

TO BE PUBLISHED IN THE GAZETTE OF INDIA
EXTRAORDINARY, PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA
NOTIFICATION

New Delhi ,the 14th May, 2012

F. No. 23-1/2012- B&CS .---- In exercise of the powers conferred by section 36, read with sub clauses (i) and (v) of clause (b) of sub-section (1) of section 11 of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), read with notification of the Government of India, in the Ministry of Communication and Information Technology (Department of Telecommunications), No.39,-----

(a) issued, in exercise of the powers conferred upon the Central Government under clause (d) of sub-section (1) of section 11 and proviso to clause (k) of sub section (1) of section 2 of the said Act, and

(b) published under notification No. S.O.44 (E) and 45 (E) dated the 9th January, 2004 in the Gazette of India, Extraordinary, Part III, Section 4, the Telecom Regulatory Authority of India hereby makes the following regulations, namely:-

STANDARDS OF QUALITY OF SERVICE
(DURATION OF ADVERTISEMENTS IN TELEVISION CHANNELS)
REGULATIONS, 2012
(15 OF 2012)

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.- (1) These regulations may be called the “Standards of Quality of Service (Duration of Advertisements in Television Channels) Regulations, 2012 (15 of 2012)”.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions.- In these regulations, unless the context otherwise requires:

(a) "Act" means the Telecom Regulatory Authority of India Act 1997 (24 of 1997);

(b) "Authority" means the Telecom Regulatory Authority of India established under sub-section (1) of section 3 of the Telecom Regulatory Authority of India Act, 1997;

(c) "broadcaster" means a person or a group of persons or body corporate or any organisation or body providing programming services and includes his authorised distribution agencies;

(d) "broadcasting services" means the dissemination of any form of communication such as signs, signals, writing, pictures, images and sounds of all kinds by transmission of electro magnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly;

(e) "programme" means any television broadcast and includes;

(i) exhibition of films, features, dramas, advertisements and serials;

(ii) any audio or visual or audio-visual live performance or presentation, and----

the expression "programming service" shall be construed accordingly;

(f) “TV channel” means a channel, which has been registered under -----

(i) the guidelines for uplinking from India, issued vide No.1501/2/2002-TV(I)(Pt.) dated the 2nd December, 2005; or

(ii) policy guidelines for downlinking of televisions channels, issued vide No. 13/2/2002-BP&L/BC-IV dated the 11th November, 2005, -----

as amended from time to time, or such other guidelines for uplinking or downlinking of television channels, as may be issued from time to time by the Government of India (Ministry of Information and Broadcasting) and reference to the term 'channel' shall be construed as a reference to "TV channel";

(g) all other words and expressions used in this regulations but not defined, and defined in the Act and rules and regulations made thereunder or the Cable Television Networks (Regulation) Act, 1995 (7 of 1995) and the rules and regulations made thereunder, shall have the meanings respectively assigned to them in those Acts or the rules or regulations, as the case may be.

CHAPTER II

PROVISIONS FOR DURATION OF ADVERTISEMENTS IN TV CHANNELS

3. Duration of advertisements in TV channels.-- (1) No broadcaster shall carry in its broadcast of a programme, advertisements exceeding twelve minutes in a clock hour and any shortfall of advertisement duration in any clock hour shall not be carried over.

(2) The advertisements in the clock hour shall include all types of advertisements including advertisements promoting the channel(s) of the broadcaster.

Explanation: The clock hour shall commence from 00.00 of the hour and end at 00.60 of that hour (example: 14.00 to 15.00 hours).

(3) In case of live broadcast of a sporting event, the advertisements shall be carried only during the breaks in the sporting action.

(4) The time gap between end of one advertisement session and the commencement of next advertisement session shall not be less than fifteen minutes.

Provided that in case of broadcast of a film or movie the time gap between end of one advertisement session and the commencement of the next advertisement session shall not be less than thirty minutes.

Provided further that nothing contained in this sub-regulation shall apply in case of live broadcast of a sporting event.

(5) Every broadcaster shall ensure that the advertisements carried in its channels are only full-screen advertisements and there shall be no part-screen or drop-down advertisement.

(6) Every broadcaster shall ensure that the audio level of the advertisements carried in its channel shall not be higher than the audio level of the programs being broadcast in that channel.

