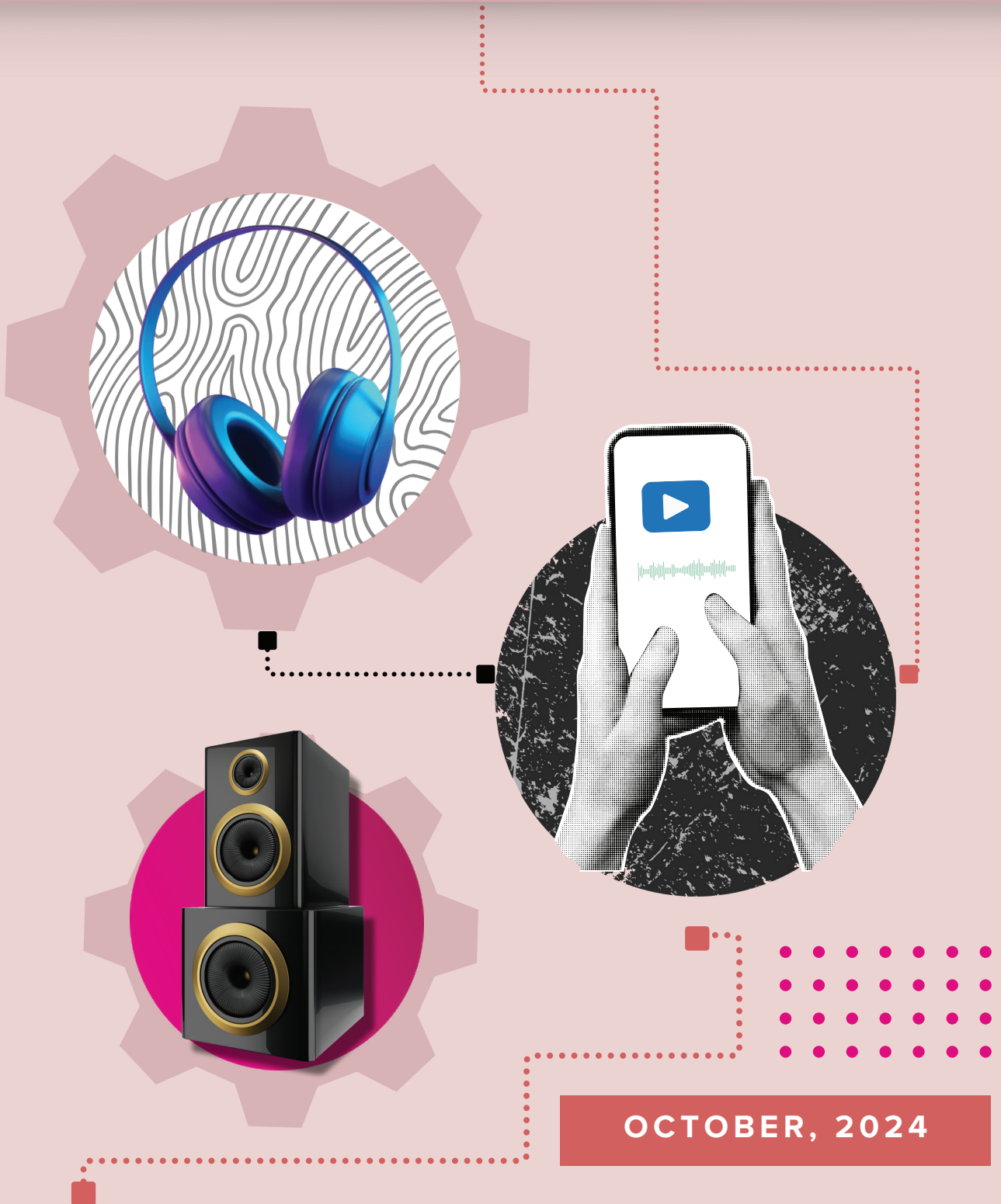


Written Comments

**IMPACT OF THE DRAFT BROADCASTING SERVICES
REGULATION BILL, 2023, ON THE MUSIC STREAMING INDUSTRY**



OCTOBER, 2024

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1. BACKGROUND

A. OVERVIEW OF THE BROADCASTING SERVICES REGULATION BILL, 2023

The BSR Bill aims to modernize India's broadcasting industry regulatory framework. It seeks to replace the Cable Television Networks (Regulation) Act of 1995 and expand its scope to include both traditional and digital platforms, such as cable TV, DTH, IPTV, OTT services, and digital news. The Bill's key objectives include fostering innovation, safeguarding consumer interests, promoting investment, and creating a cohesive legal structure adaptable to emerging technologies.¹ To achieve these goals, the Bill introduces new regulatory mechanisms, including Content Evaluation Committees (CECs) and mandatory compliance with Programme and Advertising Codes. These provisions are designed to ensure that broadcasting content adheres to government-defined standards.

While these provisions are designed to ensure that broadcasting content adheres to societal norms, they are inherently suited for the push-based model of traditional broadcasters. Streaming services, which function on a user-driven, on-demand model,

are fundamentally different from this.² This distinction makes the application of the BSR Bill to streaming platforms both unnecessary and potentially harmful.³

B. IMPORTANCE OF THE MUSIC STREAMING INDUSTRY

India's music streaming industry has emerged as a powerhouse of growth and cultural influence, becoming a major contributor to the country's creative economy. The rise of digital platforms like JioSaavn, Spotify, and Amazon Music have democratized legal access to music, allowing millions of users to engage with content from across the world and enable artists to earn revenue from their music.⁴ This market in India has grown at an impressive rate, driven by the increasing popularity of local and regional music, the expansion of independent artists, and the ease of access provided by mobile and internet connectivity.

