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Ref. No. TR/CPII-2018

BY EMAIL

Dated 26-11-2018

To,

Shri. Asit Kadayan,
Advisor (QoS),
Telecom Regulatory Authority of India (TRAI),
Mahanagar Door Sanchar Bhawan,
J.L. Nehru Marg, (Old Minto Road)
New Delhi - 110002, India
Email: advqos@traai.gov.in


Dear Sir

ALCOA-India is delighted to present its comments on the consultation paper issued on 12th November 2018 by the Authority on Regulatory Framework for Over-The-Top (OTT) Communication services.

The result of this consultation process has to be a standard setting regulatory regime in a time bound manner, as the issues are related to regulatory imbalance between Telecom Service Providers (TSPs), Distribution Platform Operators (DPOs) vis-à-vis the OTT players, that are mushrooming in absence of any registration and regulatory guidelines to follow, while are providing services that can be regarded as same/similar to services offered by TSPs and DPOs.

Thanking You

For ALCOA India


Narender Bagri
General Secretary

Dated: 26th November 2018

ALCOA- India (Office Bearers)

Mr. Vijay Pal Singh Chauhan (Chairman)
Mr. Ram Kishan Tomar (President)
Mr. Kanwaljeet Singh (Vice President)
Mr. Yogesh Khatri (Treasurer)
CC :

Chairperson TRAI
Principal Advisor (B&C)
Advisor's (B&CS)

ALCOA – India

COMMENTS ON TRAI ISSUED CONSULTATION PAPER FOR REGULATORY FRAME WORK FOR (OTT) OVER THE TOP COMMUNICATION SERVICES

By - ALCOA- India: The principal trade association of the last mile service providers, providing Cable television, Broadband Internet access and VAS in India. With its primary mission to provide its members with a strong national presence by providing a single, unified voice on issues affecting the Cable TV and the telecommunications industry. Keeping with the interest of the subscribers and customers connected at large.

OTT Definition : Presently, there is no globally accepted definition of OTT services. Governments, regulatory agencies, international agencies and other forums have adopted varying definitions depending on the context before them.

Whereas

IPTV Definitions at present :

IPTV (Internet Protocol Television) is a system where a digital television service is delivered using the Internet Protocol over a network infrastructure, which may include delivery by a broadband connection. A simpler definition would be, television content that, instead of being delivered through traditional format and cabling, is received by the viewer through the technologies used for computer network. In case of IPTV, it requires either a computer and software media player or an IPTV set top box to decode the images in real time. *(As per the Guidelines For Provisioning of Internet Protocol Television (IPTV) Services, issued by the Ministry of Information & Broadcasting F.No. 16/03/2006-BP&L Vol.III)*

ITU-T defines IPTV services as “multimedia services such as television / video / audio/ text/ graphics/ data delivered over IP-based networks managed to provide the required level of QoS/QoE, security, interactivity and reliability” (QoS: quality of service, QoE: quality of experience).

Department of Telecommunication DOT, IPTV definition: An IPTV (Internet Protocol Television) service (or technology) is the new convergence service (or technology) of the telecommunications and broadcasting through QoS controlled Broadband Convergence IP Network including wire and wireless for the managed, controlled and secured delivery of a considerable number of multimedia contents such as Video, Audio , data and applications processed by platform to a customer via Television, PDA Cellular, and Mobile TV terminal with STB module or similar device.

Definition of IPTV as defined by the Authority (TRAI) under clause 2 (1a) of :

THE TELECOMMUNICATION (BROADCASTING AND CABLE SERVICES)
INTERCONNECTION REGULATIONS, 2004: “Internet Protocol television service”

means delivery of multiple Channel TV programmes in addressable mode by using Internet Protocol over a close network of one or more service providers”

More recent TRAI definitions in (Eighth) T.O and Interconnection Regulations 2017:-

(n) “distribution platform” means distribution network of a DTH operator, multi-system operator, HITS operator or IPTV operator;

(o) “distributor of television channels” or “distributor” means any DTH operator, multisystem operator, HITS operator or IPTV operator;

(t) internet protocol television operator or IPTV operator" means a person permitted by the Central Government to provide IPTV service;

(u) internet protocol television service or IPTV service" means delivery of multi channel television programmes in addressable mode by using Internet Protocol over a closed network of one or more service providers;

Therefore it becomes pertinent to broadly classify OTT (Over The Top) as :

a) OTT Communication Services ; OTT VoIP, OTT Messaging, etc.

b) OTT Television Services ; OTT IPTV (Internet Protocol Television)

Please also find enclosed a public notice issued by the Ministry of Information & Broadcasting, Government of India dated 23.12.2015 contents whereof are also reproduced below : - (Enclosure – 1)

“Subject: Adherence to clause 5.6 of Article of Downlinking guidelines by all Broadcasters Private TV (Channels) registered with Ministry of Information and Broadcasting.

