

MAPPING DIGITAL MEDIA: INDIA



Mapping Digital Media: India

A REPORT BY THE OPEN SOCIETY FOUNDATIONS

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7. Policies, Laws, and Regulators

7.1 Policies and Laws

7.1.1 Digital Switch-over of Terrestrial Transmission

Access and Affordability

Unlike in many countries where a multi-channel broadcasting milieu existed in the terrestrial space before C&S channels proliferated, in India a genuinely multi-channel milieu—eclipsing the monopoly of DD’s terrestrial channels—emerged only after the advent of private C&S channels. In 2005, the TRAI recommended opening terrestrial transmission to private players, but the government has not taken a policy initiative in this regard.³⁸³ Consequently, terrestrial transmission remains solely the domain of the state broadcaster, Prasar Bharati; hence issues dealing with the switch-over to DTT implicitly concern the state broadcaster, as addressed earlier in section 2.1.4.

Public provisions governing access and affordability to terrestrial transmission analyzed below concern two phenomena—the state broadcaster’s switch-over to DTT and the reception channels via private wired and wireless distributors, and the access and affordability of a wider set of its digital services, including the DTH service (see section 2.1.4). This is because the state broadcaster visualized its DTT and DTH services as being part and parcel of the same program of digitization, and was even allocated resources jointly for both services accordingly.³⁸⁴

Although there are no explicit clauses on access or affordability, two decisions by Prasar Bharati can be interpreted to address these. First, the MIB’s choice of 2017 as the year to phase out analog transmissions of DD, overriding the TRAI recommended date of December 2013, was calibrated keeping in mind that STB costs would reduce at an average of 7–8 percent every year.³⁸⁵ Second, the decision was made that DD should

383. TRAI, “TRAI Recommendation on Private Terrestrial TV Broadcast Services,” 29 August 2005, at <http://www.traai.gov.in/traai/upload/recommendations/8/recom29aug05.pdf> (accessed 21 May 2011).

384. When matters of digitization of the state broadcaster came up in meetings of the Committee on Financial Restructuring of Prasar Bharati, the Committee suggested that the appropriate model for the digitization of DD was “DTH with terrestrial and digitalization,” and hence estimated a combined capital investment of Rs 35,310 million for DD during 2007–2015; *Going Digital*, p. 19.

385. This figure of cost reduction of STBs seems to have originated way back in the 2006 report “Going Digital”—viz. “The cost of STB is presently about Rs 2250.00 and is decreasing every year by 7–8%” (“Going Digital,” p. 15).

retain its analog terrestrial service for some time—in parallel with its digital terrestrial feed. This simulcast policy implicitly takes cognizance of the many citizens unable to afford receiving the state broadcaster if its switch-over is immediate. But it is unclear if during the years of simulcast both analog and digital feeds would follow the stipulations of the Sports Broadcasting Signal (Mandatory Sharing with Prasar Bharati) Act, 2007: in the words of N.V. Ramana, Director General (Engineering) at DD, “It has not been decided whether this Act will also apply to DTT.”³⁸⁶

To improve the affordability of its DTH services, DD ensured that STBs were available on the open market, allowing users to buy from a range of cheaper options. Unlike private players, DD has no plans to manufacture and market its STBs, although the MIB has recently woken up to the dependence on imports for the gigantic number of STBs required for digital cable.³⁸⁷

As regards the affordability of the change to digital cable, almost completely in the private sector, the MIB’s Strategic Plan for 2011–2017 made no provisions: it merely predicted resistance by viewers to incur expenditure on STBs.³⁸⁸ But to ensure citizen access to DD channels, the MIB extended the existing must-carry provision to Conditional Access Systems (CAS), DTH, and digital cable services. Section 8 of the Cable Television Networks (Regulation) Act 1995, as amended in 2011,³⁸⁹ made it mandatory for LCOs and MSOs to relay at least two DD terrestrial channels (DD National and DD News), one regional channel of the respective state, and two parliament channels³⁹⁰ in the prime band. These must-carry obligations continued for the CAS as part of the Cable Television Networks (Regulation) Act 1995 to carry two national channels and one regional channel.³⁹¹ DTH operators are required to include eight channels as per clause 7.8 of their license agreement; these include the Lok Sabha TV, DD Rajya Sabha (now Rajya Sabha TV), DD National, DD News, DD Sports, DD Urdu, DD Bharti, and Gyan Darshan channels.³⁹² The eight specified channels, along with 11 regional Prasar Bharati channels, are also to be carried within the digital addressable system as specified by the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012.³⁹³

386. Interview with N.V. Ramana, Director General (Engineering) at DD, New Delhi, 2 May 2012.

387. In the words of the Minister of Information and Broadcasting: “Now all the money which is being spent on buying set top boxes is like building a revenue model for China or Taiwan from where these boxes are coming. So possibly, there is a strong case as we go into the second, third and fourth phases of digitisation to really try and see if we can augment even at this late stage, some kind of domestic capacity.” “Set top box: China gains from our digitisation project,” PTI, Daily.bhaskar.com, 13 January 2013, at <http://daily.bhaskar.com/article/NAT-TOP-set-top-box-china-gains-from-our-digitisation-project-4147339-NOR.html>.

388. MIB, *Strategic Plan*.

389. The Cable Television Networks (Regulation) Amendment Act 2011, at http://www.mib.nic.in/writereaddata/html_en_files/actsrules/cableamend060112.pdf (accessed 22 July 2012).

390. A notification had been made earlier on 6 November 2007 for the mandatory carriage of the two parliament channels. It was later incorporated under the Amendment Act, at http://www.mib.nic.in/writereaddata/html_en_files/actsrules/gazett261107.pdf (accessed 10 January 2013).

391. TRAI, Notification, 4 September 2006, at [http://www.mib.nic.in/writereaddata/html_en_files/actsrules/act_cas/Interconnection%20\(thrid%20amendment\)%20regualtion%20-4.09.2006.pdf](http://www.mib.nic.in/writereaddata/html_en_files/actsrules/act_cas/Interconnection%20(thrid%20amendment)%20regualtion%20-4.09.2006.pdf) (accessed 10 January 2013).

392. MIB, Memorandum, 26 November 2007, at http://mib.nic.in/writereaddata/html_en_files/dth/Compulsory%20carriage%20of%20DD%20channels%20on%20DD%20-%20Order%20dated%2026.11.2007.pdf (accessed 23 August 2012).

393. TRAI, Notification, 30 April 2012, at <http://traigov.in/WriteReadData/WhatsNew/Documents/regulation%20for%20DAS%20Master-copy.pdf> (accessed 23 August 2012).

In contrast to the digital transitions of terrestrial transmission and of cable services, the MIB was direct and proactive in designing provisions for affordability in the state broadcaster's DTH service; this service, DD Direct Plus, initially was launched to cater to areas uncovered by terrestrial transmission (see section 2.1.2). Not only does DD's DTH service provide a low-cost alternative to commercial DTH services but, importantly, the STBs for DD Direct Plus are based on open DVB standards and can be used for any DTH platforms that provide FTA channels; any FTA satellite receiver with at least the MPEG-2 or MPEG-4 DVB-S standard can receive the DD Direct Plus bouquet, including radio channels.

Provisions for affordability and access are similarly visible in Prasar Bharati's mobile television service, the only one permitted in India. This started in New Delhi in 2007 as a pilot project with eight DD channels and has now grown to 16 channels, including DD News. First, all these channels are received free of cost,³⁹⁴ making the service affordable. Second, while the pilot mobile television service was done in collaboration with Nokia, and hence its transmission was only available on Nokia high-end mobiles, subsequently the digital terrestrial transmitter installed in 2003 at New Delhi's Broadcasting House was converted to transmit DVB-H signals to widen access, so that any DVB-H enabled mobile phone could get free access to television channels within a radius of 10–12 km, irrespective of the service provider.

Subsidies for Equipment

The MIB and TRAI are well aware of how other countries have provided subsidies on STBs and made available loans for persons to buy such equipment.³⁹⁵ Yet there is no scheme for subsidizing STBs and digital television sets required for DTT on a regular basis, nor free distribution of units for demonstration purposes in remote areas, like DD initially did for its DTH receiver units.³⁹⁶ Exceptions, as usual, were made for border states: during 2007–2008, Prasar Bharati provided 25,000 DTH receiver units with television sets to north-eastern states for uncovered areas, and 10,000 DTH sets with television sets to Jammu and Kashmir.³⁹⁷

For other parts of the country, the MIB has rather helplessly admitted, "For receiving digital terrestrial signals, viewers will have to incur expenditure on Set-Top Boxes."³⁹⁸ As it is, DD's terrestrial audience measured in terms of households has been declining in percentage, and recently even in absolute, terms (see Table 3); perhaps as a consequence, its current 27 million households predominantly entail the humble sections of society—those unable to spend a few dollars on monthly cable rents, and in all probability completely unable to purchase an STB. Consequently, there is a risk that at the end of the simulcast period, when STBs become

394. These include DD National, DD Bangla, DD Oriya, DD News, DD Urdu, DD Gujarati, DD Sahyadri, DD Sports, DD Punjabi, DD Malayalam, DD Saptgiri, DD Bharati, DD India, DD Podhigai, DD North East.

395. TRAI, "Consultation Paper on Digitalisation of Cable Television," New Delhi, January 2005, pp. 17–19, at <http://www.traai.in> (accessed 27 April 2011).

396. For demonstration purposes, DD had provided 10,000 DTH receive units (before its DTH service's formal launch) in villages of selected states. During 2007–2008, 20,000 DTH receive units were provided to the Government of Himachal Pradesh for installation in Kinnaur, Lahaul Spiti, and Chamba districts; Prasar Bharati (2008), "Annual Report 2007–08," New Delh, p. 46 (hereafter Prasar Bharati, "Annual Report 2007–08").

397. Prasar Bharati, "Annual Report 2007–08," p. 46.

398. MIB, Strategic Plan 2011–17, p. 14.

necessary, there will be a sudden drop in DD's terrestrial audience—after having spent hundreds of millions on ushering in DTT.

