

## Media Hotline

September 05, 2014

### MEDIA & ENTERTAINMENT ALERTS

- Advertisements to be in compliance with ASCI Code;
- Guidelines for advertisement of fairness improvement products;
- Strengthening the Electronic Media Monitoring Centre;
- Clarified - no need for a fresh security clearance for additional channels; and
- Proposed outlay for the Ministry of Information and Broadcasting, 2014 – 15 Budget.

### ADVISORY FOR NOT BROADCASTING ADVERTISEMENTS THAT ARE IN VIOLATION OF ASCI CODE

The Ministry of Information and Broadcasting (“**MIB**”) has released an advisory dated August 21, 2014 with respect to carrying of advertisements, which are in violation of the Advertising Standards Council of India (“**ASCI**”) Code of Self-Regulation in Advertising (“**ASCI Code**”), on all TV channels.

The advisory has been issued pursuant to ASCI bringing to the MIB’s attention the fact that various TV channels carried objectionable advertisements which violated the ASCI Code as well as the Drugs & Magic Remedies (Objectionable Advertisements) Act, 1954.

Since non-compliance of ASCI’s decision is a violation of the ASCI Code and is, in turn, a violation of Advertising Code under the Cable Television Networks (Regulation) Act, 1995 (“**Cable TV Act**”) and Cable Television Network Rules 1994 (“**Cable TV Rules**”), this complaint by ASCI was placed before the MIB’s Inter-Ministerial Committee (“**IMC**”). The IMC observed that non-compliance of ASCI’s decision violates Rule 7(9) of the Cable TV Rules which provides that advertisements that violate the Advertising Code should not be carried in the cable service. The IMC also observed that ASCI had pointed out possible violations of the provisions of the Drug & Magic Remedies (Objectionable Advertisements) Act, 1954 and the rules thereunder.

Thus, the MIB has advised all the TV channels to refrain from carrying advertisements of products which it has listed in its advisory and has directed channels to ensure strict compliance of the Cable TV Rules.

### GUIDELINES FOR FAIRNESS IMPROVEMENT PRODUCTS ADVERTISEMENTS

ASCI has issued guidelines dated August 14, 2014 with respect to advertising for skin lightening or fairness improvement products (“**Guidelines**”) in light of the concerns raised by certain sections of society on advertisements of fairness products communicating the notion that dark skin is inferior and undesirable. While the ASCI Code already provides that advertisements should not deride race, caste, colour, creed or nationality, in light of the widespread advertisements for fairness and skin lightening products, ASCI decided to issue specific Guidelines.

The Guidelines provide that no advertisement should communicate any discrimination and reinforce negative social stereotyping on the basis of skin colour. They should not portray people with darker skin as unattractive, unhappy and unsuccessful in aspects of matrimony, job placements, promotions and other prospects. Further, special care should be taken to ensure that the expressions of the models are not represented in a negative way which could be perceived as unattractive, unhappy, depressed or concerned before using the product. .

According to the Guidelines, darker or lighter coloured skin should not be portrayed to be associated with any particular socio-economic strata, caste, community, religion, profession or ethnicity and should not perpetuate gender based discrimination based on skin colour.

### DECODER TO BE PROVIDED TO THE ELECTRONIC MEDIA MONITORING CENTRE

The MIB has issued a circular dated July 22, 2014 to all TV channels with respect to providing the Government with monitoring facility at the Electronic Media Monitoring Centre (“**EMMC**”). This obligation has been placed on the channels pursuant to Clause 5.14 of the Policy Guidelines for Downlinking of Television channels, which requires the broadcaster / channel permission holder to provide monitoring facilities (at its own cost) for monitoring of content by the MIB when required.