It has come to the notice of this Ministry that certain DTH operators are beaming into India Free-to-Air TV Channels without obtaining due license / registration / authorization in any manner from this Ministry. These FTA TV channels, it is learnt, are permitted TV channels. However, Broadcasters appear to have allowed their signals to be used by such unauthorized operators .Clause 5.6 of the Article 5 of Downlinking guidelines issued by the Ministry stipulates that all the Broadcasters (Channels) shall provide Satellite TV channel signal reception decoders only to MSOs/Cable Operators registered under the Cable Television Networks (Regulation) Act, 1995 or to a DTH operator registered under the DTH guidelines issued by Government of Indian or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a HITS operator duly permitted under the policy guidelines for HITS operators issued by the Ministry of Information and Broadcasting, Government of India to provide such service.

2. It is re-iterated that compliance of the above clause should be strictly adhered to by all registered Broadcasters (channels) and in no case Satellite TV channel signal reception decoders or access to their signals per se be provided to any MSO/Cable Operators, DTH Operators, IPTV service provider and HITS operator who is not registered/permitted by the Ministry of Information and Broadcasting. Non-adherence to the laid down stipulation is liable for stern action from this Ministry in case corrective action by broadcasters is not taken immediately.

We also draw your attention to an ORDER No. 1601/28/2008-TV (I) Date- 8.9.2008 issued by the Ministry of Information and Broadcasting.. (Enclosure-2)

In pursuance to the Cabinet decision taken on 21st August, 2008 regarding modification of policy guidelines for downlinking of television channels to enable broadcasters to provide their content to Internet Protocol Television (IPTV) Service provider, the existing clause 5.6 of the downlinking guidelines has been amended as under.

“5.6 The applicant company shall provide satellite TV channel signal reception decoders only to MSOs/Cable operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service provider duly permitted under their existing telecom license or authorized by Department of Telecom to provide such service”.

We also bring in the knowledge of the Authority here “ A clarification dated 18.11.2008” issued by the Ministry of Information and Broadcasting, Government of India contents whereof are also reproduced here under : (Enclosure-3)

Clarification

Certain Broadcasters have expressed an apprehension that clause (vii) of the Guidelines for IPTV Service issued by this Ministry on 8th September 2008 for compliance of IPTV Service Providers, may be used by multi system operators/cable operators to distribute the contents of TV channels to telecom IPTV licensees without obtaining relevant rights from the content owners resulting in violation of the terms and conditions on which content is being provided by the rights owner to multi system operators or cable operators

2. The matter has been examined and attention is invited to clause (v) of the IPTV policy guidelines of this Ministry wherein it has been stated that provisions of Cable Television Networks (Regulation) Act, 1995 and rules thereto and regulations issued by Telecom Regulatory Authority of India will continue to be applicable to IPTV Services of cable operators. As such MSOs/Cable operators can provide only such content which is permissible as per the Cable TV Networks (Regulation) Act, 1995 and Rules and which is in conformity with Advertisement and Programme codes prescribed under the Cable Television Networks Rules 1994. Further Rule 6(3) of the Cable Television Networks Rules, 1994 clarifies that no content can be included in cable service in respect of which copyright subsists under the Copyright Act, 1957 unless he has been granted a license by the owners of copyright. Given the above legal position it is expected that MSOs/Cable Operators will provide content to Telecom Licensees for IPTV Services only after obtaining the relevant rights for the same following which it will be treated as a violation of Programme code liable for suitable action as per law..

Whereas in spite of these reasonable prohibition and restriction laid down in the prescribed regulation (s) few pay TV broadcaster's namely Star India, Sony Pictures, Television Eighteen and Zee Entertainment Enterprises have openly flouted the law of the land, under the garb of OTT Services and have also been providing live TV channels on its own wholly owned and operated OTT IPTV platforms namely : HOTSTAR, SONYLIV, VOOT & Zee5. Without obtaining any licence / permission or getting themselves registered as DPOs with the concerned ministry of Information & Broadcasting, Government of India.

Whereas HotStar that is being operated by M/s. Novi Digital Entertainment Pvt Limited a wholly owned subsidiary of Star India Pvt. Ltd went even few steps further by also disseminating unrestricted pornographic and lascivious content on its OTT IPTV platform namely HotStar.

Whereby to our knowledge a FIR 0238/ 2017 P.S NFC was also registered against the principal officers namely Mr. Uday Shankar and Mr. Ajit Mohan of M/s. Star India Pvt. Ltd and M/s. Novi Digital Entertainment Pvt. Ltd respectively, under various sections of IPC for selling obscene content and 67 A of IT Act 2000. (Punishment for publishing or transmitting obscene material in electronic form). Upon a complaint filed with the Delhi police by public spirited person(s).

Recently we again hear from media reports that a PIL have been filed in High Court of Delhi and notice issued to centre seeking the government's response on the plea which also alleged that the online media streaming platforms such as Netflix, Amazon Prime and HotStar show "uncertified, sexually explicit and vulgar" content.