4. The Authority may issue such directions as it deems fit to secure compliance of the provisions of these regulations.

(Wasi Ahmad)
Advisor (B&CS)

Note.-----The Explanatory Memorandum explains the objects and reasons of the Standards of Quality of Service (Duration of advertisements in Television channels) Regulations, 2012 (15 of 2012)".

Explanatory Memorandum

Background

1. The Telecom Regulatory Authority of India (TRAI), established under the Telecom Regulatory Authority of India Act, 1997(24 of 1997) has been entrusted with discharge of certain functions, *inter alia*, to regulate the telecommunications services and to protect the interests of service providers and consumers of the telecom sector. Government of India, in the Ministry of Communication and Information Technology Gazette Notification NO. 39, dated 9th January 2004, has notified the Broadcasting Services and Cable Services to be Telecommunication Services thereby bringing the regulation of Broadcasting and Cable TV services under the ambit of TRAI.
2. Since the dawn of the television, advertisements have been used to promote a wide variety of goods and services. Advertisements provide for a significant portion of the revenue of the television industry. The broadcasters of the free to air channels¹ rely solely on the advertisements as their source of revenue, while the pay channel² broadcasters have twofold source of revenue in the form of advertisement and subscription revenues.
3. The consumers are presently fed with content feeds interlaced with the advertisements within and in-between the various programmes aired by the broadcasters in their channels as well as MSOs and local cable operators in their local/video channels. The majority of television advertisements consist of advertising spots, info-commercials and self-promotional campaign in various formats ranging in length from a few seconds to several minutes.

¹ FTA Channel: A channel for which no fees is to be paid to the broadcaster for its re-transmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly.

² Pay channel : A channel for which fees is to be paid to the broadcaster for its retransmission through electromagnetic waves through cable or through space intended to be received by the general public either directly or indirectly.

4. The extant provisions concerning the duration and format of advertisements in the TV channels, as provided in sub-clause (11) of clause 7 of the Cable Television Networks Rules, 1994, as amended, prescribe that no programme shall carry advertisements exceeding 12 minutes per hour, which may include up to 10 minutes per hour of commercial advertisements, and up to 2 minutes per hour of a channel's self-promotional programmes. It is also provided in sub-clause (10) of clause 7 of the said rules that all advertisement should be clearly distinguishable from the programme and should not in any manner interfere with the programme viz., use of lower part of screen to carry captions, static or moving alongside the programme.
5. There have been several complaints, mainly from the consumers raised at various fora, regarding overplaying of advertisements, long duration of advertisements, overlaying of advertisements on the screen, increased audio level during advertisements etc. It has been said that the advertisement duration and formats are not in accordance with the provisions stated above. It has often been pointed out that the advertisements are played/repeated several times in between the programmes, which break the continuity of the programme and often done at crucial stages of a programme. In this context, there have been requests to at least restrict and regulate the duration, frequency and timings of the advertisements.
6. With the primary objective of striking a balance between giving a consumer a good TV viewing experience, and protecting the commercial interests of broadcasters, a consultation paper was issued on 16th March 2012 titled "Issues related to Advertisements in TV channels". In the consultation paper, various issues related to advertisements on TV channels in India were discussed and a proposal for regulation of duration and format of advertisements was put forth for comments of the stakeholders. In response to this consultation paper, 29 comments were received. Based on the comments/ views of the stakeholders and analysis of various aspects, facts and available studies, the Authority has decided to issue separate regulations for the duration of advertisements carried in TV channels.

A. Regulation of advertisements

7. In general the broadcasters and their associations, the advertisers and their associations are against any regulation as proposed by TRAI. The arguments given are – i) it is outside the jurisdiction of TRAI as it is akin to content regulation, ii) rule 7 (11) of the Cable Television Networks Rules eclipses the power given to TRAI through the notification

dated 9th Jan 2004, iii) it is against the fundamental right of freedom of speech and expression guaranteed under Article 19(1) (a) and (g) of the Constitution, iv) it is contrary to the TRAI's earlier recommendations dated 1.10.2004, which stated that "there should not be any regulation, at present, on advertisements on both free to air and pay channels", v) rather than regulating the advertisements, the focus should be on successful implementation of the digitisation of the cable TV sector, vi) any restriction on advertisements would have the impact of sharp increase in subscription charges, vii) Limited availability of advertising time will imply jacking up of advertisement rates by many folds and this will be detrimental to the small and medium enterprises (SMEs), viii) advertisements increase consumption of goods and services which then drives the growth of employment and economic development.

