

**CONSULTATION PAPER ON “ISSUES RELATED TO PLACING OF TELEVISION
CHANNEL ON LANDING PAGE” ISSUED BY THE TELECOM REGULATORY
AUTHORITY OF INDIA DATED APRIL 03, 2018**

**TO
THE TELECOM REGULATORY AUTHORITY OF INDIA**

**FOR AND ON BEHALF OF
SONY PICTURES NETWORKS INDIA PVT. LTD.**



Dated: April 19, 2018

➤ **INTRODUCTION**

We appreciate the initiative taken by the Telecom Regulatory Authority of India (TRAI) of engaging in a consultation process with concerned stakeholders by issuance of the present Consultation Paper on 'Issues Related to Placing of Television Channels on Landing Page' ("**Consultation Paper**"). While we have provided our specific responses to the queries listed under Chapter 3 {Issues for Consultation} of the Consultation Paper in this comments sheet below, we, at the very outset, would like to elucidate that 'landing page' is simply a 'marketing technique' employed by distribution platform operators (DPOs) to promote the channels/content of the broadcasters/other third parties (depending upon their business requirements). Hence, it's best left to the interested parties to have the freedom and ability to enter into such fair marketing/other viable arrangements like landing page per their business needs.

Further, under the extant regulatory framework read with the direction dated May 31, 2017¹ issued by TRAI, DPOs are allowed to carry channels declared in a particular genre by a broadcaster, to ensure level playing field. Conversely, DPOs have been discouraged from placing broadcasters' channels at more than one LCN within multiple genres. While carrying of channels at more than one LCN was an illegitimate ploy being adopted by certain broadcasters/ DPOs to illicitly improve sampling/ratings and has rightly been prohibited by TRAI, any proposal for restrictions on placement of broadcasters' pay TV/free channels on landing page at single LCN in a single genre would be arbitrary and restrictive, impacting broadcasters'/DPOs' independence in marketing and doing business. Advertising autonomy is a core of doing business and cannot in any manner be extinguished/diminished. If we take examples of other medias like Press, Radio, etc., there is complete autonomy for advertising. Landing page is merely an advertising medium which needs to be understood and appreciated. Lastly, it needs to be borne in mind that content rules irrespective of marketing might of which, landing page is one such medium. Stickiness for a channel does not depend on landing page but on the content worthiness.

Bearing the foregoing in mind, we have provided our thoughts on the specific queries outlined under the Consultation Paper herein below for your kind perusal.

➤ **ISSUES**

Query 1:

Do you feel that emerging concept of placing TV channel on landing page can influence TRP ratings? Suggest the action which may address the issue with justification.

Response 1:

It is to be noted that placement of a channel on landing page only provides a window for the channel to showcase its content to the audience. It is a promotional tool which helps the consumer discover quality content. Landing page could have the potential to influence TRP ratings only if its content is able to hold the consumer for more than a clock minute (60 seconds). Stickiness of the viewer to stay on the landing page is determined by the viewer's interest in the content of the landing page channel. Only if the consumer appreciates the content, will he/she stick for more than a clock minute on the page which could then have the potential for influencing ratings for the channel. It is however pertinent to bear in mind that ratings are a long term play. Landing page could help a new entrant in the market to grab immediate eyeballs. This has also been used by existing players for immediate

¹ Press release no. 39/2017

recall among viewers. This is a short-term play and ultimately it is the content which will decide the fate of a channel. Further, TRAI has no empirical data to substantiate that ratings are influenced by landing page.

In light of the above, we believe, landing page is immune from regulatory intervention. Also, it is to be noted that landing page facility has been in existence since the very inception and has worked well for all stakeholders. Hence, we do not see any necessity to regulate the same.

Query 2:

Should concept of landing page be defined? If so, please suggest the definition of the landing page with justification.

Response 2:

We believe there is no requirement to define landing page. It should be left to the DPOs and other interested parties.

Query 3:

Will defining framework for placing TV channels on landing page affect the present business model of distributors? If so, will it be considered impacting the freedom to do business by distributors of TV channels? Give your suggestions with justification.

