PRODUCERS
GUILD
OF INDIA

April 30, 2024

To Shri Tejpal Singh,
Advisor (B&CS),
Telecom Regulatory Authority of India.

SUBJECT: PRODUCERS GUILD OF INDIA - INPUTS FOR THE FORMULATION OF THE NATIONAL BROADCASTING POLICY, 2024

Dear Sir,

On behalf of the Producers Guild of India ("Guild"), we would first like to take this opportunity to convey our gratitude to the Telecom Regulatory Authority of India ("TRAI") for their continued and dedicated efforts in the formulation of the National Broadcasting Policy, 2024.

The Guild is a representative industry association of mainstream film, television and digital content producers in India. We are based in Mumbai which is the major hub of mainstream cinema in India. We represent majority of the producers of cinematograph films/audio-visual works in all mediums and formats. Our members produce cinematograph films/audio-visual works primarily for theatrical exhibition and/or subsequent exploitation in other media; or films created for a particular media including television and internet/OTT.

In response to TRAI's Consultation Paper on Inputs for formulation of National Broadcasting Policy, 2024 ("NBP") dated April 2, 2024, we have offered our views, inputs, and comments to be considered towards the formulation of the National Broadcasting Policy, 2024.

As under:

I. Creation and Expansion of Quality Indian Content to Make India the 'Global Content Hub'

The Media and Entertainment ecosystem is a sunrise sector expected to generate INR 4 lakh crores annually by 2025 and reach $100 billion or INR 7.5 lakh crore industry by 2030[1]. India's vibrant audio-visual sector, bolstered by governmental backing, a wide range of content options, and well-planned strategies, is now at a position where it can become an attractive choice for foreign production companies and filmmakers. The Indian film industry is a major employer, an engine of economic growth, and a patron and promoter of creativity. To unlock the vast international potential of Indian content and compete effectively with filmmakers worldwide, the following regulatory measures can be adopted:

[1] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1837074

A. Institutional Funding: The primary challenge faced by both the creative and business sides of the content creation industry is financing. The majority of producers depend on monetizing their own content to secure the funds necessary for financing their productions. In the recent industrial landscape of commissioned work, producers often find themselves in a position where they must relinquish their intellectual property rights to the platform or the studio commissioning the content in order to secure funding. The industry heavily relies on high-interest loans due to the absence of substantial corporate support which use the intellectual property rights of the content as collateral. Despite attaining the 'Industry' status and contributing to government revenue through various taxes such as GST, as well as creating numerous job opportunities, the industry lacks access to structured institutional funding from either nationalized banks or private sector banks in India primarily considering that films inherently carry significant risk, which may deter many banks from extending loans due to the uncertainty involved. Only a handful of prominent corporate studios and producers can access film funding from private or public sector banks, and even then, they must provide substantial collateral such as land, studios, buildings, or even the intellectual property rights of the content. Most film producers struggle to obtain any financing due to the strict and sometimes inconsistently applied criteria, terms, rules, and regulations set by such banks, despite their significant contributions to the film industry. As a result, they are forced to seek funds from private moneylenders at exorbitant interest rates, adding pressure to the viability of their projects. It is pertinent to note that due to the limited availability of accessible funding within the Indian film industry and the dwindling number of studios or platforms, producers find themselves relying on these third-party funding entities, often compromising creative freedom to adhere to the requirements and creative vision of the funders. This constraint can stifle creativity. If there were easier access to funding or institutional financing, and a broader range of funding sources, the process of content creation would likely be more streamlined. Hence, there is a requirement for the Government to highlight the film and content industry as a critical industry contributing to the overall wealth of the nation and a catalyst for economic advancement. This would motivate both state-owned and private financial institutions to provide competitive financing options for content production. Additionally, the Government may consider incentivizing private sector banks or implementing regulatory reforms to foster increased inclination among private sectors to extend loans to the film industry and/or state-owned organizations could act as secured guarantors based on the merits of individual film producers to further facilitate access to funding.

B. Collaborative Measures: Partnering with renowned international studios allows Indian content creators to leverage their expertise, resources, and global network. This collaboration can lead to the production of high-quality content that resonates with audiences worldwide. Additionally, international studios bring in diverse perspectives and storytelling techniques, enriching the content and making it more appealing to a global audience. Through collaboration and co-production, Indian content gets exposure on international platforms, reaching audiences beyond traditional markets.

This increased visibility helps in building a positive reputation for Indian content globally, leading to more opportunities for partnerships, collaborations, and market expansion.