In terms of year-on-year growth in on-demand audio and video song streams, India was by far the leader. According to the data from Luminate's 2023 year-end report, the consumption of music on streaming services in India is growing fast. The country streamed 463.7 billion more songs than in 2022. The United States came second, trailing behind with 184 billion new song streams.⁵ In fact,

¹ Page 2, Introduction, Explanatory Note on the Draft Broadcasting Services Regulation Bill, 2023- https://mib.gov.in/sites/default/files/Public%20Notice_0.pdf

² Farooqui, J. (2022, December 8). OTT Companies Are Spending More on Original Shows. The Economic Times. Retrieved 12 October 2024, from <https://economictimes.indiatimes.com/industry/media/entertainment/ott-companies-are-spending-more-on-original-shows/articleshow/96065775.cms?from=mdr>

³ Shreya, S., Tiwari, P., Rizvi, K., and Saxena, G. (2023, July 18). IT Rules, 2021: A Regulatory Impact Assessment Study (Vol. 2). The Dialogue and Internet and Mobile Association of India. Retrieved 12 October 2024, from <https://thedialogue.co/wpcontent/uploads/2023/07/IT-Rules-2021-Analysis-Volume-2.pdf>

⁴ Geurts A., Cepa K. (2023, August) Transforming the music industry: How platformization drives business ecosystem envelopment. Retrieved 9 October 2024, from <https://doi.org/10.1016/j.lrp.2023.102327>

⁵ Luminate Year End Music Report 2023 (2023, Jan 10). Retrieved 9 October 2024, from <https://luminatedata.com/reports/yearend-music-in-dustry-report?alilid=eyJpJjoiQVBNNXhaRDNOc2FOQThWRClslNQiOiI0ZmlyZ0RmNUV1ck5FXC9SekUxWERzQT09In0%253D>

Arijit Singh became the most-followed artist on Spotify worldwide in August 2024, leaving behind global artists such as Taylor Swift and Ed Sheeran.⁶ This growing consumption is also translating into revenue growth for the Indian music sector and the state. The global recorded music industry reached an impressive \$26.2 billion in 2022, marking a 9% overall growth. This surge was primarily driven by streaming, which saw an 11.5% increase in revenue. This growth reflects the global appetite for accessible music and highlights the sustained financial strength of the recorded music industry as it continues to adapt to the digital age.⁷