Introduction

1. TSPs offer voice calling and text messaging directly. Internet works on top layer of network, as standalone. TSPs have exclusive licence in the form of spectrum and Right of Way (RoW) implying scarcity. They have to pay licence fee, spectrum charges and taxes, besides hardware, which affect their profits. TSPs do not undertake any responsibility for content; they only accept and facilitate transmission of content for delivery. Internet implies abundance and open characteristics. Subscriber is charged for all the services used directly by the TSP. Their business is sure to undergo changes.

2. At present, video access, in residential, small office and institutional segment, is through Cable TV or DTH. Both comprise a distribution medium from turnaround to premise of viewer. Both deliver live FTA and PAV TV channels / content to viewers primarily on their domestic television receivers through a digital addressable Set Top Box (STB) / CPE.

While an IP network is a communication network that uses Internet Protocol (IP) to send and receive messages between one or more computers. As one of the most commonly used global networks, an IP network is implemented in Internet networks, local area networks (LAN) and enterprise networks. An IP network requires that all hosts or network nodes be configured with the TCP/IP suite.

The Internet is the largest and best known IP network.

Three types of IPTV / OTT IPTV

IPTV comes in three different flavours. The first kind—and the one you're probably using already—is called video on demand (VOD). With a service such as Netflix or Amazon Prime (an online movie / content on demand portal), you select a TV program or movie you want to watch from a wide range, pay your money, and watch it there and then.

A different kind of IPTV is being offered by some of the world's more enterprising TV broadcasters. They make its last week's programs available online using a web-based streaming video player. This kind of service is sometimes called time-shifted or catch-up IPTV, because you're watching ordinary, scheduled broadcasts at a time that's convenient for you.

The third kind of IPTV involves broadcasting live TV programs across the Internet as they're being watched—so it's live IPTV or IP simulcasting in unicast or multicast

All three forms of IPTV can work either using your computer and an ordinary web browser or smart phone (for much better quality) a set-top box and an ordinary digital TV or an fully integrated Smart TV. All three can be delivered either over the public Internet or through a managed, private network that works in essentially the same way (for example, from your telephone and Internet service provider to your home entirely through the provider's network).

3. But what happens if one operates all the above three, as a global service, with servers (CDN) in multiple territories ? This is what actually being done by the Pay TV broadcasters themselves operating an OTT IPTV platform (s) without any possible restrictions and obtaining any permission to operate. Even to the extent of openly violating the reasonable and much required cross media ownership restriction's that are in violation of the policy mandate that neither the broadcaster shall acquire more than 20% equity in the distribution platform operator nor the distributor of the channels can hold more than 20% equity in the broadcaster or in another distributor company. Such policy mandate has been given for the purposes of ensuring efficient market conditions and curbing the monopolistic practices. The market is already distorted by the vertical integration between the broadcasters and the distributors of the channels. Vertically integrated players tend to drive the un-integrated distributors from the market. The relevant provisions of the DTH Guidelines and HITS guidelines are having these reasonable and much required Cross media holding restrictions in place

4. Here these permissionless OTT IPTV platforms are operating since 2015, and have also been providing FTA as well Pay TV live TV channels via internet, without requiring users to subscribe to a traditional cable TV or satellite DTH, whereas these permitted / licensed distribution platforms are forced to re-distribute pay TV channels only in packages / bouquets been provided by these very same Pay TV broadcasters who are also operating these permissionless OTT IPTV platforms.

Here we find it pertinent to also bring on record various representations made by various last mile associations, to the Authority TRAI in May, June and July 2017 the contents these petitions made u/s 11.12 &13 of TRAI Act, 1997 are being reproduced here for ready reference and making an information to the concerned :-

To
HON'BLE SHRI R. S. SHARMA,
The Chairman, Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi – 110002

PETITION UNDER SEC. 11, 12 & 13 OF TRAI ACT, 1997 SEEKING ACTION AGAINST DISCRIMINATORY PRICING FOR CABLE TV OPERATIONS STAR INDIA PVT LTD AS AGAINST HOTSTAR (A DISTRIBUTION PLATFORM- INTERNET PROTOCOL TELEVISION (IPTV) / OVER THE TOP (OTT) IPTV) VERTICALLY INTEGRATED TO STAR INDIA PVT LTD

Respected Sir,

1. That HotStar an Internet Protocol Television (IPTV) / Over the Top (OTT) IPTV service being operated by M/s. Star India Pvt. Ltd and its wholly owned subsidiaries is cannibalizing and adversely affecting, ongoing business of Cable TV operators in the country, who are providing cable TV services to consumers / public for past more than 2 decades.