C. Content Development Funds: The primary purpose of content development funds is to encourage and facilitate the production of diverse and high-quality content in various formats such as films, TV shows, web series, documentaries, and animation. These funds aim to promote creativity, innovation, and cultural diversity within the entertainment sector. Content development funds can be established by governments, industry associations, film councils, or private organizations dedicated to supporting the content creation ecosystem. These funds may receive contributions from public budgets, grants, sponsorships, and partnerships with stakeholders in the entertainment industry. Such funds can provide financial support to content creators, including filmmakers, producers, directors, writers, animators, and production houses. This funding can cover various stages of content development, including scriptwriting, pre-production, production, post-production, marketing, and distribution. By providing financial resources, content development funds encourage content creators to explore new ideas, experiment with different genres and storytelling techniques, and push the boundaries of creativity. This fosters innovation and helps in the production of unique and engaging content that resonates with audiences. Furthermore, content development funds can play a crucial role in promoting cultural diversity and representing diverse voices, perspectives, and narratives within the entertainment industry by supporting small time creators including regional creators by maintaining an ecosystem for financing the production of content in regional languages, indigenous stories, niche genres, and underrepresented themes, thus enriching the content landscape.

II. Incentives to Indian Film Producers

Location scouting for any film is dependent primarily on the story and script requirements. It is most likely that multiple locations are shortlisted basis such requirements of the filmmaker. The finalization of one shoot location is subject to various factors including access to resources (such as specialized equipment, skilled labour, or production facilities), aesthetic appeal, logistical support, cultural and political factors, local laws, visa requirements, etc. However, the most critical one being the financial consideration i.e. the costs involved in shooting at such location. The shooting cost is a major variable component constituting 50% to 70% of the total budget of the film. Hence, managing and controlling the shooting cost is crucial.

Incentives offered by various locations can significantly impact the overall budget of a film. Tax credits, subsidies, rebates, grants, and other financial incentives can make shooting in certain locations more cost-effective compared to others. Production companies often assess these incentives prior to narrowing down on any shoot location to ensure the efficient use of its resources.

Considering that film production in any country/state helps with a lot of direct and indirect economic benefits such as attracting revenues, employment opportunities, developing film industry infrastructure, increasing tourism, etc., multiple countries offer various forms of incentives (monetary and non-monetary in nature) to increase film productions in their territory.

We are glad to note that, in November 2023, the Government of India as part of its incentives scheme for the production of foreign films, announced an increased incentive for foreign film production in India from 30% to 40% of the qualifying spends with an increased cap limit of INR 30 Crores per film along with an additional 5% percent bonus for significant Indian content. This will most certainly help in attracting international film projects to the country.

However, the trend of Indian producers opting to shoot abroad, such as in locations like the United Kingdom, Abu Dhabi, Mauritius, and certain European countries, has been on the rise owing to the lucrative financial incentives (in the range of a 20% to 40% rebate) being offered with favourable terms like low qualifying thresholds, high or no upper limits on amount of incentive, and allowing most cost heads (including cast and crew fees) to be included as qualifying expenditure.

While numerous state governments in India are offering financial incentives for shooting in the respective state, the same is not comparable to the incentives being offered either by foreign countries or by the Indian Government to foreign film productions in India, considering that (a) the amount of such incentives offered is substantially low (which can range from INR 50 Lakhs to INR 2 to 3 Crores per film) as opposed to the incremental costs incurred for shooting outside one's home base; (b) the requirement and conditions to be complied with are excessively stringent; (c) the procedure for availing these incentives are not clear, often very tedious and time consuming; (d) the time taken to actually receive such monetary benefit is very long, spanning over a period of years, sometimes even after the release of the said film. These drawbacks most certainly undermine the entire objective of the provision of such incentives.

In light thereof, while we understand the need to provide incentives to foreign film producers to attract foreign direct investment and showcase the beautiful landscapes of India to the world at large, we would urge the Government to devise ways to encourage Indian film producers to shoot in India to avoid loss of revenue and employment opportunities from our country. These could encompass - offering similar incentive schemes (as being offered to foreign film production in India); formulating other comparable budget specific schemes to provide monetary non-monetary benefits especially for independent and lower-budget filmmakers; single window clearance for Indian film producers to obtain clearances for filming across India, so as to streamline the bureaucratic processes, thereby reducing the need for approvals from various authorities including state governments and other agencies.

III. Building Infrastructure

In order to facilitate the growth of the Indian film industry and contribute to its development and competitiveness on a global scale, it would be necessary to focus on the following key areas:

A. Film Studios and Production Facilities: The number of large physical studios have shrunk to a great extent in Mumbai – the birthplace of Indian cinema and the most prolific production hub, as well as other cities. Further, there are only a handful of film cities in our country such as in Mumbai, Hyderabad, Noida, etc. Moreover, many of the once iconic studios that witnessed the history of our cinema and our legends at work have now been converted to residential buildings or shopping malls. Even the few surviving studios are being run out of personal passion by owners who can definitely earn more by selling these plots to real estate developers. Therefore, it is necessary to construct state-of-the-art and self-sufficient film studios / film cities equipped with modern technology and all such facilities required for film making in order to attract both domestic and international film producers.

