

WORKING PAPER:
**TOWARDS A NATIONAL
BROADCASTING POLICY: FOR AN
INDUSTRY IN TRANSITION**

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OVERVIEW

Since the introduction of broadcasting (radio in 1927, which later included TV broadcasting in 1959), the broadcast industry has become a key part of India's social fabric. For instance, broadcasting has served as a key medium for the government to disseminate information to the masses, and serving as a mirror to society¹. In terms of monetary value, broadcasting generated revenues of INR 771 billion in 2018, which is projected to increase to INR 994 billion by 2021². It was also estimated by the Media and Entertainment Skills Council (MESC) that the broadcasting industry would have employed 3.1 lakh people by 2017³.

Further, as a core avenue of dissemination for India's creative economy, the broadcasting sector has successfully created synergies with other segments of the creative economy, especially films, where distribution avenues remain limited. For instance, India's screen density remains abysmal, with eight screens per million people, compared to China's 16, and US' 125 screens per million people⁴. Unsurprisingly then, broadcast rights accounted for 21.2 percent of the film industry's revenues in 2018, and radio remains one of the most important platforms for marketing and promoting new music⁵.

Moreover, broadcasting holds immense value economically, socially and politically, serving as a powerful development tool⁶. As recognised by the World Bank, the power of broadcasting is premised on the "widespread accessibility", "ease of use" of technologies, and the wide spread of distribution networks⁷. Different

countries have sought to regulate broadcasting to realise the emancipatory potential of the sector. Countries such as the US and the UK use economic regulation to remedy market failure⁸, whereas Canada and France intervene to ensure that the broadcasting industry promotes creative expression and local cultures and diversity⁹. The EU, with which India's policy stance is aligned in several technology-driven areas, is situated in the middle of this spectrum. It endeavours to ensure that high-quality and diverse content is available and 'findable', and that the widest possible audience has access to such content¹⁰.

In India, the broadcasting sector was initially leveraged by the state to facilitate national integration and dissemination of information to the masses. With privatisation and liberalisation, the approach to regulating broadcasting changed to enable access and promote competition¹¹. **Today, maximising access to broadcasting as a policy objective has been largely addressed, as 197 million households today subscribe to TV, with private radio channels in over 100 cities and the All India Radio (AIR) reaching 99.19 percent of Indians in 23 languages¹². Moreover, 88 per cent of TV households have now been digitised, enabling access to a wider selection of channels and content, and a better quality of service. However, quality and choice of content remains suboptimal, with homogenised and formulaic content serving a characteristically diverse and heterogeneous populace.** As per the latest figures from BARC, the highest number of channels in most languages today fall in the general entertainment content (GEC) genre.

1 *Media Development's Role in Social, Economic and Political Progress*, Media Development Investment Fund (2014), <https://www.mdif.org/wp-content/uploads/2014/08/Media-Developments-Role-in-Social-Economic-and-Political-Progress-Literature-Review.pdf>.

2 *A billion screens of opportunity: India's Media & Entertainment Sector*, Ernst & Young-FICCI (March 2019), [https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/\\$FILE/EY-a-billion-screens-of-opportunity.pdf](https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/$FILE/EY-a-billion-screens-of-opportunity.pdf).

3 *Skills Gap Study for the Media & Entertainment Sector*, Media and Entertainment Skills Council (MESC) (February 2014), <http://mescindia.org/images/skill-gap-report/MESC-Skills-Gap-Study.pdf>.

4 *A billion screens of opportunity: India's Media & Entertainment Sector*, Ernst & Young-FICCI (March 2019), [https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/\\$FILE/EY-a-billion-screens-of-opportunity.pdf](https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/$FILE/EY-a-billion-screens-of-opportunity.pdf).

5 *Ibid.*

6 Carter Eltzroth and Charles Kenny, *Broadcasting and Development: Options for the World Bank* (2003), <http://documents.worldbank.org/curated/en/129701468763468998/pdf/271420PAPER0Broadcastinganddevelopment.pdf>

7 *Ibid.*

8 Mark Armstrong and Helen Weeds, *Public Service Broadcasting in the Digital World* (2007), http://www.econ.ucl.ac.uk/downloads/armstrong/PSB_Armstrong_Weeds.pdf.

9 See *Background Paper to the Canadian Broadcasting Policy* (2011), <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2011-39-e.pdf>; Also see Thierry Vedel, *Television across Europe: Regulation, Policy and independence: France*, pp.643 (2005), <https://hal-sciencespo.archives-ouvertes.fr/hal-01053946/document>.

10 *Audiovisual and Media Policy*, Factsheets on the European Union, European Parliament (Oct. 2018), <http://www.europarl.europa.eu/factsheets/en/sheet/138/audiovisual-and-media-policy>; Jenny Metzendorf, *The Implementation of the Audiovisual Media Services Directive by National Regulatory Authorities National Responses to Regulatory Challenges*, 5(2014) *Journal of Intellectual Property, Information Technology and E-Commerce Law* 88, <https://www.jipitec.eu/issues/jipitec-5-2-2014/3998/#ftn.N10574>.

11 Kanchan Kumar, *Mixed Signals: Radio Broadcasting Policy in India*, *Economic and Political Weekly*, Vol. 38 (22) (2003), <https://www.jstor.org/stable/4413630>.

On an average, approximately 52.07% of fictional GEC programming in every language consists of dramas and soaps. On the other hand, programming for other genres like horror, action/thriller, and comedy remains miniscule in comparison. Viewership patterns, on the other hand, indicate higher demand for certain genres, in comparison to the proportion of such programming carried¹³.

This is paradoxical, since there are few other industries which are as strongly driven by consumer preferences as the media industries. Cultural sensibilities, demographic diversity and socio-economic evolution directly and constantly affect the success of content offerings and distribution platforms. Therefore, **it is imperative for systemic reforms to incentivise the creation of high-quality content which is accessible to the widest audience possible, and to strengthen the forces of market competition towards delivering a rewarding consumer experience¹⁴. Policy and regulatory impetus should thus be geared towards maximising consumer welfare, which entails providing consumers with high quality, diverse content at affordable prices.**

EVOLVING SCOPE OF BROADCASTING

With the advent of internet-based content services, and the growing adoption of IP-based broadcast transmissions, competition in the content consumption and distribution spaces has improved. The TV and Radio industries are seeking to address related market challenges through network expansion, consolidation and strategic leveraging of digital opportunities. For instance, advertising on TV is being bundled with digital advertising to provide better value to advertisers. Similarly, TV programming is being coupled with a host of interactive services on digital platforms to drive stickiness of linear television. Illustratively, on air programming of television shows like Satyamev Jayate were coupled with engagement campaigns on social

media. Consumers are also presented with increased content and service standards through personalized feeds on the digital medium. This is complemented by a wide availability of affordable and niche content on demand. Thus, digital content disruptions have presented opportunities for the broadcast industry to provide more interactive and creative content along with a heightened viewer experience.

Owing to these crossovers with the digital content space, the scope of ‘broadcasting’ has come to be revisited in law and policy frameworks around the world. For instance, Canada is currently awaiting recommendations on a joint review of its broadcasting, radiocommunications and telecommunications regulations. In this regard, a key question for consultation is how broadcasting (encompassing radio and TV services) can remain relevant as part of a broader, shifting, communications landscape.¹⁵

While the understanding of broadcasting was previously based on analogue transmission of content for reception by the public, the meaning of broadcasting has come to be understood more broadly to include encrypted transmissions through cable and satellite as well¹⁶. For instance, the Prasar Bharati Act defines broadcasting based on “transmission of electromagnetic waves”, and the intention for reception by the public through relay stations¹⁷. As such, the understanding of broadcasting has typically taken a conjunctive understanding of the following considerations:

- a. **Means of transmission** (wired or wireless): Where wireless implies transmission through Hertzian/ electromagnetic waves as well as satellite, and wired implies by cable or fibre¹⁸;
- b. **Control over the transmission** (close or managed versus open communication networks): Where the transmission takes place under the control and responsibility of the broadcasting organisation¹⁹; and
- c. **Manner of consumption** (one to many, and push based): Where the transmission has been made

¹² *A billion screens of opportunity: India's Media & Entertainment Sector*, Ernst & Young-FICCI (March 2019), [https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/\\$FILE/EY-a-billion-screens-of-opportunity.pdf](https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/$FILE/EY-a-billion-screens-of-opportunity.pdf).

¹³ *What India Watched*, BARC (2018), <https://www.thedmti.com/wp-content/uploads/2019/04/WHAT-INDIA-WATCHED-2018-BARC-India-Yearbook.pdf>.

¹⁴ *A theory of broadcast media concentration and commercial advertising*, Cunningham, B.M. and Alexander, P.J., 2004. *Journal of Public Economic Theory*, 6(4), pp.557-575.

¹⁵ *Canada's ongoing review is a Joint Review of telecom and broadcasting, owing to the interrelated nature of the two industries and in the wake of digitalisation. See Terms of Reference, Broadcasting & Telecommunications Legislative Review*, Govt. of Canada, <http://www.ic.gc.ca/eic/site/110.nsf/eng/00001.html#toc-04> (last accessed on 07 June 2019).

¹⁶ Hilde Van den Bulck, *Policy Issues Surrounding Broadcasting*, Oxford Research Encyclopedia of Communication (2016).

¹⁷ Section 2(c), Prasar Bharati (Broadcasting Corporation of India) Act, 1990 defines broadcasting as: “the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electromagnetic waves general through space or through cables, intended to be received by the general public either directly or indirectly through the medium of relay stations and all its grammatical variations and cognate expressions shall be construed accordingly”.

¹⁸ *Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)*, WIPO (1978), https://www.wipo.int/edocs/pubdocs/en/copyright/615/wipo_pub_615.pdf.

¹⁹ *Ibid*.

publicly available for reception by the public, such that transmission signals have been emitted; it is immaterial whether or not they are in fact received by specific members of the public²⁰.

Such an understanding of broadcasting has thus typically excluded dissemination of content over computer networks, and where the venue and timing of receiving the transmission is chosen by the consumer²¹. However, such definitions are being revisited with the advent of convergence as transmission protocols, means of access, and the range of services rendered across different media overlap.

DISTINGUISHING REGULATION FROM POLICYMAKING

At the same time, regulation of broadcasting continues to remain a complex issue, even if the scope of the sector has come to broaden through additions to existing definitions. For instance in India, the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007, includes continuous streaming of content in “digital data form on the computer networks”, which may be accessible to single or multiple users²². At the same time, content and carriage distinctions remain vital to defining the scope of services regulated, whereby ‘broadcasting content services’²³, and ‘broadcasting network services’²⁴ are distinctly defined and corresponding obligations tailored specifically.

The distinct rationale for regulation for radio and TV broadcasting stems from such services being reliant on scarce spectrum: as spectrum is a scarce public resource, its use remains licensed by the government so as to fulfil

its role as a custodian of this resource²⁵. Furthermore, the Supreme Court has also underpinned the use of a teleport, which is only allowed by operators licensed under the Wireless Telegraphy Act as the basis for regulation of broadcasters²⁶. Therefore, TV and radio have been tightly regulated -- beginning from complete monopoly of the government to licensed regulation for private broadcasters post liberalisation and privatisation.

In the internet realm, the absence of dependence on scarce spectrum and teleports does away with the need to regulate services in the same manner as TV and radio. Thus, the contemplation of any regulation of digital streaming must account for the specific market failures that need remedy through state intervention. Notably, digital media accounted for only 11.8% of the Media and Entertainment sector in 2018. However, the absence of regulation has facilitated tremendous growth with digital media being the fastest growing segment at 41.9% in 2018, when it reached an estimated 12-15 million households²⁷.

LOOKING FORWARD

In this evolving context of broadcasting, it will be necessary for policy and regulatory frameworks to be reimagined to reflect the realities of this transition. To this end, government focus must be on:

1. Enabling TV and radio broadcasters to keep pace with their digital counterparts: It is important to liberalise existing regulatory frameworks to ensure they do not hold back investments in a consolidating and evolving business environment; and
2. Facilitating innovation and consumer welfare: Given the nascence of online media markets, any regulation should be tailored to address clearly identified harms,

²⁰ Ibid.

²¹ See Pg. 270, *Guide to Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms*, World Intellectual Property Organization (WIPO), https://www.wipo.int/edocs/pubdocs/en/copyright/891/wipo_pub_891.pdf. Further, Article 2(f), *WIPO Performances and Phonograms Treaty (WPPT)*, 1996 defines “Broadcasting” as: “the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent.” Similarly, the latest iteration of the definition of “broadcasting” under the *Broadcasting Treaty* being deliberated by the WIPO Standing Committee on Copyright and Related Rights (SCCR) defines “broadcasting” as: “the transmission either by wire or wireless means for reception by the public of a programme-carrying signal; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent. Transmissions over computer networks shall not constitute “broadcasting”.”

²² Section 2(1)(b), *Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 (“Sports Act”)*: “broadcasting” means assembling and programming any form of communication content, like signs, signals, writing, pictures, images and sounds, and either placing it in the electronic form on electro-magnetic waves on specified frequencies and transmitting it through space or cables to make it continuously available on the carrier waves, or continuously streaming it in digital data form on the computer networks, so as to be accessible to single or multiple users through receiving devices either directly or indirectly; and all its grammatical variations and cognate expressions.

²³ Section 2(1)(d), *Sports Act, 2007*.

²⁴ Section 2(1)(i), *Sports Act, 2007*.

²⁵ *The Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal and Anr* 1995 SCC (2) 161.

²⁶ *Star India Private Limited v. Department of Industrial Policy and Promotion* (2019) 2 SCC 104.

²⁷ *A billion screens of opportunity: India’s Media & Entertainment Sector*, Ernst & Young-FICCI (March 2019), [https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/\\$FILE/EY-a-billion-screens-of-opportunity.pdf](https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/$FILE/EY-a-billion-screens-of-opportunity.pdf).

and based on assessments of its impact on innovation and consumer welfare.

At this stage, it is prudent for government to undertake an independent assessment of the country's broadcasting landscape²⁸. Here, relevant considerations are: **trends and likely drivers of change; potential for new services and models; sustainability of revenues; the needs and preferences of audiences; consumer behaviour; platform and distribution developments; and, the efficacy of the extant regulatory frameworks.** At the same time, the complex of legislative and regulatory frameworks must be harmonised. Illustratively, the Ministry of Information and Broadcasting (MIB) is currently tasked with legislation and policymaking for television, radio, and the press, while the Ministry of Electronics and Information Technology (MEITY) holds the mandate over all matters relating to information technology and the internet²⁹. The ambit for telecommunications, including licensing and policymaking for telegraphs, telephones, wireless and data, along with the administration of the Telegraph Act, Wireless Telegraphy Act and the TRAI falls within the Department of Telecommunications (DoT)³⁰. In this context, it would be prudent for the MIB to establish a National Broadcasting Commission along the lines of the Digital Communications Commission (erstwhile Telecom Commission), which was set up in 1989 to serve as the policy-making wing of the DoT³¹. Such a commission could include technical members from different arms of government, as well as from industry and academia, who can help shape the future of harmonized policymaking for broadcasting.

