

Self-Regulation Guidelines for the Broadcasting Sector

(Draft 2007)

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A. Introduction

1. A need has been felt to regulate the content going into public domain to ensure conformity with acceptable contemporary community standards and to protect the vulnerable sections from harmful and undesirable content on TV.

2. These Self Regulation Guidelines (Guidelines) set out principles, guidelines and ethical practices, which shall guide the Broadcasting Service Provider (BSP) in offering their programming services in India so as to conform to the Certification Rules prescribed under the Cable Television Networks (regulations) Act 1995, irrespective of the medium/platform used for broadcasting of the programme.

3. These Guidelines have been drafted to introduce greater specificity and detail with a view to facilitate self regulation by the broadcasting industry and minimize scope for subjective decision by regulatory authorities or the broadcasting service providers. The basic underlying principles of these Guidelines is that the responsibility of complying with the provisions of the Certification Rules vests with the BSP.

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4. The principles in these Guidelines are sought to be implemented at the first instance through a self-regulatory mechanism of the BSP. Regulation by 'forbearance', as present in the telecommunications industry, shall guide the Broadcasting Regulatory Authority of India (BRAI) whilst enforcing adherence by the BSP, with the guidelines. Such self-regulatory mechanism shall be subject to a credible and time bound default/ grievance redressal mechanism, which shall function under the guidance of the BRAI.

5. The BRAI may offer general guidance on the interpretation of the Guidelines. However, any such advice is given on the strict understanding that it will not affect its discretion to judge cases and complaints after broadcast/transmission and will not affect the exercise of its regulatory responsibilities. The BSP should seek its own legal advice on any compliance issues that may arise.

6. As the Guidelines are based on self-regulation, these set out the factors, which should be taken into account by the BSP when forming a view about the acceptability of any programme.

7. These Guidelines do not profess to address every case that may arise. The BSP may face a number of individual situations, which are not specifically referred to therein. The principles, as outlined in the following sections, should make clear what the Guidelines are designed to achieve and help the Service Provider make the necessary judgments.

8. The BSP has to adhere to the Certification Rules under the Cable Television Networks (Regulation) Act, 1995, which are in addition and not in derogation of the Drugs and Cosmetics Act 1940, the Emblems and Names (Prevention of Improper

Use) Act, 1950, the Drugs (Control) Act, 1950, the Drugs and Magic Remedies (Prevention of Improper Use) Act, 1954, the Prevention of Food & Adulteration Act, 1954, the Prize Competitions Act, 1995, the Indecent Representation of Women (Prohibition) Act, 1986, the Trade and Merchandise Marks Act, 1999, the Copyright Act, 1957, The Prevention of Cruelty to Animals Act, 1960, The Cigarette and other Tobacco Products Act 2003, the Cinematograph Act, 1952, the Consumer Protection Act, 1986, and such other existing or new statutes, and Rules/Regulations/Guidelines framed thereunder from time, relating to exhibition of films or broadcasting of programmes and advertisements.

B. Principles

9. These Guidelines are intended to guide the BSP and are based on enduring principles; that all programming should not mislead, cause offence, or lead to harm, particularly to the vulnerable.

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10. For the purposes of the Guidelines, “Programme” in relation to a broadcasting services, means, any television or radio broadcast and includes:

Exhibition or films, features, dramas, news, advertisements, promos, trailers, songs, music videos and serials through video/audio cassette recorder or video/audio cassette players

Any audio or visual or audio-visual live performance or presentation and the expression “programming service” shall be construed accordingly, but does not include any matter that is wholly related to or connected with any private communication.

11. This section should be read in conjunction with Certification Rules. Basic principles of these Guidelines are the following:

a. Programmes should always be scheduled with an awareness of the likely audience in mind. Great care and sensitivity should be exercised to avoid shocking or offending the audience.

b. Each BSP shall categorize each of their programs based on its theme, subject matter treatment, language and audio visuals presentation and slot it accordingly. The BSP will ensure that all programmes broadcast are in accordance with scheduling as per Certification Rules.

c. The BSP should take reasonable steps to protect minors. The BSP should be vigilant in gaining an understanding of how material shown on television could impact the development of minors. Minors cover a wide age group and levels of maturity. It is therefore necessary for the BSP to exercise judgment on the capacity of minors in different age groups in coping with the depiction and treatment of material, which may not be suitable for them.

d. There is a progressive decline in the proportion of minors present as television audience through the evening and during the night. The restrictions on the broadcast of programmes unsuitable for minors should be relaxed on a gradual and progressive basis after 8 pm. The assumption is that after 8 pm parents are expected to share responsibility for what their children are permitted to watch on television.

e. By and large, the Certification Rules shall uniformly apply to all types of BSPs. However, for News and Current affairs (N & C A) programming, it is desirable that BSPs edit the content as well as carry prominent warnings and suitably mask any portions of news or current affairs scenes considered unsuitable for viewing in accordance with the certification norms for scheduling them for broadcast in its News bulletins throughout the day.

f. Television news has greater reach and impact than other media. It is instantly

available in millions of homes to both the discerning as well as the non – discerning audiences. With ever increasing number of round the clock news channels and the intense competition among them for the viewership as well as changing priorities as to what constitute news, news and current affairs contents of television call for some discipline with specific guidelines. We need to be aware that a damage or injustice resulting from news and current affairs contents

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of television cannot be undone post facto. Hence, there is a need for having separate and transparent guidelines for news programming that need to be followed scrupulously by all.