However, DD Direct Plus was kept free of monthly subscriptions to “enable those persons who cannot afford to incur recurring expenses on a monthly basis to be able to watch television channels at a one-time cost for purchase of STB without any further expenses.”³⁹⁹ Yet, Ashok Jaikhani, Additional Director General (Programme) at Doordarshan, admits “While DD Direct Plus does not charge a subscription fee, its bouquet of channels is less attractive in big cities compared to private DTH players.”⁴⁰⁰

Legal Provisions on Public Interest

The switch-over to DTT is being undertaken through a series of administrative procedures rather than a specifically designed legal framework. Here, aspects of public interest may be evaluated at two levels—in the arguments underlying the rationale for the switch-over, and in the design of administrative implementation for it, the latter also concerning the wider digitization of the state broadcaster.

While aspects of the implementation of the wider digitization of the state broadcaster did factor in some public interest concerns—hence decisions on simulcast during the long switch-over and DD Direct being rent-free—there are no explicit public interest arguments for terrestrial switch-over. From available government documents, three broad sets of explanations favoring switch-over can be gleaned, none of which constitutes a convincing public interest rationale or reflect principles of equity.

The first and dominant rationale for the digitization of terrestrial broadcasting that punctuates various documents from the Planning Commission, the MIB, and Prasar Bharati is enhancing viewers' and listeners' experience—namely, improving the quality of television signals, introducing program guides, and enabling broadcasts, especially of AIR, on multiple platforms such as webcasting, podcasting, SMS, and mobile.⁴⁰¹ The reasons given for developing and promoting allied digital services like mobile television and IPTV are the large number of mobile phone users, that this is the best platform for delivering the benefits of television and mobile communications in one device, and that such a combination of terrestrial broadcast platforms and mobile platforms is important in terms of spectrum efficiency.⁴⁰² Policymakers have ignored the fact that few citizens have the requisite mobile handsets and broadband connections; this suggests the wider digitization of the state broadcaster will benefit only certain sections of society.

399. MIB, “Annual Report, 2011–12,” Government of India, New Delhi, 2012, pp. 101–102 (hereafter MIB, “Annual Report, 2011–12”).

400. Interview with Ashok Jaikhani, Additional Director General (Programme) at Doordarshan, New Delhi, 15 April 2011. Even the MIB Strategic Plan for 2011–2017 envisages the absence of popular pay-TV channels on DD's DTH service as a weakness: see MIB, “Strategic Plan 2011–17,” p. 14.

401. MIB, “Strategic Plan 2011–17,” p. 22; despite a mandate to prepare a road map for going digital and emphasizing the technical qualities of DTT, “Going Digital” failed to explain how the digitization of the state broadcaster would serve the public interest; all that it says, for instance, is: “In order to provide the listeners with high technical quality radio programs, All India Radio has planned to migrate from analogue to Digital,” “Going Digital,” p. 12.

402. “Going Digital,” p. 8.

Second, the MIB argued that DD switching from analog to digital transmitters would enable multi-channel transmission from a single transmitter (i.e. a relay of about between five and eight channels against one analog transmitter) and power efficiency. This forms part of the large argument on spectrum efficiency of DTT—namely, “Television broadcasting in analog mode requires significant spectrum, which is a scarce resource. Therefore, countries all over the world are migrating from analog to digital terrestrial broadcasting.”⁴⁰³ According to Archana Gupta, Director (Engineering) of Transmitter Design at DD, DTT would serve the public interest by ensuring a more efficient spectrum utilization since it will allow carriage of between eight and ten channels on the slot of one analog channel. As such, the DVB-2 standard that Prasar Bharati is procuring is far better than the DVB standard planned earlier: it allows 32 instead of 18 channels on a bandwidth of 36 MHz.⁴⁰⁴

While freeing up spectrum is posed as a major argument for moving to DTT,⁴⁰⁵ there is no mention of how the freed spectrum—some of which is commercially highly lucrative and technologically very efficient⁴⁰⁶—would be used in the public interest. Some thinking visualized a spectrum dividend being deployed to launch more Prasar Bharati regional terrestrial channels, and mobile reception and/or HDTV services, especially if they are considered to be part of the standard service offering.⁴⁰⁷ However, no plans for this have been announced. It is pertinent to mention that while the frequency band used for DTT services is 700 MHz,⁴⁰⁸ TRAI had recommended using this band for Broadband Wireless Access (BWA) and WiMAX services for rural areas⁴⁰⁹—which, on the face of it, indicates greater public interest usage than, say, HDTV or mobile television services, which will be limited to a handful even in urban areas. As for the revenue generated from parts of the digital dividend transferred to telecoms operators (4G), there is no evidence, or evidence of intent, to suggest that it will be deployed either for quality programming—capitalizing on the enhanced viewers’ and listeners’ experience DTT promises—or to cushion subsidies for the STBs required for DD’s DTT audience, the handful that may exist by 2017. Such a rechanneling of resources seems impossible not only due to the clashing interests ruling the MIB and MCIT, but also due to prevailing revenue-expenditure practices followed by the government.⁴¹⁰

403. MIB, “Strategic Plan 2011–17,” p. 52.

404. Interview with Archana Gupta, Director (Engineering) of Transmitter Design at Doordarshan, New Delhi, 22 April 2012.

405. There are two instances where additional spectrum would be required: temporarily, during the simulcast phase when existing analog and new digital systems would need to be broadcast together; and permanently, in the case of AIR where, while no additional spectrum will be required for DRM transmissions in the MW/SW band, it would be required for DRM transmitters in the FM/VHF band as well as the ‘L’ band; “Going Digital,” p. 14.

406. While some of the frequency bands used for broadcasting in India have exclusive allocations for broadcasting, most are shared. For example, the 800/900 MHz bands used for cellular services (GSM and CDMA, etc.) are available for broadcasting also; “Going Digital,” p. 16.

407. “Going Digital,” p. 2.

408. DD DTT will be provided in the VHF band 4–5 (470–862 MHz); interview with Archana Gupta, Director (Engineering) of Transmitter Design at Doordarshan, New Delhi, 22 April 2012.

409. “Going Digital,” p. 17.

410. Revenues from auctions, administered by MCIT, accrue to the Consolidated Fund of India, whereas expenditure for STB subsidies, under the purview of MIB, stems from its overall annual allocations from the public exchequer.

Public Consultation

In 2005, TRAI published a Consultation Paper on Deregulating Terrestrial TV for the private sector, which served as the basis for comments and input from stakeholders. There was a specific call on TRAI's website for stakeholders to send comments as written submissions. A few months later, two important recommendations figured in TRAI's Recommendation on Terrestrial TV: first, the inclusion of community terrestrial television along with private commercial service providers; and maintaining both analog and digital terrestrial television transmissions (i.e. simulcast) so that community and commercial outlets could choose which transmission to use depending on their audience and local contexts until the TRAI/MIB felt it justified to phase out analog transmission. Both these instances reflect the imprint of civil society organizations (CSOs) in shaping aspects of citizen access, as producers and consumers.

However, this was not the case with subsequent and more significant matters of the switch-over: there was no consultation with CSOs on the Planning Commission's Sub-Group report "Going Digital" (the first to raise the comprehensive digitization of the state broadcaster), nor on MIB's Strategic Plan 2011–17 (which created the blueprint for the state broadcaster's switch to DTT), nor for DD's decision to provide HDTV for the Commonwealth Games of 2010. While the Strategic Plan states at the outset that, "In preparing the Strategic Plan, wide consultations have been held with key media units and the related stakeholders," there are no details publicly available on such consultations.⁴¹¹ In fact, there were no representatives from CSOs in the committees formulating "Going Digital" and MIB's Strategic Plan.⁴¹²

7.1.2 The Internet

Regulation of News on the Internet

On the internet and mobile, there is no such recognition of news as a separate content category. Thus, there is a legal gap to distinguish online news from other online content, and similarly, news alerts on mobile from general mobile content (generically referred to as Value-added Services, or VAS). Sanjay Salil, the founder of MediaGuru, explains: "There is no legal recognition or definition of a news website/portal on the internet. I can, say, decide to start a news website now, and be up and running within a few hours if I can register the name and get server space."⁴¹³

Therefore, even individual bloggers can propagate their site as a news site. Most mobile service providers tie up with existing television, online, and print organizations to source news that they cater to their subscribers. Such services are charged to subscribers and provide content that already exists on other platforms. "Only in the case of mobile television is there a proposal that a news provider will first need to get a license to start a regular television channel," adds Mr Salil.⁴¹⁴

411. MIB, Strategic Plan 2011–17, p. 2, at <http://www.mib.nic.in> (accessed 2 April 2012).

412. In contrast, the MIB conducted 23 open-house sessions with broadcasters between November 2009 and December 2011; MIB, "Annual Report, 2011–12," p. 95.

413. Interview with Sanjay Salil, founder, MediaGuru, New Delhi, April 2012.

414. Interview with Sanjay Salil, founder, MediaGuru, New Delhi, April 2012.

There is no specific or direct regulation of news on the internet and mobile platforms. But there are indirect means specifically directed at these platforms, and there are statutory regulations regarding all content. Of crucial importance is the Information Technology Act, 2000 and its subsequent amendments—Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 and Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009.⁴¹⁵

The 2008 November Mumbai attacks resulted in a further amendment under which a Computer Emergency Response Team (CERT)—created in 2003 under the Ministry of Communications and Information Technology (MCIT)⁴¹⁶—was given statutory recognition as ICERT, the Indian Computer Emergency Response Team. ICERT was given the power to intercept emails, block websites and web content, and give directions for compliance to service providers, intermediaries, data centers, etc. Pranesh Prakash of the Center for Internet and Society, Bangalore, explains:

The State has been given unbridled power to block access to websites as long as such blocking is deemed to be in the interest of sovereignty and integrity of India, defense of India, security of the State, friendly relations with foreign States, and other such matters. Thus, if a web portal or blog carries or expresses views critical of the Indo-US nuclear deal, the government can block access to the website and thus muzzle criticism of its policies.⁴¹⁷

A planned new amendment will make intermediaries, such as Google, also liable. Entitled Information Technology (Due Diligence Observed by Intermediaries Guidelines) Rules, 2011, these are similar to content guidelines for broadcasters.⁴¹⁸ This means the proposed amendments along with the original Information Technology Act 2000 will allow ICERT to block sites with content MCIT finds blasphemous, obscene, derogatory to women and children, compromising national security, etc.