²⁸ *Broadcasting Services Strategy, Broadcasting Authority of Ireland (Oct. 2018)*, <http://www.bai.ie/en/download/133341/>.

²⁹ *Government of India: Allocation of Business Rules, 1961 (As amended till 04 Apr. 2019)*, https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeabrules/english/1_Upload_1829.pdf.

³⁰ *Ibid.*

³¹ *Constitution of Telecom Commission (now Digital Communications Commission), Resolution of the Cabinet Secretariat dt. 11 Apr. 1989, as notified in the Gazette of India*, http://dot.gov.in/sites/default/files/2016_05_26%20Res%20Policy-I.pdf?download=1%3Cbr%20%3E.

PRINCIPLES TO INFORM THE NATIONAL BROADCASTING POLICY

In order to keep pace with technology, countries like Australia have considered principle-based approaches to regulation³². In this context, it is important to appreciate the merits of adopting a firm principle-based approach to governing broadcasting markets. **Functional parameters change with technologies and which makes it difficult for policies to keep pace. Conversely, robust principles can provide a stable anchor for a future-proof policy framework.** For instance, UK regulator Ofcom's "Approach to Regulation" is informed by high-level principles³³. Specifically, it operates with a bias against heavy-handed/frequent interventions. Priority areas for British authorities include growth, competition and innovation to benefit consumers and citizens by enabling greater ability to access new products and services. At the same time, they follow principles in order to protect the public/consumer/citizen interests. Such interventions are typically warranted when there is a specific public policy goal which markets alone cannot achieve. Illustrative situations include: (a) protecting vulnerable groups (including children) from harmful content; and (b) discouraging misleading or bad faith sales practices³⁴.

Similarly, the European Commission aims to ensure that member states embrace principles which ensure that government action does not distort competition and promotes technological neutrality³⁵. There has also been general consensus in jurisdictions within the EU (like France) that principles of plurality and diversity should not be subordinate to technical regulations governing competition³⁶. Further, countries like Japan

have been seen to adopt certain granular governance principles to thwart specific threats to plurality such as a principle to guard against the risks stemming from media concentration³⁷. Developing countries like Colombia, Lithuania and Mexico also lean heavily on principles of promoting free and fair market competition, protecting user's rights and preserving plurality. In this context, some principles are suggested for a National Broadcasting Policy in India:

ENABLING A MARKETPLACE FOR FREE EXCHANGE OF IDEAS, PLURALITY AND CHOICE

Suggested Language:

The Policy will strive to preserve and enable a marketplace for ideas through independent, adequate and proportionate regulation.

Rationale:

Broadcasting is at the core of facilitating the free flow of news, information and opinion, which adequately informs citizens to exercise their democratic rights. In this context, best practices indicate that interventions should support the basic concept of freedom of expression, which in turn is a precondition for the effective operation of democracy³⁸. In this breadth, India's Supreme Court has articulated that, "effective competition of ideas in the market alone will ensure the emergence of truth", and which is a key constituent of India's right to freedom of speech and expression³⁹. This, in turn, requires adequate/robust competition in media markets⁴⁰, and independence from unnecessary government intervention. To facilitate competition the government must focus on non-discrimination and transparency at every level of the broadcasting value chain. Additionally,

32 Convergence Review: Final Report, Convergence Review Committee, Australian Government (March, 2012), https://web.archive.org/web/20140321214755/http://www.archive.dbcde.gov.au/_data/assets/pdf_file/0007/147733/Convergence_Review_Final_Report.pdf

33 Ofcom's Annual Plan 2005/6 : Consultation Document, Section 2: Our approach to regulation, Ofcom, UK, (2006), https://www.ofcom.org.uk/_data/assets/pdf_file/0020/42770/ch2.pdf

34 Ibid.

35 Competition Issues in Television and Broadcasting, OECD Global Forum on Competition, OECD (2013), pg 98 <http://www.oecd.org/daf/competition/TV-and-broadcasting2013.pdf>.

36 Ibid., pg 125.

37 Ibid., pg 196.

38 Eve Salomon, Guidelines for Broadcasting Regulation, Commonwealth Broadcasting Association (now Public Media Alliance) (Dec. 2008), <https://www.publicmediaalliance.org/wp-content/uploads/2017/08/RegulatoryGuidelines.pdf>

39 Bennett Coleman & Co. & Ors. v. Union Of India & Ors., 1973 SCR (2) 757, <https://www.sci.gov.in/jonew/judis/6674.pdf>.

40 Matthew Gentzkow and Jesse M. Shapiro, Competition and Truth in the Market for News, *Journal of Economic Perspectives—Volume 22, Number 2* (2008), pp. 133–154, <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.22.2.133>.

international authorities like the Council of Europe have remained committed to the perspective that in order to guarantee the existence of a wide range of independent and autonomous media in the broadcasting industry, it is essential to provide for adequate and proportionate regulation of the sector⁴¹.

MARKET AND EVIDENCE BASED INTERVENTIONS

Suggested Language:

In order to account for market dynamism, the Government will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent. To ensure markets are not distorted, it shall encourage the use of relevant tools like regulatory impact assessments, market studies and consumer surveys.

Rationale:

The Government should provide the necessary support to attract capital, talent, and creativity towards the production of higher-quality content and consumer experiences. These imperatives must be complemented with appropriate safeguards to preserve plurality, diversity and choice. For this, a light touch/minimalist approach is in order, complemented by a reliance on strong interventions which address discernable market failures. Government intervention must further the objective of orderly market growth. Therefore, the underpinning rationale for regulatory intervention in the broadcasting industry should be restricted to situations such as⁴²:

- Weak competition leading to consumer harm
- Externalities
- Information asymmetry leading to difficulty in making informed decisions
- To achieve social objectives such as enhancing access to broadcasting or protecting vulnerable groups like children from harmful material

SIMPLIFYING LEGAL FRAMEWORKS

Suggested Language:

The Government will aim to ensure that when regulatory and legal frameworks conflict with one another, they will be rationalised in a transparent and consultative manner.

Rationale:

Currently, India's broadcasting ecosystem has a multiplicity of laws, regulations and authorities. As subsequent analysis will demonstrate, this translates into inefficient processes and contradictory incentive structures which hamper market growth. This can be seen both in terms of internal and external incoherence. Illustratively:

- *Internal Incoherence:* Distinct compliance requirements across various Distribution Platform Operators (DPOs) like DTH, IPTV, HITS, MSOs and LCOs.
- *External Incoherence:* Lack of harmonization between downstream regulations and copyright laws.

Broadcasting authorities in countries like New Zealand have observed that lack of clarity and consistency in regulations and policies serve as a substantive threat to preserving cultural diversity⁴³. Future inconsistencies may even be contradictory to the rule of law and principles of natural justice, as per the *doctrine of legitimate expectations*.⁴⁴ Therefore, the Indian Government should take preemptive measures to resolve legal and regulatory anomalies.

OPTIMAL USE OF PUBLIC RESOURCES

Suggested Language:

The Government will seek to maximise the utility of public resources and infrastructure.

⁴¹ Recommendation Rec(2000) 23, Committee of Ministers, Council of Europe (20 Dec. 2000), [https://mediainitiatives.am/wp-content/uploads/2017/01/Council-of-Europe-Declaration-on-the-Independence-and-Functions-for-the-Broadcasting-Sector-in-English-1.pdf](https://rm.coe.int/16804e0322; Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, Committee of Ministers, Council of Europe (26 Mar. 2008), <a href=)

⁴² Economic rationales for regulating markets, Economics in Practice, Scrutiny Unit, UK Parliament (June 2011), <https://www.parliament.uk/documents/commons/Scrutiny/Rationale-for-regulating-markets.pdf>.

⁴³ Digital Broadcasting: Review of Regulation | Volume Two | Discussion Paper, Ministry for Culture and Heritage, Government of New Zealand (January 2008), https://cto.int/wp-content/themes/solid/_layout/dc/k-r/DigitalBroadcastingReviewofRegulationVolumeTwo.pdf.

⁴⁴ Sethi Auto Service v. Delhi Development Authority, AIR 2009 SC 904.

Rationale:

Proper management of spectrum is essential for the successful operation of both the broadcasting industry and the digital economy. In this regard, the broadcasting policy should prioritise proper allocation and efficient use of spectrum, besides continuously monitoring technological developments and modifying spectrum-related policies and regulations to suit them. Proper allocation of spectrum would entail choosing the right bands for allocation and setting justifiable prices and usage fees. Encouraging technological development, spectrum sharing, and research and development will enable the efficient use of spectrum. Further, it is the onus of government agencies that manage spectrum to ensure that spectrum use and allocation is conducted in a transparent manner and steps such as allocating new bands and unused spectrum are undertaken regularly. The National Digital Communications Policy has already adopted some of these strategies, and envisions a unified spectrum allocation and management programme for broadband and broadcast technologies. The National Broadcasting Policy would benefit from harmonisation with the NDCP, and India may consider developing a unified strategy for spectrum management similar to other jurisdictions such as the UK and the EU⁴⁵.

Similarly, the government must identify other preexisting sector/industry assets which may be utilised more effectively to further development objectives. It may consider strategies such as unbundling the local cable loop for greater utility, infrastructure sharing, inter platform competition, etc. which can augment competition and choice. Additionally, India's extant satellite policies⁴⁶ (which is from the year 1997) is in urgent need of modernisation. The MIB should commence conversations to address such lacuna and leverage it as a point of departure to incentivise the adoption and deployment of modern SATCOM technologies.

⁴⁵ *Spectrum management strategy - Ofcom's approach to and priorities for spectrum management over the next ten years*, Ofcom, United Kingdom (02 Oct. 2013-03 Jan. 2014), <https://www.ofcom.org.uk/consultations-and-statements/category-1/spectrum-management-strategy> (last accessed on 07 June 2019).

⁴⁶ *A policy framework for satellite communication in India*, Indian Space Research Organisation (ISRO), Government of India (1997), <https://www.isro.gov.in/sites/default/files/article-files/indias-space-policy-o/satcom-policy.pdf>.

SUGGESTED OBJECTIVES AND IMPLEMENTATION STRATEGIES

This section explains specific strategies to achieve each of the following objectives:

1. Ensuring Plural Content for a Diverse Market
2. Facilitating Infrastructure Expansion and Enabling Digitisation
3. Incentivising High Quality Content Creation
4. Coordinated Policymaking
5. Focusing on Ease of Doing Business Imperatives
6. Propelling Public Service Broadcasting in India

OBJECTIVE 1: ENSURING PLURAL CONTENT FOR A DIVERSE MARKET

UPHOLDING CONSTITUTIONAL AND INTERNATIONAL LAW IMPERATIVES

Suggested Language:

Broadcasting and freedom of expression are intrinsically linked, and one helps actualise the other. The Government shall uphold the standards laid down under the Indian Constitution as well as agreed under international commitments, towards encouraging spread of creative expression through broadcasting.

Rationale:

Article 19(1)(a) of India's Constitution guarantees a fundamental right to freedom of speech and expression. International courts and experts have consistently held that a robust right to freedom of speech and expression is a core element of a well-functioning democratic society⁴⁷. This has also been reflected in Indian jurisprudence. In *Sakal Papers and Anr v Union of India*⁴⁸ the Supreme

Court of India characterised this right as “perhaps the most precious of all freedoms guaranteed by our Constitution.” The rationale deployed by the court was that the freedom of speech and expression “of opinion” assumes a heightened sense of importance for democratic constitutional regimes which envisage periodic changes in the composition of lawmakers and governments. Such freedoms therefore necessitate preservation⁴⁹. Moreover, the apex court has historically appreciated that this fundamental right should be broadly interpreted to include the freedom to circulate one's views through various means of dissemination such as audio-visual mediums like print, radio, television, etc. The rationale to protect such communication channels and the accompanying right to circulation under the constitutional framework is to advance the public interest. Specifically, it allows for the dissemination of news and views for popular consumption which informs the public of events, developments and is a means through which voters are educated – a critical consideration for a vibrant and functioning democracy⁵⁰. The Supreme Court built on this jurisprudence and made a seminal decision in *The Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal and Anr* – a case which laid the foundational principles for India's broadcasting laws⁵¹. The Court categorically crystallised that the right to receive and impart information is a key constituent of the overarching right under Article 19(1)(a)⁵². Specifically, this constitutes a right to access the best means of imparting and receiving information, and also access the means to telecast for said purpose.

In addition to constitutional imperatives, India is also bound by its commitments under international agreements. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), India has recognized the right to protection of moral and material interests in authorship of literary and artistic production⁵³. India must not only seek to protect the economic and moral rights connected to intellectual property, but also guarantee a policy ecosystem which encourages the creation of creative works. Additionally,

⁴⁷ Joint Declaration on Universality and the Right to Freedom of Expression, OSCE (06 May 2014), <https://www.osce.org/fom/118298?download=true>; Compulsory Membership in an Association prescribed by Law for the practice of Journalism (Arts. 13 and 29, American Convention on Human Rights), Advisory Opinion OC-5/85, Inter-American Court of Human Rights (13 Nov. 1985), http://www.corteidh.or.cr/docs/opiniones/seria_05_ing.pdf.

⁴⁸ 1962 SCR 3 842, <https://www.sci.gov.in/jonew/judis/4110.pdf>.

⁴⁹ *Ibid.*

⁵⁰ *Life Insurance Corporation of India v. Professor Manubhai D. Shah*, 1992 SCR (3) 595, <https://www.sci.gov.in/jonew/judis/12354.pdf>.

⁵¹ 1995 SCC (2) 161, <https://www.sci.gov.in/jonew/judis/10896.pdf>.

⁵² *Ibid.*, Para 124.

⁵³ Article 15, International Covenant on Economic, Social and Cultural Rights (ICESCR), <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of expression, which includes the “freedom to seek, receive and impart information and ideas of all kinds”, without restrictions, and through any media of one’s choice⁵⁴. Furthermore, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions reinforces the role of human rights in national policies for creation, production and distribution of cultural goods and services⁵⁵. Contracting Parties must endeavour to encourage the creation, production, dissemination, and distribution of the cultural expressions of individuals and social groups within their territories. Therefore, the national broadcasting policy should appreciate that India’s Constitution and its obligations under international law, and require future broadcasting laws to uphold the right to receive and impart information and rights relating to the same. This includes an enabling environment to ensure that concerned parties can access the best means to disseminate the information/content in question.

BALANCING FREE SPEECH RIGHTS WITH REASONABLE RESTRICTIONS

Suggested Language:

The Government shall align content standards and regulatory frameworks in a manner consistent with reasonable restrictions to the right to freedom of speech and expression. In order to balance the need to protect viewers and listeners from harmful content whilst enabling broadcasters to be creative and express its full range of views and perspectives, the Government shall ensure restrictions are well defined.