B. Post-Production Facilities including Animation and VFX: The emergence of animation and the progress in VFX technologies has revolutionized narrative techniques, resulting in a boom in the entertainment sector. Despite economic hurdles and interruptions in production due to the early stages of the pandemic, there has been intense competition among media and entertainment industries, with animation and VFX offering a distinct competitive edge to content creators. Recently, there has been a notable increase in the demand for local productions. The increasing desire for high-quality content across different platforms such as advertisements, web series, films, and OTT platforms has inclined directors and producers towards prioritizing cinematic effects and animation over live-action sequences. This shift is motivated by the aspiration to craft authentic illusions and seamlessly integrate fantasy into reality. To sustain this trend, creators are likely to focus on developing rich fantasy content with a strong visual appeal. Projections indicate that by 2025, this sector could generate between 75,000 to 125,000 direct and indirect jobs, thereby benefiting the Indian economy significantly. Accordingly, there is a need to develop advanced post-production facilities for editing, sound mixing, visual effects, colour grading, animation and VFX that can enhance the quality of Indian films and make them more competitive in the global market. To foster the growth of animation, VFX, and post-production segments, several steps and initiatives can be adopted by the Central and State Governments and the industry, namely:

- Talent Development: Implementing programs to enhance the training and development of multidisciplinary talent in animation, 3D graphics, computing science, game development, and visual effects. This will ensure a skilled workforce to meet industry demands.

- Ecosystem Collaboration: Encouraging collaboration among key industry players to create an interconnected ecosystem. This can facilitate pathways for growth and innovation within the sector.
- Access to Opportunities: Providing support for local players to scale by facilitating access to funding, investment, and markets. This will help the industry expand locally and compete internationally.
- Intellectual Property Development: Creating an environment conducive to generating and retaining intellectual property to drive sustainable growth and attract top talent. This will lead to downstream revenue for creators and long-term industry sustainability. In addition, the Animation and VFX industry is also seeing early adoption of emerging technologies such as virtual production, artificial intelligence, and machine learning. Artificial intelligence can also help filmmakers with post-production tasks, such as editing, coloring, sound design, automatically create video summaries from text articles, using natural language processing and computer vision.
- Incentives and Partnerships: Design competitive incentives to stimulate industry collaboration and promote the sector. Cultivating partnerships with skilled professionals and leveraging external expertise can drive growth and innovation.
- Promotion and Showcasing: Promoting the industry through showcasing capabilities and achievements to attract investors and talent. This can elevate the industry's profile and attract more opportunities for growth.
- Digital Transformation: Embracing digital transformation and cloud-based solutions for remote post-production and efficient content streaming. This will drive innovation and efficiency in the media industry.

C. Film Schools and Training Institutes: Apart from physical film studios/film cities, it would be essential to establish film schools and training institutes to nurture talent and provide formal education in filmmaking, acting, screenwriting, cinematography, and other aspects of the industry. These institutions can help develop a skilled workforce and create a talent pool for the industry.

D. Film Festivals and Cultural Centres: International film festivals like in Cannes, Sundance, Berlin, Venice, and Toronto, to name a few, are indeed prestigious events that attract filmmakers, industry professionals, and cinema enthusiasts from around the world. They serve as platforms for showcasing diverse cinematic talents, fostering cultural exchange, and promoting the art of filmmaking globally. However, despite the substantial amount of film produced in India annually, the scale of film festivals such as the International Film Festival of India (IFFI) in Goa and the Mumbai Film Festival (MAMI) hosted in the country remains considerably smaller in comparison to their international counterparts. Therefore, there is a need to build dedicated spaces for hosting larger scale film festivals comparable to those internationally, cultural centres, film incubators, co-working spaces, and networking hubs where filmmakers, production houses, investors, and technology providers can come together to exchange ideas, collaborate on projects, and access resources. This would not only help in showcasing Indian cinema on a global platform but also promote collaboration and networking among filmmakers, producers, distributors, and other industry stakeholders, thereby in turn helping facilitate international collaborations and co-productions.

While such infrastructure building is the need of the hour, however, the reality of the situation is that, especially in metros, it is virtually impossible for a private player to build and run a physical studio or any such institutions/facilities, for a better return than an alternate use of that space would yield. Therefore, there is a need for the Government, in active consultation with industry stakeholders, to brainstorm on innovative ways in which infrastructure can be built either by the Government or as public-private partnerships using appropriate financial incentives and policies. By focusing on these areas and investing in the necessary infrastructure, India can strengthen its position as a global hub for filmmaking and contribute to the growth and sustainability of its film industry.

