

Media Hotline

July 16, 2014

MEDIA & ENTERTAINMENT ALERTS

Since the new government in India has taken office, there have been numerous important policy related clarifications / directives issued by the Ministry of Information and Broadcasting ("**MIB**"), relating to the media and entertainment industry. Nishith Desai Associates, continuing with its practice of documenting important regulatory changes, is bringing you this alert which aims to provide a brief overview of some of the key regulatory changes with our comments.

- Prior permission of the Ministry required before remittance, of hiring charges for using satellites;
- Advisory issued for portrayal of rash and negligent driving in the media;
- Mandatory display of censor board certificate before films / trailers aired on television.

REITERATED - PERMISSION TO BE OBTAINED BEFORE REMITTANCE OF TRANSPONDER HIRING CHARGES FOR USING FOREIGN SATELLITES

The MIB, through its advisory dated June 25, 2014, has made reference to Reserve Bank of India's ("**RBI**") circular dated October 25, 2004. The circular requires, obtaining prior approval from the MIB before remitting hiring charges (in foreign exchange) for transponders outside India. □

The advisory has been issued in light of MIB discovering that certain parties are making remittances of hiring charges without applying for approval from them. This amounts to contravention of Circular and thereby the provisions of the Foreign Exchange Management Act, 1999 ("**FEMA**").

The MIB has advised broadcast companies and teleport operators to comply with FEMA and submit applications seeking approval of the MIB at least 30 days in advance i.e., the date before which the payment is due.

What remains vague here is whether such approval needs to be sought as a one-time approval from the MIB for each remittance made outside India or whether it needs to be obtained in advance each time the payment is required to be made. The language in the MIB advisory seems to suggest approval requirement before each payment is to be made which, practically, would be unreasonable and is likely to lead to delays in making payments.

THE PORTRAYAL OF RASH AND NEGLIGENT DRIVING BY MEDIA SHOULD BE FOLLOWED BY A DISCLAIMER!

The MIB released an advisory on June 23, 2014 highlighting concerns of the Ministry of Road Transport and Highways regarding the depiction of rash and negligent driving of vehicles, by the media.

The Ministry of Road Transport and Highways has requested that:

- the stills/images/scenes depicting rash, negligent or dangerous driving may not be usually portrayed in print and electronic media.
- in an unlikely event, when depiction of such situation becomes unavoidable, these should be accompanied by appropriate messages such as "over speeding kills", "Driving two-wheeler without wearing helmet is dangerous and illegal", "Driving four wheeler without wearing seat belt is dangerous", etc.

In pursuance of this, the MIB has advised all TV channels, Doordarshan as well as print media to be extremely careful while portraying such stills/images/scenes which depict rash, negligent or dangerous driving; and in case, such portrayal is necessary, then it may be accompanied by appropriate messages/warnings.

However, there may be certain practical difficulties with the actual implementation of this advisory. Since the ambit of this advisory extends to print media as well, it has not been clarified whether any news article reporting any accident and casualties should also include the warning message. Several questions arise: Would there be an exception to live motorsports or would they also need to comply? Would television news reports be exempted from such advisory? Additionally, since the advisory is directed to TV channels, Doordarshan and the print media, there may be instances where TV Channels may need to insert a warning for a film to be broadcast on television which has been cleared by the CBFC (*as defined below*) but whether films released theatrically would need to carry any such warning message remains ambiguous. Similarly, there may be cases where stills from films are carried in a newspaper, would a warning message, then, be required for such stills as well?

Since this is only an advisory, it is not clear what the consequences of non-compliance with it are. It also remains to be seen whether the MIB passes a particular direction / order requiring the print and electronic media to mandatorily implement such direction / order.

MANDATORY DISPLAY OF CBFC CERTIFICATES BEFORE TELECASTING FILMS, FILM TRAILERS ON TV CHANNELS

The MIB released an advisory dated May 29, 2014 (as a reminder of its earlier advisory dated January 6, 2011) with respect to the display of the Central Board of Film Certification ("**CBFC**") (*censor board*) certificate before every film

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and film trailer.

Television channels in India need to comply with the Cable Television Networks (Regulation) Act, 1995 (“**Cable Act**”) which, in turn, requires compliance with certain provisions of the Cable Television Networks Rules, 1994 (“**Rules**”).

Specifically, the Rules provide for a Program Code, where it mandates that transmission of a programme through a cable service will happen only if it is in compliance with such Code. In this context, the Proviso to the provisions below is relevant and has been reproduced below:

(i) “Contravenes the provisions of the Cinematograph Act, 1952...

(ii)

Provided that no film or film song or film promo or film trailer or music video or music albums or their promos, whether produced in India or abroad, shall be carried through cable service unless it has been certified by the Central Board of Film Certification (CBFC)) as suitable for unrestricted public exhibition in India.

Explanation – For the purpose of this clause, the expression “unrestricted public exhibition” shall have the same meaning as assigned to it in the Cinematograph Act, 1952 (37 of 1952);

Thus, the advisory recommends display of the CBFC certificate before any film / film trailer as well as compliance with the Rules, failing which MIB has indicated that such violations may attract penal provisions under the Cable Act and the Uplinking and Downlinking guidelines.

– **Kartik Maheshwari & Khushboo Baxi**

You can direct your queries or comments to the authors

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