Rationale:

Article 19(2)⁵⁶ of the Indian Constitution states that the right to freedom of speech and expression is subject to reasonable restrictions. Within Indian jurisprudence such reasonable restrictions have been interpreted in a variety of ways. India’s Supreme Court while discussing the freedom of the press in *Indian Express Newspapers (Bombay) Pvt Ltd and Ors v Union of India and Ors*⁵⁷ discussed the contours of “reasonableness” of restrictions imposed on fundamental rights. In that instance, the Court found that there is a need to evaluate a multiplicity of factors which, *inter alia*, includes the underlying purpose of the restriction which has been imposed and **importantly the proportion/disproportion** of the restriction which is imposed⁵⁸. In other cases such as *Shreya Singhal v Union of India*⁵⁹ India’s Supreme Court held that reasonable restrictions must be **narrowly tailored or narrowly interpreted** in a manner which restricts only that speech/content that is absolutely necessary⁶⁰. Moreover, in prior judgements Indian jurisprudence holds that legislation which excessively invades a particular right falls outside the scope of reasonableness.⁶¹

Even internationally, reasonable restrictions on the right to seek, receive and impart information under the ICCPR⁶² are justifiable only in narrow instances of risks to national security, public order or morality. Importantly, domestic laws which prescribe such restrictions must satisfy what is referred to as the three-part test as follows:

1. The restriction must be **prescribed by law** wherein prohibited speech is reasonably foreseeable/discernible;
2. The restriction must be **necessary** (international courts like the ECHR follow the necessary in a democratic society threshold); and
3. The restriction must be **proportionate** to the harm which is being caused by the particular speech.

⁵⁴ Article 19(2), ICESCR.

⁵⁵ Convention on the Protection and Promotion of the Diversity of Cultural Expressions- What It Is, UNESCO, <https://en.unesco.org/creativity/convention>.

⁵⁶ “Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence”

⁵⁷ 1986 AIR 515, <https://indiankanoon.org/doc/223504/>.

⁵⁸ *Ibid*.

⁵⁹ Writ Petition (Criminal) No. 167 of 2012, <https://www.sci.gov.in/jonew/ropor/rop/all/250446.pdf>.

⁶⁰ *Ibid.*, Para 17.

⁶¹ *Chintaman Rao v. The State of Madhya Pradesh*, [1950] S.C.R. 759, <https://www.sci.gov.in/jonew/judis/1235.pdf>.

⁶² Article 19, *The International Covenant on Civil and Political Rights*, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

ENCOURAGING SELF-REGULATION

Suggested Language:

The Government will facilitate independent and effective means of self-regulation to address specific and discernible harms emanating from content. In general, the Ministry of Information and Broadcasting shall seek to identify reasonable and proportionate content standards whilst enabling creativity and innovation.

Rationale:

Content regulation for broadcasting has expanded to extend beyond cable operators, to all distributors and broadcasters within the Indian broadcasting ecosystem. While the uplinking and downlinking guidelines have extended the application of the Program and Advertisement Codes to broadcasters⁶³, the relevant licensing conditions extend the same to other distribution platforms. In the context of the broadcasting industry today, which is competing with the wider digital content economy, prescriptive content regulation has the negative impact of restricting the creative impulses of content creators and reducing the competitiveness of broadcast content. Ensuring the competitiveness of broadcast content entails a fine balance between the public interest and ensuring accuracy of information, while encouraging diversity and plurality of content and free-expression.

Many countries have consequently encouraged co-regulatory frameworks to engender accountability in media⁶⁴. In India, robust self-regulatory codes have been crystallised for both news and non-news content. For instance, the Indian Broadcasting Foundation Code for non-news and current affairs channels is enforced by the Broadcasting Content Complaints Council (BCCC). Similarly, the News Broadcasting Standards Authority (NBSA) is the self-regulatory body which enforces the self-regulatory “Code of Ethics and Broadcasting Standards and Guidelines” for news & current affairs channels on behalf of India’s News Broadcasters

Association (NBA). It is important to highlight as it presently stands India’s self-regulatory content mechanisms run parallel to the content codes referenced above. It may be noted that international expert organisations like *Article 19* have stated that jurisdictions with responsive/robust self-regulatory content monitoring mechanisms should remove any parallel content codes, especially those which have penalties of a civil or criminal nature⁶⁵. To eliminate such overlaps, the Government of India should rationalise self-regulation frameworks within extant laws similar to the Advertising Standards Council of India (ASCI)⁶⁶.

At the same time, it must be noted that extant self-regulatory frameworks need to be strengthened to monitor and restrict violations strictly, while ensuring that no regulatory gaps remain. For instance, the NBSA does not currently govern all news broadcasters operating in India. Additionally, enforcement of Codes remains arbitrary. In this scenario, the Ministry must develop oversight mechanisms to ensure transparency, such as mandatory annual reporting to the Ministry, and publishing the same online. Such reports should include information regarding complaints resolved, received and under consideration, along with reporting on financing. The Ministry may further require self-regulatory bodies to mandatorily provide written orders on complaints resolved to ensure non-discrimination and transparency of decision making.

Apart from this, in other content domains like the internet; industry-led stakeholders are proactively developing content standards to ensure trust and safety. For example, in 2019, nine providers of curated online content released the “*Code Of Best Practices For Online Curated Content Providers*”⁶⁷. This document was intended to establish a set of baseline principles to inform content restrictions being offered over the platforms of the signatories. Such voluntary efforts should be supported by government, particularly as validation through statutory recognition allows for proportionate content standards to be developed and implemented within Indian content

⁶³ In 2004, the Bombay High Court held in the matter of *Pratibha Naithani v. Union of India* that the prohibition to not play A rated movies that applied to cable operators shall apply to broadcasters as well. In response to this judgment, MIB formulated Up-linking and Downlinking Guidelines in 2005, which extended the application of Program and Advertisement Code to broadcasters.

⁶⁴ *Audiovisual and Media Services Directive - Self and Co-regulation study*, Directorate General- Communications Networks, Content and Technology (DG CONNECT), European Commission (25 May 2016),

<https://ec.europa.eu/digital-single-market/en/news/audiovisual-and-media-services-directive-self-and-co-regulation-study>.

⁶⁵ Pg. 193, *Broadcasting Policy and Practice in Africa*, Article 19 (2003), <https://www.article19.org/data/files/pdfs/publications/africa-broadcasting-policy.pdf>.

⁶⁶ Under Rule 7(9) of the Cable Television Networks (CTN) Rules, cable operators are prohibited from carrying advertisements that violate the ASCI code for self regulation in advertising. DTH, HITS and IPTV operators are also mandated to follow the Advertising Code under Rule 7 of the CTN Rules, and are thereby bound to follow the ASCI Code.

⁶⁷ *Code of Best Practices for Online Curated Content Providers*, Internet and Mobile Association of India (Jan. 2019), <http://iprmentlaw.com/wp-content/uploads/2019/01/Code-on-OCC-Providers.pdf>.

markets. To this end, the National Broadcasting Policy should highlight the importance of statutorily recognised self-regulatory systems as the framework of choice for proportionate content standards for its creative industries.

PROMOTING CHOICE THROUGH ACCESS, FINDABILITY AND NON-DISCRIMINATION

Suggested Language:

The Government aims to enhance access, findability and non-discriminatory treatment of content which can ensure better quality of service in broadcasting markets.

Rationale:

As the Indian broadcasting market expands, viewers are being inundated by content, with 880 TV channels and 355 FM Radio channels to choose from⁶⁸. Therefore, India must balance imperatives of access, findability and non-discrimination in broadcasting markets. For instance, EU policies stress the need for broadcasting service providers across platforms to strictly adhere to standards analogous to ‘must carry’ principles. This helps achieve objectives of diversity since searching for and finding content should not be determined solely by monetary interests at the cost of user choice. Further, other jurisdictions have also stressed on the need for findability to be coupled with net neutrality-like principles of non-discriminatory treatment of content. Another point of emphasis observed in jurisdictions like the UK is focusing on periodic updating and strengthening of frameworks governing electronic programming guides.⁶⁹

ENSURE OBJECTIVITY AND STRENGTHENING RESPONSES TO MISLEADING AND PAID NEWS

Suggested Language:

The Government will ensure objectivity and plurality of news media by undertaking a review of incidence of paid news and framing appropriate guidelines for disclosures by political parties, news media (including print and electronic media), and business groups.

Rationale:

An objective news media is key to promoting plurality of opinion and achieving a well-informed knowledge society⁷⁰. In this context, policymakers must address issues of both internal and external plurality. While external plurality deals with issues of media ownership (discussed in the next section); internal plurality refers to threats of editorial independence of media outlets⁷¹ as it can compromise people’s constitutional rights to access information⁷². Therefore policymakers must not only address questions of media ownership and threats arising from the recurring use of private treaties⁷³, but also lack of adequate disclosures of advertorials⁷⁴, violation of disclosure norms for political advertising, and unbalanced airtime for opposing political sides⁷⁵, that lend to the shaping of a biased, lopsided polity.

In this regard, TRAI’s *Recommendations on Media Ownership (2014)* highlight the need for disclosures across the spectrum, limitations on ownership by specified entities such as local and state governing bodies and publicly funded institutions, as well as restrictions on private treaties⁷⁶. Prior to these recommendations, the

68 Performance Indicators Report (October–December 2018), Telecom Regulatory Authority of India, https://main.trai.gov.in/sites/default/files/PIR_04042019_0.pdf

69 Code of practice on electronic programme guides, Ofcom, United Kingdom, https://www.ofcom.org.uk/_data/assets/pdf_file/0031/19399/epgcode.pdf.

70 Catherine Happer and Greg Philo, *The Role of the Media in the Construction of Public Belief and Social Change*, *Journal of Social and Political Psychology*, Vol. 1(1) (2013) <https://jspp.psychopen.eu/article/view/96/37>.

71 Para 1.13, *Recommendations on issues relating to Media Ownership*, TRAI (12 Aug. 2014), https://main.trai.gov.in/sites/default/files/Recommendations_on_Media_Ownership.pdf.

72 Recognised as a constitutional right enshrined within the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India in *S.P. Gupta v. Union of India*, AIR 1982 SC 149, <https://indiankanoon.org/doc/1294854/>.

73 Agreements entailing “a company giving stake in it (shares, warrants, bonds etc.) in return for media coverage through advertisements, news reports, advertorials etc. in print or electronic media.”; see Press Release: Guidelines concerning mandatory disclosure by the media of its stake in the corporate sector, Press Council of India (02 Aug. 2010), https://www.sebi.gov.in/sebi_data/commondocs/presscouncil_p.pdf.

74 The 2018 Cobrapost sting operation is a case in point where several media houses were found to engage in biased reporting in lieu of money; see *Cobrapost Sting: Big Media Houses Say Yes to Hindutva, Black Money, Paid News*, *The Wire* (26 May 2018), <https://thewire.in/media/cobrapost-sting-big-media-houses-say-yes-to-hindutva-black-money-paid-news>.

75 For instance, Doordarshan was found to have provided the Bharatiya Janata Party (BJP) twice the airtime provided to the Indian National Congress, and was required to desist from such preferential treatment by the Election Commission of India in the run-up to the 17th Lok Sabha Elections (2019); see EC tells Doordarshan to desist from giving preferential airtime to one political party, *Business Today* (10 Apr. 2019), <https://www.businesstoday.in/lok-sabha-elections-2019/news/ec-tells-door-darshan-to-desist-from-giving-preferential-airtime-to-one-political-party/story/335899.html>.

76 *Recommendations on issues relating to Media Ownership*, TRAI (12 Aug. 2014), https://main.trai.gov.in/sites/default/files/Recommendations_on_Media_Ownership.pdf.

Standing Committee on Information Technology in its 47th report on “Issues Related to Paid News” (2013) recommended defining “paid news” comprehensively, mandatory disclosure of ‘private treaties’ and details of advertising revenue received by the media houses, and strengthening regulation of media by eliminating conflicts of interest in governing bodies and empowering such bodies with adequate punitive powers⁷⁷. While the Election Commission of India has undertaken specific action to curb paid news by enforcing disclosures regarding expenditure in paid news by political parties and candidates in electoral matters, it is necessary to address such concerns beyond election coverage as well⁷⁸. For instance, most of these recommendations remain unimplemented at the level of the Ministry of Information and Broadcasting⁷⁹. On the other hand, implementing such measures swiftly, and across the board can curb unethical media practices while also creating spill-over benefits for online media, which is inundated by information warfare, misinformation and fake news.

CROSS MEDIA OWNERSHIP, VERTICAL INTEGRATION AND MEDIA PLURALITY

Suggested Language:

The Government shall strengthen competition law principles and institutions to address risks of concentrations of media ownership to plurality. At the same time, frameworks will be rationalised to catalyse investments, augment supply chain efficiencies and spur content creation.

Rationale:

With the implementation of the new regulations on broadcasting and cable services, distributors are strictly bound by “must carry” obligations, which ensure non-discrimination in the carriage of content to consumers. Furthermore, with a mature competition regulator in place, the Indian Government can rely on a strong ex-post antitrust framework to govern monopoly formation and mitigate consumer harms in broadcasting markets. As a first order, the MIB must clearly articulate in its policy what these consumer harms constitute. There must also be an appreciation that the CCI’s expertise resides in market analysis through the prism of efficient functioning of markets for general goods and services. However, as India’s telecom regulator has previously stated that the media “cannot, and should not, be bracketed with general commodities and services. The market for ideas is very different from that for, say, shoes or biscuits.”⁸⁰ Therefore, competition law principles and authorities like the CCI must be empowered with the necessary tools and principles to effectively ensure pluralism of news/views. Standards like the UK developed *Media Public Interest Test/Media Plurality Test*⁸¹ may be used as templates for antitrust evaluations/assessments⁸². Other global expert organisations have also stated that in order to achieve objectives of media pluralism and consumer access to a broad range of content, there is a need for policymakers to strengthen must-carry and access provisions⁸³.

To this end, due care must be taken to restrict concentration risks linked to cross-media ownership. According to TRAI’s *Recommendations on Media Ownership* restrictions on cross-media holdings seek to preserve external plurality in media markets⁸⁴. The recommendations go on to state that if the same media

⁷⁷ Issues related to paid news, Report of the Standing Committee on Information & Technology, Lok Sabha (May 2013), http://indianjournalistsunion.org/Paidnews_Parliament_Committee_Report.pdf.

⁷⁸ This was the thrust of the Law Commission’s Consultation on Media Law (May 2014) as well, where the Commission recognised that issues relating to the media are not solely limited to elections and sought to consult on issues which inter alia included privacy breaches and paid news; see Consultation Paper on Media Law, Law Commission of India, Government of India (May 2014) <http://www.lawcommissionofindia.nic.in/views/Consultation%20paper%20on%20media%20law.doc>.

⁷⁹ Action taken by the Government on the Observations/Recommendations of the Committee contained in their Forty-seventh Report (Fifteenth Lok Sabha) on ‘Issues Related to Paid News’, Report of the Standing Committee on Information & Technology, Lok Sabha (Aug. 2015), http://164.100.47.193/lssccommittee/Information%20Technology/16_Information_Technology_12.pdf.