415. In the latter set of rules, the “printed sample content of the alleged offending information or part thereof shall be examined by a committee consisting of Designated Officer as its chairperson and representatives, not below the rank of Joint Secretary in Ministries of Law and Justice, Home Affairs, Information and Broadcasting, and the Indian Computer Emergency Response Team;” see Ministry of Law and Justice, Information Technology (Amendment) Act, 2008, New Delhi, 5 February 2009, at http://www.mit.gov.in/sites/upload_files/dit/files/downloads/itact2000/it_amendment_act2008.pdf (accessed 23 April 2011).

416. Gazette Notification G.S.R. 181(E), Part II, Section 3, Sub-section (ii), 27 February 2003. This notification was rescinded on 17 May 2010 by a Gazette Notification (Extraordinary) G.S.R. 410(E) in Part II, Section 3, Sub-section (i). Copies of these notifications are available at <http://mit.gov.in> (accessed 24 July 2012).

417. Interview with Pranesh Prakash, lawyer with the Center for Internet and Society, Bangalore, 29 June 2011.

418. MCIT (2011), Draft Rules, New Delhi, at http://www.mit.gov.in/sites/upload_files/dit/files/due_diligence4intermediary07_02_11.pdf (accessed 19 April 2011). The rules clearly state the intermediary “shall notify users of computer resource not to use, display, upload, modify, publish, transmit, update, share or store any information that ... is harmful, threatening, abusive, harassing, blasphemous, objectionable, defamatory, vulgar, obscene, pornographic, paedophilic, libellous, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever; causes annoyance or inconvenience or deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature” among other reasons. Further, the intermediary “shall take all measures to secure its computer resource and integrity of information received, stored, transmitted or hosted shall be ensured.”

When broadcasters publish content on mobile platforms, either via mobile television (terrestrial transmission), the internet (which mobile subscribers can receive through GPRS or 3G data plans), or through a content deal with a mobile service provider, the content regulation guidelines applicable are those applicable for television news broadcasters.⁴¹⁹ But content first published on the internet and made available on mobile via EDGE/GPRS/3G comes under the purview of the Information Technology Act, 2000 (often referred to as the IT Act).

In September 2010, ahead of the Allahabad High Court judgment on the dispute between Hindus and Muslims over the Babri Masjid structure in Ayodhya, the government was to block all mass SMS messages and MMS messages to prevent instances of hate speech that could incite religious violence.⁴²⁰ In August 2012, in the wake of violence in Assam and targeting of Assamese elsewhere, TRAI restricted sending SMS/MMS by pre-paid mobile users to 20 a day for 15 days.⁴²¹

Legal Liability for Internet Content

Internet regulation in India has been shaped by three primary dynamics: insurgency and activist movements in Kashmir, North-East and Central India; the use of mobile phones and satellite communication by terrorists during the Mumbai attacks in 2008 (commonly cited to justify not only surveillance and decryption but interception of both internet and mobile platforms); and cyber-espionage and data theft concerning government websites.⁴²²

The legal liability that exists for online content is the same as that of offline content. You could face legal liability if the content you have posted is considered to be: Defamatory; Obscene; Insulting to any religion; Promoting enmity between different groups; Infringing on copyrights; infringing on trademarks. However, there is an additional liability for online content imposed as per Section 66A of the Information Technology Act, 2000. This section provides for punishment for sending offensive messages through communication service.⁴²³

This Section, according to Prasanth Sugathan, Legal Counsel of the Software Freedom Law Center, can be used against producers and publishers of online content in addition to the defamation provisions in the Indian Penal Code.⁴²⁴

419. MIB, "Self-Regulation Guidelines for the Broadcasting Sector (Draft)," 2008 at http://www.mib.nic.in/writereaddata/html_en_files/Codes/codes_bro/ContentCode100308.pdf (accessed 20 April 2011).

420. Sandeep Joshi, "Bulk SMS, MMS Banned Ahead of Ayodhya Verdict," *The Hindu*, New Delhi, 22 September 2010, at <http://www.thehindu.com/news/national/article777241.ece> (accessed 5 May 2011).

421. Vibodh Parthasarathi and Arshad Amanullah, "Silencing SMS: The anatomy of 'mCurfews' in India," at <http://blogs.lse.ac.uk/indiaatlse/2012/10/10/silencing-sms-the-anatomy-of-mcurfews-in-india/> (accessed 8 December 2012); Lakshmi Ajay, "Ban on SMSes hits festive spirits, upsets young users," *The Indian Express*, 22 August 2012, at <http://www.indianexpress.com/news/ban-on-smses-hits-festive-spirits-upsets-young-users/991469> (accessed 8 December 2012).

422. Jason Mick, "China Cyberspies Strike Indian Military, Tibetan Exiles and Embassies in U.S.," *Dailytech.com*, 7 April 2010, at <http://www.dailytech.com/China+Cyberspies+Strike+Indian+Military+Tibetan+Exiles+and+Embassies+in+US/article18064.htm> (accessed 8 December 2012).

423. Interview with Prasanth Sugathan, Legal Counsel, "Software Freedom Law Center," New Delhi, March–April 2012.

424. Interview with Prasanth Sugathan, Legal Counsel, "Software Freedom Law Center," New Delhi, March–April 2012.

In a landmark ruling on liability in 2008, the New Delhi High Court held that intermediaries are liable for material available online deemed obscene.⁴²⁵ In a case involving an MMS clip of two New Delhi schoolchildren having sex that was widely circulated online, the Court ruled that Bazee.com, which had hosted the clip, was liable even if not responsible for uploading the clip itself. Since then, legal liability has become incrementally stringent, from the amendments of the IT Act in 2008 to the latest notified rules of the IT Act in 2011. Although the proposed Intermediary Guidelines specifically mention bloggers, they will affect all intermediaries,⁴²⁶ including providers and publishers of news.

The new rules require the intermediaries to act within 36 hours to disable access to any information that they receive a complaint about ... Since intermediaries would lose protection from the law if they don't take down content, they have no incentives to uphold freedom of speech of their users. Similarly, since there is no right to be heard before your website is taken down nor is there an in-built mechanism for the website owner to appeal under the rules, the decisions made by the government to ban sites cannot be questioned unless you are prepared to undertake a costly legal battle. Again, if an intermediary (like Blogspot or an ISP like Airtel) refuses to cooperate, its directors may be personally liable to imprisonment for up to a period of seven years. Thus, being personally liable, the intermediaries are rid of any incentive to stand up for the freedom of speech and expression.⁴²⁷

Clearly, these new amendments have enough power to regulate the independence and performance of news media, given the possibility of government clampdowns through the Information Technology Act 2000 and its subsequent and proposed amendments.

Moreover, while there is no specific liability regulation for mobile platforms, Section 2 (1) (l) of the IT Act 2000 defines a “computer system” as a “device or collection of devices including input/output devices ... which contain computer programs, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions.”⁴²⁸ Smartphones—and even basic phones—can be legally interpreted as a “computer system.” Hence, technically all intermediary liability applicable to internet companies is applicable to mobile telecoms operators. For them, explains Subho Ray, President of the IAMAI, “the entire voice generation content ideally comes under the intermediary guidelines as user generated content.”⁴²⁹ Mr Ray notes that most VAS companies are vendors to the telecoms operators, and if there were a liability involved in any content they provided, that would have been explained and audited by the operators before allowing access to the pipes to any VAS vendor, or the service would have been declined on the grounds of non-compliance.⁴³⁰

425. *Avnish Bajaj v. State*, 150 (2008) DLT769.

426. An intermediary is defined as “any person who on behalf of another person receives, stores or transmits a message or provides any service with respect to that message.”

427. Interview with Pranesh Prakash, lawyer with the Center for Internet and Society, Bangalore, 29 June 2011.

428. Ministry of Law and Justice, Information Technology (Amendment) Act, 2008, New Delhi, 5 February 2009, at http://www.mit.gov.in/sites/upload_files/dit/files/downloads/itact2000/it_amendment_act2008.pdf (accessed 23 April 2011).

429. Interview with Subho Ray, President, IAMAI, New Delhi, March 2012.

430. Interview with Subho Ray, President, IAMAI, New Delhi, March 2012.

What brings complexity to the issue of liability are the resulting circumstances news outlets find themselves in, which has tended to influence their behavior. For one thing, corporate, political, and other interest groups have been monitoring online content, including blogs, much more closely than before. Sandipan Deb, the former Editor of *Open* and former Managing Editor of *Outlook*, says:

Big companies hire agencies to constantly trawl blogs and other online spaces. These are obviously important for the corporations to advertise products and services, and send the right messages about themselves. Many bloggers are paid to test products and taken on junkets by companies [which] pay attention to what is being said about them on Blogs, social networks and other spaces.⁴³¹

Corporate and political groups are equally quick to take legal and other action against critical content, even if it is on individual blogs or appears as status updates on social networks. The legal tensions between the IIPM, which runs a chain of business schools and manages other businesses (including media), and several media organizations is a case in point. The IIPM successfully forced bloggers like Rashmi Bansal (Youthcurry.blogspot.com) to remove online content. More recently, Vodafone's Indian entity sued a customer for "false allegations" and "defamatory statements" on the latter's Facebook status.⁴³²

An equally strange incident pertains to the business daily *Financial Chronicle*, recalled by its former Associate Editor Hardev Sanotra: the leading diversified conglomerate Sterlite, in an ongoing case, sued the newspaper for adverse comments by a reader in response to an online article.⁴³³ Journalists say even after so-called critical or adverse content is removed from a news website, some business houses lodge complaints, arguing that such content can still be accessed through a search engine's servers' cache.