Response 3:

We hereby wish to highlight the following elementary principles of a landing page:

- It is a marketing tool offered by DPOs to promote channels/content of broadcasters/other third parties akin to marketing techniques adopted by any other content/product owners. A landing page is similar to advertisement commercial in a movie. If a consumer is not happy with the commercial, he/she has the liberty to change the channel. Similarly, if the content of the landing channel does not appeal to the consumer, then the consumer can switch the channel;
- DPOs have made substantial investments and developed a facility in order to evidently be able to monetize the same;
- There is fair restriction on dual LCNs already;
- Landing page is a medium and not the means to ramp up ratings. It works as efficiently as a medium. It is like placing certain products behind the billing counter in a store to be able to grab consumers' attention.

In light of the foregoing principles of a landing page, we do not see a reason for placing any form of restrictions on advertising techniques adopted by content owners to promote their channel. Imposition of restrictions on landing page would be contrary to Article 14 and Article 19 (1) (g) of the Constitution of India, 1949 (“**Constitution**”). Article 14 of the Constitution guarantees equality before law. Any such arbitrary and unreasonable impositions on broadcaster’s marketing rights when such rights are available with other media/other industries could be seen to fetter fundamental right to equality enshrined under the Constitution. Further, the freedom to contract as part of the right to trade, is part of the public policy of India and is guaranteed under Article 19(1)(g) of the Constitution. The right cannot be curtailed or restricted by placing arbitrary restrictions on fair negotiated dealings between broadcasters and DPOs.

Also, any limitation or framework that would restrict the channels or cost could potentially impact the DPO's business model and its ability to provide an additional value added service.

Query 4:

Is landing page a natural choice of consumer while viewing TV channels? If not, why should channels, whose TV ratings are released by TV rating agency, be placed on landing page? Give your comments with justifications.

Response 4:

While landing page is not a natural choice for a consumer, it also does not bind the consumer to a particular channel. The navigation tool enables viewers to navigate to other channels as soon as they switch on their television sets irrespective of whether the channel is on landing page. Stickiness of the viewer to stay on the landing page is determined by the viewer's interest in the content of the landing page channel. Only when the viewers appreciate the content will they stick for more than a clock minute on the page which could then result in influencing ratings for the channel.

Further, television channels, rated or un-rated, are interested in taking the landing channel as it provides them a platform to exhibit their content to the consumers. Similar to channel placement, this feature enables the channel to have an opportunity to grab consumer eyeballs. If an attempt is made to prohibit landing page, then either the channel placed first in a particular genre/the EPG/the last viewed channel becomes the by-default landing page which again are not natural choices for the consumers.

Query 5:

Whether placing of a TV channel on landing page increases television ratings? If yes, why TV Channels, whose TV ratings are released by TV rating agency, should not be barred from being placed on landing page? If no, why broadcasters are eager to place their channels on landing page? Give your suggestions with justification.

Response 5:

First and foremost, as mentioned in the foregoing, TRAI has no empirical data to establish that landing page influences ratings for television channels. The idea behind placing a channel on landing page is purely as a marketing tool adopted by DPOs to advertise broadcasters/other third parties' channels/content. However, it is not a straight-jacket formula to increase ratings for television channels. It is like any other on-ground/off-ground marketing tools that are appointed and success although the aim is never a guarantee. Further, even within a genre, it is between the broadcaster and the DPOs who decide on the placement of channels. The DPO places the channels basis the placement deal with the broadcaster. Similarly, the landing page is open for all broadcasters without prejudice. Basis the demand, the interested parties pay the cost to use the landing page tool for a mutually negotiated period of time. The probability of influencing television ratings will be determined by whether the viewer who is subject to a landing page facility continues to view the landing page for at least one clock minute after switching on his television set. This itself will be determined by the viewer's interest in the content. As soon as the viewer navigates to a different channel without spending a minute on the landing page channel, the opportunity to earn television ratings for the channel are lost with respect to that viewer for the period that he switched on his television set. Nonetheless, we agree that DPOs should not put any threshold time limit before which the channel cannot be changed by the consumers.