According to industry reports, India's creator economy has grown at a compound annual growth rate (CAGR) of 22%, and in 2023, digital platforms contributed nearly 90% of the revenue generated by the Indian music industry.⁸ Global platforms like Spotify and Apple Music have enabled Indian artists to reach global audiences, with international music consumption of Indian content growing by 85% year-over-year.⁹ Recognising the power of Indian music, Prime Minister Narendra Modi has stated, *"In today's times of globalisation, it is our responsibility that Indian music makes its mark and has an influence globally"*.¹⁰ These platforms are not only crucial for artists but also play a key role in positioning Indian music on the world stage, enhancing India's soft power.

2. THE DIGITAL CONTENT ECOSYSTEM IN INDIA

A. GROWTH OF DIGITAL PLATFORMS

India's digital content ecosystem has rapidly transformed over the past decade. These services include hosts of UGC and social media platforms where users and creators can upload content directly; and a wide spectrum of audio-visual streaming services, some of which curate content libraries and also invest in the production of new content; and others, such as music streaming, that host creative content developed and owned by various creators and professional creative businesses. Streaming services, with their varied business models, offer users access to millions of songs from Indian and international artists. These platforms have acquired an industry-wide catalogue of music, creating opportunities for independent and regional artists to gain exposure and for regional languages to gain access to much wider audiences.¹¹ The measures have had an impact, as the market share of Hindi-language within the world's Top 10,000 streaming tracks has grown. In 2021, Hindi-language music made up just 3.8% of the Top 10,000 on-demand streaming tracks. That percentage grew to 7.8% for 2023.¹²

⁶ Arijit Singh becomes most-followed musician on Spotify globally; beats Taylor Swift. (2024, August 21). Retrieved 9 October 2024, from <https://indianexpress.com/article/trending/trending-global-ly/arijit-singh-becomes-most-followed-musician-on-spotify-beats-taylor-swift-ed-sheeran-9504619/>

⁷ IFPI Global Music Report 2023 — State of the Industry. (2023) Retrieved 14 October 2024, from https://www.ifpi.org/wp-content/uploads/2020/03/Global_Music_Report_2023_State_of_the_Industry.pdf

⁸ Coherent MI, India Creator Economy Market Size and Share Analysis - Growth Trends and Forecasts (2023 - 2030). Retrieved 9 October 2024, from <https://www.coherentmi.com/industry-reports/india-creator-economy-market>

⁹ Five Artists Reflect on Five Years of Spotify in India, Reaching New Fans, and the 'True Power' of Music (2024, March 20). Retrieved 9 October 2024, from <https://newsroom.spotify.com/2024-03-20/spotify-india-five-years-artist-interviews/>

¹⁰ PM's address at the launch of Pandit Jasraj Cultural Foundation (2022, Jan 28). Retrieved 9 October 2024, from <https://pib.gov.in/Press-ReleaseDetailm.aspx?PRID=1793276®=3&lang=1>

¹¹ Mazur D., Lyssarides O. (2019, July). Think Global, Act Local. Retrieved 9 October 2024, from <https://spotify.design/article/think-global-act-local>

¹² Luminate Year End Music Report 2023 (2023, Jan 10). Retrieved 9 October 2024, from <https://luminatedata.com/reports/yearend-music-in-industry-report?aliid=eyJpIjojQVBNNXhaRDNOc2FOQThWRClSnQiOjI0ZmIYZ0RmNUV1ck5FXC9SekUxWERzQT09In0%253D>

The shift from physical and digital downloads to streaming has revolutionised the way music is consumed in India. Streaming platforms allow users to access music on-demand, providing them with personalised playlists, curated recommendations, and exclusive content. This model differs significantly from traditional broadcasting, where content is pushed to users at specific times and with no user control.

