



Submission by IAMAI:
TRAI's Consultation Paper No. 01/2013-dated 15.02.2013, on
Issues related to Media Ownership.

1. Media, by its very nature, can either be subscribed or 3rd party paid. An overwhelming part of the media is free for consumers for listening, viewing and consuming. The infrastructure and manpower required to carry out the above four functions would be the same for almost all forms of media.
2. The legal position, insofar as media is concerned, is enshrined under Article 19(1)(a) of the Constitution of India. The Right to Freedom of Expression and Speech, can only be curtailed by reasonable restrictions on the ground of sovereignty and integrity of the country, security of the State, friendly relations with other foreign State, public order, decency and morality or in relation to contempt of court, defamation etc. Any step towards putting restrictions on cross-media control/ownership would fail to stand the test of judicial scrutiny under Article 19(2) of the Constitution of India.
3. Digital News consumption is growing in India. High quality news production and editorial are cost intensive operations. News production requires media groups to have multiple avenues to monetize this business and recover costs.
4. Therefore, there should be freedom for any Media Company to get into another media domain business without any restrictions, whatsoever.

In India today, a) different media platforms in the same Group are separate, independent, companies, with entirely different editorial teams of their own, which take an independent view of issues. In fact, very often, the views of one Editor are entirely opposite, or indeed at cross-purposes, to the stand taken by another Editor of another media platform in the same Group; b) There is a surge for user generated content in the form of news clippings and other content that are available for viewing by consumers.

Both these forms need to be protected under the rights provided by the Constitution of India.

5. The internet is now a bigger and very important tool for dissemination of information, more than even the radio and television. Various proactive measures taken by different wings of the State to promote dissemination of information through the internet are:
 - (a) All Government Departments being available on websites;
 - (b) All Laws, Regulations etc. being available on website;
 - (c) Almost every court in the country is now making available its orders and other information on its website;

- (d) Telecast of parliamentary proceedings on website;
- (e) Online/e-filing of returns of individuals and corporate;

Internet has also played a significant role for doing business and fulfilling transactions in India through

- (a) Online Buying/selling of products and services;
- (b) Online Banking transactions facilities by state and public banks

6. All these go to show that the internet is the most powerful medium of communication and any attempt to curb the growth or spread of the internet would, in fact, be counter-productive. The internet has also a major role in making available to the general public research tools, educational programs, music based programs, entertainment, networking etc.
7. The running of a website entails enormous investment in terms of manpower, investment for acquisition of content, software licenses, web hosting, purchase of domains, etc. Sometimes such investments are also possible by those companies who already have interests in related media, and they should not be barred from doing so. Conversely, any online site would require Audio-video content, for which it would need to have access to a TV and radio or other news channel for this content. Imposing a ban on cross media holding / ownership would mean hampering such relationship and may perhaps have a prejudicial effect on the free flow of information and the freedom of speech and expression.

Given the reality of the technologically converging media sector today, where all content is available online, any move to even suggest curbs on cross-media ownership may be considered regressive and out of tune with technological reality.

8. The purposes for which this Consultation Paper seeks to propose a ban on cross media holdings/ownership is effectively dealt with by the Competition Act in most countries of the world. Even in India, the Competition Act of 2002 was promulgated with an “object to prevent practices having adverse effect on competition, to promote and sustain competition in the markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets” which in true sense aims at bringing plurality at all levels including media industry. In view of the same, there is no need to bring further regulation for controlling the media and curtailing the freedom it has, that too, without any reasonableness in the action.
9. It may be noted that following are safeguards that are currently in place in the system.
 - (a) The IT Act regulates the Internet medium in a limited way and concurrently provides safe harbor provision to intermediaries for 3rd party content