C. Self Regulation Mechanism

12 This section sets out the mechanism for self-regulation of content. Self-regulation shall operate at

two levels – at the BSP level and the Industry level. These are described below:

First tier of self-regulation – At the BSP level

- i. It shall be the individual responsibility of each BSP to ensure compliance with the Certification Rules prescribed under the Cable Television Network (regulation) Act 1995 and the Rules made there under, the principles and all relevant clarification, guidelines and interpretations, standards and norms prescribed by the Central Government or the BRAI.
- ii. Every BSP should have its own internal mechanism to comply with the Certification Rules for which it may appoint one or more Content Auditors of requisite qualification and experience. Each BSP shall provide details of its Content Auditor/s on its own website and channel for information of the public. This information will also be notified to the Ministry of I&B and BRAI who will post the same on their respective websites also. This person/s shall also be the contact point for any feedback or complaint etc. from the public regarding content violations.
- iii. For the purposes of ensuring compliance with the Certification Rules, each BSP may develop its own internal guidelines and procedures. However, each BSP shall consult its Content Auditor/s for assigning appropriate categorization as per Certification Rules in respect of each program/advertisement. The BSP will also refer to the Content Auditor/s public complaints against content to satisfy itself with regard to compliance with all the relevant legal and administrative requirements under various statutes and regulations having a bearing on content.
- iv. The Chief Editor of the channel by whatever designation he is known in the BSP, shall be responsible for the final decision to accept or modify the guidance given by the Content Auditor/s and to schedule and broadcast the program. The Chief Editor of the channel will be finally responsible for self-regulation and ensure that the programmes are consistent with the Certification Rules and comply with all other legal and administrative requirements under various statutes in respect of content broadcast on the channel.
- v. Any BSP may broadcast live/interactive programs/advertisements in which the public or invited guests may participate, whose gestures or utterances may not be possible to predict and which may violate the Certification Rules. In all such cases, the Chief Editor of the BSP should satisfy himself that adequate briefing is given to the participants about the certification norms and indemnify the BSP against any deliberate violations by the guests/participants. It would be treated as sufficient compliance of the Certification Rules if the anchor at the end of the show sums up

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the proceedings giving a balanced view of the discussion and states that the views expressed by the participants were their own.

Duties of the Content Auditor

- (i) The Content Auditor shall ensure that the BSP is in compliance with the Certification Rules.
- (ii) The Content Auditor shall be the point of contact for any issues, complaints in relation to any programmes or advertisement broadcast by the BSP.
- (iii) The Content Auditor will be responsible for examining all the programs and recommending appropriate categorization as per Certification Rules in respect of each program/advertisement.
- (iv) The Content Auditor will examine public complaints against content and guide the BSP to satisfy itself with regard to compliance with all the relevant legal and administrative requirements under various statutes and regulations having a bearing on content.
- (v) The Content Auditor shall bring to the notice of the Chief Editor of the BSP, by whatever designation he is called, any violation of the Certification Rules or other statutes, which may be either rectified by the management or the opinion of the Content Auditor could be overruled. In every case of the opinion of the Content Auditor getting overruled by the Chief Editor, it shall be the duty of the Chief Editor to notify the Central Government or the BRAI, as the case maybe, regarding the same.
- (vi) The BSP shall provide an annual certificate to the central government or BRAI, as the case maybe, regarding reporting of all instances of over ruled cases having been duly reported.
- (vii) The Content Auditor shall not be held personally liable for any violation of the Certification Rules and it will be only the Chief Editor of the BSP who will be liable for any non-compliance.