2. I have recently come to know that this HotStar IPTV / OTT IPTV service does not hold any license to operate an IPTV or have any registration granted by the Ministry of Information and Broadcasting, Government of India to operate as a Distribution platform operator (DPO) while it is directly affecting the ongoing business of thousands of legally registered Cable TV operators in the country, like us, who are being charged exorbitant rates for redistributing of bundled pay TV channels, distributed by M/s Star India Pvt. Ltd, that are also carrying excessive advertisements on them in blatant violation of all laws, rules, regulations and laid down guidelines.

3. Where these same pay TV channels distributed by M/s. Star India Pvt. Ltd are being separately uplinked illegally, without any advertisements shown on them and are being provided free of cost to the viewers / consumers much before the scheduled time of their telecast made available to us for re-distribution to our consumers also pornographic content and non-permitted channels like Foxnews, Foxbusiness and Skynews are being telecasted / redistributed without any restrictions on this unlicensed HotStar IPTV over the top IPTV service that is also being highly advertised on all the TV channels of Star India.

4. For some mysterious /unknown reasons, till date no action has been taken by authority and MIB. Whereas, if any cable TV operator was running the business illegally without taking licence or registration and showing pornographic content and non-permitted channels, Government would have taken immediate action, of closing his / her illegally operated distribution platform operation by seizing the equipment and registration of FIR.

5. Whereas, the separately uplinked and down linked signals of M/s. Star India Pvt. Ltd pay TV channels provided to its owned and operated IPTV platform "HotStar" are having no advertising / commercials, they are being separately uplinked and are being redistributed, many hours before time, when same pay TV channels are being provided to Cable TV operators in the Country for redistribution to its consumers after few hours, while exorbitant subscription fee for these forced upon, bundled channels in a bouquet / packages are being charged each month per subscriber TV set / STB. That too when the duration of advertisement shown in a clock hour is almost 18 - 21 minutes on these pay TV channels of

M/s. Star India Pvt. Ltd. provided to the Cable TV operators for redistribution to end-user consumers/ subscribers.

6. *In view of the aforesaid, we request TRAI to immediately issue directions to M/s. Star India Pvt. Ltd and the MSOs having an interconnection agreement for Digital Addressable System (DAS) with this Pay TV broadcaster, to not charge any amount towards subscription in fixed CPS "Cost per Subscriber" or on RIO charges "Reference Interconnect Offer" from their linked Cable TV operators for the pay TV channels being provided free of charge on its HotStar IPTV / OTT IPTV platform. Including Star Sports Channels that are also being shown free of cost to a very large section of our viewers / consumers, that too having minimal advertisements shown during important sports events, upon them.*

7. *In view of the above facts and circumstances, the undersigned claims following reliefs:-*

a) *The TRAI should direct Star India Pvt. Ltd. to provide its channels distributed / exhibited through Hotstar platform free of cost to the Multisystem operators / local cable operators,*

b) *The TRAI should direct Star India Pvt. Ltd. not to insert any advertisement into the TV programmes provided to the Multisystem operators / local cable operators*

Thanking you in anticipation of TRAI passing these directions at the earliest, in a time bound manner and to ensure a level playing field.

Yours Truly

Thereafter reminder representations were also sent to the Regulatory Authority TRAI in the month of August and September 2017 . As this Regulatory Authority TRAI did not respond at all to any of the aforesaid petition(s) made u/s 11,12 & 13 of TRAI Act 1997 seeking action against discriminatory pricing for Cable TV Operators

To,
HON'BLE SHRI R.S SHARMA
The Chairperson, Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawaharlal Nehru Marg
New Delhi – 110002

Reference : *Our petition dated --- 6.2017 under section 11,12 & 13 of TRAI Act, 1997 seeking action against discriminatory pricing for Cable TV Operators w.r.t Star India Pvt Ltd as against Hotstar (An Internet Protocol Television (IPTV) / Over The Top (OTT) IPTV Distribution platform) Vertically integrated to M/s. Star India Pvt. Ltd.*

Respected Sir,

We a group of Cable TV service providers have made the aforesaid petition to the sole industry regulator TRAI sent by speed post on --.06.2017

Where we had appraised the regulatory authority that this aforesaid HotStar an IPTV / OTT IPTV service being operated by M/s Star India Pvt. Ltd and its wholly owned subsidiaries is cannibalizing and adversely affecting our ongoing business of Cable TV operators in the country.

It was also informed to the regulatory authority that this Hotstar service does not hold any license to operate an IPTV or have any registration granted by the Ministry of Information & Broadcasting to operate as a Distribution platform operator (DPO) while it is directly affecting the ongoing business of thousands of legally registered Cable TV operators in the country.

For some mysterious / unknown reasons, till date no action has been taken by the regulatory authority and Ministry of Information and Broadcasting that is also the administrator of licenses / permissions granted to DPOs, Private satellite TV channels, those are also being shown on this illegally operated IPTV / OTT IPTV distribution platform, without any advertisements shown upon them and are being separately uplinked for making the programs available much before the scheduled time of their telecast made available to us for redistribution to our consumers also pornographic content and non-permitted channels like FoxNews, FoxBusiness and SkyNews are being telecasted / redistributed without any restriction on this unlicensed HotStar IPTV / OTT IPTV service that is also being highly advertised on all the TV channels of Star India.