- (b) The Press Council of India regulates the print media regarding newspapers.
 - (c) In the Television sector, the News Broadcasting Standards Association (NBSA) has already performed impartially and transparently, being headed by a retired Chief Justice of India.
 - (d) The general entertainment industry is governed by the self-regulatory authority set up under the Broadcasting Content Complaints Council (BCCC) headed by an ex-Chief Justice of the Hon'ble Delhi High Court.
10. With regard to regulations on using internet as a media distribution channel, it will be appropriate to refer to Chapter-3 of the Consultation Paper wherein TRAI has given the international position regarding restrictions on cross media ownership across the world. However, it is evident that there is no restriction across the world regarding usage of internet as channel of distribution. The Internet is merely a mode of distribution of existing media which facilitates the consumer to consume news at their own leisure. Hence, since the viewership on internet platform is a matter of choice by consumers, it would be wholly improper to have any restriction in any manner whatsoever on the same, as it would amount to an intrusion of freedom of speech and expression.

ANSWERS TO THE QUESTIONS:

General Disqualifications

Q1: In your opinion, are there other entities, apart from entities such as political parties, religious bodies, Government or government aided bodies which have already been recommended by TRAI to be disqualified from entry into the broadcasting and distribution sectors, which should also be disqualified from entry into the media sector? Please elaborate your response with justifications.

Q2: Should the licensor, either suo motu or based on the recommendations of the regulator, be empowered to disqualify any entity from entering the media sector in public interest? For instance, should the licensor or the regulator be empowered to disqualify (or recommend for disqualification) a person who is subject to undue influence by a disqualified person.

Response

Q 1-2. Internet either as technology or distribution platform, does not currently have a licensor. It is governed by the IT act and if any changes have to be brought into the 'regulations of content of internet' it should be done via the IT Act after due consultation with the Industry, Associations and other relevant bodies and civil society groups.

Media Ownership/ Control

Q3: Should ownership/ control of an entity over a media outlet be measured in terms of equity holding? If so, would a restriction on equity holding of 20% (as recommended by TRAI in its recommendations on Media Ownership dated 25th

Feb 2009) be an appropriate threshold? Else, please suggest any other threshold value, with justification?

Response: NO. We are not in favor of any restriction over distribution or technology platform. The competition laws in the country are sufficient to deal with these issues.

Q4: In case your response to Q3 is in the negative, what other measure(s) of ownership/ control should be used? Please support your view with a detailed methodology to measure ownership/ control over a media outlet.

Response

Q.3-4.Read as above

Media Ownership rules

Q5: Should only news and current affairs genre or all genres be considered while devising ways and means to ensure viewpoint plurality? Please elaborate your response with justifications.

Q6: Which media amongst the following would be relevant for devising ways and means of ensuring viewpoint plurality?

(i) Print media viz. Newspaper & magazine; (ii) Television; (iii) Radio; (iv) Online media; (v) All or some of the above

Q7: Should the relevant markets be distinguished on the basis of languages spoken in them for evaluating concentration in media ownership? If your response is in the affirmative, which languages should be included in the present exercise?

Q8: If your response to Q7 is in the negative, what should be the alternative basis for distinguishing between various relevant markets?

Q9: Which of the following metrics should be used to measure the level of consumption of media outlets in a relevant market?

(i) Volume of consumption; (ii) Reach; (iii) Revenue; (iv) Any other
Please elaborate your response with justifications.

Q10: In case your response to Q9 your view with a fully developed methodology to measure the level of consumption of various media outlets using this metric.

Q11: Which of the following methods should be used for measuring concentration in any media segment of a relevant market?

(i) C3; (ii) HHI; (iii) Any other

Q12: If your response to Q11 with a fully developed methodology for measuring concentration in any media segment of a relevant market using this method.

Q13: Would Diversity Index be an appropriate measure for overall concentration (including within media and cross media) in a relevant market?

Q14: In case your response to Q13 is in the affirmative, how should the weights be assigned to the different media segments in a relevant market in order to calculate the Diversity Index Score of the relevant market?

There is no need to put any restriction on control of ownership across media as no one constituents of the media and no particular mode of media delivery can control or influence the consumers/public. More competition will result in better and cheaper technologies. This will help in spreading the information revolution.