B. NEED FOR A DISTINCT REGULATORY APPROACH

The regulatory framework that governs broadcasting services cannot be applied to music streaming platforms without considering their technological, operational and business model differences. The BSR Bill, as it stands, treats music streaming services as broadcasters, subjecting them to the same regulations designed for television and radio. This approach fails to recognise the fundamental differences between the two models. It also fails to distinguish between the various categories of OTT streaming services.

C. PUSH VS. PULL MODELS

Traditional broadcasters use a “push” model, where the content programmed by the service is distributed to a wide audience at predetermined times.¹³ Users have no control over what they watch or listen to other than to change the channel, as they are passive recipients of the content, and the same content is being “pushed” to all the listening audience at the same time. In contrast, music streaming platforms operate on a “pull” model, where individual users choose the content, they want to consume, and that

content is delivered to them one-on-one.¹⁴ They can create playlists, skip songs, and listen to specific tracks whenever they want. These differences in user behaviour, audience size, extent of programming, and technology involved are crucial and should be reflected in the regulatory framework.

D. PROMOTION OF INNOVATION

Music streaming platforms thrive on innovation, offering features such as personalised playlists, real-time collaborations, and exclusive artist content. These platforms have empowered artists, particularly independent and regional musicians, by providing them with direct access to global audiences. Applying traditional broadcasting regulations to these platforms would create unnecessary barriers to innovation, limiting the ability of platforms to offer new features and services that enhance the user experience.

3. KEY PROVISIONS IN THE BROADCASTING BILL

A. DEFINITION OF BROADCASTING NETWORK OPERATOR

The BSR Bill defines a “Broadcasting Network Operator” as any entity that provides broadcast services, including cable, satellite, and digital platforms.¹⁵ Music streaming services are included in this definition despite their distinct operational model. This inclusion is concerning because it subjects music streaming platforms to regulations designed for traditional broadcasters.

¹³ Chalaby, J. K., and Plunkett, S. (2020). Standing on the shoulders of tech giants: Media Delivery, streaming television, and the rise of global suppliers. Retrieved 9 October 2024, from <https://doi.org/10.1177/1461444820946681>

¹⁴ Asia Video Industry Association. A Governance Framework for Online Curated Content (OCC) Services. Retrieved 9 October 2024, from <https://avia.org/wp-content/uploads/2020/11/A-Governance-Framework-for-Online-Curated-Content-Services.pdf>

¹⁵ Clause 2(1)(h), BSR Bill, 2023.

Music streaming platforms should be explicitly excluded from the definition of broadcasters and this exclusion should apply across all the related definitions (including Broadcasting network, broadcasting network operator, internet network operator, OTT broadcasting service). Their user-driven, on-demand model is fundamentally different from the push-based model of traditional broadcasting. Including them under this definition would create unnecessary regulatory burdens and stifle the growth of the industry.

B. SERVICES OTHER THAN BROADCASTING

Clause 4(5) extends the regulatory scope to services that are “intricately linked” to broadcasting. The lack of clarity in this provision creates ambiguity around what constitutes services that are related to broadcasting. Music streaming platforms, which offer on-demand content, could be mistakenly categorised as services linked to broadcasting.

This clause should be revised to provide a clear definition of “services other than broadcasting” to ensure that music streaming platforms are not inadvertently included. The current language is too broad and could lead to regulatory overreach, impacting the operational flexibility of music streaming services.

C. PROGRAMME CODE AND ADVERTISING CODE

The Programme and Advertising Codes are designed to regulate content on traditional

broadcasting platforms, ensuring that it adheres to societal norms and values.¹⁷ However, applying these codes to music streaming platforms, which offer industry-provided content, would misplace the responsibility for the content which should remain with the creative sector, including the advertising industry, that provides it.

Music streaming platforms should be exempt from the Programme and Advertising Codes. These platforms operate on a model where music and third-party advertising are provided to the platform, with extensive control by those third-parties over it.