8. The other stakeholders comprising mainly the consumers, consumer organisations and cable operators have supported the TRAI proposal for the regulation of duration and format of advertisements in the TV channels.
9. One of the industry associations has stated that it's the wrong time to regulate the advertisements since the digitization has just started. Further, advertisements are part of a business model of the broadcasters and should not be seen as a burden to the consumers. In fact advertisements help the consumers in many ways. They further submitted that a system of self regulation by the industry body is a better and appropriate way to regulate the advertisements.
10. The broadcasters have also quoted some rulings of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has held that the restriction on advertisement space in the news papers would lead to reduction in its revenue which is in violation of Article 19(1)(a) and consumer interest cannot be the only relevant factor for framing a regulation.
11. TRAI has been entrusted for laying down the standards of quality of service to be provided by the service providers and ensure the quality of service to the consumers. In this endeavour the Authority has observed that the duration of advertisements, their placement within or in-between the programmes and their frequency of occurrence, is closely related to the quality of viewing experience of the consumers. The quality of viewing experience of the consumers is akin to the quality of service provided by the service providers to the consumers. Accordingly, to ensure the quality of the service to the consumers, the Authority is of the view that suitable regulations should be in place.

B. Advertisement duration based on clock hour basis

12. The broadcasters are of the view that advertisement duration should not be regulated on clock hour basis as the viewership pattern differs throughout the day. Moreover, for certain channels such as sports channels, where the live content is seasonal, limited to a specific period and the natural breaks, where advertisements would be appropriate, would vary from sport to sport. There cannot be a universal measure based on clock hour basis as it would not be logical.
13. It has been stated by the broadcasters that the subscription fees of the TV channels has been regulated in order to give the consumer choice and good quality service at affordable prices. A regulation on the advertisement time and its corresponding effect on the revenues of the broadcasters will hamper growth and competition in the broadcasting industry as the regulated channel rates leave no space for the broadcasters to hike the channel rates to balance out the reduction in advertisement revenues.
14. It is suggested by a stakeholder (multi-system operator) that in the Digital era, where a consumer has absolute choice in choosing any channel and paying accordingly, there is no need to regulate advertising time. It is up to the subscriber to opt to watch a channel with advertisements at a lower cost or pay premium to watch a channel without ads. Broadcasters on the other hand will automatically regulate the ad time as too many ad breaks will drive away subscribers, thus affecting their resources.
15. As per the news broadcasters, news television is a dynamic medium which has to continuously deal with different kind of news like breaking news, news flash, news related to natural calamity etc. They have stated that on issues of national importance the broadcasters themselves drop the advertisements, keeping in view the consumer sentiments and national interest and so any regulation in this respect is not warranted.
16. One of the cable operator association has stated that the limit for the duration of the advertisement should be regulated on a clock hour basis as well as on 24 hr basis. Supporting the clock hour based capping of advertisement duration, one of the consumer organisation has stated that this would avoid accumulation of advertisement slots, especially in peak hours. Another consumer organisation has even stated that the limits may be more stringent for children specific programmes.

17. As far as television advertising in the Indian market is concerned, the consumers, in their complaints, have been sceptical about the manner of calculating the duration of advertisements per hour by the channels. It has often been alleged that even if the total advertisement time over a period of 24 hours is averaged out for an hour, still it exceeds the permissible limits. It has further been expressed that the advertisement durations during the telecast of popular programmes/programmes in the prime time, far exceeds the permissible limit of 12 minutes per hour. The study, conducted by the Centre for Media Studies (CMS) regarding the duration of advertisements carried in six major news channels over the last 4 years, reveals that on an average around 35% of the prime time (7pm to 11pm) of the news broadcasters is just advertisements, against the per hour limit of 20% prescribed in the existing regulations. The maximum yearly average has been found to be as high as 47.4%. This in turn leads to insertion of too many advertisements in the programme leaving little time for the content to be viewed. It is important that the advertisements are not confined in any particular hour in order to ensure that it does not affect the viewing experience at that point in time. Internationally also the regulation prescribes the advertisement duration limits in any given hour. Therefore the Authority is of the view that the limits for the duration of the advertisements shall be regulated on a clock hour basis i.e. the prescribed limits be adhered to on clock hour basis.