Whereas in our petition dated --.06.2017 made to the regulatory authority we sought directions to M/s. Star India Pvt. Ltd, to not charge any amount towards subscription in fixed CPS " Cost per Subscriber" or on RIO charges as per the published Reference Interconnect Offer for the Pay TV channels being provided on its operated HotStar IPTV / OTT IPTV platform and also claimed the following reliefs :

- a) The TRAI should direct Star India Pvt. Ltd. to provide its channels distributed /exhibited through Hotstar platform free of cost to the Multisystem operators /local cable operators,*
- b) The TRAI should direct Star India Pvt. Ltd. not to insert any advertisement into the TV programmes provided to the Multisystem operators /local cable operators*

More than 2 (Two) months have elapsed whereas we have not heard from TRAI on our last representation/ petition made dated --.06.2017. We are once again requesting you to take corrective actions against the OTT Platforms and intervene to save the market from failure.

In case we do not hear from the authority or authority does not take any action, we will be constrained to assume that TRAI deliberately did not take any action which amounts to decision /order and is appealable before the Ld' TDSAT.

Yours Truly

Pertinent to mention here, that as per the TRAI Act 1997 one cannot approach the Honorable TDSAT " Telecom Dispute Settlement and Appellant Tribunal " as it can only hear and dispose of appeal against any direction, decision or order of the Authority under this Act.

Moreover, very interestingly the RTI request application made by an office bearer of one of the association petitioning as aforesaid u/s 11. 12 & 13 of TRAI Act. to TRAI w.r.t to the above enumerated representation(s) made to the Honorable Chairperson at the Authority were never responded to by the designated CPIO at TRAI and even the first appeal made to the designated Appellate Authority in TRAI under the RTI Act for CPIO not responding to the RTI request made, was again not ever responded to or acknowledged by the designated RTI Appellate Authority in TRAI.

These are the state of affairs at this Regulatory Authority of India. That now have deliberately tried best to take this consultation paper finally issued on regulatory frame work for OTT “Communication”, towards the telecommunication side regulatory framework, whereas the violations of the advertising & proگرامing code, allowing re-transmission of permitted Television channels on unregistered DPOs, operating an OTT IPTV without any permission, in deliberate violations of the prescribed uplinking and downlinking guidelines and cross media ownership restrictions are matters for adjudication related to B&CS and fall exclusively under the domain of Ministry of Information and Broadcasting as that is the licensing authority and an administrator of licences / permissions granted to DPOs and the permitted private satellite TV channels in the country.

Whereas on the contrary the Authority deliberately shy away from performing its roles and responsibilities as are envisaged upon its establishment. which definitely can't be construed, only as a continued dereliction of duty, there has to be something much more attached to it.

However -

5. Answers to issues for consultation :

Q1. Which service(s) when provided by OTT service provider(s) should be regarded as the same or similar to services being provided by TSPs ? Please list all such OTT services with descriptions comparing it with services provided by TSPs

OTT communication services (VoIP) providing real-time person to person, M2M telecommunication services using the network infrastructure of the TSP, and application services such as multimedia, content on demand services (gaming), messaging, trade and commerce services (e-commerce, radio taxi, financial services), cloud services (data hosting and data management platforms or applications), social media etc, using the network infrastructure of the TSP.

Whereas OTT Internet Protocol Television (IPTV) services also providing real time, Live TV channels, re-broadcast channels that are the permitted TV channels for downlinking in India and content of these permitted TV channels is being only provided for time shifted / Catch-up TV (scheduled broadcasts at a time that's convenient) exactly fits in the description of a DPO and should be falling under the definition of “distributor of television channels” or “distributor” means any DTH operator, multisystem operator, HITS operator or IPTV operator; (as defined in the TRAI (Eighth) T.O of 2017 and its associated regulations notified on 03.03.2017)

Q2. Should substitutability be treated as the primary criteria for comparison of regulatory or licensing norms applicable to TSPs and OTT Service providers? Please suggest factors or aspects, with jurisdiction, which should be considered to identify and discover the extent of substitutability.

OTT communication services (Excluding Live TV Television and Re broadcast Television / Content) such as VoIP and messaging applications are complimenting the services provided by the TSPs where capability of substitution have emerged in

their convergence and with net neutrality being in place. These are mostly third party applications and TSPs too have substantially invested in development of own applications. An example can be derived from RIL Jio that have developed all kind of own innovative applications including Jio TV and is operating it only after obtaining a Telecom licence and a pan- India MSO registration from the concerned Ministry / Govt. of India Departments.