Second Tier of Self-Regulation Mechanism – the Industry Level

13 In order to provide a self-regulation mechanism to the industry and a complaint redressal mechanism to the viewers and listeners against alleged violations of the Certification Rules, the Central Government or the BRAI may authorize industry segment level organization to set up their respective Broadcasting Consumers' Complaints Committees (BCCC). Such BCCCs shall consist of professional experts with adequate representation from the relevant industry segments, the Consumers or other civil society organization as well as eminent person with legal or regulatory experience, to adjudicate on public complaints or appeals. Such BCCCs may be set up – one each in respect of content in the following areas:

a) Broadcast of Films: The Cinematograph Act prescribes that all films shall be previewed and certified by the Central Board of Film Certification (CBFC), which is usually headed by an eminent film personality and other persons from different walks of life. The CBFC certifies every film as suitable for viewing by various categories of viewers as per the Certification Guidelines under the Cinematograph Act. The existing procedure of preview and certification by CBFC shall continue to be followed for films/trailers/promos etc. even when these have to be broadcast on the television or radio; or for certain categories of advertisements as may be prescribed (e.g. advertisements or promotional materials in respect of products whose brand names are

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the same as any of the liquor or tobacco products whose advertising or promotion is prohibited). It is, therefore, incumbent on the BSP to comply with prior certification procedure in the case of broadcast of films/trailers/promos etc.

b) Broadcast of Advertisements: The Advertising Standards Council of India (ASCI) has already a self-regulatory body called the Consumers' Complaints Committee

(CCC). The ASCI has also developed an advertising code to be followed by all advertisers, which has been recognized for compliance with by all broadcasters/Cable operators etc. It will be the responsibility of the BSP to have its Content Auditor preview each advertisement to certify that its content complies with ASCI code.

c)Broadcast of Programs:. The Central Government nominates the following industry-level representative bodies to set up Consumers' Complaint Committees on the lines of the CCC of ASCI to develop their own respective mechanisms for preview of content, if required, as well as adjudicate on public complaints within the prescribed time.

i. Indian Broadcasting Foundation (IBF) : for the television channel operators broadcasting their channels on cable & satellite/DTH/Mobile Phone etc. networks.

ii. News Broadcasting Association (NBA) for :News & Current Affairs Broadcasters

iii. The Cable Operators's Fedreation of India (COFI) : **for the Multi Service Operators** or the Local Cable Operators who may acquire or produce their own content and transmit it as their own video/radio/cable channels in their respective cable TV networks, in addition to retransmitting television broadcasters' channels.

iv. The Association of Radio Operators of India (AROI) : for the radio operators who are responsible for the content on their satellite and terrestrial channels.

v. The Community Radio Forum (CRF) for the Community Radio stations -

vi. Prasar Bharti: for Doordarshan and All India Radio. Prasar Bharti may set up an internal complaint redressal body on the lines of CCC of ASCI.

Powers and Functions of the Broadcasting Consumers' Complaints Committees (BCCCs):

14.The Broadcasting Consumers' Complaints Committee of ASCI/IBF/NBA/COFI/AROI/CRF/PB or any such organization as may be notified by the Central Government of the BRAI, shall have the following powers and functions in respect of complaints of disputes on content between consumers i.e. viewers or listeners and any BSP in their respective industry segment, irrespective of its membership of the ASCI/IBF/NBA/COFI/AROI/CRF/PB as the case may be:

a. To receive appeals/complaints or grievances regarding a programme or an advertisement broadcast by a BSP.

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b. To requisition tapes of any program or advertisement as deemed necessary. The BSP and the advertiser shall be obliged to supply the same in a maximum period of 5 working days. Notwithstanding the license condition of preserving the tapes for 90 days after the broadcast, it shall be incumbent upon the BSP to retain the tapes till final disposal of complaints.

c. To consider such appeals/complaints and facilitate their settlements by passing a reasoned decision in writing within 60 (sixty) days of receipt of the said appeal/complaint.

d. To function in consonance with the principles of natural justice and give its decisions based on the written statement filed by a complainant and after providing a reasonable opportunity.

e. If the concerned BCCC or any such organized as notified by the Central Government or the BRAI (as the case maybe) considers that the BSP is at defaults, it may:

(i) Direct the BSP not to telecast objectionable programme or advertisement

pending decision;

(ii) Direct the BSP to make suitable edits to the advertisement or the programme, as the case maybe, so as to comply with the Certification Rules;

(iii) Direct that such an advertisement or the programme, as the case maybe, shall not be broadcast by any BSP;

(iv) Direct the BSP to broadcast an apology/disclaimer/warning in a suitable manner as may be prescribed by it;

(v) Order any other punitive action in accordance with the constitution of the BCCC of the ASCI/IBF/NBA/COFI/AROI/CRF/PB and the rules or regulations made thereunder.

(vi) Pass any other orders as it may deem fit.

f. Send a copy of the order passed by it to the complainant, the BSP and to the BRAI as well as post it on their web site, and maintain an updated list of all such orders passed.

g. Report to the Central Government or the BRAI, as the case may be, any noncompliance of its orders without reasonable cause, for suitable punitive action under the relevant laws, rules, guidelines, license conditions etc.

h. Exercise such other powers as may be granted by the Central Government or the BRAI from time to time.

i. Undertake necessary steps to enhance the understanding and awareness of the Certification Rules and these Guidelines. They will also inform the public of their role in the content regulation mechanism.

j. Recommend to the Central Government or the BRAI amendments, amplification or clarifications to the Certification Rules or these Guidelines on the basis of the nature of issues raised before them in the course of adjudication on the complaints or appeals received by them.