In light of the discussions above, the reason why broadcasters should not be barred from placing their channels on landing page can be concluded to be on account of primarily two factors – Firstly, there is no guarantee that a channel on landing page will result in increasing viewership every time a viewer switches on his/her television set. Secondly, the landing page facility, due to its nature of being a marketing tool, is open for all broadcasters/third parties without prejudice. There is no reason why it would provide undue advantage to select broadcasters/interested parties as there is a cost attached to availing this tool along with alternative marketing methodologies.

Query 6:

What should be the criteria/consideration to put a TV channels on landing page? Give your suggestion with justification.

Response 6:

As mentioned in our responses in the foregoing, landing page helps a new entrant in the market to grab immediate eyeballs thereby ensuring level playing field for all broadcasters. This has also been used by existing players for immediate recall among viewers. Currently, the facility is open for being availed by all broadcasters for a negotiated sum of money basis mutual negotiations between the interested third parties and the DPO(s) providing such facility(ies). Any limitations in terms of, for eg. only non-rated channels being placed on landing page will curb demand for the landing page resulting in leakage in distributor's revenue. The same would also be unconstitutional in nature for reasons mentioned above.

Query 7:

Do you think the influence, if any, in television ratings by placing of TV channels on landing page can be mitigated through changes in measurement methodology of television ratings? Give your suggestions with justifications?

Response 7:

Since, by definition, opting for a landing page facility implies landing on the channel LCN itself, the measurement methodology of TV ratings cannot be changed by design to mitigate the influence of the facility. However, as mentioned in the foregoing, DPOs should not hold viewers for a pre-determined time period. The moment a consumer switches on the television set, he/she should have the ability to switch from the landing page. Further, TRAI could consider implementing technology to eliminate dual LCNs.

Query 8:

Please comment on the feasibility to implement user's 'last visited page' as landing page in distributors' network?

Response 8:

If the "last visited page" is used as the landing page, then that too will be forced on the consumer rather than being a channel of his/her choice. TRAI's intention of eradicating influence on ratings will in any case not be addressed by this suggestion. In the meantime, the broadcaster would lose a marketing tool to highlight its content and the DPOs would be deprived of a revenue stream which could otherwise be monetized by them.

Query 9:

Should the landing page be used to place TV channels not having TRP rating or only to provide platform specific information? Give suggestions with justification.

Response 9:

Again, placement of non-rated channels on the landing page would in addition to being forced viewing for consumers would result in lack of innovation. Considering DPOs have invested in a technology tool for provisioning of the facility, withdrawal of the right to monetize the said tool would result in dissuading invention and innovation in the field. Any restriction in the manner stated above would be unfair for DPOs & interested parties and shall be seen as a restraint on freedom of trade. It should be left to the market forces as regards content/channel to be placed on landing page.

Query 10:

Any other suggestions/comments related to the issue under consideration?

Response 10:

To summarise:

- **Unequal treatment and curtailment of freedom to contract** - Placement of broadcasters' channels on landing pages is one of the marketing techniques adopted by DPOs. It is like any other marketing tool appointed by broadcasters/other media sectors/other sectors. It is similar to product placement behind the counter in the world of FMCG which is a commercial deal between retailer and the manufacturer and is permitted. Restrictions on landing page would result not only in violation of fundamental right to equality enshrined under Article 14 of the Constitution (considering there are no such restrictions on marketing methodologies applied by radio/print media/other markets). It would also curtail freedom to contract which as part of the right to trade, is part of the public policy of India and is guaranteed under Article 19(1)(g) of the Constitution.
- **Deter innovation** - It has been possible to avail the facility on account of technology tool developed by DPOs to explore additional revenue streams. Any restriction on the same shall deter DPOs from investing in innovations fearing regulatory intervention.
- **Non-discrimination/no harm**- Landing page is non-discriminatory in nature since subscribers of the same DPO are able to view the same landing page. Also, the facility is available to all interested parties at large.

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