⁸⁰ Recommendations on issues relating to Media Ownership, TRAI (12 Aug. 2014), https://main.traai.gov.in/sites/default/files/Recommendations_on_Media_Ownership.pdf.

⁸¹ Is The UK ‘Media Plurality Test’ Fit For Purpose?, Centre for Freedom of the Media, University of Sheffield (15 July 2011), <http://www.cfom.org.uk/2011/07/15/is-the-uk-media-plurality-test-fit-for-purpose/>.

⁸² The operation of the media ownership rules listed under Section 391 of the Communications Act 2003, Ofcom’s Report to the Secretary of State, Ofcom UK (23 Nov. 2018), https://www.ofcom.org.uk/_data/assets/pdf_file/0030/127929/Media-ownership-rules-report-2018.pdf.

⁸³ Guide to the Digital Switchover, Organization for Security and Co-operation in Europe (OSCE) (2010), pg. 53, <https://www.osce.org/fom/73720?download=true>.

⁸⁴ Recommendations on issues relating to Media Ownership, TRAI (12 Aug. 2014), https://main.traai.gov.in/sites/default/files/Recommendations_on_Media_Ownership.pdf.

entity controls outlets across different media segments, similar views and opinions would be disseminated across all segments. Different segments of media perform different yet complementary functions. For example, television tends to perform an “announcement” function, the radio updates listeners (who are on the move) and print media complements this by providing in-depth analysis⁸⁵. An individual’s demand for news is typically fulfilled after they consume information across the various aforementioned segments, which underscores the need for diverse/heterogeneous ownership across these discrete channels.

There is a need for policymakers like MIB to study the industry’s structure and concentration⁸⁶ in order to map the degree of influence being exerted by particular entities/conglomerates. Toward this guidance can be sought from European standards which adopt methods of assessment such as audience or market share, as opposed to numerical limitations on how many channels an individual or company can own⁸⁷. Additional transparency disclosures⁸⁸ will also have to be considered at the time of mergers, acquisitions and major investments. Pertinently, reference may also be drawn to the Parliamentary Standing Committee on Information Technology’s 47th Report on Issues Related to Paid News⁸⁹. In it, the Standing Committee states that ownership across media segments or between content and distribution may lead to concerns of monopolistic practices⁹⁰. The role of the Competition Commission of India in such scenarios assumes importance.

Government interventions should nevertheless not thwart investments into an ecosystem which is inherently capital intensive in nature. Moreover, from a market

perspective the benefits of consolidating supply chains is manifold and, inter alia, includes economies of scale through forward and backward linkages. Here, it may be noted that cross-media ownership and concentration of ownership standards should not come at the cost of business/market survival strategies. This can be corroborated by experience of countries like the Netherlands which relaxed investments/ownership controls, the decision for which was also influenced by the greater choice people have in accessing a multiplicity of perspectives and views over the internet⁹¹.

In this regard it is imperative India reviews its current tools which regulate investment (such as FDI controls on vertical integration) and build parallel safeguards which balance investment needs with concerns of market influence and risks of erosion of plurality. At the same time these safeguards should be built in a technology neutral and non-discriminatory manner so as to eliminate/avoid scenarios where certain investments into a specific distribution technology is inordinately blocked, and whereas the policy should avoid discriminating capital which emanates from Indian and foreign promoters.

Additionally, relevant markets should be identified with appropriate nuance. Specifically, the relevant product market whilst framing cross media ownership controls should not affect all genres but only those genres which have a role in shaping public opinion and affect democratic processes. Thus, the National Broadcasting Policy should only restrict its applicability to the News and Current Affairs genre. Indeed, such exceptional focus on News and Current Affairs genre of content would be aligned with global practices in countries like the

85 Mark Cooper, *Media Ownership and Democracy in the Digital Information Age*, Consumer Federation of America, 2003.

86 Toby Mendel, *Applying UNESCO’s Media Development Indicators: A Practical Guidebook to assist Researchers*, UNESCO, https://en.unesco.org/sites/default/files/guidelines_mdi_final_en_o.pdf.

87 Para I (2.1), *Recommendation of the Committee of Ministers to member states on media pluralism and diversity of media content*, Council of Europe (31 Jan. 2007), https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d6be3; *Media Pluralism and Human Rights- Issue Discussion Paper*, Commissioner for Human Rights, Council of Europe (06 Dec. 2011), <https://rm.coe.int/16806da515>.

88 *Response of Article 19, Public consultation on "Media Pluralism and Democracy"*, 2016 Annual Colloquium on Fundamental Rights, European Commission (July 2016), http://ec.europa.eu/information_society/newsroom/image/document/2016-44/article_19_en_18798.pdf.

89 *Issues related to paid news*, Report of the Standing Committee on Information & Technology, Lok Sabha (May 2013), http://indianjournalistsunion.org/Paidnews_Parliament_Committee_Report.pdf.

90 This continues to hold significance as cable distribution sector has seen the emergence of large MSOs and embedding of cross-media ownership patterns leading to “near-monopolies”. See Vibodh Parthasarathi and Alam Srinivas, *Problematic Ownership Patterns: The Evolution of the Television Distribution Networks in India*, *Economic and Political Weekly* Vol. 54 (12) (2019), <https://www.epw.in/engage/article/television-networks-political-ownership-patterns>.

91 Pg. 50, *Jurisdictional Review of plurality policies, guidelines, practices and rules*, Broadcasting Authority of Ireland (Mar. 2018), https://www.bai.ie/ga/media/sites/3/dlm_uploads/2018/12/201503_Jurisdictional_Review_vFinal.pdf.

US, UK, Germany⁹², Norway⁹³, France⁹⁴, and Canada⁹⁵. Moreover, moving forward MIB should continue to study consumption patterns for people across different segments of media including the internet. Based on this, policies on cross media ownership should be continually updated, and adapted to the online sphere if necessary⁹⁶.

ENHANCING MEDIA LITERACY

Suggested Language:

The government shall focus on developing standards, commissioning research and commencing capacity building initiatives which help increase levels of media literacy in the country. The government shall additionally focus on working with relevant ministries and departments to embed media literacy into national programmes for digital literacy and education.

Rationale:

TV and radio industries are key drivers of societal aspirations - and therefore efforts should be made to promote greater media literacy in the country. It assumes particular importance in the age of the internet and social media, and needs to be an integral part of education and training at all levels. In jurisdictions like the EU, governments treat media literacy as an expansive exercise and beyond the piecemeal development of tools and technologies. More precisely, governments strive to equip citizens with critical thinking skills to analyse complex issues and discern between opinion and fact. In May 2019, the United Kingdom's Department for Digital, Culture, Media and Sport commenced a consultation for its audio-visual media services ecosystem⁹⁷. It paid dedicated focus to media literacy, towards which it discusses the need for states to undertake specific measures to develop people's

skills in media literacy. Specifically, a 2018 Directive of the European Union defines it as "... skills, knowledge and understanding that allow citizens to use media effectively and safely".⁹⁸

MIB may consider taking the lead of countries like the UK and commence projects to determine mid to long term strategies for media literacy in new mediums like the internet. Institutionally, it could do this in conjunction with relevant departments and arms like the Ministry of Electronics and Information Technology (MEITY), Ministry of Human Resources Development (MHRD), and NITI Aayog. Pertinently, MIB should consider embedding media literacy especially in the online sphere to become a part of national digital literacy programmes like the Pradhan Mantri Gramin Digital Saksharta Abhiyaan (PMGDISHA)⁹⁹. Another point of departure/instrument through which a national media literacy initiative could achieve scale and create a grassroots culture of safe consumption of the news media-- is the forthcoming New Education Policy, 2019.

OBJECTIVE 2: FACILITATING INFRASTRUCTURE EXPANSION AND ENABLING DIGITISATION

LEVERAGING INFRASTRUCTURE AND RESOURCE SHARING TO DRIVE EFFICIENCY AND COMPETITION

Suggested Language:

To reduce costs and encourage inter-platform competition, the Government shall encourage and incentivise infrastructure sharing. Additionally, the government shall develop strategies for efficient spectrum management.

⁹² Prof. Dr. Georgios Gounalakis, *Media Ownership and Pluralism: A Comparative View*, University of Marburg (23 Nov. 2007), https://www.kek-online.de/fileadmin/user_upload/KEK/Publikationen/Reden_und_sonstige_Beitraege/Media_Ownership_and_Pluralism.pdf.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Recommendations on issues relating to Media Ownership, TRAI (12 Aug. 2014), Paras 3.12, 3.13 on pg. 17, https://main.trai.gov.in/sites/default/files/Recommendations_on_Media_Ownership.pdf; *Ibid.*

⁹⁶ The operation of the media ownership rules listed under Section 391 of the Communications Act 2003, Ofcom's Report to the Secretary of State, Ofcom UK (23 Nov. 2018), https://www.ofcom.org.uk/_data/assets/pdf_file/0030/127929/Media-ownership-rules-report-2018.pdf.

⁹⁷ Audiovisual Media Services: Consultation Document, Department for Digital, Culture, Media & Sport, Govt. of UK (May 2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/805246/Audiovisual_Media_Services_Consultation_Document.pdf.

⁹⁸ *Ibid.*, Para 103 on pg. 36.

⁹⁹ Overview of PMGDISHA, Pradhan Mantri Gramin Digital Saksharta Abhiyaan (Prime Minister Rural Digital Literacy Project), Govt. of India, <https://www.pmgdisha.in/about-pmgdisha/>.

Rationale:

Participation in digital markets depends largely on the cost of creating, maintaining and accessing infrastructure. Infrastructure sharing would enhance the availability of distribution network capacities, reduce Capital Expenditure (CAPEX) and Operative Expenses (OPEX) for service providers, reduce the price of broadcasting services to subscribers, lower the entry barriers for new service providers and provide more space for niche channels to reach targeted customers, and propel competition in the broadcasting market¹⁰⁰. Under its recommendations on *Infrastructure Sharing in Broadcasting TV Distribution Sector*, TRAI has specifically recommended incentivising infrastructure sharing for distributors to take up on a voluntary basis. Granting infrastructure status to the broadcasting industry may help assuage capital inadequacies which prevent such voluntary uptake of infrastructure sharing at the last mile. Additionally, TRAI's recommendations on *Ease of Doing Business in the Broadcasting Sector*, reiterate the recommendation to encourage infrastructure sharing among cable TV and radio operators to reduce infrastructure costs, while maintaining a competitive landscape.

Unbundling the local cable loop is one of the key ways in which infrastructure sharing can further digitisation as it can create new monetisation opportunities for cable operators within broadband markets. Inter-platform competition has been widely observed to deliver lower prices and faster broadband speeds in Europe¹⁰¹. Smith et al (2013) find that a 10 percent increase in the share of inter-platform competition reduces prices by 1.6 percent, and increases the average broadband speed by 20 percent. By removing one of the key barriers to entry in the distribution market, unbundling the local cable loop can incentivise new service providers to enter the market and provide the benefits of enhanced competition to consumers. These benefits have materialised due to similar interventions in the telecommunications sector in India¹⁰².

Similarly, spectrum sharing among broadcasters will allow for the more efficient use of a valuable natural resource,

besides enhancing investment in content. The same has also been specified in the NDCP 2018, and has been favoured in other jurisdictions such as the EU and UK¹⁰³.

ENCOURAGING LOCAL MANUFACTURING

Suggested Language:

The Government shall incentivise local manufacturing and R&D of broadcasting equipment by enhancing access to finance.

Rationale:

With the growth of the broadcasting industry, encouraging local manufacturing of key infrastructure and equipment can also help achieve Make in India targets by driving organic demand for the same. In this regard, TRAI has previously noted that the lack of easy finance and research and development facilities are some key challenges that the sector must overcome, in seeking to promote indigenous manufacturing. Additionally, tax incentives and subsidized funding for setting up manufacturing as well as R&D units, are useful policy solutions. The broadcasting policy should integrate objectives and strategies of promoting local manufacturing and R&D by envisioning or providing the scope for appropriate fiscal and non-fiscal incentives.

INNOVATION SANDBOXES

Suggested Language:

The Government shall encourage Innovation Sandboxing for evidence-based regulation and encourage adoption of new broadcasting technologies.

Rationale:

With the growth of the broadcasting industry, To enable new technologies, the MIB may leverage other sectoral experiences. For instance, the Reserve Bank of India recently released sandbox guidelines. A similar approach could help create feedback loops and allow for real time/

¹⁰⁰ Consultation Paper on infrastructure sharing in broadcasting TV distribution sector, TRAI (21 Sept. 2016), https://main.trai.gov.in/sites/default/files/CP_infrastructure_sharing_final_21_09_2016_o.pdf.

¹⁰¹ Pg. 601, Ron Smith, Peter Northall, Tom Ovington and Juana Santamaría, *The Impact of Intra-Platform Competition on Broadband Prices and Speeds*, *Journal of Information Policy*, Vol. 3 (2013), <http://www.jstor.org/stable/pdf/10.5325/jinfopoli.3.2013.0601.pdf?refreqid=excelsior%3A85e038f9cf19ed6c0667f026d3c526d>.

¹⁰² *Lessons of Reforms of the Telecom Sector*, Indian Institute of Management, Ahmedabad (2015), <https://web.iima.ac.in/assets/snippets/workingpaperpdf/705538772015-03-22.pdf>.

¹⁰³ *Spectrum management strategy - Ofcom's approach to and priorities for spectrum management over the next ten years*, Ofcom, United Kingdom (02 Oct. 2013-03 Jan. 2014), <https://www.ofcom.org.uk/consultations-and-statements/category-1/spectrum-management-strategy> (last accessed on 07 June 2019).

accurate impact assessments for new technologies in broadcasting. The type of technologies and use cases which may be enabled/studied through a sandbox regime could include efficient spectrum utilisation; adoption of new technologies such as UHD, Cloud, IP based transport in studios and broadcast facilities and software defined broadcasting; “Value Added Services”; Use of Freeband Technology; Disaster Preparedness for Broadcaster facilities; etc.¹⁰⁴

STRENGTHENING QUALITY OF SERVICE

Suggested Language:

In recognition of the disaggregated nature of the broadcasting sector at the last mile, the Government will seek to improve linkages with last mile operators through establishment of consumer cells at the local level. These will strengthen endurance of the industry by providing avenues for active feedback loops and strengthening the quality of service within the sector.

Rationale:

Enhancing the consumer experience will be a necessary component of resilience of the broadcasting industry, particularly when contrasted against the consumer experience over the internet. The broadcast sector is characteristic of highly disaggregated last mile distribution markets. As a result, central laws and regulations are enforceable only to a limited extent. At the same time, the last mile operators are the nodal links between the consumer and the rest of the broadcasting value chain. Improving linkages with last mile operators, and establishing consumer cells at the local level, can help create active feedback loops with consumers, which can further enhance industry capacity to improve consumer service across the chain. Regulators such as TRAI have already adopted a consumer-cell led approach towards greater consumer awareness in some market segments.

OBJECTIVE 3: INCENTIVISING HIGH-QUALITY CONTENT CREATION

CENTRALITY OF INTELLECTUAL PROPERTY

Suggested Language:

The Government will aim to further the objectives of creation, commercialisation, enforcement and promotion of copyright and related rights in the broadcasting sector, in consonance with the objectives of the National Intellectual Property Rights Policy, 2016.

