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Dear Sir,

Subject: Consultation Paper on Tariff Issues related to TV Services

Reference: TRAI's CP released on 29 January, 2016

Confederation of Indian Industry (CII) would like to thank the broadcast regulator, Telecom Regulatory Authority of India (TRAI), for initiating a consultation paper on the most important aspect of "tariff" for the cable TV segment.

The members of CII represent the vibrant creative industry of India constituting stakeholders from the Broadcasting, Film Production, Music, New Media, Advertising, Animation, Gaming and Technology. CII has been a driving force in all policy deliberations with the Government to usher in an investor friendly dispensation that has consumer interests as its key consideration.

Given the cable and satellite television sector is critical for the mainstay of our members, contributing substantially to their revenues, the current Consultation Paper of TRAI assumes significance as it has wide ramifications on the financials of our member companies and their continued ability to remain invested in India's rapidly evolving Media and Entertainment landscape.

We urge the Authority to appreciate that the business models of content industries are primarily governed by the country's Copyright Laws. Hence it is imperative that sectoral regulations controlling the broadcasting space are in sync with Copyright Principles.

In all other jurisdictions as Convergence has established its firm foothold, the legal framework has reconciled telecommunication/broadcast regulations with Copyright Laws so that the interests of all stakeholders were duly taken care of.

The Indian Copyright Act was enacted on the basis of the Berne Convention. The Berne Convention facilitates content owners to authorize and monetize public performance or broadcast, and the communication of broadcasts and public performances. Accordingly the Copyright Act was amended to recognize "Broadcast Reproduction Rights" to allow broadcasters to freely monetize the same. However, the TRAI Act as originally enacted, never envisaged broadcasting within its remit. Subsequently by way of an amendment and a government notification "broadcasting services" were brought within the ambit of TRAI.

The TRAI Act makes no reference to the Copyright Act. This disconnect has resulted in telecom centric rules and regulations being force-fitted on the broadcasting sector thereby undermining its ability to monetize its IPR in accordance with market forces and also impairing a fair share of revenues that accrue to the larger eco-system comprising the creative fraternity. This is throttling innovation, restricting growth and impeding investments in the sector.

Over the years, the broadcasting sector has been losing its sheen before prospective investors. The Authority should embark upon a course correction by ensuring that its regulations are in consonance with the Copyright Laws of the country.

Below we demonstrate the manner in which the TRAI regulations do not sit well with the provisions of the Copyright Act.

1. Exclusivity

Section 14 and 37 of Copyright Act grants exclusive rights in a "Work" and "Broadcast Reproduction Rights"

On the contrary, Clause 3.2 of TRAI's Interconnect regulation takes away the right to have any exclusivity in any "Work" and "Broadcast Reproduction rights".

This takes away the right of Content owners/ broadcasters to monetize their work as per the provisions of the Copyright Act. Content owners and broadcasters are also discentivised from creating innovative or niche TV content as they are currently unviable under the Telecom framework. Instead what gets disseminated is mass content appealing to the lowest common denominator as can be seen from what is currently available in the 800 odd channels currently in circulation.

2. Freedom of contract

- 1.1 Sections 14, 18 and 30 of Copyright Act enshrine the freedom of Content owner/ broadcaster to contract (i.e. determine the license fee/ term/ territory).
- 1.2 On the contrary, TRAI has frozen wholesale prices of TV channels for more than a decade.
- 1.3 TRAI has also mandated retail price regulation.

3. Mode of assignment/ license

Section 18, 19 and 30 of Copyright Act grants the manner in which the "Work" and Broadcast Reproduction Right can be commercially exploited/ monetized by the copyright owner/ broadcaster. On the contrary, TRAI through an ex-ante RIO (reference interconnect offer) formulation has (i) subsumed the role of the Copyright Board by issuing mandatory commercial and technical licensing terms which are otherwise squarely covered under Sections, 18, 19 and 30 and Sections 65A and 65B inter alia.

TRAI has also stipulated the manner of offering channels in ala carte mode along with freezing of bouquets offerings that were prevailing prior to 2007. This is akin to the government mandating FMCG companies to offer all their products only as a single unit at a frozen price and freezing all bundled offerings for all times to come. For eg. The government mandating that Microsoft should compulsorily offer its entire software suite (MS OFFICE Suite) at the rate prevailing in 2007 - in both ala carte (i.e. regulated individual pricing for MS WORD, MS, EXCEL , etc) and bouquet (ie for the entire MS OFFICE Suite) for an indefinite period of time.

TRAI has also disallowed broadcasters from bundling third party channels in their bouquets, for eg. Disney Channels cannot be a part of Zee Channels, or NDTV cannot be a part of Viacom Channels.

This prohibition on broadcasters' ability to aggregate third party channels flies in the face of the freedom to contract granted under Section 18 and 19 of the Copyright Act.

4. Permits differential classification of consumers

The Copyright Act clearly recognises the right to differentiate between classes of consumers such as domestic and commercial consumers (Section 2.(ff) and Section 52(1)(k))

TRAI on the other hand, as recent as 2015, has done the exact opposite by treating commercial subscribers equal to ordinary/domestic subscribers. Hence the whole sale rate freeze of TV channels

of 2004 has now been extended to all 5 Star, 4 Star and 3 Star Hotels all over the country as if they required tariff protection in public interest.

OUR RECOMMENDATIONS:

It is our considered view that the price forbearance model stated in the Consultation Paper needs to be implemented both at the wholesale as well as the retail, more so given that sectors that have been traditionally identified with price controls have moved towards rate deregulation, for example, petroleum, sugar, telecom, airfare, cement, etc. It is also to be noted that pay channels cannot by any stretch be equated with the essential services as has been held by none other than the Authority itself in 2010. Going forward we urge the Authority to ensure that the regulatory provisions particularly on "Must Provide", "Channel Pricing at the wholesale and Retail", "Freedom to Contract", etc are in consonance with not only the Indian Copyright Act but also the stated intent of the Government as manifested in its policies pertaining to "Make In India" and "Ease of doing business." The regulatory roadmap should be enabling enough for broadcasters to come up with innovative offerings. Moreover broadcasters in India, like their counterparts abroad, should be in a position to freely monetize their offerings in accordance with market forces and not be unduly restrained from reaping the dividends of their creativity. This will ensure both viz. choice of quality offerings to Indian viewers at reasonable prices and much needed investments to flow into the

Sector that shall not only result in increased employment and contribute to income generation but also correct economic imbalances, bridge fiscal deficits and lead to inclusive growth through the much cherished motto of "Sab Ka Saath Sab Kaa Vikaas" as articulated by the Hon'ble Prime Minister which aspiration today is shared by the entire Nation.

Regards,

Yours sincerely,

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