IV. Nurturing Streaming/OTT Platforms

A. In recent years, there has been an explosion in the quantum of content produced for streaming platforms, as also a mushrooming of such platforms, both international and home-grown. This has led to an exponential growth in opportunities for both content producers as also India's huge and immensely gifted talent pool, besides providing an international fan base for Indian content given many of the platforms' global reach. Indeed, with cinemas shut or severely disrupted for a long period during the Covid pandemic, OTT platforms were critical to the industry's very survival by offering an alternate platform for exhibition of films as also providing production opportunities in the form of web/digital shows.

B. We are grateful that the Government heeded our pleas for soft-touch regulation of this sector while formulating the IT Rules 2021. It would be our earnest plea that the Government champion the cause of our industry by allowing unfettered creation of content for OTT platforms so that a wide array of Indian stories and Indian shows can attract audiences all across the world. This is particularly important given the highly competitive global environment where we are competing with Korean, Spanish, Turkish and a host of other content providers for the audiences' attention.

C. As was submitted by the Producers Guild of India in the recent past to the Ministry of Information and Broadcasting regarding the reconsideration, revision and / or clarification on the draft Broadcasting Services (Regulation) Bill, 2023 ("**Broadcasting Bill 2023**"), it is necessary to have a balanced approach while framing any legislations especially which grant the power to prohibit the dissemination of content over OTT platforms/limit the creativity of the makers by implementing excessive restrictions, to create an environment for fostering growth rather than having an overly restrictive approach which could cause stagnation.

D. We have stated below a few areas of concern regarding the implementation of the Broadcasting Bill 2023, namely:

- The inclusion of broad and discretionary terms like the content not being in conformity with the Program Code and the Advertisement Code or public interest or if the content is likely to promote, on grounds of religion, race, language, caste or community, or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquillity; or sovereignty or integrity of India; or security of India; or friendly relations of India with any foreign State; or public order, decency or morality, in the absence of a matrix to substantiate as to how the transmission of the content would impact the overall public interest, provides the Government with a discretionary power to issue directives prohibiting the dissemination of any programme or channel.
- It is pertinent to mention that the ambit of freedom of speech and expression is ever evolving with technological advancements and includes all modes/mediums of communication including broadcasting as well as streaming services.
- The Broadcasting Bill 2023 envisages the requirement for every broadcaster or broadcasting network to constitute one or more Content Evaluation Committee (CEC) for the purpose of self-certification of the content, which can curtail the creative freedom of the makers which will need to in turn adhere to the regulations applicable to OTT platforms.
- The Broadcasting Bill 2023 also provisions for the formation of a three-tier structure involving self-regulation by broadcasters and broadcasting network operators at the first tier, industry level self-regulation at the second tier and a new body constituted by the Central Government i.e. Broadcast Advisory Council (BAC) at the third tier.
- The Broadcasting Bill 2023 grants the Central Government the authority to bypass the initial two tiers of grievance and refer issues/concerns directly to the BAC, potentially undermining the self-regulatory process.

E. Restrictive provisions (many of which have been left open ended to be determined at a later stage in the Broadcasting Bill 2023) shall hinder the ease of conducting business and reduce the opportunities and scale of operations for streaming services in the Indian content market. This is worrisome for the producers as this shall ultimately lead to OTT giants pulling away from Indian content space due to censorship issues, as has been done on multiple occasions in the recent years. This could also result in the OTT platforms becoming more restrictive in nature, which can result in a substantial reduction in the volume of content being created, thus disincentivizing the producers from exploring a lot of creative topics and concepts.

V. Increasing Screen Density

With less than 9000 screens serving a population of over 140 crore people, India is amongst the most severely under-screened film markets in the world despite being the global leader in terms of the number of films produced annually. By way of comparison, the United States of America has almost 5 times as many the number of screens despite having one-third of our population. Similarly, China, whose population is similar to ours, has almost 9-10 times the number of film screens that we have.