Recently, 22 social networking companies, including Google, Inc. and Facebook, Inc., were asked by a lower court in New Delhi to submit compliance reports on what they had done to remove offensive content from their sites. All did so in a bid to prove they did monitor content on a regular basis.⁴³⁴ In such an environment, even the news websites/portals have become more sensitive to content uploaded on their sites. Says Sundeep Khanna, Editor at Livemint.com, the website of India's second-largest business daily:

One has to understand that the pace on the internet is quite fast; content is uploaded almost immediately unlike a print publication or TV channel where the normal editing process can go through 3–4 filters. Therefore, we have decided to be more careful. Apart from the usual disclaimer on blogs and online columns that these represent personal views of the writer, we make sure sensitive stories are carefully read before they are uploaded. Our advantage is that if our facts are wrong or half-correct, they can be quickly removed after a complaint.⁴³⁵

431. Interview with Sandipan Deb, former Editor, *Open*, and former Managing Editor, *Outlook*, New Delhi, March 2012.

432. See <http://www.pluggd.in/vodafone-dhaval-valia-case-on-facebook-post-297> (accessed 8 December 2012).

433. Interview with Hardev Sanotra, former Senior Editor with *India Today*, *Tebelka*, and *Financial Chronicle*, New Delhi, February 2012.

434. See <http://webcache.googleusercontent.com/search?q=cache:http://www.pluggd.in/google-facebook-remove-content-in-india-297> (accessed 8 December 2012).

435. Interview with Sundeep Khanna, Editor, Livemint.com, New Delhi, March 2012.

The overall trend emerging suggests that both the general legal environment created by explicit liability statutes pertaining to all internet content and specific cases of liability pertaining to news outlets together created a milieu that has often indirectly or tangentially shaped the behavior and response of news media.

7.2 Regulators

News content in broadcasting and radio is regulated by the Programming and Advertising Code, 1975 drafted by the MIB and initially meant for the state-owned DD and AIR. This same code was included in the Cable Television Networks (Regulation) Act 1995, which governs the C&S television sector, and was subsequently extended to private FM radio channels. It has vague, over-encompassing clauses, such as the content cannot offend “good taste or decency,” be critical of friendly countries, attack religious and other communities, deal with obscenity and half-truths, and incite violence. But these are mere guidelines and are recommendatory in nature. In most cases of violation, the MIB asks a channel to run a “scroll of warning” and/or to telecast the content at a different time; only in rare cases—although never for news—is the channel banned.⁴³⁶ Since there are no transparent mechanisms to challenge MIB orders, most channels comply with very rare exceptions.⁴³⁷

In the past six years, the MIB has twice sought to introduce a Broadcasting Bill in parliament, which was intended to strengthen the content code, especially for television news channels. Although both times this was not cleared by parliament, this initiative scared television news channels into developing a coherent institutional self-regulatory mechanism. This led to the News Broadcasters Association (NBA)—a trade body set up in 2007—to formulate guidelines for self-regulation of news content; violations are dealt with by an industry redress body headed by a retired Chief Justice of India. However, such protocols are applicable only to NBA member channels, such membership not being mandatory for all news channels.

Print content is regulated by the Press Council Act, 1965 which sets out a different code of conduct for newspapers and journalists. The PCI, set up under the Act, can only act on complaints and demand an apology from or impose a fine of Rs 10,000 on the concerned publication. The 2011 amendments to the Act gave powers to district magistrates to ban a publication if its content led to a law and order situation. But there are indirect ways the government can control print content. The above amendments also bind publications to reveal details of their advertising revenues and list of advertisers; this makes it easier for the MIB or other government bodies to identify and pressure major advertisers.

436. For instance, in 2006, AXN was banned for a year for a program entitled “World’s Sexiest Advertisements.”

437. In November 2010, the MIB issued directions to the entertainment channel Colors to shift the timing of its reality show “*Big Boss*” from prime time (9 p.m.) to after 11 p.m. The channel obtained a stay from the Bombay High Court; Apar Gupta, “The Legal Limits of Reality Television, Part 2: beeps, blurs and scrolls,” India Law and Technology Blog, at <http://www.iltb.net/2010/10/the-legal-limits-of-reality-television-part-2-beeps-blurs-and-scrolls/> (accessed 7 July 2011) (hereafter Apar Gupta, “The Legal Limits of Reality Television”).

Similarly, the government can ask the DAVP, which releases all central government advertising and is the lifeline of most small newspapers, to hold back or dilute its advertising spend in publications critical of the government, as several recent instances have revealed.⁴³⁸ On the face of it, English publications get a massive proportion of the DAVP's annual advertising spend—e.g. 40 percent in 2009–2010—compared to the far smaller amounts allocated to other languages, predominantly published in the states.⁴³⁹ However such vernacular regional and local dailies tend to be particularly dependent on small sums of government advertising, since this could amount to a very large, sometimes determining, proportion of their total advertising, and perhaps even circulation, incomes. This makes smaller newspapers in the vernaculars more vulnerable to pressures on editorial matters

Information on the internet is largely unregulated, but the government has taken strict action against social media and search sites for inflammatory content, as explained elsewhere in this chapter. Section 69 A of the Information Technology Act specifically provides the government with powers to take down pages and block online content. As Prashant Sugathan, quoted earlier, explains: “The rules for such procedure have been laid out in the Information Technology (Procedure and Safeguards for Blocking for Access to Information) Rules, 2009.”⁴⁴⁰

In the case of licensing norms, the Press Registration Act, 1967 (amended several times since) states that all newspapers and magazines must register with the Registrar of Newspapers of India (RNI), which also decides whether a media organization can own a specific title. Throughout the 1990s and early 2000s, there were no licensing rules for broadcasters and distributors; even the Cable Television Networks (Regulation) Act, 1995 only stipulated that last-mile cable operators and MSOs (cable head-end operators) should follow the existing laws of the land, which were not specific to them. In any case, all broadcasters uplinked their programming from outside India and, thus, did not come under the ambit of any Indian laws.

Since digitization, a slew of Acts and policy guidelines came into being; these included several amendments to the Cable Television Networks (Regulation) Act 1995; the Uplinking⁴⁴¹ and Downlinking⁴⁴² Guidelines in 2005; Direct-To-Home Service Guidelines in 2004; and Internet Protocol Television (IPTV) Guidelines, among others. These fixed eligibility criteria for broadcasters and DTH players; those for broadcasters were changed through uplinking amendments in 2011.

The broadcast sector is partially regulated by the TRAI, which was set up in 1997; through 2004 amendments, the multi-sectoral regulator's jurisdiction was extended to cover not the content, but limited to ownership, carriage, interconnection, and pricing issues. Clause 3.1 of the TRAI's Broadcast and Cable

438. Maneesh Pandey, “Home ministry cracks whip on Kashmiri newspapers over ‘anti-India’ news,” *Mail Today*, 11 October 2011, at <http://india-today.intoday.in/story/home-ministry-cracks-whip-on-kashmir-media-over-anti-india-news/1/154451.html> (accessed 20 September 2012).

439. “Indian Government's Print Advertising Spend 2009–2010,” *MediaNama*, 12 April 2011 (accessed 7 January 2013).

440. Interview with Prasanth Sugathan, Legal Counsel, Software Freedom Law Center, New Delhi, March–April 2012.

441. The process of linking signals from the broadcasters' on-ground station to a satellite.

442. The process of downloading the uplinked signals from the satellite on to an on-ground receiver, from where it is transmitted to the end customer.

443. *Suo Moto v. State of Rajasthan*, RLW 2005 (4) Raj 2741.

Interconnection Regulation forbids broadcasters from engaging in any practice or activity—or from entering into an understanding, arrangement, or exclusive contract—that prevents distributors from obtaining television signals. Clause 3.2 requires broadcasters to provide television signals on non-discriminatory terms to distributors that request their signal.

7.2.1 Changes in Content Regulation

Some changes in television content regulation have been catalyzed by judicial activism. In 2004, the Rajasthan High Court directed the central and Rajasthan governments to offer concrete suggestions on curbing what they termed “the menace” of depicting women in an indecent manner in newspapers, magazines, advertisements, television programs, posters, and music videos.⁴⁴³ In September 2005, the central government then set up district and state-level committees to monitor and address complaints regarding content aired over cable television and to take action. Although the MIB formalized the constitution of state and district level committees through an order dated 19 February 2008, thanks to bureaucratic and other delays, only the states of Pondicherry and Jammu and Kashmir have complied.⁴⁴⁴

However, in 2008, the MIB set up the Electronic Media Monitoring Centre (EMMC) to monitor television programs across 150 television channels across the country; the EMMC also acts as a platform for complaints against broadcasters who violate content code under the Cable Television (Network) Regulation Act 1995.⁴⁴⁵ The Monitoring Committee was directed to submit a report on obscenity in hoardings and other advertisements and on television. The Committee was asked to scrutinize television programs telecast by various channels as well as newspapers in order to identify ads, photographs, or material “compromising the dignity of women and at the same time corrupting and degrading those whose minds are open to immoral influence.” The other instrument leveraged to regulate the broadcast media is the Inter Ministerial Committee on Regulating Television Content set up by the MIB in January 2005 to look into complaints, taking suo moto or otherwise cognizance of programs and advertisements violating the Program and Advertising Codes under Rule 6 of the Cable Television Network Rules 1994.