Rationale:

At the heart of the broadcasting industry lies the content, and the broadcast signal which transmits the content, both of which are protected strictly under the Indian Copyright Act and Rules. In this regard, India is bound by international obligations under the Berne Convention, TRIPS¹⁰⁵, and other WIPO administered instruments, including the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the Internet Treaties). Under these, the country is bound to provide complete protection to copyrighted works. Moreover, as India undertakes to assent to a distinct Broadcasting Treaty under deliberation of the Standing Committee on Copyright and Related Rights (SCCR) at the WIPO, its obligations towards protecting broadcast reproduction rights (BRR) will need to be shaped in accordance with our international obligations.

In this context, it is important to note that India’s domestic copyright framework is in consonance with international obligations. With the introduction of Section 39A in the 2012 Copyright Act Amendment, the benefits of collective management of copyrights through copyright societies were also extended to holders of the BRR. Thus, a comprehensive mechanism to protect, license and monetize rights belonging to broadcasters holding a BRR was made available under the Copyright Act framework. However, current regulatory frameworks for the broadcasting sector are not consonant with this mechanism, as economic restrictions on broadcasting services under the TRAI framework serve to restrict the economic rights of content creators as well. In October

¹⁰⁴ Response to Consultation Paper on Ease of Doing Business in the Broadcasting Sector, STAR India (Aug. 2017), https://main.trai.gov.in/sites/default/files/STAR_India_12092017.pdf.

¹⁰⁵ The three-step test under the Berne Convention prescribes that the right may only be limited if the use does not conflict with the normal exploitation of the work, and does not unreasonably prejudice the legitimate interests of the author. In effect, restrictions on any economic or moral right of the rightsholder must conform to the test. While under the Berne Convention, this applies to the right to reproduce, in the TRIPS context, the test applies to all rights guaranteed within a copyright.

2018, the Supreme Court has adjudicated on this matter, evaluating the jurisdiction of TRAI vis-a-vis regulation of tariffs (which translate to restrictions on royalty payments to broadcasters). In its judgment, the Court held that the TRAI Act is “a statute conceived in public interest” and thus serves the interest of both consumers and broadcasters, while the Copyright Act only protects the property rights of broadcasters. Therefore, in case of conflict, the TRAI Act holds precedence over Copyright Act¹⁰⁶. However, such a holding negates the basis of copyright, which is to serve the access interests of the public by balancing it with incentives for creation and promotion of knowledge and art¹⁰⁷. This has been established within Indian jurisprudence, and specifically examined in the landmark DU Photocopy case. In its judgment, the Delhi High Court held that copyright is “not an inevitable, divine, or natural right” implying “absolute ownership” of creative

works, but is intended to “stimulate activity and progress in the arts for the intellectual enrichment of the public”.¹⁰⁸ Similarly, the Supreme Court has also held in another instance, that the Copyright Act seeks to maintain a balance between the interests of the copyright holder in protecting their works, and that of the public to have access to the works.¹⁰⁹

This thread of copyright jurisprudence has not been rationalised with broadcasting in India, where broadcasting governance has been conducted in isolation of copyright considerations. This is also demonstrable through a study of best practices across 46 signatories to the Berne Convention, which suggested that the current regime is exceptional in **treating carriage and content in broadcasting as telecommunications services without incorporating the copyright framework (see figure 1)**.¹¹⁰

FIGURE 1: BROADCASTING GOVERNANCE FRAMEWORKS COMPARED ¹¹¹

Jurisdictions that differentiate between Carriage and Content for Broadcasting:	Jurisdictions which differentiates between telecommunications and broadcasting:	Jurisdictions that don't differentiate between telecommunications and broadcasting but cooperate with ip Authorities or incorporate IP expertise:	Jurisdictions Reforming regulatory Framework:
Czech Republic, Germany, Luxembourg, Norway, Poland	Austria, Belgium, Denmark, France, Netherlands, Sweden, Switzerland, Portugal, Indonesia, china, Kosovo, Romania, Taiwan, Chile, Colombia, Pakistan, South-Sudan, Jamica, New Zealand, Singapore, Spian	Us, Australia, UK, Japan, Canada, Hungary, Italy, Argentina South Africa, Russia, Malaysia, Finland, Hong Kong,Thailand, Vietnam, Uganda	Brazil, Mexico

¹⁰⁶ *Star India Private Limited v. Department of Industrial Policy and Promotion*, (2019) 2 SCC 104, https://sci.gov.in/supremecourt/2018/24405/24405_2018_Judgement_30-Oct-2018.pdf.

¹⁰⁷ The Hon. Sir Anthony Mason AC KBE, *Public-Interest Objectives and the Law of Copyright*, *Journal of Law, Information and Science* (1998), <http://www.austlii.edu.au/au/journals/JLLawInfoSci/1998/2.html#Heading98>.

¹⁰⁸ *The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors.* CS(OS) 2439/2012, <http://lobis.nic.in/udir/dhc/RSE/judgement/16-09-2016/RSE16092016S24392012.pdf>; *Syndicate of the Press of the University of Cambridge v. B.D. Bhandari* 185 (2011) DLT 346 held that copyright right law, “through exemptions and doctrines, whether statutorily embedded or judicially innovated”, ensures the privileges granted by copyright don’t “stifle dissemination of information”.

¹⁰⁹ *Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd.* (2008) 13 SCC 30, <https://www.sci.gov.in/jonew/judis/31596.pdf>.

¹¹⁰ *Promoting the Creative Economy: India's 100 billion USD imperative*, *Koan Advisory* (July 2017), <http://www.koanadvisory.com/wp-content/uploads/2019/06/Creative-Economy-report-USD-100-billion.pdf>.

¹¹¹ *Ibid.*

It has also been noted by policymakers that regulating prices tightly can serve to restrict incentives to invest and innovate. This is particularly relevant in sectors where the potential for benefits from research and development is large, such as information and communications technology.¹¹² Additionally, a key principle for digital broadcasting is to engage distinct licensing and regulatory frameworks for the transmission facility (the platform) and the programming content¹¹³. It is also worth noting that the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media cautioned against direct regulation of prices and conditions to use the network, stating that this constitutes “excessive interference”, where the market can otherwise ensure competitive prices and higher quality¹¹⁴.

Therefore, moving forward, it is prudent for broadcasting regulations to be realigned in consonance with extant copyright frameworks, which are intrinsic to the sector. This would also be in conformity with the policy objectives of the National IPR Policy 2016, which specifically calls for rationalisation of extant laws with intellectual property frameworks, and enabling commercialization of IPR¹¹⁵.

ENABLING EFFECTIVE MONETISATION OF CONTENT

Suggested Language:

The Policy seeks to enable innovative monetisation schemes to encourage effective competition, serve consumers, and promote high quality content development.

Rationale:

With infrastructural and business model convergences, advertising and subscription revenues are increasingly being split across various mediums. There is concomitantly a need to revisit any regulation which imposes quantitative and qualitative restrictions on content monetisation. Moreover, with infrastructural convergence, there is a need to deregulate quantitative advertising provisions for linear audio-visual content,

to enable adequate flexibility to develop monetisation strategies. To demonstrate, the FreeDish model is based primarily on advertising, which facilitates affordability, thereby enabling wider access. Similarly, a mix of advertising and subscription may lead to lower subscription charges¹¹⁶. The internet content economy is currently experimenting with a range of models, ranging from subscription-based to freemium, to purely advertisement driven content. Future broadcasting regulations should thus facilitate innovation goals of the broadcasting industry by affording adequate flexibility to monetise their offerings while leveraging co-regulation and self-regulation practices to protect against any potential user harms.

RESOLVING PIRACY CONCERNS

Suggested Language:

The Ministry will study major avenues of piracy to propose appropriate technological and legal solutions to appropriately tackle issues with piracy. This will involve a review of the Copyright Act and the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act. The Ministry will also endeavour to accede to international broadcasting treaties to leverage global IP protections.

Rationale:

During 2010-2011, India had the highest rates of broadcast piracy in the Asia-Pacific region, with total accumulated losses of USD 1.4 billion. Live sports telecasts, which derive the bulk of their value from the instantaneous nature of the telecasts, are particularly vulnerable to piracy losses. To demonstrate, in 2017, more than 1,700 unique URLs were found to be telecasting IPL illegally, several of these capable of providing HD and near-HD viewing qualities¹¹⁷. India must address such piracy-related challenges through appropriate anti-piracy measures. In this context, assenting to relevant IP treaties can strengthen protections at the global level. Moreover, domestic laws such as the *Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007*, which

¹¹² Economic rationales for regulating markets, Economics in Practice, Scrutiny Unit, UK Parliament (June 2011), <https://www.parliament.uk/documents/commons/Scrutiny/Rationale-for-regulating-markets.pdf>.

¹¹³ Guide to the Digital Switchover, Organization for Security and Co-operation in Europe (OSCE) (2010), <https://www.osce.org/fom/73720?download=true>.

¹¹⁴ Ibid.

¹¹⁵ National Intellectual Property Rights Policy, Govt. of India (12 May 2016), https://dipp.gov.in/sites/default/files/National_IPR_Policy_English.pdf.

¹¹⁶ The economics of two-sided markets (2009), Rysman, M., *Journal of economic perspectives*, 23(3), pp.125-43, <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.23.3.125>

¹¹⁷ IPL 2017: The Piracy Conundrum, INDIAN Television (20 Apr. 2017), <http://www.indiantelevision.com/television/tv-channels/sports/ipl-2017-the-piracy-conundrum-170420>.

fail to provide for encrypted feeds of live signals must be revisited to ensure that avenues for signal piracy of lucrative live programming are restricted.

PROMOTION OF CONTENT CLUSTERS

Suggested Language:

The Government shall foster and promote the development of new “content clusters” to enhance the competitiveness of local content.

Rationale:

India’s entertainment industry has thrived in clusters, whether it is the film industry in Mumbai, Animation hubs in Hyderabad and Bangalore, or TV News studios in Delhi. A content cluster such as a film city can provide access to a large talent pool at lower costs, enable knowledge exchange and collaborations between creative professionals, and allow for the shared utilisation of expensive inputs such as production sets and cameras. These benefits have materialised for the IT and Automobiles sectors in India, for which the Indian government adopted a cluster-based approach to development¹¹⁸. In Finland, science and technology policy makers brought together expertise from universities, hardware (see Nokia) and incentivised R&D in adjacent services markets (see gaming) to target the IT industry in a holistic manner. Creative economy clusters in the Hollywood area in Los Angeles, Toronto, and Vancouver are international examples of the success of this format.

Such clusters can catalyse local value chains by creating a market for allied services such as transport, logistics, product design and hospitality services and are also known to create synergies with the technology and multimedia clusters located close to them. In California, such approaches incentivised market participants to invest into new digital technologies to improve consumer experiences and therefore help spur forward

and backward linkages in its M&E ecosystem. Some of the related sectors/supporting clusters which spawned out of the content ecosystem in California include IT, fitness and health, fashion, publishing, etc¹¹⁹. Promoting Vancouver as a filmmaking hub has had spillover effects and the region is fast assuming the status of becoming a VFX and gaming hub with particular capabilities in virtual reality (VR), augmented reality (AR), mixed reality (MR) and related technologies¹²⁰. India can especially benefit from such synergies as it hosts technology hubs in Bangalore, Hyderabad, Pune, Noida, and Gurgaon, and low-cost skilled labour is abundant throughout the country. Policies which incentivise cluster development, such as that of creating Special Economic Zones may be considered. Such efforts should also aim to strategically identify appropriate locations and regions where such cluster formations can reap the maximum dividends. Ontario’s Entertainment and Creative Cluster framework could provide a template for India to consider implementing in strategic locations/regions¹²¹.

ENABLING GREATER STATE-LEVEL SUPPORT FOR REGIONAL CONTENT

Suggested Language:

The Government shall work with state governments towards sharing best-practices and replicating policy successes in spurring regional content wherever possible.

Rationale:

Regional content development can catalyse local value chains and create revenues and employment, which should motivate state governments to promote the development of the broadcasting sector. There is evidence of an untapped market opportunity in the TV broadcasting industry in many states. Viewership of Oriya TV channels increased by 34% in 2018, while that of Assamese increased by 26 %, Marathi increased by 25% and Bhojpuri increased

¹¹⁸ India’s Automobile Hubs, Make In India (2018), <http://www.makeinindia.com/article/-/v/india-s-automobile-hubs> (last accessed on 07 June 2019).

¹¹⁹ Final Report: The L.A. Motion Picture Industry Cluster, Harvard Business School (May 2006), https://www.isc.hbs.edu/resources/courses/moc-course-at-harvard/Documents/pdf/student-projects/LA_Motion_Picture_Industry_2006.pdf.

¹²⁰ Vancouver Is Now One Of The Largest VR Hubs In The World, VRScout (03 June 2018), <https://vrscout.com/news/vancouver-second-largest-vr-hub/#>; Vancouver is Leading the Race in Overtaking Hollywood and Liquid Media Group (NASDAQ: YVR) is Positioned to Profit..., Insider Financial (28 Sept. 2018), <https://insiderfinancial.com/liquid-media-group-nasdaq-yvr-positioned-profit>; VES Vancouver: Dynamic Growth in a Vibrant Community, VFC Voice Magazine (20 Mar. 2019), <http://vfxvoice.com/vancouver-dynamic-growth-in-a-vibrant-community/>.

¹²¹ Ontario’s Entertainment & Creative Cluster: A framework for growth, The Ministry of Tourism and Culture, Govt. of Canada (2010), http://www.mtc.gov.on.ca/en/publications/Creative_Cluster_Report.pdf.

by 22%.¹²² However, there are very few TV channels which cater to audiences from all of these linguistic groups¹²³, relative to others such as people who speak Tamil, Telugu, Kannada, and Bangla¹²⁴. Such disparity also informs us that the market has not been able to organise itself in a manner wherein content equitably represents people and perspectives, from all parts of the country. Recognising such disparities and the general economic opportunity associated with creative sectors some states have taken the lead in promoting development of high-quality local content. For example, Karnataka's Animation, Visual Effects, Gaming and Comics (AVGC) Policy 2017-2022 includes support for skill development and infrastructure creation, besides providing fiscal incentives for content development.¹²⁵

Similarly, Telangana's IMAGE Policy, 2016 may be another template for other states to consider¹²⁶. Borrowing from global templates like Media City in Dubai (UAE) and Manchester (UK), and the Dutch Games Garden in the Netherlands, the policy aims to transform Telangana into a global hub for cultural arts by taking advantage of the region's rich heritage in arts and crafts, dance, music, cinema, comics etc. It aims to promote IP creation and facilitate new business models. Laudably, the State addresses the creative industry in a holistic sense and seeks to push Film, Content, Digital, Animation, VFX, Gaming & Comics¹²⁷. Specifically, the Policy aims to facilitate (through fiscal and non-fiscal incentives) the provisioning/investments into best in class infrastructure; facilitate the setting up of mini state-level clusters through appropriate Public-Private Partnerships (PPPs); provide comparable incentives for clusters developed by the private sector; enable allotment of land; facilitate creation of talent pool/recruitment; setting up of dedicated incubators; promoting the creation of local content; capital investment subsidies; electricity/power benefits; subsidies on lease rentals; reimbursement of production cost; exemption on entertainment taxes; relaxation of labour law requirements (specifically under the Factories Act and Shops and Establishment laws) and Mega Project Incentives.