In address to address the issue of screen-density, our overarching recommendations are to:

A. Simplify regulatory processes for setting up theatres: Streamlining the regulatory process for theatre establishment is crucial for increasing screen density. Comparative analysis of countries with efficient regulatory frameworks, such as the United States and the United Kingdom, reveals a more streamlined approach to theatre licensing and construction. In contrast, countries like India and Brazil have more bureaucratic processes, which can hinder the growth of the exhibition sector. To simplify regulatory processes, policymakers can consider the following measures:

- Encourage digital submissions: Allow digital submissions of applications and documents to expedite the review process and reduce physical paperwork.
- Implement time-bound approvals: Set a time limit for regulatory approvals to ensure timely decisions and minimize delays.
- The goal of increased screen building will only be substantially served if it is backed with attractive financial incentives. Indeed, it was these incentives that propelled the first wave of multiplex growth in our country and as these policies have tapered off, so has the rate of growth in screens. In fact, it should be a matter of great concern to all of us that we actually have fewer functional screens in our country now than we had a decade ago. Incentives and policies to promote building of screen capacity will not only help in increasing box office collections and tax revenues, but will also help generate the considerate direct and indirect employment that ensues from each new property, Moreover, the presence of multiplexes/cinemas has a substantial and positive impact in boosting revenues of surrounding retail outlets, eateries and real estate valuations in general.

B. Promote regional cinema: Supporting regional cinema can boost screen density by diversifying content and attracting audiences. A comparative study of screen densities in regions with strong regional cinema industries, such as Tamil Nadu in India and Catalonia in Spain, highlights the positive correlation between regional film production and screen availability. To promote regional cinema, policymakers can consider the following measures:

- Provide financial support: Offer financial incentives, such as subsidies or tax credits, to regional filmmakers and producers to encourage the production of local content.
- Facilitate distribution: Establish distribution networks and support regional film festivals to ensure that regional films reach a wider audience.

VI. Combating Piracy

To combat piracy and ensure content security through copyright protection in the Indian broadcasting sector, a comprehensive approach is necessary which shall include both technological solutions and policy frameworks can be summarized under the following heads:

A. Technological Solutions

- Implementing digital rights management (DRM) technologies to protect content from unauthorized access and distribution. DRM technologies can include encryption, watermarking, and access control mechanisms that prevent unauthorized access to content. Indian streaming platforms like Netflix and Amazon Prime Video employ DRM technologies to protect content. However, challenges arise due to the widespread use of pirated set-top boxes and streaming devices, which often bypass DRM protections. For instance, the sale of preloaded Kodi boxes facilitates access to pirated content. In the United States, the Digital Millennium Copyright Act (DMCA) mandates the use of DRM technologies to protect copyrighted content. Streaming platforms like Hulu and Disney+ employ robust DRM systems to prevent unauthorized access and distribution. India can emulate such legal frameworks and collaborate with device manufacturers to ensure compliance with DRM standards.
- Content monitoring systems like Markscan and VdoCipher are utilized to track instances of piracy across digital platforms. However, the sheer volume of online content and the proliferation of social media platforms pose challenges for effective monitoring. For example, popular Indian films and TV shows are often illegally uploaded on social media platforms like Meta and YouTube. In the United Kingdom, the Intellectual Property Office (IPO) collaborates with industry stakeholders to develop advanced content recognition technologies. Companies like Friend MTS provide real-time monitoring solutions that identify pirated content across online platforms. India can explore partnerships with global providers of content monitoring solutions to enhance its anti-piracy efforts.
- Deploying anti-piracy tools like content monitoring systems and camcorder detection software to prevent unauthorized recording and distribution of content. Content monitoring systems can detect and block unauthorized streaming or downloading of content, while camcorder detection software can detect and prevent unauthorized recording of content in cinemas and other public places.
- Blockchain-based solutions like smart contracts and decentralized distribution platforms hold potential for enhancing transparency and security in content distribution. However, regulatory uncertainties and scalability issues hinder widespread adoption. For example, the lack of clear regulations for cryptocurrency transactions complicates the implementation of blockchain-based payment systems. In Sweden, blockchain technology is utilized by platforms like KODAKOne to secure digital rights and facilitate fair compensation for content creators. Similarly, Estonia's e-Residency program enables content creators to register their works on blockchain for copyright protection. India can study these initiatives and collaborate with blockchain startups

and regulatory bodies to develop a conducive ecosystem for blockchain-based content distribution.

B. Legal Framework and Enforcement

- Strengthening the enforcement of existing copyright laws in India, such as the Copyright Act of 1957, to deter piracy and protect intellectual property rights. This can be achieved by increasing the number of specialized copyright enforcement units and providing them with adequate resources and training.
- Implementing stricter penalties and fines for copyright infringement to serve as a deterrent to potential pirates. For instance, the Indian government has proposed amendments to the Copyright Act that include increasing the minimum jail term for copyright infringement from six months to three years and the maximum fine from INR 2 lakhs to INR 10 lakhs.
- Collaborating with law enforcement agencies to crack down on physical and digital piracy activities across the country. This can be achieved by establishing dedicated anti-piracy units within law enforcement agencies and providing them with the necessary tools and resources to combat piracy effectively.