C. Minimum gap between two consecutive ad breaks

18. It has been stated by the broadcasters that there should not be any reduction in frequency of advertisements, as the broadcasters struggle to recover even 20% of the cost of the movie in the first year of telecast with no restriction and if 3 breaks in a movie norm is implemented then it will become unviable for the broadcasters to acquire the cable and satellite rights; also adversely affecting the movie industry. It has also been stated that there is no data to show that when the content is compelling, the users tend to keep away due to excessive advertising. As an example, the broadcaster has stated that the movies running on channels which have multiple breaks have garnered high TRPs and GRPs.

19. One of the broadcasters has stated that in India, the market dynamics is already playing its role and the advertisement break patterns have started to change to reflect this. This is evident from the fact that more and more channels have started putting on screen displays providing information of the duration of advertisement breaks with an aim to retaining viewers. There are broadcasters who transmit 'break free' movies. Thus, market should

be allowed to operate under self-regulated environment to achieve the objective. One view is that as long as the overall advertisement and channel promos are restricted within the fixed limits, there should not be any restriction of content duration in between advertisement breaks as the content duration between the breaks would be based on the content flow and the creative planning. On the issue of minimum duration between two consecutive advertisement breaks, broadcasters have stated that many of children's shows are of very short duration (7 to 8 minutes), hence breaking an episode to insert advertisement breaks in the middle of an episode to meet the regulatory requirement does not make any sense.

20. On the other side the consumer and consumer organisations and the cable operators association have in general supported the stipulations proposed by TRAI. One of the consumer organisation has stated that maximum advertisement time for any session should also be specified to ensure that two advertisement breaks of consecutive sessions are not combined together for an unusually long advertisement break.
21. The frequency as well as the timings of the advertisement breaks, to a large extent, determines the extent to which they contribute to be the irritants in the consumer viewing experience. For example, the advertisement breaks which cut into certain portions of the programme that are either climaxes of the plot or major turning points may prove to be a greater irritant as compared to the ones which coincide with natural interruptions in the programmes or spaced at adequate time intervals with respect to the attention span of the consumers. Frequent advertisements break the continuity of the programme to such an extent that it jeopardises its integrity. Impact of frequent breaks is more pronounced in case of films. To address this aspect, a number of international markets have regulated the frequency of the advertisement breaks in the TV channels. Therefore, in order to strike a balance between the consumer's viewing experience and the interest of broadcasters, with a view to keep the operations viable, the Authority is of the view that the time gap between end of one advertisement session and the commencement of next advertisement session shall not be less than fifteen minutes and during the broadcast of a film (movie), this time gap shall not be less than thirty minutes. However, in case of sporting events, being broadcast live, this provision shall not apply.

D. Advertisements during live sporting events

22. On the issue of telecast of advertisements during live sporting events, the broadcasters and their association have stated that there exists enough stipulations in the Cable Television Network Regulation Act and the Rules made there under. They have further stated that the production and rights cost for live sporting events is very high and hence the present format of advertisement breaks should be allowed and if advertisements breaks are restricted then it may not be commercially viable to have live telecast of sporting events. There is an argument from a broadcaster that the statutory definition of 'program' include the term advertisement as an integral part of the definition and advertisement insertion is an effective tool for communication with the viewers about various products & services. They have further stated that in an increasingly competitive environment, channels have been required to develop new, creative ways of engaging their viewer on behalf of advertising clients and advertising and sponsorship insertions represent an important strategic way in which channels can seek to monetize their airtime and therefore allowing advertising only in the break time or half time as totally impractical. There is a view from sports broadcasters that nature of sporting events is too diverse and distinct and generic guideline for advertisement break during the 'interruption' may not serve the purposes as the notion of interruption is not defined and any attempt of putting proposed stipulation could lead serious impact on the ability of the broadcaster to attract sponsors and eventually degrade the quality of production of event in TV.
23. Majority of consumers, MSOs and cable operator associations have stated that there should be advertisement free transmission for any sports channel which are on Pay Mode. Some consumer associations have stated that the same prescription should be in place for other live events also. There is a suggestion from a consumer group that, in cricket matches, the advertisements after every 'over' should be banned and there could be advertisements only when there is a break in the cricket match because of events such as fall of a wicket, disruption due to rains, etc.
24. An Industry association has stated that the sports broadcasters operate in an environment where the content is periodically available, with limited shelf life and very limited advertising opportunity, huge content cost and the feed has to be shared with the public broadcaster in respect of sporting events of national importance. They have further stated that there is no need for regulation for the commercial interruptions as the flow of the

sporting action determines the rhythm of commercial breaks. They have cited examples that in games like hockey and football, on-field action is continuous, from kick off till half time and hence no question of broadcasters cutting the live event for telecasting of commercials.