ENCOURAGING CONTENT EXPORTS

Suggested Language:

The Government shall encourage exports of broadcasting content through the creation of an Export Promotion Council for Broadcasting.

Rationale:

In 2017 India's exports from the Audio-Visual industry, which was designated a "Champion Sector" for export of services by Government of India in 2018, amounted to USD 0.44 billion. Notably, even with significant untapped upside potential, India has maintained a consistent trade surplus in AV services. However, establishing a strong and sustained presence in international markets will require export promotion. The government has allocated INR 5000 Crore for the development and promotion of Champion Sectors. Setting up an export promotion council for the broadcasting industry, similar to those for other sectors, could prove instrumental in enhancing exports from the broadcasting industry using parts of this allocation. Besides direct exports of content programming, an export promotion body should also facilitate presence of Indian broadcasters in other countries. This council may also be set up under the Entertainment chapter of the Services Export Promotion Council¹²⁸. Such a body may provide institutional support to broadcasters, such as enabling them to enter into strategic alliances with foreign distributors, navigating IP regimes in other countries, and undertaking initiatives to promote trade in these services. An exemplary initiative in this regard is India's Free Trade Agreement with South Korea, which has a separate chapter on cooperation in the audio-visual sector. It specifies arrangements for co-producing content and entitles such content to all government benefits in both countries¹²⁹.

¹²² *A billion screens of opportunity: India's Media & Entertainment Sector*, Ernst & Young-FICCI (March 2019), [https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/\\$FILE/EY-a-billion-screens-of-opportunity.pdf](https://www.ey.com/Publication/vwLUAssets/EY-a-billion-screens-of-opportunity/$FILE/EY-a-billion-screens-of-opportunity.pdf).

¹²³ *As per the Constitution of India, the country has 22 official languages and over 40 more unofficial linguistic dialects.*

¹²⁴ *What India Watched*, BARC (2018), <https://www.thedmti.com/wp-content/uploads/2019/04/WHAT-INDIA-WATCHED-2018-BARC-India-Yearbook.pdf>.

¹²⁵ *Animation, Visual Effects, Gaming and Comics Policy 2017-2022*, Govt. of Karnataka (India) (2017), <http://itbt.karnataka.gov.in/Documents/KAVGCPolicy2017-2022.pdf>.

¹²⁶ *Image Policy 2016*, Govt. of Telangana (India), <https://www.telangana.gov.in/PDFDocuments/Telangana-IMAGE-Policy-2016.pdf>.

¹²⁷ *Ibid.*

¹²⁸ *Services Export Promotion Council*, <https://www.servicesspec.org/services/entertainment-services/>

¹²⁹ *India-Korea Comprehensive Economic Partnership Agreement*, <https://commerce.gov.in/writereaddata/trade/INDIA%20KOREA%20CEPA%202009.pdf>.

SUPPORTING SKILLS AND TALENT DEVELOPMENT

Suggested Language:

The Government shall work with authorities like the National Skills Development Corporation (NSDC) and Media and Entertainment Skills Council (MESC) to upskill workers for generating innovative, high-quality content.

Rationale:

Developing talent to enable Indian broadcasting to create new, innovative content and employ novel technologies for content creation and dissemination is essential. These initiatives could be supported by the efforts of the MESC, which aims to skill 11.74 lakh people by 2022 through various programmes such as ‘Training the Trainers’, contests and prizes to encourage creative professionals, and vocational training programmes. Some of the skill gaps identified by the MESC include the lack of technical knowledge in areas including script-writing, costume design, sound engineering, managing radio transmitters, and post-production. Another key skill gap that the report has identified is screen-writing and direction for regional content, which must be addressed in order to capitalise on the market opportunities presented by regional markets for broadcasting in India. For the Indian industry to remain competitive, it is also important to equip the workforce to use contemporary technologies such as big data, machine learning and artificial intelligence.

OBJECTIVE 4: COORDINATED AND COHERENT POLICYMAKING

HARMONISING SECTORAL REGULATION WITH NATIONAL FDI POLICY

Suggested Language:

The government will coordinate with relevant authorities to implement sectoral reforms to spur investment into the broadcasting sector. To this end, the Government will formulate guidelines on the enforcement of “must carry” obligations under TRAI’s broadcasting regulations on tariff setting and related activities.

Rationale:

Currently 100 percent foreign direct investment (FDI) is allowed under the automatic route for the broadcasting sector. Despite this, FDI in the Information and Broadcasting industry¹³⁰, remained inordinately low at only 1.02 percent of the total FDI received in the year 2018. Therefore, there is a pressing need for policymakers to scrutinise barriers to investment which are throttling capital inflows into India’s creative economy. To this end, conditions on vertical integration (VI) in broadcasting as stipulated in the licensing conditions serve as excessive barriers to FDI. The challenge with the extant policies is that they lead to a discriminatory treatment of capital by restricting broadcasters receiving foreign capital even as broadcasters receiving domestic capital are free from restrictions on vertical integration.

Additionally, the new regulatory framework for television tariffs includes “must-carry” provisions, which can address regulatory concerns regarding discriminatory treatment of content. Further, competition law and the principles therein serve as an effective lever which can thwart anti-competitive activities where required. In this context, the current restrictions on VI do not allow for the supply-chain efficiencies associated with the same. Owing to safeguards in the form of competition laws and “must-carry” provisions, the National Broadcasting Policy should relax its current restrictions on VI to encourage investment into content markets in a manner which augments supply chain efficiencies.

¹³⁰ The broadcasting ecosystem naturally forms a key constituent of the I&B sector.

HARMONISING WITH NATIONAL DIGITAL COMMUNICATIONS POLICY

Suggested Language:

The Government shall seek to operationalise relevant provisions of the National Digital Communications Policy, 2018, to achieve universal access and enable transition to next gen network infrastructure, including developing satellite communication technologies.

Rationale:

In September 2018, the DoT notified India's new National Digital Communications Policy (NDCP). Considering the obvious overlaps with the National Broadcasting Policy; the MIB should work towards operationalising common goals with the NDCP. Notably, to ensure "broadband for all" the NDCP contemplates a "Fibre First Initiative" to take fibre to the home, to enterprises and to key development institutions in Tier I, II and III areas. Under this the NDCP stipulates leveraging existing assets of the broadcasting industry to improve connectivity, affordability and sustainability. Similarly, in order to facilitate infrastructure convergence of IT, telecom and broadcasting, the NDCP has stated there is a need to restructure legal, licensing and regulatory frameworks to optimise the benefits. The NDCP even suggests the need to promote satellite communications and to liberalise/optimize the usage of such technology. Some of the specific strategies outlined in the NDCP to promote satellite communications technologies in India include rationalising regulatory frameworks which limit the use of satellite technologies, making available the Ka band for commercial communication services, reviewing satellite transponder and spectrum charges, and enhancing the allocation and permission for using satellite communication services. It is important that the Broadcasting Policy take cognisance of participants in the broadcasting industry as potential investors in the development of communications technology in India, and incentivise them appropriately so that such investments may materialise.

PROTECTING CONSUMER PRIVACY AND INFORMATION SECURITY

Suggested Language:

The Government shall focus on privacy respecting standard-setting which can ensure individual privacy in relation to Audience Measurement data collection.

Rationale:

The Supreme Court of India, in August 2017, recognised the right to privacy, and within this, the right to informational privacy of individuals as a fundamental right under the right to freedom of life and liberty¹³¹. As such, it is imperative for broadcasting sector stakeholders to embrace good principles to ensure consumer privacy. While earlier privacy concerns were limited (to billing, for instance), in the digital broadcasting era, avenues for data collection have raised more complex privacy concerns (illustratively, metadata collected through set top boxes).

In this context, the TRAI consultation on *Review of Television Audience Measurement and Ratings in India* has specifically highlighted the need to preserve privacy and consent of individuals while recording viewing choices¹³². The focus on user privacy will also need to be balanced with the quality of data collected to enable the inflow of competitive advertising revenues for the broadcasting industry. Additionally, as authorities like TRAI contemplate effectuating Set Top Box interoperability, such efforts should solve for known information security risks. For instance, standardising the Conditional Access Module (CAM) with a smartcard-based solution leads to a single point of vulnerability where hackers need only comprise a single system in order to pirate audio-visual content from a number of broadcasters. The National Broadcasting Policy should commence standardisation processes to address such privacy and information security risks.

¹³¹ Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India, https://www.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf

¹³² Consultation Paper on Review of Television Audience Measurement and Ratings in India, TRAI (03 Dec. 2018), https://main.trai.gov.in/sites/default/files/CP_TAM03122018.pdf

PROVIDING FOR A SPECIALISED INSTITUTIONAL FRAMEWORK

Suggested Language:

The Government shall assess the feasibility of establishing an independent authority i.e. a National Broadcasting Development and Consumer Protection Authority (NBDCPA). The NBDCPA shall work with relevant arms of government to promote diversity and plurality in content, while ensuring the highest standards of consumer welfare.

Rationale:

TRAI's jurisdiction emanates from an interim notification by the erstwhile Ministry of Communications and Information Technology dated January 2004¹³³. The concerned notification brought “broadcasting services and cable services” within the definition of “telecommunications services” under the eponymous Telecom Regulatory Authority of India (TRAI) Act, 1997¹³⁴. However, as was clarified by a Division Bench of the Delhi High Court, such an inclusion was meant to only serve as an interim measure until such time the Government of India set up a more specialised framework for the country's broadcasting landscape¹³⁵. Nevertheless, a specialised institutional framework for India's broadcasting ecosystem remains elusive.

In terms of composition and structure it is important to ensure that such reform should preserve the democratic characteristic of broadcasting. Therefore, authorities should be institutionally independent in nature¹³⁶. Towards this, the means of appointment of members¹³⁷ and funding of such an agency should be set out clearly

in law so as to eradicate conflicts of interest¹³⁸. In order to promote coherence the NBDCPA's terms of reference for operation should include a Memorandum of Understanding with relevant government authorities (like MIB) to set a baseline understanding on how the NBDCPA interacts with other nodal departments/ ministries.¹³⁹

Additionally, the ethos of the NBDCPA may be informed by international best practices. For example in 2011, the World Bank developed a toolkit on Media Governance and Institutions¹⁴⁰. In it the report states that media development governance refers to government promotion of “a pluralistic, editorially independent, and financially sustainable media sector”¹⁴¹. To achieve this it identifies five critical parameters, namely¹⁴²:

- *Infrastructure;*
- *Skilling*
- *An enabling/supportive business and economic environment;*
- *An enabling regulatory and legal environment; and*
- *A media literate civil society*

Legal scholars have also noted that good governance for an enabling media environment requires emphasis on the role of copyright. This is because without strong protections, there may be an impediment to attract investments into new media organisations¹⁴³. Finally, a specific jurisdictional template that Indian authorities may consider is Singapore's Infocomm Media Development Authority (IMDA). The reason is that besides its regulatory function, the IMDA also incorporates an enabling policymaking ethos which focuses on the development ecosystem through the twin

¹³³ Notification S.O. 271(E), Ministry of Information and Broadcasting, Government of India, February 27 2004, <https://mib.gov.in/sites/default/files/act16.pdf>

¹³⁴ Telecom Regulatory Authority of India Act 1997, Section 2(1)(k)

¹³⁵ *Star India P. Ltd v The Telecom Regulatory Authority of India*, 146 (2008) DLT 455, <https://indiankanoon.org/doc/1159926/>, Para 18

¹³⁶ Eve Salomon, *Guidelines for Broadcasting Regulation*, Commonwealth Broadcasting Association (now Public Media Alliance) (Dec. 2008), pg. 13, Para 2.21 <https://www.publicmediaalliance.org/wp-content/uploads/2017/08/RegulatoryGuidelines.pdf>.

¹³⁷ In jurisdictions like South Africa members in such authorities must, collectively, represent a broad cross section of the population of South Africa. They must also possess “suitable qualifications, expertise and experience in the fields of, amongst others, broadcasting and telecommunications policy, engineering, technology, frequency band planning, law, marketing, journalism, entertainment, education, economics, business practice and finance.”

¹³⁸ Eve Salomon, *Guidelines for Broadcasting Regulation*, Commonwealth Broadcasting Association (now Public Media Alliance) (Dec. 2008), pg. 14, Para 2.21 <https://www.publicmediaalliance.org/wp-content/uploads/2017/08/RegulatoryGuidelines.pdf>.

¹³⁹ *Ibid*, Page 18-19, Para 3.15

¹⁴⁰ Shanthi Kalathil, *Developing Independent Media as an Institution of Accountable Governance: A How-To Guide*, The World Bank (2011), <http://siteresources.worldbank.org/EXTGOVACC/Resources/Mediatoolkit.pdf>

¹⁴¹ *Ibid*, Page 4

¹⁴² *Ibid*, Page 7

¹⁴³ Monroe Price, *The Enabling Environment for Free and Independent Media: Contribution to Transparent and Accountable Governance*, USAID Office of Democracy and Governance Occasional Paper Series, 2002, Retrieved from http://repository.upenn.edu/asc_papers/65

lenses of: (a) Enabling Business; and (b) Empowering Society¹⁴⁴. Borrowing from this India's NBDCPA may be entrusted with conceptualising strategies and work with relevant authorities to promote diversity and plurality in content, growth, investments, copyright, ease of doing business, principles for consumer protection and welfare, skilling, media literacy, technological upgradation and innovation, promotion of exports, and content standards. Another key recommendation of the World Bank Toolkit which the proposed NBDCPA may adopt is the adoption of political economy analysis akin to a regulatory or economic impact analysis. The report discusses that prior to the design stage of policy measures and reform there is a need for authorities to undertake such exercises and provides a template for the same¹⁴⁵.

OBJECTIVE 5: FOCUSING ON EASE OF DOING BUSINESS IMPERATIVES

LIBERALISING REGULATORY FRAMEWORKS

Suggested Language:

The Government shall review administrative and security permissions and processes and revise them to engender a light-touch, time-bound licensing framework for the sector. Moreover, based on principles of plurality and diversity as espoused by the National Broadcasting Policy, the government shall review, update and where appropriate liberalise licensing conditions and regulatory frameworks.