Based on the feedback from these monitoring mechanisms, between October 2004 and April 2011, the MIB issued 180 advisories against television channels—the overwhelming majority of which were for non-news channels and largely concerned “obscene,” “indecent,” or “vulgar” items that violated the Program and Advertising Code between 2008 and 2011.⁴⁴⁶ According to the lawyer Apar Gupta, “The enforcement under this has been sporadic and ad-hoc ... There is no consistent line and uniformity in enforcement and the entire process is plagued by bureaucratic subjectivity.”⁴⁴⁷

444. Apar Gupta, “The Legal Limits of Reality Television.”

445. See <http://emmc.gov.in/ShowArticle.aspx?id=NTA1> (accessed 3 May 2011). Earlier, the Central Monitoring Service (CMS) was entrusted with the monitoring of radio and TV networks. In addition, it was monitoring content broadcast by TV/radio channels with reference to violations of the Advertisement and Program Codes enshrined in the Cable Television Networks Regulations Act 1995 and Rules framed thereunder. After the CMS was shifted from the administrative control of the MIB, the establishment of a separate Electronic Media Monitoring Center was visualized.

446. “Details of Orders/Warnings/Advisories issued to private TV channels for Violation of Program and Advertising Code,” at http://mib.nic.in/writereaddata/html_en_files/content_reg/OrdersWarningsAdvisories.pdf (accessed 7 July 2011).

447. Interview with Apar Gupta, Partner, Advani & Co., New Delhi, April 2012.

The interconnection regulations of TRAI mentioned above could have an impact on ensuring pluralism and diversity in digital broadcasting. The Telecom Disputes Settlement Appellate Tribunal (TDSAT), the arbitration arm of TRAI, explored the ambit of these provisions in an important case, *Sea TV Network v. Star India (Sea-I)*⁴⁴⁸—a dispute between Star TV, a broadcaster, and Sea TV, an MSO, regarding access to television signals. While Star India insisted that Sea TV should obtain signals from its designated distributor, Sea TV refused, saying that the designated distributor was a competing MSO. While deciding in favor of Sea TV, TDSAT said some broadcasters were very strong because of vertical integration, leading to disparities in bargaining power. TRAI had issued the regulation in question to prevent unfair and arbitrary practices and ensure that broadcasters and MSOs do not deny signals to their competitors.

In the recent past, the regulator has taken action against online news content. The Google transparency report for the period January–June 2011 lists 236 requests from the government for removal of content from Orkut and 19 from YouTube, although such content may not come under the category of news-related content.⁴⁴⁹

It is thus amply clear that while media infrastructure is under-regulated in India, media content is increasingly regulated. What is more concerning is that content regulation is explicitly conducted by the executive and implicitly by the judiciary, thereby bypassing any debate and endorsement by the legislature—i.e. by directly elected representatives.

7.2.2 Regulatory Independence

The mandate of the communication and media industry regulator in India, TRAI, is limited to recommendations to concerned ministries. While this multi-sector regulator makes recommendations on matters ranging from spectrum usage, pricing of cable channels, measuring the quality of telecoms services and broadband speeds, the MCIT and MIB, or a combination of them or these together with others (such as the Ministries of Defense, Home, Finance, Education) relevant to the case are vested with decision-making. Hence, the government reigns supreme over the regulator—whose members themselves are usually appointed by the ruling political party.

Hitherto, no politicians have been appointed as members of TRAI—perhaps largely because the bureaucracy sees it as its own turf, where usually retired civil servants are appointed, save for the odd retired judge. However, political parties are able to influence the digital environment indirectly—through the concerned ministries, and by being members of parliament. Thus, parliamentarians with interests in the communication and media—such as those owning television channels listed in section 6.1.2 and print products—are in a position to exercise leverage on policy that bypasses the regulator, rather than the ideal reverse scenario. They can do so either as members of different parliamentary committees (Standing Committees, Public Accounts

448. Petition No. 41 (C) of 2005 (2005), 5 Comp LJ 462 (TDSAT, 24 August 2005), cited in Vikram Raghavan, *Communications Law in India*, Lexis Nexis (Butterworths), New Delhi, 2007, pp. 602–603.

449. Interview with Prasanth Sugathan, Legal Counsel, Software Freedom Law Center, New Delhi, March–April 2012. For a list of blocked sites referred to here, see <http://blogs.outlookindia.com/default.aspx?ddm=10&pid=2781> (accessed 10 January 2013).

Committee, Committees of Public Undertakings), consultative and independent government committees, or through their ability to ask parliamentary questions and being participants in parliamentary debates on policy and finance issues related to the media.

7.2.3 Digital Licensing

A potential C&S television broadcaster has to obtain two licenses: a grant of permission agreement from the MIB, followed by a wireless operational license from the WPC. After this, the broadcaster applies to the WPC for spectrum assignment. Each uplink/teleport station is allocated a band of spectrum, or if the license is for a channel, the television channel is allocated a frequency after the license has been obtained and the WPC notifies the broadcaster regarding the appropriate license and spectrum fees. Licenses are granted for 10-year terms.

In October 2011, the MIB revised a key clause in the eligibility for licenses for television news channels: the minimum net worth of the applicant company was raised from Rs30 million (US\$ 556,000) to Rs 200 million (US\$3.7 million),⁴⁵⁰ affectively disabling smaller entities from even being considered. Moreover, the higher entry barrier for news channels may be interpreted as recognition by the government that the segment is tight on profits, with most existing channels bleeding; hence fresh applicants need to have a financial cushion to compete.⁴⁵¹ The other clause that was revised concerned license renewal for existing channels, since the 10-year license term was set to end for many. The revised eligibility criteria made it tough for channels violating the program code (section 7.2.1) on more than five occasions.

Toward the end of 2012, discussions on licensing in the broadcasting sector came alive. On 30 November 2012, the MIB sought clarifications from TRAI as to whether state or central governments could be allowed to enter into the broadcasting or distribution of channels. TRAI was emphatic that central government ministries, departments, companies, joint ventures, or entities belonging to or funded by central and state governments “should not be allowed to enter in to the business of broadcasting and or distribution of television channels.”⁴⁵² In early 2013, an inter-ministerial group was formed to examine TRAI’s recommendations—once again the administrative ministry, MIB, overrode the regulator.

It is not unlikely that the MIB’s initial reference to TRAI at end-November was politically motivated: in July 2012 the Tamil Nadu government’s Arasu Cable applied for a digital MSO license; subsequently, two other opposition-ruled state governments approached the MIB with proposals related to broadcasting⁴⁵³—one being the Gujarat government, whose Chief Minister is seen as the biggest challenger of the central

450. For non-news channels, it increased from Rs15 million (US\$ 272,727) to Rs50 million (US\$ 909,090).

451. Of the 745 private satellite TV channels granted permission by the MIB, as of 31 August 2011 (366 in news and 379 in non-news) over 150 channels are non-operational despite a valid license, while over three dozen licensees started up, but closed shop due to financial or other reasons: Ashish Sinha, “Broadcasters vs. Regulators,” *Financial Express*, 10 November 2011, at <http://www.financialexpress.com/news/broadcasters-vs-regulators/858401/0#> (accessed 8 December 2012).

452. See <http://www.traigov.in/WriteReadData/Recommendation/Documents/RECOMMENDATION.pdf> (accessed 9 January 2012).

453. The desire by state governments to launch their own channels is different from the central government-controlled Prasar Bharati’s channels in various languages for the states (Section 2.1).

government in the national election of 2014, which had launched NaMo TV, a ground-based channel in October 2012. But because NaMo TV was launched a day after state election schedules were announced, it was immediately shut down pending clearances by the Election Commission—and not by the MIB, since technically NaMo TV was not “broadcasting.”⁴⁵⁴

There is no system of licensing in the cable distribution business; the only related provision is Clause 3 of the Cable Television Networks (Regulation) Act 1995 mandating registration of cable operators with the nearest post office.⁴⁵⁵ Licensing has been made impractical even retrospectively because of the 50,000-plus cable operators in India. However, licensing is feasible when it comes to a limited number of operators involved in the digitization of broadcast services. Consequently, in 2005 TRAI argued two advantages of introducing a licensing system under the Act: one, to provide the government with a framework to ensure operators meet certain minimum conditions; and second, to provide operators with a clear definition of the area and a basis for them to obtain financing.⁴⁵⁶

As with cable operators, for a long time MSOs needed to only register with a post office. From August 2006, MSOs had to get permission (not a license) from the MIB and declare their ownership and areas of operation. In January 2012, after the Cable Television Networks (Regulation) Amendment Act was passed in December 2011, digital MSOs were mandated to seek a license from the MIB and a clearance from the Home Ministry. Although this license is cost-free and carries no minimum criteria of net worth, as with broadcaster licenses, it requires a series of disclosures by MSOs, including their net worth, the number of cable operators they deal with, the households they serve, and the STBs they have obtained. Following this, analog MSOs wanting to commence digital services have to apply afresh to get such a license.

The need for analog MSOs to apply afresh for digital licenses and debates over government entities owning cable companies combined, along with the usual dose of party politics, to illustrate a lack of fairness in cable licensing. Arasu Cable, the government-owned MSO in the state of Tamil Nadu, has been waiting for its digital addressable system (DAS) license from the MIB—though nine other MSOs from Tamil Nadu have already received theirs. Without a digital license, Arasu Cable would lose out to SCV—the dominant MSO in the city and state—when the switch-over in the state capital, Chennai, finally takes place, as well as subsequently in the rest of the state (see section 6.3.1). One explanation of the effective denial of a license to Arasu Cable, though unofficial, has been the debate, ignited by TRAI, about government bodies receiving

454. Although a week later the CEC cleared NaMo’s launch with conditions for monitoring political advertisements, when the same incumbent Chief Minister had launched a TV channel distributed through the internet during the previous election of 2007, it was found to be violating the law by the EC; “NaMo TV in Gujarat and Lotus TV in Tamil Nadu: BJP on air,” 2 October 2012, at <http://www.ndtv.com/article/india/namo-tv-in-gujarat-and-lotus-tv-in-tamil-nadu-bjp-on-air-274649> (accessed 13 December 2012).