C. Public Awareness and Education

- Conducting awareness campaigns to educate the public about the negative impacts of piracy on the entertainment industry and the economy. This can be achieved through media campaigns, public events, and school education programs that highlight the importance of respecting intellectual property rights.
- Educational campaigns like "Say No to Piracy" and "Respect Copyrights" are conducted by industry bodies like the Indian Music Industry (IMI) and the Film Federation of India (FFI). However, reaching diverse audiences across different regions and demographics remains a challenge. Moreover, the lack of stringent penalties for piracy undermines the deterrent effect of awareness campaigns. In Australia, the Intellectual Property Awareness Foundation (IPAF) runs targeted campaigns to educate consumers about the economic and cultural impacts of piracy. These campaigns leverage multi-channel communication strategies, including television advertisements, social media campaigns, and partnerships with influencers. India can adopt similar integrated approaches to raise awareness about piracy and promote legal consumption of content.
- Partnering with educational institutions and media organizations to promote respect for intellectual property rights and discourage piracy. This can be achieved by incorporating intellectual property education into school curricula and providing training and resources to media organizations to promote legal content consumption.

VII. Extension of the Copyright Term

The relatively shorter term of copyright does not benefit the end consumer either as content aggregators and service providers continue to charge (directly or indirectly through advertisements) for consumption of films that enter the public domain. There is therefore a very strong case to be made for increasing the term of copyright in films in line with international best practices. We have already made a Representation on this matter to the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry on November 15, 2023.

Given the clear importance of protection of copyright in works, the same cannot be defeated by including a term of copyright protection that does not adequately enable the author / creator to enjoy / reap the economic and other benefits of the works created by them. For the purposes of this representation, we are solely commenting on the term prescribed for cinematograph films, which is currently 60 (sixty) years following the calendar year in which the cinematograph film is published. In our view and for reasons as further enumerated below, this copyright term of 60 (sixty) years is not adequate and in fact does not further the rationale for which the Copyright Act was enacted in the first place:

A. At the outset it is noted that the copyright term for works has been constantly evolving and we appreciate the efforts taken by the legislative authorities to ensure that the term of copyright is commensurate to the constantly evolving society – for e.g. the term of copyright for cinematograph films has last been extended from 50 (fifty) years to 60 (sixty) years pursuant to S.2 of Act 13 of 1992. However, while this extension was definitely welcome, it does not preclude a further extension of the copyright term, especially keeping in mind the technological and social advances and the longer terms provided for in other countries around the world.

B. In our view the provision of an outer limit of 60 (sixty) years (or for that matter any number of fixed years) is technically unreasonable and arbitrary. There is no evidence, data, report, etc. that shows that this is a sufficient time period for the authors / owners of cinematograph films i.e. producers, to sufficiently recoup their investments (which have anyways increased exponentially in recent times) or that this is a sufficient period for monetization of the cinematograph films, such that the producers feel incentivised to continue producing cinematograph films for Indian markets. An extension to such copyright term would provide greater financial security to producers /production companies, who invest significant time and resources in creating films as it would enable them to continue to earn revenue from their work for a longer period, which could encourage them to create more films and invest more in the Indian film industry thus increasing profitability in a constantly growing multi-billion-dollar industry.

C. It is clear that copyright owners should have the opportunity to profit from their creations before their copyrighted works enter into the public domain. If the authors know that they are creating works for the benefit of the public domain rather than for their gain, there is the possibility that they would be disincentivised to put in the requisite time and effort to constantly create new and original works. A shorter copyright term, as the one currently in place, also acts in such manner to disincentivise producers from creating films given the time period is not sufficient to enjoy the benefits of their investment.

D. Additionally, a longer term of copyright protection for cinematograph films shall provide producers a greater incentive to produce a higher quantity of works and works of far superior quality as they are provided with adequate assurance that they can continually exploit their works and continue earning for a longer period. Further, it should also be borne in mind that the life expectancy of humans has constantly increased since the first copyright act was enacted (in 1710) and therefore by increasing the term of copyright protection producers can continue to enjoy the benefits of their work and investments during their entire lifetimes.

E. It is common knowledge that a technological revolution is underway and therefore as part of such revolution, the ways of adaptation, exploitation and dissemination of existing works are increasing exponentially. On account of these developments, owners of copyright in works that are on the verge of expiry or have already expired get little or no opportunity to benefit from such technological revolution. Taking a recent example in this case, with the advent of cryptocurrencies, NFTs and the metaverse, there is a lot of scope to release clips of films as NFTs, release entire films in the metaverse, etc. if the film is already in the public domain, then the original producer of the same cannot take advantage of such new modes of technologies.

F. Many of the older films need restoration, however, if they are soon to pass into the public domain, the cost of restoration is not justifiable and no one is going bear the cost of the same, which is actually worse for public interest as the quality of works is not improving.