Rationale:

It would be beneficial for policymakers to revisit extant licensing and permissions frameworks for broadcasting in India. A “light-touch” or streamlined regulatory approach can help reduce inefficiencies in current processes by steering the extant framework towards self-certification and compliance-driven regulations wherever appropriate. For instance, as per the extant framework any company must apply along with the requisite fee to MIB¹⁴⁶. After receiving an approval from MIB, the company (through the teleport operator) must also approach the Wireless Planning and Coordination (WPC) wing under DoT, and the Network Operation and Control Centre (NOCC) to seek an amendment for the teleport operator within the Wireless Operating License (WOL). Pertinently, such processes do not prescribe time limits for applications to be processed¹⁴⁷. Concomitantly TRAI has recommended doing away with permissions from agencies like WPC and NOCC for minor changes such as change of name, logo and language of a TV channel¹⁴⁸. At the same time, the telecom regulator was mindful that frequent/excessive changes in name/logo should be discouraged.

However, a change in the format of a TV channel (e.g. SD to HD or Vice Versa) may alter the parameters of transmission¹⁴⁹ substantially. Therefore, such changes need to be appropriately captured in instruments like the WOL and also require reallocation of bandwidth. Therefore,

¹⁴⁴ About IMDA, Infocomm Media Development Authority, Government of Singapore, <https://www2.imda.gov.sg/who-we-are/about-imda>

¹⁴⁵ Shanthi Kalathil, *Developing Independent Media as an Institution of Accountable Governance: A How-To Guide*, The World Bank (2011), <http://siteresources.worldbank.org/EXTGOVACC/Resources/Mediatookit.pdf>

¹⁴⁶ Along with an undertaking of no change in directorship, ownership & shareholding pattern of the company.

¹⁴⁷ Recommendations on Ease of Doing Business in Broadcasting Sector, TRAI (26 Feb. 2018), Para 3.86 on pg. 38, http://main.trai.gov.in/sites/default/files/Recommendation_EODB_26022018.pdf.

¹⁴⁸ *Ibid.*, Para 3.88 on pg. 39.

¹⁴⁹ May include frequency plan of the uplink earth station and other parameters of uplink/downlink.

TRAI recommends that while permissions for change in the format of a channel remain mandatory-- such permissions must nevertheless be streamlined. To this end, TRAI recommends MIB and relevant authorities like the WPC Wing and NOCC must address applications within a defined period. Additionally, in order to ease the process, such requests along with due payments can be made through an integrated online portal. Considering, the TRAI recommendations have yet to be adopted and there is a clear emphasis on liberalising permissions and related frameworks, the National Broadcasting Policy could be a vehicle to facilitate some of these major recommendations which facilitate an easier operational landscape.

At a broader level, India's broadcasting licensing frameworks and objectives should reflect its maturing broadcasting industry. There should be greater focus for such frameworks on ensuring plurality, diversity¹⁵⁰, efficient resource allocation, maximising investments and supporting business activity. As such the broadcasting licensing framework should be reoriented in a manner which is consistent with international standards for free speech and plurality. To this end, licensing and operation related decisions by authorities must ensure that processes have sufficient guarantees against arbitrariness, including the proper reasoning by the concerned authorities upon denial of a request¹⁵¹.

Further, it may be reasonable to relax/enable minor amendments, as long as they do not call into question the basis of the original licence award or constitute anti-competitive practices¹⁵². Such a shift towards liberalised regulatory and licensing frameworks assume greater importance considering the disruptions emanating from adjacent technological markets like the internet. Indeed, other countries like Ireland have been devising modern policies for broadcasting wherein they are striving to place an emphasis on developing dynamic licensing

policies and related measures to promote higher quality programming and content which are cognisant of the current and future challenges facing the sector in a rapidly evolving media landscape¹⁵³. Moreover, even in order to achieve policy goals of plurality and diversity, there must be an appreciation that licensing conditions and permissions therein should not have the effect of “of making use of the licence unreasonably difficult or financially unattractive.”¹⁵⁴

LIBERALISING REGULATORY FRAMEWORKS

Suggested Language:

The Ministry will overhaul “Broadcast Seva” to achieve complete streamlining of permissions processes in broadcasting. To this end, related ministries and departments engaged in the permissions process will be on-boarded onto the service, to enable efficient single window clearances. The Ministry will also coordinate with relevant departments to develop time-bound clearances across the board.

Rationale:

The current application process proves to be inefficient and cumbersome, involving several permissions mandated to be obtained across Ministries and Departments. Currently, apart from permissions from the MIB, the applicants variably require additional permissions from the Wireless Planning and Coordination (WPC) Wing and the Network Operation & Control Center (NOCC), the Department of Space (DoS), and the Ministry of Home Affairs (MHA). Additionally, the timelines for obtaining each permission remain open-ended in the absence of prescriptions for an upper limit on the time taken by each authority to communicate their respective decisions.

¹⁵⁰ Article V-“Private Broadcasting”, Declaration of Principles on Freedom of Expression in Africa, African Commission On Human And Peoples’ Rights (2002), <http://hrlibrary.umn.edu/achpr/expressionfreedomdec.html>.

¹⁵¹ Guide to the Digital Switchover, Organization for Security and Co-operation in Europe (OSCE) (2010), pg. 103, <https://www.osce.org/fom/73720?download=true>; Paras 49-51, Case of Glas Nadezhda Eood and Elenkov v. Bulgaria, Application no. 14134/02, European Court of Human Rights (Oct. 2007), <https://bit.ly/2K6ZGiu>, and Para 81, Case of Meltex Ltd and Mesrop Movsesyan v. Armenia, Application no. 32283/04, European Court of Human Rights (June 2008), <https://bit.ly/2EYE43B>.

¹⁵² Pg. 31-32, Eve Salomon, Guidelines for Broadcasting Regulation, Commonwealth Broadcasting Association (now Public Media Alliance) (Dec. 2008), <https://www.publicmediaalliance.org/wp-content/uploads/2017/08/RegulatoryGuidelines.pdf>.

¹⁵³ Pg. 4, Broadcasting Services Strategy, Broadcasting Authority of Ireland (Oct. 2018), <http://www.bai.ie/en/download/133341/>.

¹⁵⁴ Broadcasting Policy and Practice in Africa, Article 19 (2003), Principle 22.1 on pg. 192, <https://www.article19.org/data/files/pdfs/publications/africa-broadcasting-policy.pdf>.

In this context, expert groups like Article 19 have found that in other developing regions such as Africa, licensing systems which entail licensees to obtain different permissions and licenses from different departments is cumbersome which serve as barriers to broadcasters from participating actively within the market¹⁵⁵. Such expert groups recommend that governments should adopt frameworks where broadcasters have to only deal with one body even if more than one body is involved in the eventual decision making¹⁵⁶. Moreover, even in terms of its model broadcasting principles, Article 19 states that licensing and permissions processes¹⁵⁷ should, inter alia:

- Embed clear time limits within which decisions must be made;
- Any refusal should be accompanied by written reasons and should be subject to judicial review; and
- Licensees should not be subjected to multiple decision-making processes

To this end, TRAI undertook a study of the extant licensing and permissions framework in its consultation on Ease of Doing Business in the Broadcasting Sector¹⁵⁸, which took note of the extant inefficiencies within the permissions processes in the broadcasting sector. Under its Recommendations, it has indicated the need for streamlining the permissions process. In this regard, it also noted that in May 2017, the MIB sought to streamline permissions in broadcasting through “Broadcast Seva”, where an applicant can submit the application through a single window¹⁵⁹. While this covers permissions under the MIB, approvals from external ministries and departments continue to be obtained separately. Noting this concern, TRAI recommended an integrated online portal to be set up by the MIB to provide an efficient and transparent solution for those applying for permissions with not only MIB, but also the other departments and ministries involved. Moreover, integrating written responses with reasoning, as well as implementing TRAI

recommendations on integrating workflow provisions within the portal can help achieve transparency and rid the process of arbitrariness.

IMPLEMENTING UNIFORM LICENSES

Suggested Language:

The Ministry will endeavour to implement unified licensing frameworks within the broadcasting sector to enable technology neutral and uniform regulation.

Rationale:

Even as the overall framework for permissions and licensing of the broadcasting industry needs revisions, there is scope to review the framework in its entirety, and consider unified licensing to underpin technology neutral and uniform regulation for orderly growth of the sector. In the context of enabling the switch over of TV and radio services to digital technologies, the OSCE Representative on Freedom of the Media emphasised the need for developing technology neutral regulatory frameworks, noting the EU’s strategies to facilitate the transition without giving preference to the specific technology used¹⁶⁰. India, too, has adopted technology neutral approaches in the past. In the face of convergence, the Department of Telecommunications (DoT) implemented the Unified Access Service Licensing (UASL) framework in 2003, enabling basic service operators and cellular operators to offer either or both services through a technology of their choosing. This experience held specific lessons for India -- spectrum management must be rationalised in tune with the unified licensing framework to enable competitive market outcomes¹⁶¹. Thereafter, with the holistic adoption of the unified license regime as per the National Telecom Policy 2012, spectrum was delinked from the service¹⁶². Notably, in subsequent TRAI Recommendations on Unified

¹⁵⁵ *Ibid.*, pg. 25.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Access to the Airwaves- Principles on Freedom of Expression and Broadcast Regulation, International Standards Series, Article 19 (Mar. 2002)*, <https://www.article19.org/wp-content/uploads/2018/02/11-08-08-STANDARDS-access-to-airwaves-EN-2.pdf>.

¹⁵⁸ *Recommendations on Ease of Doing Business in Broadcasting Sector, TRAI (26 Feb. 2018)*, http://main.trai.gov.in/sites/default/files/Recommendation_EODB_26022018.pdf.

¹⁵⁹ *Broadcast Seva, Ministry of Information & Broadcasting, Govt. of India*, <https://www.broadcastseva.gov.in/>.

¹⁶⁰ *Guide to the Digital Switchover, Organization for Security and Co-operation in Europe (OSCE) (2010)*, <https://www.osce.org/fom/73720?download=true..>

¹⁶¹ *Chapter-3: Implementation of Unified Licencing Regime, Report no. 19 of 2010- Performance Audit of Issue of Licences and Allocation of 2G Spectrum of Union Government, Ministry of Communications and Information Technology, Comptroller and Auditor General of India (16 Nov. 2010)*, https://cag.gov.in/sites/default/files/audit_report_files/Union_Performance_Civil_Allocation_2G_Spectrum_19_2010_chapter_3.pdf.

¹⁶² *Unified License, Dept. of Telecommunications, Govt. of India*, <http://dot.gov.in/unified-license>.

Licensing (2005), broadcasting services were also expected to be integrated within the unified licensing framework (with necessary adjustments), so as to enable governance on the same principles as the telecom sectors¹⁶³.

In this context, it is necessary to note that while emphasising technology neutrality, licensing frameworks for carriage services and content services must be distinct¹⁶⁴. Currently, while cable TV operators are required to register as per the provisions of the Cable Television Networks (Regulation) Act and Rules, DTH, HITS and IPTV operators are governed by licensing frameworks. Broadcasters (satellite TV channels) are governed as per the uplinking and downlinking guidelines. Implementing a streamlined and technology neutral licensing framework would entail unifying licenses for distribution and carriage, while content services may continue to be separately regulated. Illustratively, the UK's Ofcom has two broad set of licenses - the Digital TV Programme Service/ Digital TV Additional Service (DTPS) license for broadcasting companies¹⁶⁵ and the Television Licensable Content Services (TLCS) for distributors¹⁶⁶. Additionally, taking a cue from lessons derived from unifying licenses in the telecom sector, it is prudent to develop efficient spectrum management practices for complementing transition within the broadcasting sector.

ENABLING LIVE PROGRAMMING

Suggested Language:

The Government appreciates the importance and will promote an enabling business environment for live programming. To this end, it shall review frameworks which stand as barriers to investment or serve as procedural bottlenecks.

Rationale:

In an era where different types of content are competing with one another through different modes and technologies, the National Broadcasting Policy should

strategically unlock content which drives television viewership. In this breadth, globally it is observed that live programming (especially sporting events) are some of the most watched and profitable television programming. Even in India, data from audience measurement agency BARC informs us that live programming/sporting events have been some of the most watched content over Indian broadcasting networks. For example, in 2018, viewership of live telecasts of sports events per minute were 4 times that of non-live telecasts¹⁶⁷. Therefore, the National Broadcasting Policy should consider ways to promote live programming and additionally, identify regulatory and licensing bottlenecks which stifle the production of such events. To achieve this first, the policy should address laws which disincentivise the creation of such content. Additionally, the policy should identify procedural inefficiencies which create hurdles in the broadcast of such content.

An illustrative procedural issue in this regard, is the challenge associated with frameworks relating to permissions required for temporary uplinking for live coverage of events. As per the extant framework, for live coverage over non-news and current affairs channels, there is a need for businesses to get permission from the MIB. However, regulators like TRAI have been apprised by stakeholders that the approvals processes surrounding these permissions remain cumbersome¹⁶⁸. This contributes to uncertainty and unpredictability as representations clearly indicate that often authorities give permissions only a few days before the scheduled telecast of the event¹⁶⁹, and there have also been instances where the broadcaster does not receive permission to unlink before the scheduled event. Such procedural inefficiencies can have the effect of eroding value from the ecosystem in terms of both value and trustworthiness. Therefore, the government should revise the framework by integrating:

- Clearly prescribed time limits/deadlines for applications and processing timelines;
- Revising the framework from a permissions framework to a notification framework where the

¹⁶³ Recommendations on Unified Licensing, TRAI (13 Jan. 2005), <https://main.traigov.in/sites/default/files/recom13jan05.pdf>.

¹⁶⁴ Guide to the Digital Switchover, Organization for Security and Co-operation in Europe (OSCE) (2010), <https://www.osce.org/fom/73720?download=true>.

¹⁶⁵ Digital Television Programme Services and Digital Television Additional Services- Guidance notes for licensees, Ofcom UK (24 May 2018), https://www.ofcom.org.uk/_data/assets/pdf_file/0023/44825/dtps_dtas_guidance_notes_for_licensees.pdf.

¹⁶⁶ Television Licensable Content Services, Guidance Note for licence applicants, Ofcom UK (23 May 2018), https://www.ofcom.org.uk/_data/assets/pdf_file/0020/10883/tles_guidance.pdf.

¹⁶⁷ What India Watched, BARC (2018), <https://www.thedmti.com/wp-content/uploads/2019/04/WHAT-INDIA-WATCHED-2018-BARC-India-Yearbook.pdf>.

¹⁶⁸ This includes bandwidth arrangement, teleport permission as well as additional permissions from WPC and NOCC.

¹⁶⁹ Recommendations on Ease of Doing Business in Broadcasting Sector, TRAI (26 Feb. 2018), para 3.93 on pg. 42, http://main.traigov.in/sites/default/files/Recommendation_EODB_26022018.pdf.

broadcaster may notify the Ministry of top-level details regarding the broadcast;

- Since there is pre-existing infrastructure (like teleport/DSNG vans) which are already approved¹⁷⁰, broadcasters should be allowed to uplink through such cleared infrastructure. To be clear, approved teleport operators are allowed to offer infrastructure/equipment like DSNG to other broadcasters to uplink signals of TV channels via satellite utilising space spectrum assigned by WPC. This may be a conduit to simplify the permissions process for temporary uplink of live events where temporary uplinking of live events through pre-approved DSNG and space spectrum may be permitted on the basis of registration (along with fees and top-level details of the agreement with the relevant teleport operator); and
- Also, in order to cater to business needs and consumer demands, MIB should consider enabling frameworks to cater the need of broadcasters to provide multiple feeds of the same live event (typically in various languages).