455. This clause reads, “No person shall operate a cable television network unless he is registered as a cable operator under this Act: Provided that a person operating a cable television network, immediately before the commencement of this Act, may continue to do so for a period of ninety days from such commencement; and if he has made an application for registration as a cable operator under section 4 within the same period, till he is registered under that section or the registering authority refuses to grant registration to him under that section,” at [http://tdsat.nic.in/books/THE%20CABLE%20TELEVISION%20NETWORKS%20\(Regulation\)%20Act.doc](http://tdsat.nic.in/books/THE%20CABLE%20TELEVISION%20NETWORKS%20(Regulation)%20Act.doc) (accessed 7 July 2011).

456. TRAI, “Consultation Paper on Digitalisation of Cable Television,” New Delhi, January 2005, pp. 20–21, at <http://www.trai.in> (accessed 27 April 2011). In 2020, TRAI issued detailed recommendations for licensing LCOs and MSOs, but they were not accepted; see <http://traigov.in/WriteReadData/Recommendation/Documents/finalreom5agust.pdf> (accessed 27 April 2011).

television and MSO licenses, which the MIB is said to be considering. But the politicization of licensing is the most likely reason, since the political interests affiliated with the owner of SCV—the DMK party currently in opposition in Tamil Nadu—is an important coalition partner in the central government, while the ruling regime in Tamil Nadu, desperately canvassing for Arasu Cable’s license, forms part of the opposition in the central government.

Precisely because DTH and HITS require and occupy spectrum, matters of licensing naturally arose. DTH is licensed by the MIB based on guidelines for eligibility criteria, application procedure, and conditions for the license.⁴⁵⁷ The main controversy over DTH licensing was around mandating technical interoperability (which concerns whether consumers could shift DTH operators without buying a new STB) among license providers. TRAI had recommended that technical interoperability be retained in DTH licensing to protect consumers,⁴⁵⁸ and that conditions be amended to oblige service providers to inform and educate consumers about the limited technical interoperability of STBs with personal video recorders and digital video recorders. TRAI also recommended DTH service providers be encouraged to rent basic or advanced STBs to consumers, but that there should be no dilution in the technical interoperability conditions as they exist today. Based on these recommendations, in September 2007, TRAI issued a directive to DTH operators seeking to sort out interoperability issues.⁴⁵⁹ The decisions and debates emanating from this, detailed earlier (section 5.2.1), suggest that until DTH licensing clauses on technical and commercial interoperability are fully addressed, the licensing framework will remain unfair to consumers and rival, especially late-entrant, DTH operators.

2G mobile licenses were auctioned until 2001, when the policy shifted to a FCFS basis, where licenses were bundled with a minimum spectrum allocation (see section 5.1.1). After this led to a huge scam in 2008 with the allotment of 122 licenses, and subsequent cancellation of the licenses by the Supreme Court in 2012, the policy was reverted back to auction. Under the 2012 national telecoms policy,⁴⁶⁰ licenses have been delinked from the minimum spectrum that came bundled with the former; while licenses will be given at a nominal rate, spectrum will be charged according to the market price established through an open auction.

3G mobile telephony spectrum, 4G, and Broadband Wireless Access (BWA), commonly known as WiMAX, along with private FM radio, have been licensed through the auction system, justified by earlier TRAI

457. MIB, “Guidelines for DTH Broadcasting Service in India,” New Delhi, 16 March 2001, at <http://www.indiantelevision.com/dth/dth11.htm> (accessed 2 May 2011). Licensing criteria stipulate that the entity has to be an Indian company registered under the Companies Act 1956; the total foreign equity holding including Foreign Direct Investment (FDI), Non-resident Indian (NRI), Overseas Corporate Body (OCB), Foreign Institutional Investor (FII) is not to exceed 49 percent, of which the FDI component is not to exceed 20 percent; broadcasting companies and/or cable companies shall not be eligible to collectively own more than 20 percent of the total equity of a DTH company, while the latter cannot have more than a 20 percent equity share in a broadcasting and/or cable company; no restrictions on the total number of DTH licenses; license will be valid for a period of 10 years. Payments include an initial non-refundable entry-fee of Rs 100 million to the MIB, a Bank guarantee to the MIB for Rs 400 million valid for the duration of the license, an annual fee equivalent to 10 percent of its gross revenue as reflected in the audited accounts and finally, a license fee and royalty for the spectrum used as prescribed by the WPC, under the DoT.

458. TRAI, “Recommendations on Licensing Issues Related to DTH,” New Delhi, 2006, p. 7, at <http://www.trai.in> (accessed 11 July 2011).

459. “TRAI issues directives for DTH Operators in India,” at <http://www.techclave.com/dth-cas-iptv/trai-issue-directives-dth-operators-34675/> (accessed 11 July 2011).

460. *National Telecom Policy—2012*, Department of Telecommunications, MCIT, Government of India, at <http://www.dot.gov.in/ntp/ntpindex.htm> (accessed 13 December 2012).

recommendations.⁴⁶¹ The DoT auctioned off the BWA frequencies in 2010, but there was a strange condition, pegging the WiMAX spectrum base price at 25 percent of the reserve price fixed for 3G spectrum.⁴⁶² While 3G is the domain of mobile telephony operators, this linkage was unfair in terms of WiMAX since smaller ISPs also might be interested in bidding but unable to afford it. The 3G auctions earned the government Rs 677,189 million (US\$ 12,549 million). Further, ISPs are concerned about the required net worth in excess of Rs1 billion (US\$18.5 million)⁴⁶³ for internet telephony (Voice Over Internet Protocol) which ISPs could easily provide, bringing competitiveness into the sector and reducing costs to the consumer.

The government-owned AIR enjoys advantages over both private FM and community radio (CR) stations as it does not pay any license fee—though it pays spectrum user charges like the other two. Moreover, AIR is the only radio licensee allowed to broadcast news.⁴⁶⁴ While private FM licenses, valid for 10 years, entail an OTEF and revenue share, these are not levied on CR stations whose license is for five years only. But the biggest hiccup in CR licensing, which is unfair to rural stations in particular, is that they have to come to the capital, New Delhi, for frequency allocation and then again for their Wireless Operating License (WOL). The frequency allocation is arbitrary, the online application—the technical terms of which grassroots communities find tough to understand—is mandatory, and the process can take over six months. Even the MIB has admitted the dependence on inter-ministerial clearances for community radio applications causes delays, in addition to a long and cumbersome licensing procedure.⁴⁶⁵

7.2.4 Role of Self-regulatory Mechanisms

While TRAI suggested self-regulation as a possible method to regulate DTH service quality standards,⁴⁶⁶ mechanisms and debates around self-regulation have largely concerned media content. Here, self-regulatory bodies have emerged at the industry level, beginning with the Advertising Standards Council of India (ASCI), which in 1985 laid down the Code for Self-Regulation in Advertising.⁴⁶⁷

News channels created the NBA and formed a nine-member body in October 2008, the News Broadcasting Standards Authority (NBSA)—including four editors from different news channels and four “eminent persons” from different walks of life, with a returned judge serving as the chair.⁴⁶⁸ In February 2009, the

461. TRAI, “Consultation Paper on Allocation and Pricing of Spectrum for 3G Services and Broadband Wireless Access” (see Annexure J), New Delhi, 12 June 2006, at <http://www.trai.gov.in/WriteReadData/trai/upload/ConsultationPapers/85/Consultation12jun06.pdf> (accessed 21 June 2011).

462. Thomas K. Thomas, “DoT Suggests Wi-Max Base Price at 25% of 3G Reserve,” *The Hindu Business Line*, 31 July 2010, at <http://www.thehindubusinessline.com/todays-paper/article1058460.ece?ref=archive> (accessed 24 June 2011).

463. Internet Service Providers Association of India, “How to Become an ISP,” at <http://www.ispai.in/HowToBecome-ISP.php> (accessed 7 June 2011).

464. Only in March 2011 did the government permit private FM radio stations to broadcast news as long as it was sourced from AIR; see http://www.dnaindia.com/india/report-private-fm-radio-channels-to-be-allowed-to-carry-news-sourced-from-air_1525484 (accessed 20 April 2012).

465. MIB, “Strategic Plan 2011–17,” pp. 14–15.

466. TRAI (2007), “Consultation Paper on Issues Related to DTH,” New Delhi, March, p. 27, at <http://www.trai.in> (accessed 28 April 2011).

467. Advertising Standards Council of India, at <http://www.ascionline.org/> (accessed 30 June 2011).

468. For details and current composition, see <http://www.nbanewdelhi.com/authority-members.asp> (accessed 3 December 2012).

NBSA issued guidelines on a wide range of issues, including accuracy, privacy, impartiality and fairness, decency, and good taste, meant to elaborate its 2008 principles of self-regulation. However, the NBSA's compliance and penalties can be levied only on news channels that are members.

The Indian Broadcasting Federation (IBF), the trade body of non-news channels, has its own content code for all non-news and entertainment channels.⁴⁶⁹ The self-regulatory authority it created, the Broadcasting Contents Complaints Council (BCCC), comprises persons from within the MIB and national-level statutory commissions; it is also chaired by a retired Judge of the Supreme Court or a high court. Broadcasters are asked to categorize all content, based on how explicit the images shown are, to indicate whether it is suitable for unrestricted viewing or not.⁴⁷⁰

In the case of newspapers, the PCI, a statutory body, was set up more than 30 years ago—although even in cases of violation of journalistic ethics, it can only admonish or censure news outlets. There have been frequent calls to amend the Press Council Act of 1978 to give it more teeth and bring electronic media within its ambit. Its current chairman, former Judge of the Supreme Court, Justice Markandey Katju, openly canvassed for this, repeatedly and vehemently emphasizing that self-regulation is not working: “In fact there is no such thing as self-regulation, which is an oxymoron. Everybody is accountable to the people in a democracy, and so is the media,” he states.⁴⁷¹

A candid admission of the failure of self-regulation in the digital environment emerged from the NBA itself in the context of a Supreme Court case on the need for a framework for reporting court proceedings. The NBA urged the Supreme Court to frame guidelines for the regulation of television channels, stating that self-regulation did not have the desired effect;⁴⁷² going further, the NBA counsel argued that though the association had brought in self-regulation, it had no legal sanctions, and of the 46 news channels, only 21 were NBA members and self-regulation would not bind the others.