G. Finally, while different countries have their own set of laws and regulations, given increasing globalisation, it is important to ensure that the copyright protection afforded to cinematograph films in India is at par with the copyright protection afforded around the world to ensure that international filmmakers are not provided with additional rights that incentivise them to producer more and better-quality films than Indian filmmakers. In this regard, we have set out in the table below the copyright term for certain other jurisdictions highlighting the longer period given:

Territory	Copyright Term for Cinematograph Films
United Kingdom	70 years after the death of the last of the following individuals, director, the author of the screenplay, author of the dialogue and the composer of the original score. This means that films made by deceased authors, directors, and composers are protected by copyright for up to 70 years after their death. In case the identity of these individuals is not known, the period is 70 years from the end of the calendar year when the film was made.
United States	95 years from the date of publication or 120 years from the date of creation
Japan	70 years commencing from when the work is made public
Australia	70 years commencing from when the work is made public
Singapore	70 years commencing from when the work is made public

H. The reason the differing standards of copyright protection in different countries is important is due to the Berne Convention, of which India is a member. Per Article 7(8) of the Berne Convention jurisdictions with longer copyright terms are not obliged to protect Indian films for such longer term but only for the term prescribed under the Copyright Act, while they will protect their own films for the longer period. This means that Indian films released in the same year as foreign films will come into the public domain much earlier thus reducing their profitability and incentive of producers to distribute the same. The shorter period could also affect the quality of Indian films vis-à-vis international films, thus affecting India's reputation in the global media and entertainment market.

VIII. Inputs on Specific Questions Asked in TRAI Consultation Paper

In addition to the foregoing, the following are our submissions on certain specific questions raised in the Consultation Paper, based on inputs received from our members.

Q7. What policy measures and regulatory aspects should be adopted in the NBP to nudge the growth of Indian regional content through OTT platforms?

The NBP should not prescribe content quotas on OTT services.
OTT services tailor their production strategies to meet consumer demand, and there is strong demand for local/regional content by the Indian audience. OTT services have responded to the demand for Indian content with high levels of production investment, and content is widely available and accessible to consumers in India. The 2024 edition of the FICCI EY Media and Entertainment report reveals that in 2023, regional OTT volumes exceeded Hindi language content for the first time. The same report also indicates that the share of vernacular content produced in India is set to increase to 55% of total content produced.

Thus, data on investment and availability of Indian content on OTT platforms does not support the assertion of any market failure or the need for local content obligations.

- OTT services meet the demand for availability of multilingual content by providing subtitles and audio in various Indian languages. This ensures that global content is easily accessible to Indian consumers regardless of the language that it is produced in.

- The market share of regional OTT services increased from 47% in 2021 to 52% in 2023.[2] Consumers have easy access to regional content on services which cater to niche regional audiences. Market demand and healthy competition incentivises regional platforms to differentiate themselves. Local content quotas are an inorganic market intervention that would diminish the unique selling point regional content services offer.

- Increased investment in local content is an organic market response to competition for eyeballs. This is because catering to consumer preferences is key and offering unrelatable content can lead to a loss of subscribers. Complete creative control has allowed OTT streaming platforms to offer diverse content slates that cater to varying consumer preferences. Mandatory impositions to create certain kinds of content (local content, in the NBP's case), can endanger this creative freedom and stifle growth. A negative impact on growth can have a direct effect on jobs, development of hardware and software capacity, and other contributions to the Indian economy.

Quota requirements do not produce the intended effect and harms India's prospects of becoming a global content hub. Protectionist policies like quotas can have the following downsides:

- Quotas can deter the development of the local industry, since they prevent open and fair competition.[3] A lack of competition reduces incentives to innovate and improve efficiency, leading to stagnation. It can also reduce product variety and quality.[4] Frontier Economics' analysis indicates that policies like quotas lead to a reduction in the export of audio-visual products, with countries that have greater policy restrictions tending to have lower levels of investment in content.

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[2] https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2024/ey-in-india-s-media-entertainment-sector-is-innovating-for-the-future-03-2024-v1.pdf

[3] https://www.koreatimes.co.kr/www/opinion/2024/04/638_268177.html

[4] https://www.mpa-apac.org/2021/10/local-content-production-and-sensible-regulation-new-studies-demonstrate-the-close-relationship/

- They can distort market dynamics by artificially limiting supply, preventing markets from developing naturally. For example, the Korean government abolished a screen quota after it left cinema halls empty due to lack of available films.[5]

Q13. With the continuous advancement of technologies and convergence of the telecom, information technology and broadcasting sectors, what policy and regulatory measures are required, beyond the existing ones, to facilitate the growth of the broadcasting sector with ease of compliance? Elaborate your comments with proper reasoning and justifications to the following issues:

i. **To enable healthy and competitive environment amongst the existing and emerging services and ensuring parity among comparable distribution mediums, while being technology neutral.**
ii. **To allow and encourage infrastructure sharing among the players of broadcasting and that with the telecommunication sector.**
iii. **Any other suggestion for policy and regulatory framework**

The NBP should restrict its coverage to the broadcasting sector and exclude OTT services from its scope.

