

BROADCAST & ENTERTAINMENT SECTOR NEWSLETTER

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DOWNLINK AND UPLINK GUIDELINES AND THE SPORTS BROADCAST

The Ministry of Information & Broadcasting, Government of India has recently come out with the Guidelines for Downlinking and Uplinking of the television channels in India. The most important issue affecting foreign broadcasters operating in India, the issue of the mandatory sharing of the feed related to the telecast of sports events of national importance particularly cricket matches with the public broadcaster is most important.

The guidelines mandate that the shared content will be telecast by Prasar Bharti (The government owned Public broadcaster) on its terrestrial and Direct-to-home (DTH) service. The conditions shall apply to all future events including those covered by existing contracts. However, in case of cricket event whose broadcasting rights have been obtained by sports channels prior to the proposed law coming into effect, DD will get a feed for all matches featuring India and the finals.

The mandatory content sharing is effective for all events held within and outside the country. The advertising revenue that accrues from the sale of such events on Doordarshan will be shared in the ratio of 75:25 in favour of rights holders.

This need not necessarily be just for cricket for which the broadcaster will have to share the feed, sporting events of

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"national importance" are also covered in the notification. Said events of national importance will be determined following "consultations" among I&B ministry, the Sports and Youth Affairs ministry, Prasar Bharti and the concerned sports channels/sports rights management companies.

India has history of broadcast related disputes between the private broadcasters who own the rights to telecast cricket to the lucrative Indian market and the public broadcaster Prasar Bharti. In this context it is no surprise that the most controversial issue in these guidelines deals with the sharing of the sports content especially cricket with the pubcaster from the retrospective effect. Some important effects of these guidelines on sports broadcasting are:

- These guidelines would lead to drastic reduction in the value of the cricket broadcast rights especially the value of the rights already bought before issuance of these guidelines decreases significantly for the private broadcaster who bought these rights.
- Another issue would be of the revenue sharing between the Prasar Bharti and the Private broadcaster. As the sharing with pubcaster would lead to the reduction in the advertising revenue and also the subscription money these channels acquire from the cable operators.

The counter argument presented by Prasar Bharti is that it is only the public broadcaster which reaches viewers across the country and it would be unfair on part of the cricket board to award rights to private channels who have limited reach thereby depriving millions of cricket fans without cricket telecast. This

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emotion seems to have overwhelmed the government while issuing these guidelines and consideration here seems to be commercial importance of the event as can be gauged from the fact that Prasar Bharti recently at the first instance surprisingly refused to telecast the Hockey Champions Trophy held in India.

Undoubtedly the private broadcasters have moved the courts in Mumbai and Delhi, TEN Sports a Dubai based sports broadcaster has filed a Writ in the High court of Mumbai and ESPN Star Sports has filed a Writ in the High Court of Delhi against these guidelines. Ten Sports has exclusive rights for the cricket in Pakistan and the India-Pakistan series beginning next month is the money spinner for the channel. The channel claims to have already booked substantial advertising air time for the series. The prices were paid by the advertisers believing ten sports to be exclusive broadcasters and mandatory sharing of feed would lead to breach of trust with the advertisers. Further, the petition contends that the effect of these guidelines was not factored at the time of acquiring these rights. In addition to the above points the petition by ESPN Star Sports against these guidelines emphasizes that the guidelines effect the Rights under the Copyright Act granted to the Broadcast Organizations and Articles 14 & 300 A of the Constitution of India.

The controversy is not just limited to cricket with recent news reports suggesting that Prasar Bharti, has conveyed to the Ministry of Information & Broadcasting that they would also like properties such as the Football World Cup 2006, Formula One and the Tennis Grand Slams to be included in the list of the events of National importance and the rights acquired by the private broadcaster should be shared with the public broadcaster just like in case of cricket.

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With litigations initiated against these guidelines Government seems to be blinking now and Information & Broadcasting Minister, calling for a compromise formula between private broadcasters who have the rights for various cricket events and Prasar Bharti. Clearly the decisions of the Mumbai and the Delhi courts on the writ petitions against these guidelines would also far reaching implications on Sports Broadcasting in India.

These are our preliminary observations on the matter Lall & Sethi, Advocates would be happy to assist you in future on any of these issues.

News FLASH

- ✓ Government of India to introduce Optical Disc Law to curb piracy in entertainment industry.
- ✓ The Delhi High Court has refused to grant stay on the guidelines issued by the Government of India on mandatory content sharing and the matter has been put up for the hearing on January 18, 2005 on the petition filed by ESPN STAR Sports. Similarly Mumbai High Court has also refused to grant any interim relief to TEN SPORTS.
- ✓ Star India's petition against the cable rates fixed by the Regulator TRAI has been adjourned till March 2006. TRAI had sought to fix the annual hike in cable rates at 4%. TDSAT the Appellate Tribunal of the Regulator has subsequently stayed the 4% hike.
- ✓ Sahara India has acquired the Sponsorship Rights for the Indian cricket team till 2009 for Rs. 3 Bn.

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- ✓ The Delhi High Court has cleared decks for the bidding of the telecast rights to be granted by the Board of Control of Cricket in India.
- ✓ Pakistan Telecom to launch IPTV services soon.

Lall & Sethi, Advocates are representing the petitioners in the writ petition against the Government of India on the recent notification issued by the Ministry of Health & Family Welfare against the depiction of the cigarette smoking scenes on Cinema and Television. The notification originally scheduled to come into effect from October 2, 2005 has now been postponed to March 1, 2006.

Lall & Sethi, Advocates

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