OTT Internet Protocol Television service is in substitution to the traditional Cable TV and DTH being operated, only under a regulatory regime. Moreover the TRAI T.O and Interconnection Regulation 2017 have broadly defined the applicability and substitutability of all distribution services as following so, there remains no ambiguity at all, w.r.t a distribution platform offering programme of television channel including pay channel on a MRP (Maximum retail price) to a subscriber : -

(n) "distribution platform" means distribution network of a DTH operator, multi-system operator, HITS operator or IPTV operator;

(o) "distributor of television channels" or "distributor" means any DTH operator, multisystem operator, HITS operator or IPTV operator;

(t) internet protocol television operator or IPTV operator" means a person permitted by the Central Government to provide IPTV service;

(u) internet protocol television service or IPTV service" means delivery of multi channel television programmes in addressable mode by using Internet Protocol over a closed network of one or more service providers;

(w) "maximum retail price" or "MRP" for the purpose of this Order, means the maximum price, excluding taxes, payable by a subscriber, for a-la-carte pay channel or bouquet of pay channels, as the case may be;

(zh) "television channel" means a channel, which has been granted downlinking permission by the Central Government under the policy guidelines issued or amended by it from time to time and reference to the term "channel" shall be construed as a reference to "television channel".

(za) "pay channel" means a channel which is declared as such by the broadcaster and for which broadcaster's share of maximum retail price is to be paid to the broadcaster by the distributor of television channels and for which due authorization needs to be obtained from the broadcaster for distribution of such channel to subscribers;

(zb) "programme" means any television broadcast and includes -

(i) exhibition of films, features, dramas, advertisements and serials;

(ii) any audio or visual or audio-visual live performance or presentation, and the expression "programming service" shall be construed accordingly;

(zg) "subscriber" for the purpose of this Order, means a person who receives broadcasting services relating to television from a distributor of television channels, at a place indicated by such person without further transmitting it to any other person and who does not cause the signals of television channels to be heard or seen by any person for a specific sum of money to be paid by such person, and each set top box located at such place, for receiving the subscribed broadcasting services relating to television, shall constitute one subscriber

Q3. Whether regulatory or licensing imbalance is impacting infusion of investments in telecom networks especially required from time to time for network capacity expansions and technology upgradations ? If yes, how OTT service providers may participate in infusing investment in telecom networks? Please justify your answers with reasons.

Apparently 'NO'. for OTT communication services, as they are internet based. Subscriber seeks an internet connection from fixed line or wireless networks operated by TSPs, including but not limited to mobile telephony. So the TSP earns by increase in data usage by the subscriber. TSPs to remain in business dynamically have to foresee the capacity enhancements and provide for the same.

-But -

YES for OTT Internet Protocol Television service, as they have suddenly mushroomed due to Govt of India and the Authority failing to timely act and bring in some requisite regulations / guidelines to follow, while these illegal / non permitted OTT IPTV platforms being operated by the Pay TV Broadcaster have continued to cannibalizing and adversely affect the ongoing business of Cable TV operators and DTH operators in the country with predatory pricing and forcing bouquets of undesirable Pay TV channels on consumers through the permitted DPOs, while these Pay TV channels are having limitless duration of commercials shown during the programme even though there are regulations in place for permitted duration of advertisements shown. But the Authority and the Ministry have both miserably failed in the implementation of its own prescribed regulations for some mysterious reason.

Q4. Would inter-operability among OTT services and interoperability of their services with TSPs promote competition and benefit the users ? What measures may be taken, if any, to promote such competition? Please justify your answers with reasons.

'NO'. OTT is enshrined in internet, which is accessed through TSP networks, irrespective of TSP and is application based. Hence it is deemed interoperability. However we are all quite aware of the big DAS STB inter-operability announcements in press and media and claims made by the Authority. Where TRAI indulges in consultation purely as a formality in participative file noting procedures and having completed them recommends what they want because it is seen in the past that regulations become non-implementable or are under challenge in court.

Q5. Are there issues related to lawful interception of OTT communication that are required to be resolved in the interest of national security or any other safeguards that need to be instituted ? Should the responsibilities of OTT service providers and TSPs be separated? Please provide suggestions with justifications.

OTT IPTV so far, has impacted availability of video content, PAY in particular, and other in general, enabling viewing without involvement/payment to the permitted

Distribution Platform Operator . As long as it is confined to only entertainment without damaging and destroying the social fabric. and causing serious prejudice to our society and social value provided and protected under constitution of India. it does not attract harmful security safeguards. But as they have been found to have been flouting the prescribed laws w.r.t also disseminating lascivious, obscene and sexually explicit that are not amenable to decency, morality, and a cultured democracy such as India. and by no stretch of imagination that can be considered to be under freedom of speech and expression. Licensing, Regulating and Monitoring the content shown on permitted TV channels and on DPOs are in Ministry of Information and Broadcasting domain, at present, therefore these OTT IPTV services should be brought under the prescribed regulations as are prescribed for the DPOs , MIB is already have a specialised wing EMMC established for monitoring content being broadcasted in the country.