The National Broadcasting Policy (NBP) extends its scope to Over-the-Top (OTT) services and other segments of the Media and Entertainment (M&E) landscape like gaming and music. OTT services are not a part of the broadcasting ecosystem since they are functionally distinct from TV and radio broadcasting that involves a combination of carriage and content. TV broadcasters transmit their content to consumers through Distribution Platform Operators (DPOs) and OTT services send data over IP networks, like any other information exchange over the internet.

Moreover, TRAI regulates carriage, and its remit extends to authorized entities under the Telecommunications Act, 2023 and registered cable network under the Cable Television Networks (Regulation) Act, 1995 (CTN Act) as per Section 59 of the Telecommunications Act. OTT services do not fall under the definition of 'telecommunication' or 'telecommunication services' under the Telecommunications Act, 2023 and are not authorised entities under it. Neither do they require registration under the CTN Act. The MIB's reference letter does not mention OTT services. In this context, the inclusion of OTT services as a whole and Online Curated Content Providers as a subset, is unwarranted.

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[5]https://www.mpa-apac.org/2021/10/local-content-production-and-sensible-regulation-new-studies-demonstrate-the-close-relationship/

Industry stakeholders had highlighted these issues in the pre-consultation and requested the regulator to exclude OTT services from the scope of the NBP, but the current CP includes questions on OTT services. These is an untenable position because:

- TV broadcasting and OTT markets are at different stages of development. OTT is a sunrise sector with potential for growth and in a position to contribute positively towards India's digital economy. It needs a growth-oriented forward-looking policy approach. On the other hand, TV broadcasting requires an action plan for resilience in the midst of a secular downturn. These are two fundamentally different imperatives.
- Infrastructure pipes for delivery of broadcasting and OTT services are distinct and require specialised policy / regulatory oversight.
- Television is a push-based medium, and consumers view content at a time and schedule decided by the broadcaster. OCCPs are pull-based, where consumers decide the time and content they want to watch from a library of available content.
- Friends and family view TV together. A survey by BIF and CUTS International found that 38 per cent of respondent consumers watch TV as a family bonding exercise while users view OTT services on their smartphones.

For these reasons, we recommend that the NBP should restrict its coverage to the broadcasting sector and exclude OTT services from its scope.

Q17. What other strategies should be adopted in the policy document for ensuring a robust grievance redressal mechanism to address and resolve complaints with respect to content as well as services effectively? Provide your comments with proper explanation.

The current grievance redressal mechanism for OCCP works well and there is no need for a policy/ regulatory overhaul.

The self-regulatory approach for Online Curated Content Providers (OCCPs) under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is functioning well and there is no evidence of market or regulatory failure that requires added policy emphasis. An impact assessment study on implementation of the Rules conducted in 2023 found that the self-regulatory mechanism was working well.[6]

[6]https://www.iamai.in/sites/default/files/research/IT%20RULES%2C%202021%20-%20Part%20II_compressed.pdf

The government is also satisfied with the efficacy of the mechanism. In February 2023, Mr Anurag Thakur, Union Minister, MIB said that the Ministry received and addressed all 265 consumer grievances against OCCPs since the IT Rules were implemented.[7] Then MIB Secretary, Mr Apurva Chandra, and[8] then MIB Joint Secretary Mr Vikram Sahay have also echoed the same view, and added that the mechanism has led to a reduction in FIRs against content and its creators.[9]

Once again, on behalf of the Producers Guild of India, we thank you for this opportunity and are confident that our suggestions and inputs will be given due consideration in the formulation of the National Broadcasting Policy, 2024.

For Producers Guild of India

Nitin Tej Ahuja
Chief Executive Officer

[7] https://www.exchange4media.com/media-others-news/mib-took-care-of-265-ott-grievances-under-digital-media-code-anurag-thakur-125240.html

[8] https://12ft.io/proxy?q=https%3A%2F%2Feconomictimes.indiatimes.com%2Findustry%2Fmedia%2Fentertainment%2Fmib-advises-ott-platforms-to-exercise-self-restraint-amidst-growing-concerns-about-vulgar-content%2Farticleshow%2F99520949.cms%3Ffrom%3Dmdr

[9] https://bestmediainfo.com/2023/05/drop-in-firs-against-ott-content-due-to-selfregulation-mechanism-joint-secy-vikram-sahay