25. The insertion of advertisements during live sporting action impairs the viewing experience of the consumers. There has been a wide spread support from the consumer and consumer organisations for the proposed regulatory framework in respect of telecast of advertisement only during the interruptions and natural breaks in the live sporting action. Accordingly, the Authority is of the view that in case of sporting events being telecast live, the advertisements shall only be carried during the natural breaks in the sporting action e.g. half time in football or hockey match, lunch break / drinks break /change of overs in cricket matches, game/set change in case of lawn tennis etc.

E. Part- screen advertisements/ Drop- down advertisement

26. Majority of broadcasters have stated that the program should be clearly visible and distinguishable from the advertisement and this should not interfere with or cause any impediment in viewing and enjoying the telecast of a sporting event. However, total ban on the part screen advertisements would be a disproportionately excessive measure. They have further stated that the, Rule 7(10) of the Cable Television Networks Rules, 1994, already captures the legislative intent and mandate that advertisements must be clearly distinguishable from the programme and should not interfere with the programme. Therefore, there appears to be no need for further regulation.
27. There was a view from a broadcaster that with availability of wide and bigger TV screens, the insertion of an advertisement on any part of the screen when programme is also simultaneously being telecasted on the same screen, does not affect the quality of telecast or create a hindrance to viewer's enjoyment and therefore is in complete conformity with the rules stipulated by MIB in this behalf.
28. Industry association opined that the sports broadcasters should have sufficient flexibility regarding the format of advertisement and advocated that part-screen advertisements should be allowed as this has the virtue of allowing the viewer to watch the action even while the advertisement airs. They further stated that if part-screen advertisements were banned it would be necessary to interrupt the coverage, and this would not be of benefit to consumers.

29. Stakeholders other than the broadcasters have stated that advertisement should be only full screen and scrolls, part of screens should not be allowed as it will disturb the entire programme ethics and disturb the viewers and divert the attention from the main programme they watch. There is a suggestion from an individual that the restrictions for cricket matches should be more elaborate and they should ban the popping up of advertisements during the ongoing game and appearance of advertisements on left and bottom portion of the screen.
30. In case of part screen advertisements, the advertisement shares the screen space with the regular program content. Such advertisements encroach upon the screen space. While the consumers tend to buy bigger and higher resolution screens to enjoy the best possible near life size images and clarity in programmes, only end up viewing larger than life commercials sharing the screen. Also in case of part screen advertisements the consumer does not have a choice to skip these advertisements, adversely affecting the overall viewing experience of the consumers. Therefore the Authority is of the view that there shall only be full screen advertisements. Part screen and drop-down advertisements shall not be permitted.

F. Audio Level of the Advertisement

31. On the issue of audio level of the advertisements vis-a-vis the audio level of programs, consumers, the consumer organisations, multi-system operators and cable operator associations have stated that they are in agreement with the proposal of TRAI. A stakeholder has stated that it will be an unfair broadcasting practice if the audio levels of the program and the commercials are different and can create a false impression on the consumer of inconsistent service provision by the cable operator.
32. Majority of broadcasters have stated that the rule 7(6) of the Cable Television Networks Rules 1994, as amended, stipulates that the audible matter of the advertisement shall not be excessively loud and the rule already takes care of this aspect and hence no further regulation required in this regard. However, there is a view from a broadcaster that broadcasters should match the audio level of content and commercials, subject to technical feasibility.
33. From the perspective of the consumer's viewing experience, the sudden increase in audio level at the time of advertisement is quite annoying to the consumer and is not at all desirable. The Authority observed that technical solutions exist which can be employed

by the broadcasters to ensure that the audio level is maintained at the same level during the program and the advertisements. Accordingly, the Authority is of the view that every broadcaster shall ensure that the audio level of the advertisements in its channel shall not be higher than the audio level of the programs being broadcast in that channel.