OBJECTIVE 6: PROPELLING PUBLIC SERVICE BROADCASTING IN INDIA

NUDGING PUBLIC BROADCASTER TO FULFIL STATUTORY MANDATES

Suggested Language:

The Government shall augment the public broadcaster's capacity to inform, educate and entertain the public. It will consider strategies to enhance Prasar Bharati's fiscal autonomy and promote best practices to enable the public broadcaster to acquire or produce high-quality programming.

Rationale:

The Prasar Bharati Act, 1990 prescribes a primary duty on India's public broadcaster "to organise and conduct public broadcasting services to inform, educate and entertain the public and to ensure a balanced development of broadcasting on radio and television". Specifically, the Act assigns a primary duty to India's public broadcaster to organise and conduct broadcasting services which inform, educate and entertain the public¹⁷¹. In furtherance of this some of the legislative objectives for Prasar Bharati to work towards, inter alia, include¹⁷²:

- Promoting India's constitutional values;
- Safeguarding the citizen's right to be informed freely, truthfully and objectively on matters of public interest. Specifically, such content should be presented in a fair and balanced manner, which equitably feature contrasting views, without a specific position or political ideology;
- Providing adequate coverage representative of India's diverse cultures and linguistic demographics;
- Provisioning adequate coverage across of sports and games in order to promote the culture of culture of competition and sportsmanship;
- Provisioning appropriate content for youth consumption;
- Providing content which speaks to the regional and societal minorities such as women, scheduled castes, scheduled tribes, etc.

To achieve this the Act imposes a positive obligation on the public broadcaster to take steps to ensure that content is provided/produced which is in furtherance of public

¹⁷⁰ For news and current affairs broadcasters, as a result of extant uplinking policy guidelines.

¹⁷¹ Section 12(1), Prasar Bharati Act, 1990 ("Prasar Bharati Act").

¹⁷² Section 12(2), Prasar Bharati Act.

service imperatives¹⁷³. This includes establishing a robust system to gather news and information¹⁷⁴, and developing capacity within Prasar Bharati to competitively purchase/acquire rights to programmes, sporting events, films, serialised programming, etc. for broadcast to the public¹⁷⁵.

Although, these are not binding obligations, Prasar Bharati has struggled to earn sufficient revenues to develop requisite programming quality. Illustratively, out of its total receipts in 2016-17, commercial revenues from DD accounted for only 18 percent of Prasar Bharati's receipts, and income from DTH accounted for only 6.1 percent of the same. Income from these two sources fell short of covering DD's programme expenses (excluding administrative expenses) by INR 363.43 crore. Prasar Bharati is therefore heavily dependent on state-funding, and close to 85.7 percent of its receipts are linked to such grants.

The ability of a public broadcaster to delink itself financially from the state and government grants is a prerequisite for high quality, independent programming. For instance, the Public Service Broadcaster (PSB) in the UK, the BBC, is funded by license fees collected from the TV owning households of the country. This ensures that only those households which avail the services of the PSB pay for them, and delinks the broadcaster from political budget cycles. The BBC also has a commercial arm, which, among other functions, bids for producing commissioned programmes. This model of funding has made the BBC an active contributor to the portfolio of high-quality content produced by the UK¹⁷⁶.

UPDATING THE ROLE OF PRASAR BHARATI TO SERVE MODERN BROADCASTING IMPERATIVES

Suggested Language:

The role of Prasar Bharati shall be reviewed keeping in mind the new challenges such as fake news and misinformation, which

can be mitigated through high quality public programming by adhering to principles of plurality and public accountability

Rationale:

When India's broadcasting market was a state-run monopoly, the central role of Prasar Bharati was self-evident. However, in today's TV ecosystem where consumers have close to 900 TV channels including several news/current affairs channels, the expectations from the public broadcaster must undergo revision. For instance, there is a need to redefine what role public service broadcasting can play in a changing and increasingly globalised media landscape¹⁷⁷. In general, in the internet era, sensationalist content and fake news/misinformation is becoming all pervasive. Given such headwinds, regulators in jurisdictions like the UK¹⁷⁸ have found that the public's support for public service broadcasting is increasing because the public views PSBs as a trustworthy source/repository of high quality and factually robust news¹⁷⁹. Moreover, as creative industries continue to grow at a faster rate than the general economy, the sector is considered a source of job creation as compared to the economic performance in other sectors. Therefore, a high quality and active PSB can be a substantial area through which the state can directly contribute to greater employment.

Global expert authorities like the OSCE have begun examining how broadcasting frameworks (including the role of PSBs) should be reimaged through these various technological/market transitions¹⁸⁰. As such PSBs should prove as tools which ensure the integrity of democratic processes by enabling freedom and transparency of elections; fighting hate speech and protecting minority cultures¹⁸¹. PSB should adhere to the highest standards in relation to editorial independence and impartiality; it provides a benchmark of quality; it offers a variety of programmes and caters to the needs of all groups in society; and it is publicly accountable¹⁸².

¹⁷³ Section 12(3)(a), Prasar Bharati Act.

¹⁷⁴ Section 12(3)(b), Prasar Bharati Act.

¹⁷⁵ Section 12(3)(c), Prasar Bharati Act.

¹⁷⁶ A Short Guide to the BBC, National Audit Office UK (Oct. 2017), <https://www.nao.org.uk/wp-content/uploads/2017/10/Short-Guide-to-the-BBC-1.pdf>.

¹⁷⁷ Is there still a place for public service television?- Effects of the changing economics of broadcasting. Report by University of Oxford-Reuters Institute for the Study of Journalism (Sept. 2013), <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-11/Is%20There%20Still%20a%20Place%20for%20Public%20Service%20Television.pdf>.

¹⁷⁸ OfCom is the telecommunications regulator of UK.

¹⁷⁹ "Public Service Broadcasting is more important today than it's ever been" argues ITV's Sir Peter Bazalgette, Royal Television Society (30 Nov. 2017), <https://rts.org.uk/article/%E2%80%99public-service-broadcasting-more-important-today-it%E2%80%99s-ever-been-argues-itvs-sir-peter>.

¹⁸⁰ Guide to the Digital Switchover, Organization for Security and Co-operation in Europe (OSCE) (2010), <https://www.osce.org/fom/7320?download=true>.

¹⁸¹ Ibid., Pg. 13.

¹⁸² Recommendation 1641 (2004): Public Service Broadcasting, Parliamentary Assembly of the Council of Europe (27 Jan. 2004), <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17177&lang=en>.

Pertinently in modern media landscapes, twenty-four hour news cycles have skewed the incentives structures where now private news channels are seen to increasingly prioritise content which satisfy commercial ratings considerations. Outcomes of the same is the prominence of the “breaking news” and sensationalist story culture. Such trends typify what is referred to as the “Foxification of News”¹⁸³. Moreover, with the rise in prominence of the internet, there has been greater proliferation of polarising content where algorithms have led to clickbait centric headlines. This has translated into a media landscape online which fuels divisiveness among people across the spectrum of different political ideologies. In this context, expert media groups like BBC Media Action have found that public service broadcasters in such divided societies, can fulfill several roles, such as providing access to accurate information as well as fulfilling the need for a public space where diverse and competing viewpoints and options can be debated in a safe and objective manner.¹⁸⁴

In short, the Government of India should steer Prasar Bharati to have a targeted focus on developing high quality news content, which can help inform the public and at the same time fulfil the social objective of fighting challenges such as fake news and sensationalism emanating from new media. In this context, it is important for Prasar Bharati should embrace values/standards such as¹⁸⁵:

- Universality
- Impartiality
- Editorial independence
- Overall independence from both state and commercial interests¹⁸⁶

- Engendering public trust¹⁸⁷
- Fostering national/cultural identity
- High quality (well-funded and well-produced) content;
- Original (new content rather than repeats or bought-in content);
- Innovation (breaking new ideas or re-inventing existing approaches, rather than copying old ones);
- Challenging content (making viewers think);
- Accountability with an independent board¹⁸⁸

Moreover, there may be a case to be made for MIB to consider policy strategies which can enable Prasar Bharati to reach audiences beyond television and radio i.e. over new communication mediums like the internet. Towards such a mobile/internet presence the government must consider strategies which can organically allow India’s public broadcaster to reach younger audiences¹⁸⁹ (especially new internet users) through social networks and a proprietary curated content platform for self-developed content¹⁹⁰.

Cues may also be taken from a March 2018 report by UK regulator Ofcom on “*Public Service Broadcasting in the Digital Age*”¹⁹¹. In it, the UK regulator examines challenges public service broadcasters are likely to face in the context of greater online media consumption and competition from many domestic and international players. It reiterates that for PSBs to retain relevance in television there must be an emphasis by the institutions on delivering high quality content which is curated to local audiences. Specifically, Ofcom highlights that apart from news, there is a need for public service broadcasters to also invest in adequate creative/cultural content which

183 Chih Chieh Chang, *Foxification: A new global phenomenon of television news program*, University at Buffalo, <https://ubir.buffalo.edu/xmlui/handle/10477/45306>; *The Foxification of News*, *The Economist* (9 July 2011), <https://www.economist.com/special-report/2011/07/09/the-foxification-of-news>.

184 Phil Harding, *Policy Briefing- Public service media in divided societies: Relic or renaissance?*, BBC Media Action (October 2015), <http://downloads.bbc.co.uk/mediaaction/pdf/policybriefing/psb-in-divided-societies-sept-2015.pdf>.

185 *Ibid.*; *Public service broadcasting in the digital age- Supporting PSB for the next decade and beyond*, Ofcom UK (08 Mar. 2018), https://www.ofcom.org.uk/_data/assets/pdf_file/0026/111896/Public-service-broadcasting-in-the-digital-age.pdf.

186 *Supporting public service broadcasting- Learning from Bosnia and Herzegovina’s experience*, United Nations Development Programme (2004), https://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/supporting-public-service-broadcasting/A2I_Pub_PublicServiceBroadcasting.pdf.

187 Para 9.36 on pg. 70, Eve Salomon, *Guidelines for Broadcasting Regulation*, Commonwealth Broadcasting Association (now Public Media Alliance) (Dec. 2008), <https://www.publicmediaalliance.org/wp-content/uploads/2017/08/RegulatoryGuidelines.pdf>.

188 Para 2.26, pg. 15, *ibid.*

189 *Public service broadcasting in the digital age- Supporting PSB for the next decade and beyond*, Ofcom UK (08 Mar. 2018), https://www.ofcom.org.uk/_data/assets/pdf_file/0026/111896/Public-service-broadcasting-in-the-digital-age.pdf.

190 *A new role for public broadcasters*, Deutsche Welle (DW) Akademie (25 Nov. 2015), <https://www.dw.com/en/a-new-role-for-public-broadcasters/a-18874402>.

191 *Public service broadcasting in the digital age- Supporting PSB for the next decade and beyond*, Ofcom UK (08 Mar. 2018), https://www.ofcom.org.uk/_data/assets/pdf_file/0026/111896/Public-service-broadcasting-in-the-digital-age.pdf.

adequately the country's diverse people and regions. Moreover, since young people are watching television less, there is a need for PSBs to promote itself and focus on brand awareness through online channels. Additionally, there is a need to strengthen consumer's ability to access PSB channels through mechanisms like a strong Electronic Programming Guide and leveraging PSBs general comparative advantages in DTT markets.¹⁹²

Similar to the UK, there may be value for the Government of India to create an independent agency or retrofit a preexisting agency (like Ofcom) to help PSBs adapt to market headwinds and transitions.¹⁹³

ACHIEVING INCLUSIVE ACCESS TO BROADCASTING SERVICES

Suggested Language:

India shall honour its commitment under the International Convention on the Rights of Persons with Disabilities and partner with industry to harness technologies like close captioning, multiple language subtitling, and sign language for enhancing access.

Rationale:

While the need to encourage access to ICTs to differently abled consumers has been acknowledged within government, measures to implement adequate measures remain limited to sporadically integrated sign language programming (for news bulletins, and select *Chitrahaar* programming) on DD channels, and sign language interpretation and audio descriptions for Independence and Republic Day celebrations. On the other hand, closed captioning is being integrated increasingly by private broadcasters, while sign language and audio description mechanisms remain absent.

In this context, Prasar Bharati should lead efforts in developing technology and capacity to deliver on accessibility goals of the government. Indeed, jurisdictions like the UK have observed that accessibility issues have assumed prominence once its PSBs took forth the mandate through the initial period¹⁹⁴. Capacity building and provision of technological support for simultaneous transmission of subtitles in different languages and sign language programming can further enable private broadcasters to replicate such efforts. This would be in consonance with India's commitments under the Convention on the Rights of Persons with Disabilities, which requires that States make efforts towards advancing the free speech and expression rights of persons with disabilities through accessible and usable formats¹⁹⁵. This includes promoting the use of sign language, Braille, augmentative and alternative communication¹⁹⁶. This would also honour the mandate under the Rights of Persons with Disabilities Act, 2016, which inter alia provides for enabling access through audio descriptions, sign language programming and closed captioning.

Further, in line with TRAI's *Recommendations on Making ICT accessible for Persons with Disabilities*, it would be prudent to enable access to assistive technologies that can complement Doordarshan's efforts and enable access across private broadcasting services as well¹⁹⁷. The ITU has also recommended the incorporation of simplified programme guides¹⁹⁸. As a means to implement this and to create shared targets between government and industry, the Government of India should consider commencing a stakeholder wide mechanism to address disability access issues. Countries like France and Ireland undertook consultations in furtherance of the same, whereas South Africa established a Special Advisory Committee on people with disabilities.¹⁹⁹

¹⁹² *Ibid.*, Para 1.8.

¹⁹³ *Ibid.*, Para 1.7.

¹⁹⁴ Para 8.8 on pg. 61, Eve Salomon, *Guidelines for Broadcasting Regulation, Commonwealth Broadcasting Association (now Public Media Alliance) (Dec. 2008)*, <https://www.publicmediaalliance.org/wp-content/uploads/2017/08/RegulatoryGuidelines.pdf>.

¹⁹⁵ Article 21, *Convention on the Rights of Persons with Disabilities*, <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Recommendations on making ICT accessible to persons with disabilities*, TRAI (09 July 2018), <https://main.traai.gov.in/sites/default/files/RecommendationsICT09072018,%20o.pdf>.

¹⁹⁸ *Making Television Accessible Report*, International Telecommunications Union (Nov. 2011), https://www.itu.int/en/ITU-D/Digital-Inclusion/Persons-with-Disabilities/Documents/Making_TV_Accessible-English.pdf.

¹⁹⁹ Eve Salomon, *Guidelines for Broadcasting Regulation, Commonwealth Broadcasting Association (now Public Media Alliance) (Dec. 2008)*, pg. 61, <https://www.publicmediaalliance.org/wp-content/uploads/2017/08/RegulatoryGuidelines.pdf>.

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