7.3 Government Interference

Traditionally, incumbent governments directing advertisements from the DAVP and ministerial budgets for publicity to chosen newspapers have typified state mechanisms distorting media markets. The other major mechanism was the tweaking of the newsprint price in the years when its production, purchase and/ or imports were tightly controlled. However, the aims of both mechanisms were not expressly commercial

469. Indian Broadcasting Foundation (IBF), “Self-Regulatory Content Guidelines for Non-News and Current Affairs Television Channels,” at <http://ibfindia.com/guidelines.php> (accessed 12 June 2011) (hereafter IBF, “Self-Regulatory Content Guidelines”). IBF Guidelines are modelled on the MIB's Content Code proposed as part of the Broadcasting Services Bill 2007, but not cleared by parliament.

470. IBF, “Self-Regulatory Content Guidelines.” The categories are: “Crime and Violence,” “Sex, Obscenity and Nudity,” “Horror and Occult,” “Religion and Community,” and “Harm and Offense.”

471. “Justice Markandey Katju clarifies,” *The Hindu*, 15 November 2011, at <http://www.thehindu.com/news/national/article2629257.ece?homepage=true> (accessed 30 March 2012).

472. J. Venkatesan, “Editors Guild opposes norms for reporting on court proceedings; NBA feels need,” *The Hindu*, 30 March 2012, at <http://www.thehindu.com/news/national/article3259342.ece> (accessed 3 April 2012).

(i.e. to promote or support certain news outlets) but, rather, political (i.e. to appease—or needle, as per the case—newspaper proprietors whose publications tend to be critical of ruling regimes), battling over limited supplies of newsprint and/or advertising budgets, in return for favorable reportage.

7.3.1 The Market

Perhaps the most compelling and sustained distortions of television and cable markets—and one directly led by government-backed entities rather than by government policy—have unfolded in Tamil Nadu. This state has among the largest number of C&S television consumers.⁴⁷³ One of the main election planks leading up to the 2006 state elections was the distribution of free color television sets to poor families. This decision by the incumbent political party, the DMK, contributed to distorting the reigning television market in Tamil Nadu as it suddenly and artificially boosted demand for cable connections and subscriptions—which benefitted one of the Maran⁴⁷⁴ brothers, nephews of the DMK's chief, one of whom is the majority owner of the state's dominant MSO, Sumangali Cable Vision.

The case of Arasu Cable Corporation, also in Tamil Nadu but owned by the state government, provides further instances of market distortion, perhaps at multiple levels. Most immediately, the long-pending clearance of Arasu's digital license (see section 7.2.3) amounts to the MIB distorting the cable market in Tamil Nadu, where Arasu was in second position. While Arasu's clearance was held up, nine private MSOs from Tamil Nadu received digital licenses from MIB, thereby reshaping the battle for subscribers in many pockets of the state's emergent digital cable market.⁴⁷⁵ The central government's delay in granting Arasu a digital license—clearly stemming from political differences between the state and central government—seems to have fueled repeated extensions of the switch-over deadline in Chennai; this also led to around 500 local cable operators joining hands to launch their own MSO, Tamil Nadu Cable Communications Ltd,⁴⁷⁶ which may also change market dynamics in the city.

There have been rare attempts by the state broadcaster to distort markets: in late 2010, Prasar Bharati dropped eight channels, including three from the Zee Group from DD Direct, the public broadcaster's rent-free DTH service. Prasar Bharati felt that the channels' viewership was low and therefore did not wish to renew their agreements after their expiry in January 2011. Zee took the matter to TDSAT, which asked DD Direct to reinstate the Zee channels, among others, ruling that the decision was against regulations.⁴⁷⁷

473. A survey by the Francis Kanoi marketing research group in 2009 revealed that Tamil Nadu, with over 5 million cable TV homes, is present in 14 percent of the total cable TV homes in the country; see TRAI, "Consultation Paper on Digital Addressable Systems," New Delhi, 2011, p. 9, at <http://www.trai.in> (accessed 27 April 2011).

474. One is a senior national DMK figure and ex-Union Telecoms minister, the other the proprietor of the dominant Tamil TV network SUN Group, and a majority stakeholder in the state's dominant cable network, Sumangali Cable Vision.

475. "Jayalithaa writes to PM on cable digitization," Livemint.com, 17 December 2012, at <http://www.livemint.com/Politics/lbZONh1NIFd85Jd-NhTGHfO/Jayalithaa-writes-to-PM-on-cable-digitization.html?facet=print>.

476. Gireesh Babu, "Chennai cable operators to launch own MSO company," *Business Standard*, 11 January 2013, at <http://www.business-standard.com/india/news/chennai-cable-operators-to-launch-ownmso-company/498436/> (accessed 26 November 2012).

477. *Zee Turner v. Prasar Bharti*, TDSAT Petition No. 195(c) of 2008, date of judgment 15 December 2008.

7.3.2 The Regulator

As TRAI's regulation is limited to making recommendations to concerned ministries, the scope for abuse is limited.⁴⁷⁸ However, Subho Ray, President of the IAMAI, says that often security or public and national safety are used as a stick to beat the industry: "companies are sometimes called individually by TRAI and told that there are complaints against them, without [providing] details, and asked to mend their ways."⁴⁷⁹

7.3.3 Other Forms of Interference

Politicians in many states who also own cable infrastructure tend to viciously blank out broadcasters and programs critical of them. In some cases this happens when their business interests are exposed, as with the infamous Bellary brothers in Karnataka,⁴⁸⁰ or in Punjab where small, independent channels⁴⁸¹ reporting unfavorably on the government were blacked out by Fastway Cable, which is closely associated with the ruling dispensation in the state⁴⁸² (see section 5.3.2).

Other instances of extra-legal pressure involve potentially rival news outlets from entering the market. In the run-up to the state elections in Tamil Nadu in May 2011, the DMK reportedly put pressure on the MIB—since it was an important national government coalition partner—to delay granting a license to the Captain TV channel, since its promoter, actor turned politician Vijaykanth, was a rival in the elections.⁴⁸³

Police and paramilitary forces in pockets of the country witnessing sub-national and/or secessionist conflict, especially armed movements, are reported to routinely use extra-legal measures to intimidate and harass journalists.⁴⁸⁴ In Jammu and Kashmir, security forces and government authorities regularly apply pressure to make sure the media are not overtly critical of the Indian government's role in the state. Harassment of journalists, especially local journalists based in the Kashmir valley, is reported to be quite common.⁴⁸⁵

478. For details of the regulatory framework and its relationship with media policy research and advocacy, see B. Das and V. Parthasarathi, "Media Research and Public Policy: Tiding Over the Rupture," in R. Mansell and M. Raboy (eds), *Handbook on Global Media and Communication Policy*, Wiley-Blackwell, Oxford, 2011.

479. Interview with Subho Ray, President, IAMAI, New Delhi, March 2012.

480. In 2011, a documentary on illegal mining by the three Reddy brothers from Bellary, then ministers in the Karnataka government, telecast on the English news channel CNN-IBN, was blanked out in seven districts of the state where they owned cable networks; Foundation for Media Professionals, "Let Media Industry Self-Regulate with Legislative Backing: Says Editor's Guild President Rajdeep Sardesai," 12 August 2010, at <http://www.fmp.org.in/index.php?p=875> (accessed 7 June 2011).

481. Day and Night Television was blocked after it carried an interview of the state Chief Minister being asked embarrassing questions; Gagandeep Ahuja, "Day and Night TV Channel Blocked on Cable Network in Punjab for airing SAD controversy," *Punjab Newslime*, 15 October 2010, at <http://punjabnewslime.com/content/day-night-tv-channel-blocked-cable-network-punjab-airing-sad-controversy/24927> (accessed 9 July 2011).

482. That the head of this firm is closely associated with the ruling dispensation in Punjab is noted in a Competition Commission of India judgment responding to a petition filed by an independent news channel against three cable operators of Punjab, including Fastaway Cable; *M/s Kansan News Pvt. Ltd. v. M/s Fastway Transmission Pvt. Ltd. & Ors.*, Competition Commission of India Case No. 36/2011 (date of order 3 July 2012), at <http://www.cci.gov.in/May2011/OrderOfCommission/362011.pdf> (accessed 26 November 2012).

483. Coomi Kapoor, "No Monopoly Friendship," *The Indian Express*, 4 October 2009, at <http://www.indianexpress.com/news/no-monopoly-friendship/524661/> (accessed 17 April 2011).

484. "Dark times," Thehoot.org, 18 July 2010, at <http://www.thehoot.org/web/home/story.php?storyid=4697&pg=1&mod=1§ionId=6> (accessed 25 March 2012). Yumnam Ibomcha, reporter for a daily from Imphal (capital of the state of Manipur) was beaten up in July 2010 by paramilitary troopers in the Collector's office, in Imphal West district. Ibomcha had gone to the Collector's office after learning that diesel permits issued to the farmers were being triplicated in view of the acute shortage of fuel in Manipur.

485. Sualeh Keen, "Freedom Gagged," *Infochange Agenda: The Limits of Freedom*, 22 (2011), pp. 33–37.

Similarly, journalists attempting to cover the state's war on the Maoists in the state of Chhattisgarh have been routinely intimidated or threatened, including publicly, by security forces.⁴⁸⁶

7.4 Assessments

Although the key rationale for DTT is spectrum efficiency,⁴⁸⁷ there is no mention of how the digital dividend will be used in the public interest. While the MCIT is keen to monetize it by auctioning those frequencies for 4G services, and TRAI has recommended that it is best used for BWA, the Planning Commission, on the other hand, has hinted at deploying the dividend to start more regional terrestrial channels, mobile reception, and/or HDTV services.⁴⁸⁸ Spectrum efficiency is also invoked to propel digital cable, since this is argued to increase the channel relaying capacity of distributors; but the more crucial argument has been to make the entire value chain of television signal-transmission transparent,⁴⁸⁹ thereby enhancing income for all players—subscriptions for distributors, revenue shares for broadcasters, and taxes for the government from everyone.