As a matter of background, the EMMC was setup in 2008 with the aim of having effective monitoring of content on various TV channels beaming over the Indian territory for any violation of:

- The Programme Code
- The Advertisement Code
- Various provisions of the Cable TV Act
- Any other law relevant to content being shown on a satellite TV channel

As per this circular, all broadcasters have to provide to the EMCC professional Integrated Receiver Decoders (“**IRD**”) for each channel and a spare one for safety, thus facilitating the monitoring procedure. Alternatively, those

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broadcasters whose channels are pay channels have the option of providing a Viewing Card and CAM Module to decrypt and monitor channels over IP (digital domain). For Free-to-Air TV channels whose signals are not encrypted, the MIB has clarified that the broadcasters need not provide such equipment.

Where a broadcaster is broadcasting multiple channels on the same frequency, then one Viewing Card and CAM Module will be used to decrypt a maximum of four channels.

#### NO NEED FOR A FRESH SECURITY CLEARANCE FOR ADDITIONAL CHANNELS

MIB released an Office Memorandum dated June 25, 2014 ("Memorandum") clarifying that Indian broadcaster companies (that have the permission to uplink/downlink TV channels) which have already obtained security clearance (including security clearance of the directors on the board of the company) from the Home ministry, need not seek fresh security clearance when applying for an additional channel during the validity of the previous security clearance. The security clearance is intended to be valid until the period of permission granted to the TV channel, i.e., for a period of 10 years..

As a matter of background, the MIB, after discussions with the Ministry of Home Affairs ("MHA") had decided vide its Office Memorandum dated January 10, 2014 that in case a company which has already obtained security clearance from the MHA applies for additional channels, fresh security clearance would have to be sought, and that the period of validity of security clearance should be kept as 10 years which could be co-terminus with the period of permission of the TV channel. The period of fresh security clearance would also be for a period of 10 years.

However, the MIB faced problems in implementing this process as there was unprecedented delay in the grant of permission for additional channels where security clearance subsisted in favour of the company and its board of directors. The industry too raised concerns on the delays in the grant of permission for additional TV channels.

In order to curb this issue, the MIB has, with the Memorandum, restored the earlier practice and as a result, security clearance is no longer required in case a security cleared company (with the same directors – which have already obtained security clearance) seeks permission for additional TV channels within the validity period. Thus, MIB has decided to grant permission to those companies which have applied for permission for additional TV channel(s) during the subsistence of the security clearance already obtained previously.

#### BUDGET 2014-2015 - MINISTRY OF INFORMATION AND BROADCASTING

The MIB has released its annual budget laying down the planned outlay of funds and the major policy initiatives which it aims to achieve for the year 2014-2015. We have listed below some important planned policy initiatives:

- The Central Board for Film Certification ("CBFC") should come-up with on-line certification of films, in the coming year;
- With the advance of science and technology, there has been immense growth in the 2D cell and 3D animation field which has been successfully incorporated by the Gaming and Television industry. However, India's share is a tad lower than the others. Hence, on a priority basis, the Government has allotted INR 570,000,000 (Five Hundred and Seventy Million Rupees) for public private partnership projects for setting up of a Centre for Excellence in Animation and Gaming and VFX under the MIB in Punjab. It is envisaged that this center of excellence will help develop the required skill and talent in India and will present research opportunities in this sector.
- Strengthening of the EMMC, by expanding its scope to monitor a total of 1500 TV channels and further will also monitor Private FM channels and Community Radio Stations ("CRS") for which a budget of INR 900,000,000 (Nine Hundred Million Rupees) has been sanctioned;
- Since the MIB issues Multi-System Operator licenses, Direct-to-Home licenses, Headend-in-the-Sky licenses etc., it plans to provide a web-based broadcasting licensing system for various broadcasting services which will have an inter-face with other ministries such as the MHA, the Department of Space, the Department of Revenue etc. This scheme is coined as "Automation of Broadcasting Wing", which will be undertaken by the National Informatics Center on a turnkey basis and a planned budget of INR 40,000,000 (Forty Million Rupees) has been approved. By virtue of such automation process, a company applying for any license, will now be able to apply, manage and monitor the whole licensing process virtually.

– Kartik Maheshwari & Khushboo Baxi

You can direct your queries or comments to the authors

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**Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business**

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