Q6. Should there be provisions for emergency services to be made accessible via OTT platforms at par with requirements prescribed for telecom service providers ? Please provide suggestions with justifications.

Yes !

.Q7. Is there an issue of non-level playing field between OTT providers and TSPs providing same or similar services ? In case the answer is yes, should any regulatory or licensing norms be made applicable to OTT service providers to make it a level playing field ? List all such regulation(s) and license(s) with justifications.

Yes ! An OTT player(s) too should be registering themselves with MIB for dissemination of video content and with DoT for voice, data and messaging services. All the prescribed laws / regulatory guidelines should be made applicable on an OTT IPTV service provider, including but not limited to cross media holding restrictions to make it a level playing field across all distribution platform operators.

Q8. In case any regulation or licensing condition is suggested to made applicable to OTT service providers in response to Q.7 then whether such regulations or licensing conditions are required to be reviewed or redefined in context of OTT services or these may be applicable in the present form itself ? If review or redefinitiuon is suggested then propose or suggest the changes needed with justifications.

Requisite regulations and licensing conditions already exists respectively with MIB and DOT in case of DPO registration i.e. Multi System Operator, DTH, HITS and IPTV. There are already around 1500 DPOs registered and operating in this country. Whereas whenever any additional need arises, issues of Licensing obligations, Taxation (jurisdiction), QoS/QoE, Data protection and privacy, Net neutrality, Inter-connection and Universal Service Obligation Fund (USOF) etc. can be adequately addressed by the respective / concerned Ministry or Department under Government of India.

Q9. Are there any other issues that you would like to bring to the attention of the Authority ?

The Authority, deliberately did not take any note of the concerns raised on this issue more than a year back, thereafter even after the renotification of the (8th) Tariff Order and Regulations on (B&CS) of 2017 on 3rd July 2018, ALCOA -India vide its various communications made to the Authority dated 10.07.2018, 17.07.2018 and 20.11.2018 have been seeking a clarification issued at the earliest by the Regulator TRAI and Ministry of Information & Broadcasting, Government of India. respectively so we find no discrepancy in the smooth implementation of the new tariff regime, as the OTT (Over the Top) IPTV (Internet Protocol Television) operators such as HOTSTAR, SONY LIV, ZEE5 and VOOT etc. Who do not have any permission granted by the Central Government to provide IPTV or OTT IPTV services and they are also not registered as DPO by the Ministry of Information & Broadcasting.

While these unregistered, non-permitted OTT IPTV distribution platforms being operated by the Broadcasters itself for the past few years are providing the same content / channels for which a MRP has to be declared and nature of Channels by Broadcasters within 60 days; as per the Press Note No: 71 of 2018 issued on 03.07.2018 by the Authority. Whereas finally on 06.11.2018 the MRP have also now been declared by all the respective Pay TV broadcasters. But the Authority as usual have failed till now to make a clarification on this important issue being faced by the DPOs w.r.t the Pay TV channels also being offered on these illegal / non-permitted OTT IPTV platforms for which a MRP have already been declared but the ambiguity still remains.

That hopefully will be adequately addressed only after the response to this Consultation paper finally issued on 12.11.2018, for bringing in a REGULATORY FRAME WORK FOR (OTT) OVER THE TOP COMMUNICATION SERVICES are received and all those will be published in public domain and thereafter some much required regulatory framework is timely put in place.

For any further clarification or information on the above, we remain at your disposal.

For ALCOA – India

Mr. Narender Bagri
(General Secretary)
Phone : +91 9811932898
Email : alcoaindia11@gmail.com

No. 8/7/2015-BP&L
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
New Delhi

Dated: 23rd December, 2015

NOTICE

Subject: Adherence to clause 5.6 of Article of Downlinking guidelines by all Broadcasters Private TV (Channels) registered with Ministry of Information and Broadcasting.

It has come to the notice of this Ministry that certain DTH operators are beaming into India Free-to-Air TV Channels without obtaining due license / registration / authorization in any manner from this Ministry. These FTA TV channels, it is learnt, are permitted TV channels. However, Broadcasters appear to have allowed their signals to be used by such unauthorized operators. Clause 5.6 of the Article 5 of Downlinking guidelines issued by the Ministry stipulates that all the Broadcasters (Channels) shall provide Satellite TV channel signal reception decoders only to MSOs/Cable Operators registered under the Cable Television Networks (Regulation) Act, 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a HITS operator duly permitted under the policy guidelines for HITS operators issued by the Ministry of Information and Broadcasting, Government of India to provide such service.

2. It is re-iterated that compliance of the above clause should be strictly adhered to by all registered Broadcasters (channels) and in no case Satellite TV channel signal reception decoders or access to their signals per se be provided to any MSO/Cable Operators, DTH Operators, IPTV service provider and HITS operator who is not registered/permitted by the Ministry of Information and Broadcasting. Non-adherence to the laid down stipulation is liable for stern action from this Ministry in case corrective action by broadcasters is not taken immediately.