Precisely because cable digitization is capital-intensive—Rs60 billion (over US\$1 billion) is estimated to be necessary for infrastructure upgrades by MSOs⁴⁹⁰—this imparts an advantage to large, corporatized MSOs over small LCOs. The second and third phases of the switch-over may require a significant upgrade of existing infrastructure and network, besides an estimated 100 million STBs, over the next five years.⁴⁹¹ Although by 2011 the top five MSOs accounted for less than 30 percent of national revenues in this sector, this masks the increasing market power of a handful of MSOs in many regional markets.⁴⁹² The MIB did note LCOs' fears of being adversely affected by mandatory digitization,⁴⁹³ yet no effective protocols to check concentration are visible in the Cable Television Networks (Regulation) Amendment Act 2011—the sole legislative instrument governing cable digitization.⁴⁹⁴

The MIB's decision to simulcast DD's terrestrial feed until 2017 and ensure that its DTH service, DD Direct, provides a low-cost alternative, is aimed at minimizing the disruption brought about by switch-over. However, many viewers have old television sets that whose ports cannot be adapted to receive digital signals;

486. Geeta Seshu, "Journalists or Dacoits?: The Media Under Attack," *Free Speech in India 2010*; selections from the Free Speech Hub of Thehoot.org, pp. 9–12, at <http://www.thehoot.org/web/simages/2011-02-21-fshmonograph.pdf> (accessed 21 June 2011).

487. While some frequency bands in India are exclusively for "broadcasting," others are shared with other services, such as the 800/900 MHz bands with cellular services; "Going Digital," p. 16.

488. "Going Digital," p. 2.

489. Transparent subscription systems, the MIB argues, will enable broadcasters to reduce their dependence on advertising revenue, which will, in turn, soften their anxiety for TRPs. This is expected to lead to an era of healthy content creation, and consequently, an effective content regulation in a diverse country; MIB, "Annual Report, 2011–12," pp. 105–106.

490. PTI, "Govt to push for indigenous manufacturing of set top boxes," *DNA*, 13 January 2013, at http://www.dnaindia.com/india/report_govt-to-push-for-indigenous-manufacturing-of-set-top-boxes_1788470 (accessed 13 January 2013).

491. FICCI-KPMG, 2012, p. 15.

492. MIB, "Annual Report, 2011–12," p. 93.

493. MIB, "Annual Report, 2011–12," p. 102.

494. For a crisp summary to the Cable Television Networks (Regulation) Amendment Act 2011 passed by parliament, see <http://www.prindia.org/billtrack/the-cable-television-networks-regulation-amendment-bill-2011-2059/> (accessed 10 January 2013).

furthermore, given their economic demography, such viewers are less likely to have cable or DTH access. If bottlenecks relating to the adoption of STBs for DTT are unresolved when the simulcast phase ends, there will be a sudden drop in viewership of the state broadcaster in the terrestrial mode.

Challenges posed by interconnectivity entail two protocols—interoperability of end-user devices and revenue share within the value chain. Protocols of interoperability among STBs are not designed to enhance competition, and rather lock subscribers with vendors. As for protocols of revenue share, in the digital cable regime the MSOs are to share the entire subscription revenue with LCOs, while remunerating broadcasters for their channels/bouquets.⁴⁹⁵ But these equations do not factor in the carriage fee broadcasters pay to MSOs, according to Roop Sharma, President of the Cable Operators Federation of India (COFI)—a fee as high as Rs 300–400 million (US\$5.5–7.5 million) in the Delhi region, paid in cash by newly launched channels for their signal to be relayed in the prime band.⁴⁹⁶

Subho Ray, President of IAMAI, notes that the central piece of legislation for the internet, the Information Technology Act, “started its journey as a promoter of e-commerce but overtime metamorphosed into a penalizing act—a tool for monitoring, blocking, taking down, and punishing intermediaries and others!”⁴⁹⁷

The sheer expansion of media services has naturally created a wider, and sometimes deeper, playing field for decision-making and mediation by state authorities. And since the formal legal, and sometimes legislative, protocols have not kept pace with such changes, much policymaking has been steered by the executive, which is often kneejerk, reactive, and/or ad hoc. The expansion of politicians and political parties into news broadcasting and cable distribution, compounding that already in newspapers, has only intensified the opportunities and scope for such interference by state authorities.

Tamil Nadu and Andhra Pradesh provide the starkest examples of how ownership of channels by entities in parliamentary politics can lead to unhealthy duopolies, distortion of the media market and partisan content—but also contribute to opacity and/or biases in decisions. This recent trend is closely linked to digitization and convergence of technologies, where political parties have taken advantage of the changing media landscape by investing in broadcasting and cable business.

In the analog era, public and parliamentary debates centered on legislative changes such as during the Prasar Bharati Act, 1989. However, recently, since most important decisions are being enacted through administrative guidelines, executive orders, and ordinances issued by various ministries, there has been limited scope for public discussions. Recent media scams and other malpractices—such as paid news, Radiagate, the spectrum

495. As per TRAI's tariff order of 21 July 2010. This is unlike in the CAS regime where broadcasters take 45 percent of pay channel subscriptions and 55 percent is shared between MSOs and LCOs. TRAI, “Issues related to Implementation of Digital Addressable Cable TV Systems,” Consultation Paper No. 8/2011, New Delhi, 2 December 2011, p. 21.

496. Roop Sharma, President of Cable Operators Federation of India (COFI), is found beaming in a YouTube interview while announcing COFI's agreement with WWIL—the MSO arm of the Zee Group—whereby 25 percent of the carriage fee earned by this national MSO will be distributed among LCOs, depending upon their size; “President COFI on WWIL Sharing Carriage Revenue with LCO,” 7 June 2012, *Cablevindia*, at http://www.youtube.com/watch?v=Ty3fM7i0c_w&feature=related (accessed 10 December 2012).

497. Interview with Subho Ray, President, IAMAI, New Delhi, March 2012.

scandal, etc.—are intimately connected with digitization and have precipitated debate in the news media, and discussion in parliament and on public platforms—even if the quality and orientation of the debates is not uniform.

Consultations in the analog decades centered on state-run organizations. But deregulation and the advent of digital media technologies led to the emergence of new and diverse stakeholders who have woven their own public discourse to shape decisions by the regulator and government.⁴⁹⁸ Although the MIB claimed to have held discussions with all stakeholders in formulating its Strategic Plan, details are still not publicly available. TRAI has been actively hosting open-house sessions to present and debate policy options. But these are invariably called at very short notice, and the accompanying consultation and study papers are shoddy. In contrast, there has long been a wide consensus among industry and civil society that the internet segment, at least since 1999 when the first IT Act was mooted, enjoyed open lawmaking, whereby the public could comment on draft laws, and recommendations were discussed. But there have been changes recently, as such openness was not followed for the 2009 rules for interception and blocking of websites. “Even the 2011 rules for intermediaries and cyber cafés did not go the full stretch, since they did not post the comments which were received through the public consultation and the responses to them before the draft was made into law.”⁴⁹⁹

Three instances affecting content diversity can be highlighted. First, TRAI has often admitted that broadcasters are more focused on “advertiser-friendly” genres, which limit investment in niche content. This eventually restricts the variety of the content.⁵⁰⁰ Second, periodic bans or caps on SMS messages, including TRAI’s latest decision to cap all bulk SMS messages to 200 per day sent from a single SIM card, mentioned earlier, tends to impede consumer groups, activists, and independent journalists from disseminating information. Third, Section 4A of the Cable Television Networks (Regulation) Act, 1995 provided that government may lay down specifications for the composition of a Basic Service Tier (BST).⁵⁰¹ Although the genre-specific composition of channels in a BST should have catered to regional viewers’ needs—and hence vary widely in a diverse country—there has been no such legal requirement in C&S areas.

Similarly, three instances affecting source diversity can be highlighted. First, raising the requisite net worth of firms to apply for news channel licenses poses a clear entry barrier to smaller, niche, and sub-regional broadcasters. Second, diversity is threatened by concentration among MSOs, as the cases of Tamil Nadu and Punjab reflect. Lastly, although the must-carry rules mandate DTH licensees to relay broadcasters on a non-discriminatory basis,⁵⁰² because the number of news channels continues to increase, the optimistic view of increased channel carrying capacity—and the diversity this may bring, especially via niche and smaller

498. For instance, noteworthy is the Broadcast Editors Association (BEA), formed in August 2009, perhaps as a response to the proprietor and journalist-proprietor dominated NBA, formed in 2007; see <http://www.beaindia.org> (accessed 10 January 2013).

499. Interview with Apar Gupta, Partner, Advani & Co., New Delhi, April 2012.

500. TRAI (2011), “Issues related to Implementation of Digital Addressable Cable TV Systems,” Consultation Paper No. 8/2011, New Delhi, 2 December 2011’ (hereafter TRAI, “Implementation of Digital Addressable Cable TV Systems”).

501. Be it the minimum free-to-air channels or a judicious genre-mix of entertainment, information, and education, including mandatory DD channels; TRAI, “Implementation of Digital Addressable Cable TV Systems,” p. 13.

502. TRAI, “Digitalisation of Cable Television”, Consultation Paper No. 1/2005, New Delhi, January 2005, p. 17.

channels—may get curtailed on some DTH platforms until their transponder and spectrum constraints are sorted out. Since higher carriage fees have been observed by TRAI in the so-called TAM cities—i.e. where rating agencies place metering devices in sample households⁵⁰³—it is in such cities that small, niche channels, unable to raise such fees, are unlikely to be transmitted.

503. TRAI, “Implementation of Digital Addressable Cable TV Systems,” p. 27.