Q15: Would it be appropriate to restrict any entity having ownership/control in an outlet of a media segment of a relevant market from acquiring or retaining ownership/control over outlets belonging to any other media segment? Please elaborate your response with justifications.

Q16: Alternatively would be appropriate to have a “2 out of 3 rule” or “1 out of 2 rule”? In case you support the “1 out of 2 rule” which media segment should be considered for imposition of restriction? Please elaborate your response with justifications.

Q17: Would it be appropriate to restrict any entity having ownership/ control in a media segment of a relevant market with a market share of more than a threshold level (say 20%) in that media segment from acquiring or retaining ownership/ control in the other media segments of the relevant market? Please elaborate your response with justifications.

Q18: In case your response to Q17 is in the affirmative, what should be such threshold level of market share? Please elaborate your response with justifications.

Q19: Would it be appropriate to lay down restrictions on cross media ownership only in those relevant markets where at least two media segments are highly concentrated using HHI as a tool to measure concentration? Please elaborate your response with justifications.

Q20: In case your response to Q19 is in the affirmative, please comment on the suitability of the following rules for cross media ownership:

(i) No restriction on cross media ownership is applied on any entity having ownership/ control in the media segments of such a relevant market in case its contribution to the HHI of not more than one concentrated media segment is above 1000. (For methodology of calculation please refer para 5.42)

(ii) In case an entity having ownership/ control in the media segments of such a relevant market contributes 1000 or more in the HHI of two or more concentrated media segments separately, the entity shall have to dilute its equity in its media outlet(s) in such a manner that its contribution in the HHI of not more than one concentrated media segment of that relevant market remains above 1000 within three years.

Q21: Would it be appropriate to lay down the restrictions on cross media ownership only in highly concentrated relevant markets using Diversity Index Score as a tool to measure concentration? Please elaborate your response with justifications.

Q22: In case your response to Q21 is in the affirmative, please comment on the suitability of the following rules for cross media ownership in such relevant markets:

(i) No restriction on cross media ownership is applied on the entities contributing less than 1000 in the Diversity Index Score in such a relevant market.

(ii) In case any entity contributes 1000 or more in the Diversity Index Score of such a relevant market, the entity shall have to dilute its equity in the media outlets in such a manner that the contribution of the entity in the Diversity Index Score of the relevant market reduces below 1000 within three years.

Q23: You may also suggest any other method for devising cross media ownership rules along with a detailed methodology.

Q24: In case cross media ownership rules are laid down in the country, what should be the periodicity of review of such rules?

Q25: In case media ownership rules are laid down in the country, how much time should be given for complying with the prescribed rules to existing entities in the media sector, which are in breach of the rules? Please elaborate your response with justifications.

Mergers and Acquisitions

Q26: In your opinion, should additional restrictions be applied for M&A in media sector? Please elaborate your response with justifications.

Q27: In case your response to Q26 is in the affirmative, should such restrictions be in terms of minimum number of independent entities in the relevant market or maximum Diversity Index Score or any other method. Please elaborate your response with justifications.

Vertical Integration

Q28: Should any entity be allowed to have interest in both broadcasting and distribution companies/entities? If how would the issues that arise out of vertical integration be addressed? , whether a restriction on equity holding of 20% would be an adequate i.e. any entity which has been permitted/ licensed for television broadcasting or has more than 20% equity in a broadcasting company shall not have more than 20% equity in any Distributor (MSO/Cable operator, DTH operator, HITS operator, Mobile TV service provider) and vice-versa? You are welcome to suggest any limits thereof between the broadcasting and distribution entities.

Mandatory Disclosures

Q29: What additional parameters, other than those listed in para 7.10 (i), could be relevant with respect to mandatory disclosures for effective monitoring and compliance of media ownership rules?

Q30: What should be the periodicity of such disclosures?

Q31: Should the disclosures made by the media entities be made available in the public domain?