



## The Draft Broadcasting Services (Regulation) Bill, 2023

On November 10, 2023, the Ministry of Information & Broadcasting (“MIB”) released the draft of the Broadcasting Services (Regulation) Bill, 2023 (“Bill”) for public comments till December 09, 2023. Once enacted, the Bill will replace the Cable Television Networks (Regulation) Act, 1995. A broad overview of the Bill’s provisions is highlighted below.

### The Bill applies to:



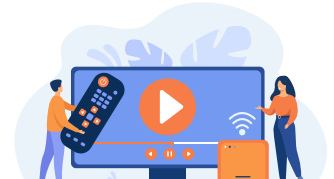
Broadcasters



Broadcasting Network Operator



Radio broadcasting services



IPTV services



OTT broadcasting service providers



Audience Measurement Service



Terrestrial broadcasting networks



Broadcasters of news and current affairs programmes

Depending on the category, there may be a requirement to obtain a licence, registration, permission or intimation to the government as a precondition to providing these services.

### 5 Key content regulation requirements

- 1 Conformity with Programme and Advertisement Code**  
Requirement to conform with the **Programme Code and Advertisement Code** applies to:
  - Programmes and advertisements transmitted or re-transmitted as broadcasting services.
  - Broadcasters of news and current affairs programs through most online mediums (excluding replica e-papers of newspapers).

- 2 Self-classification by broadcasters**  
Broadcasters to classify their programmes into different categories based on guidelines issued by the government. The classification to be displayed prominently at the beginning of the programme.

- 3 Access control measures**  
To be implemented for restricted content (e.g., adult content) as prescribed by the government.

- 4 Accessibility Guidelines for persons with disabilities**  
Certain mandatory measures such as subtitles, audio-description for the blind and translating audio content into sign language and an annual accessibility audit report may be required.

- 5 Self-certification by the Content Evaluation Committee**  
All content to be certified by the broadcaster’s “Content Evaluation Committee”, except for specific programs exempted by the Government, and the certificate from this committee may be required to be displayed in the manner prescribed.





# Regulatory Update

## Government Powers and Penalties

### Powers granted to the Government under the Bill

- Power to inspect and/or continuously monitor equipment, services and facilities of broadcasting networks and services.
- Power to seize and confiscate equipment of broadcasting networks.
- Power to seek information from broadcasters and broadcasting network operators.
- Power to prohibit the operation of any broadcasting service or broadcasting network operator in identified areas due to public interest.
- Power to prohibit transmission of any programme or channel.

### Penalties

- **For violations of programme code/ advertisement code:**
  - *Corrective measures:* Measures that may be imposed include modification of the programme/ advertisement, having the channel go off-air or display a public apology.

- *Penalties:* Different penalties apply to different operators. The maximum penalty that can be imposed is INR 5,00,000 per instance..
- *Cancellation of Registration:* In case of persistent non-compliance and where a penalty has already been imposed, the registration under the Bill may be cancelled after giving a reasonable opportunity of being heard.
- **For specific offences:** Punishment may be in the form of imprisonment for a specified term, or fine, or both. These offences include: (i) operating a broadcasting network or providing broadcasting services without registration or after the expiry of registration; (ii) furnishing incorrect information or false affidavit in connection with any proceeding under the Bill; and (iii) an ineligible person obtaining registration through misrepresentation.
- **For other violations of the Bill, rules or guidelines:** The relevant person/ entity may be subject to an advisory, suspension/ revocation of licence (if applicable), warning, censure or penalty as provided under the Bill.

## Enforcement Mechanism

Level I : Self-regulation by broadcasters and broadcasting network operators	Level II: Self-regulatory organisations	Level III: The Broadcast Advisory Council and Review Panels
<p>Every broadcaster and broadcasting network operators must:</p> <ul style="list-style-type: none"> <li>• appoint a grievance redressal officer to handle complaints regarding contravention of Programme code and the Advertisement code;</li> <li>• set up mechanisms for filing and addressing complaints;</li> <li>• be a member of a self-regulatory organisation constituted for the purpose of handling complaints;</li> <li>• publish information related to complaint redressal mechanisms prominently.</li> </ul>	<p>Self-regulatory organisation, once registered with the Central Government, are responsible for:</p> <ul style="list-style-type: none"> <li>• addressing grievances relating to content violations which have not been addressed by the broadcaster or broadcasting network operators within the prescribed time period;</li> <li>• hear appeals filed by complainants against the decision of the broadcaster or broadcasting network operators;</li> <li>• issue guidance or advisories to its members to ensure compliance with the programme Code and the Advertising Code.</li> </ul>	<p>The Broadcast Advisory Council must:</p> <ul style="list-style-type: none"> <li>• hear complaints regarding content violations arising out of appeals filed by Complainants or on reference by the Central Government;</li> <li>• examine complaints or grievances received by it, or referred to it, and make the recommendations to the Central Government regarding penalty and measures to be imposed on the broadcaster or the broadcasting network operator for content violations.</li> </ul> <p>The Central Government shall constitute the Broadcast Advisory Council consisting of the Chairperson, five government officers and five eminent independent persons that are nominated by the Central Government.</p>





# Regulatory Update

## Transition and Repeal

### Repeal

The Cable Television Network (Regulation) Act, 1995 will stand repealed on a date as may be notified by the Central Government:

### Transitional Provisions

Licences, approvals, registrations or permissions obtained under prior legislations, including the Cable Television Network (Regulation) Act, 1995 will be deemed to have been granted/obtained under the Bill.

### Application of other laws

The Bill explicitly states that its provisions will be in addition to and not in derogation of other applicable laws, such as the Cinematograph Act, 1952, the Copyright Act, 1957, the Information Technology Act, 2000 and the Telecom Regulatory Authority of India Act, 1997; and (xv) the Trademarks Act, 1999.

### What can be expected through delegated legislation?

The Central Government has been granted the power to: (i) make rules for enforcing the provisions of the Bill; and (ii) issue guidelines for fulfilling the objects of the Bill. The Bill names a few

matters for which rules may be expected. These include rules on:

- uplinking or downlinking of programmes or channels;
- programme code and advertisement code;
- the number of subscribers or viewers above which OTT broadcasting service operators will be required to intimate the Central Government;
- the manner of suspension/ revocation of registration of broadcasters or broadcasting networking operators;
- the eligibility criteria and conditions to be fulfilled by persons who intend to operate as broadcasters by uplinking or downlinking of programmes or channels;
- audience measurement service including conditions on period of registration, reporting requirements, sale and use of ratings, etc.;
- the records to be maintained, information to be furnished and technical measures to be undertaken by broadcasters, cable broadcasting networks and satellite broadcasting networks; and
- the manner for publicising information relating to subscription rates, standards of quality of service and the mechanism for redressal of grievances by cable broadcasting networks and satellite broadcasting networks.

Please get in touch with the SAM Co. attorney you regularly work with if you would like to discuss any aspect of the Bill in more detail.

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