

PRESS RELEASE

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NBDA Submissions on the Draft Broadcasting Services (Regulation) Bill, 2023

New Delhi: February 8, 2024: News Broadcasters & Digital Association (“NBDA”), the collective voice of the news, current affairs and digital broadcasters in India, whose membership includes 28 leading news and current affairs broadcasters comprising 73 news and current affairs channels and 54 digital news platforms submitted its comments expressing strong reservations and concerns regarding the Draft Broadcasting Services (Regulation) Bill, 2023 (“Draft BSR Bill”) which was circulated in November 2023 by the Ministry of Information & Broadcasting (“MIB”).

In its submissions to the MIB, NBDA highlighted the main areas of concern, which are as follows:

1. Excessive Delegation
2. Inclusion of OTT and Digital News Content
3. Vague Definitions and Ambiguous Provisions
4. Three-Tier Regulatory Structure
5. Self-certification by Content Evaluation Committee (“CEC”)
6. Stringent Penalties
7. Power of the Central Government to prohibit transmission of programme or operation of broadcaster or broadcasting network.

NBDA submitted that there is excessive reliance on delegated legislation under the Draft BSR Bill, which creates ambiguity with respect to the Central Government's expectations regarding the eventual implementation of the relevant provisions of the Draft BSR Bill. It can also lead to further contradictions and ambiguity, leading to potential arbitrary use of regulatory powers.

Regulating OTT services akin to traditional Broadcasting services would amount to treating dissimilar/unequal services in a similar manner/equally, which would not only be arbitrary and discriminatory but would also be violative of Article 14 of the Constitution. The Draft BSR Bill overlooks several fundamental distinctions between these services based on the very nature of the applicable regulatory and technology framework, business practices, and nature of relationship with consumers. Further, no prior study or impact analysis was conducted to ascertain the feasibility of treating OTT services as Broadcasting services and whether the same would potentially result in censorship or overregulation and be detrimental to the ease of doing business. Since the content disseminated by OTT services is already regulated by and under the Information Technology [Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT Rules”), the MIB should avoid regulatory overlaps under the Draft BSR Bill, which will only lead to duplication (and increase) of compliance liability for stakeholders.

NBDA criticized the usage of several broad and vague terms in the Draft BSR Bill. It stated that vague or overly broad terminology carries with it the distinct possibility of misuse and/or arbitrary application by authorities since vagueness itself serves to delegate matters of public policy to regulatory authorities, law enforcement and the Executive and can lead to unconstitutional fetters on the freedom of speech and expression. For instance, the broad definition of “news and current affairs programmes” under the Draft BSR Bill, apart from the inclusion of the terms “noteworthy”, “cultural”, and “analysis”, may also result in the regulation of any content created by individual bloggers and journalists who may not be considered broadcasters in the traditional sense, which would in turn lead to violation of Article 19(1)(a).

The imposition of the Programme Code and the Advertisement Code as they exist today would discourage journalists and individual broadcasters from expressing their views and providing diverse perspectives on various matters, as the terms used under the Programme Code and Advertisement Code are vague and can be subjectively interpreted.

NBDA submitted that the Draft BSR Bill vests uncanalised powers with the Executive to determine the contours and standards of content regulation. Since the Programme Code and Advertisement Code would impact content and thereby the freedom of speech and expression and the broadcaster's right to carry on business under Articles 19(1)(a) and (g), respectively, any restriction sought to be imposed must be within the four corners of Article 19(2) and should be prescribed by way of legislations and not by way of rules which would be notified subsequently.

NBDA submitted that using the contravention of the Programme Code or the Advertisement Code as a touchstone for undertaking action against broadcasters goes beyond the reasonable restrictions laid down in Article 19(2) and is likely to have a "chilling effect" on the freedom of speech and expression.

NBDA opposed the proposal for creating a Regulatory Structure under the Draft BSR Bill, similar to the Three Tier Complaint Redressal Structure established under the Cable Television Networks (Amendment) Rules 2021 and the IT Rules 2021.

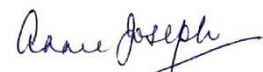
Given that the challenge to the Three Tier Complaint Redressal Structure is pending before the Hon'ble Supreme Court and the High Courts, NBDA, while expressing its deference for industry-led self-regulatory bodies such as News Broadcasting & Digital Standards Authority (NBDSA), suggested that the provisions concerning the Regulatory Structure should be kept in abeyance. Upon perusal of the provisions of the Draft BSR Bill, NBDA stated that the Bill suffers from the vice of excessive executive interference.

The Draft BSR Bill also results in pre-censorship as the broadcasters are permitted to air only those programmes which are certified by the CEC. "News and current affairs programmes" have not been exempted from the aforesaid requirements. NBDA submitted that implementing pre-broadcast certification in news and current affairs content is not feasible, and the creation of CEC is a prime example of regulatory overreach.

NBDA conveyed its apprehensions regarding the disproportionate and stringent penalties prescribed under the Draft BSR Bill, including under the First Schedule for violating the Programme and Advertisement Code. It stated that the penalties prescribed must be reduced as they were not industry-friendly and would impede the ease of doing business.

To ensure the objective of transparent policy formulation in relation to a critical legislative exercise which will have a far-reaching and long-term impact on multiple industry sectors, NBDA submitted that the MIB upload stakeholders comments and make these publicly available on its website so that all stakeholders can understand the various perspectives put forth in relation to the Draft BSR Bill and subsequently comment on the same.

NBDA stated that it believes that the Draft BSR Bill is an opportunity to revisit the extant policy and regulations and suggested that an effective light touch regulation approach should inform the formulation of the Draft BSR Bill.



Annie Joseph
Secretary General