D. Complaint Redressal Procedure

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15. Complaint before the BSP/BCCC: Any person or a group of persons may, either individually or jointly, file a complaint against any firm, program or advertisement broadcast on any of the television or radio channels on any platform or network in India for specific violations of the Certification Rules. Every such complaint may be filed either directly with the concerned BSP or with the relevant CCC of the industry segment to which the concerned BSP belongs, provided that no complaint may be entertained by the BSP if it is filled with the BSP after 30 days from the date of the last broadcast of the alleged offending film, program or advertisement, as the case may be. However, in all cases, an individual or a group of individuals can directly submit a complaint to the BCCC of the relevant industry segment within 30 days of the date of last broadcast of the alleged offending film, program or advertisement. However, the time limit for filing the complaint may be condoned at the discretion of the BSP or the concerned BCCC, as the case may be, for reasons to be recorded in writing.

16. Every complaint against violations of Certification Rules received by the BSP should be disposed off by it within ten working days under written intimation to the complainant. Consequently, the BSP may:

b. take the particular program off air or

c. modify its content for future and remedy the wrong impression that may have been created in the minds of the public or

d. tender an apology in a suitable manner or

e. inform the complainant of its decision to reject the complaint for reasons to be conveyed in writing.

17. Appeal/Complaint before the BCCC: The concerned complainant shall have the right to file an appeal against the decision of the BSP before the BCCC of the industry-segment level representative body within 30 days of the receipt of such a decision from the BSP.

18. Upon receipt of a direct complaint or an appeal against the decision of the BSP, the concerned BCCC shall first ascertain whether the BSP against whom the complaint or the appeal has been filed is under its jurisdiction. If not, the BCCC shall forward the complaint or the appeal, as the case may be, to the relevant BCCC under written intimation to the complainant/s and the concerned BSP.

19. If the complaint or the appeal is within its jurisdiction, the BCCC of the relevant industry segment, may, after giving a reasonable opportunity to the BSP, pass or refuse to pass, an interim order as deemed proper, including directing the BSP to take the alleged offensive content off air, pending final decision on the complaint or the appeal. The BSP shall be obliged to abide by the said interim order. However, the complainant or the BSP, as the case may be, may pursue further appellate remedies against such an interim order.

20. The BCCC of the relevant industry-segment level body shall finally dispose off a complaint or an appeal received by it within 60 days from the date of its receipt and

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pass such order as it deems fit in accordance with the powers vested in it by the Central Government or the BRAI as the case may be.

21. Appeal/Complaint before BRAI: The BSP or the complainant/s that may be aggrieved by an interim or the final order of the concerned BCCC may prefer an appeal before the BRAI within 30 days of receipt of such an order. In case a complaint is directly received by the BRAI, it shall refer such a complaint to the concerned BCCC of the industry-segment level organization to which the BSP belongs in all ordinary cases. However, the BRAI shall have the right to take suitable action itself, either suo-motu or on receipt of a complaint alleging serious violation of the Certification Rules that may have repercussions on the security or integrity of the country or contravene restrictions under Theme 6 (Religion & Community) or Theme 9 (General Restrictions) of the Certification Rules..

22. During the pendency of the appeal/case before the BRAI, the BSP or the complainant/s may seek interim directions from the BRAI, including against the interim or final orders passed by the concerned BCCC. The BRAI may pass any of the following interim orders, pending final disposal of the case before it, after giving a reasonable opportunity to the BSP:

- i. Direct the BSP not to telecast objectionable program or advertisement pending final decision; or
- ii. Direct the BSP to make suitable edits to the advertisements or the programme, as the case maybe, so as to comply with the Certification Rules; or
- iii. Direct that such an advertisement or the programme, as the case maybe shall not be broadcast by any BSP; or
- iv. Direct the BSP to broadcast an apology/disclaimer/warning in a suitable manner as may be prescribed by it; or
- v. Pass any other order as it may deem fit.

A copy of the order passed by BRAI shall be sent to the complainant, the BSP and to the concerned BCCC or any such organization as notified by BRAI. The BRAI should maintain an updated list of such order passed on their web-site.

23. The BRAI may finally dispose off a complaint or an appeal received by it and pass such order as it deems fit, including the prescribed penalties in accordance with the powers vested in it by the Central Government, after giving a reasonable

opportunity to the concerned party.

Appeal before FCAT: A BSP or a complainant, who is aggrieved by the order of the BRAI, may prefer an appeal before Film Certification Appellate Tribunal or any other authority as may be notified by the Central Government in this regard, within 30 days of the receipt of the impugned order.