(Navil Kapur)

Under Secretary to the Government of India

Tele: 2338676

**GOVERNMENT OF INDIA
MINISTRY OF INFORMATION AND BROADCASTING
'A' Wing Shastri Bhawan, New Delhi.**

No. 1601/28/2008-TV (I)

Date- 8.9.2008

ORDER

In pursuance to the Cabinet decision taken on 21st August, 2008 regarding modification of policy guidelines for downlinking of television channels to enable broadcasters to provide their content to Internet Protocol Television (IPTV) Service provider, the existing clause 5.6 of the downlinking guidelines has been amended as under.

“5.6 The applicant company shall provide satellite TV channel signal reception decoders only to MSOs/Cable operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service provider duly permitted under their existing telecom license or authorized by Department of Telecom to provide such service”.

(ZOHRA CHATTERJI)

Joint Secretary to the Government of India

Tele. : 23382597

Copy to:

- 1. Cabinet Secretary, Cabinet Secretariat, New Delhi.**
- 2. Secretary, Department of Telecommunications, Ministry of Communication & Information and Technology, Sanchar Bhawan, New Delhi.**
- 3. Secretary, Ministry of Home Affairs, North Block, New Delhi.**
- 4. Secretary, Ministry of Finance, North Block, New Delhi.**
- 5. Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi.**
- 6. Secretary, Department of Space, Lok Nayak Bhawan, Khan Market, New Delhi.**
- 7. Secretary, Department of Information Technology, Ministry of Communications & Information Technology, Electronics Niketan, CGO Complex, New Delhi.**
- 8. CEO: Prasar Bharati Secretariat, PTI Building, New Delhi.**
- 9. Secretary, Telecom Regulatory Authority of India (TRAI), Mahanagar Doorsanchar Bhawan, Jawahar Lal Nehru Marg (Old Minto Road), New Delhi.**

No. 16/03/2006-BP&L Vol.IV
Government of India
Ministry of Information & Broadcasting

Shastri Bhawan, New Delhi
Dated the 18TH November 2008.

CLARIFICATION

Certain Broadcasters have expressed an apprehension that clause (vii) of the Guidelines for IPTV Service issued by this Ministry on 8th September 2008 for compliance of IPTV Service Providers, may be used by multi system operators/cable operators to distribute the contents of TV channels to telecom IPTV licensees without obtaining relevant rights from the content owners resulting in violation of the terms and conditions on which content is being provided by the rights owner to multi system operators or cable operators.

2. The matter has been examined and attention is invited to clause (v) of the IPTV policy guidelines of this Ministry wherein it has been stated that provisions of Cable Television Networks (Regulation) Act, 1995 and rules thereto and regulations issued by Telecom Regulatory Authority of India will continue to be applicable to IPTV Services of cable operators. As such MSOs/Cable operators can provide only such content which is permissible as per the Cable TV Networks (Regulation) Act, 1995 and Rules and which is in conformity with Advertisement and Programme codes prescribed under the Cable Television Networks Rules 1994. Further Rule 6(3) of the Cable Television Networks Rules, 1994 clarifies that no content can be included in cable service in respect of which copyright subsists under the Copyright Act, 1957 unless he has been granted a license by the owners of copyright. Given the above legal position it is expected that MSOs/Cable Operators will provide content to Telecom Licensees for IPTV Services only after obtaining the relevant rights for the same following which it will be treated as a violation of Programme code liable for suitable action as per law..

(Zohra Chatterji)
Joint Secretary to the Government of India
Tele:23382597.

To

- 1. IBF**
- 2. IMG**

3. NBA

4. MSO Alliance

5. COFI

Copy to:

1. Secretary, Department of Telecommunications.
2. Secretary, Department of Information Technology.
3. CEO, Prasar Bharati.
4. Secretary, Telecom Regulatory Authority of India, New Delhi.

Copy also to: NIC, M/o I & B with a request that the clarification may be loaded on the website of the Ministry under the heading “Codes& guidelines/Guidelines for IPTV Services”.

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Government of India
Ministry of Information & Broadcasting

Shastri Bhawan, New Delhi
Dated the 12th January 2009.

CORRIGENDUM

This is with reference to the clarification issued on 18th November 2008 by this Ministry under the guidelines for provisioning of IPTV Services in the country.

2. In Para '2' of the said clarification, in the last but one line, the word "following" stands deleted and is substituted by the word "failing".

(Zohra Chatterji)
Joint Secretary to Government of India
Tele: 23382597

To

- 1. IBF**
- 2. IMG**
- 3. NBA**
- 4. MSO Alliance**
- 5. COFI**

Copy to:

1. Secretary, Department of Telecommunications.
2. Secretary, Department of Information Technology.
3. CEO, Prasar Bharati.
4. Secretary, Telecom Regulatory Authority of India, New Delhi.