D. CONTENT EVALUATION COMMITTEES

The Bill requires the establishment of Content Evaluation Committees to review content before it is released online on the platform. While this mechanism may be appropriate for traditional broadcasters, it would be catastrophic for the music industry.¹⁸ By industry estimates, there are over 184 million songs on streaming platforms today and over 100,000 songs are added daily globally.¹⁹ In addition to the sheer volume, music today is released globally simultaneously. The fast-paced and highly competitive nature of the global music industry means that any delays caused by regulatory approval processes would hinder artists’ ability to compete in the global market. Requiring precertification would significantly delay releases in India and undermine the core model of simultaneous global music distribution.

¹⁶ Clause 24, BSR Bill, 2023.

¹⁷ Clause 19, BSR Bill, 2023.

¹⁸ Clause 24, BSR Bill, 2023.

¹⁹ It’s Happened: 100,000 Tracks are now being uploaded to streaming services like Spotify each day. (October 6, 2022) Retrieved 14 October 2024, from <https://www.musicbusinessworldwide.com/its-happened-100000-tracks-are-now-being-uploaded/>

4. IMPLICATIONS FOR THE MUSIC STREAMING INDUSTRY

A. DISTINCTIVE NATURE OF MUSIC STREAMING

Music streaming platforms operate on a global scale, allowing for user-driven content delivery, a range of interactive features, and seamless access to a vast, industry-wide library of music. They differ fundamentally from broadcast networks, which deliver content to a wide audience simultaneously. The user-centric nature of music streaming platforms makes them more flexible and adaptable to changing consumer preferences.

- i. Music streaming services carry comprehensive libraries comprising virtually all the commercially released music that the music or film industry has produced and provided to a music streaming service. Such industry-wide catalogues are not exclusive to any particular music streaming service, and the same content is available on virtually all the music streaming services.
- ii. The ingestion processes are largely automated, and the streaming service's involvement in the process is limited. The distributors provide a catalogue of music content to the music streaming service, rather than the music streaming service "picking" or selecting specific music content from distributors. In this regard, it should be noted that licensors generally retain the right to remove sound recordings from the platform.

- iii. Music streaming services act only as intermediaries in this regard by providing a platform/ service with a primary purpose of hosting and transmitting music content provided to it/ on behalf of licensors and have no control over the content and expressions contained in the recording, metadata, or any right to edit the content or determine the content being made available on its services. Since music streaming services typically do not have the right to amend, edit or otherwise interfere with the music content delivered, hence, music streaming services should not be treated as publishers of such content and should not be responsible for compliance with the Programme Code.

B. GLOBAL REACH AND CULTURAL DIPLOMACY

Music streaming platforms have enabled Indian artists to reach global audiences, enhancing India's soft power and cultural influence. Independent artists and regional musicians, who may not have access to traditional broadcasting platforms, have found success on streaming services. The global recognition of Indian music has grown significantly, with collaborations between Indian and international artists becoming more common.²⁰

C. IMPACT OF REGULATORY OVERSIGHT

Imposing broadcast-style regulations on the music industry would slow down releases, limiting the industry's ability to innovate and artists' ability to connect with their fans. The music streaming industry thrives on its ability to provide users with personalised,

²⁰ Sankpal J. (2023, November 12), From Diljit Dosanjh-Camilo, King-Nick Jonas Top Three Indian-International Collaborations. Retrieved 9 October 2024, from <https://www.outlookindia.com/art-entertainment/from-diljit-doshanj-camilo-king-nick-jonas-top-three-indian-international-collaborations--news-330233>

on-demand content. Overregulation would disrupt this model, reducing the industry's global competitiveness and hindering its ability to contribute to India's cultural diplomacy.

D. PIRACY CONCERNS

Music streaming platforms have played a key role in reducing piracy by offering legitimate alternatives for accessing music.²¹ Delay in fans accessing the music from their favourite artists could drive users back toward unlicensed platforms, undoing years of progress in limiting piracy. The introduction of pre-certification and content evaluation processes would delay content availability, increasing the likelihood that users will turn to pirated versions of music that otherwise would be readily accessible on legitimate streaming platforms.

5. CREATIVE EXPRESSION AND SOFT POWER

A. NURTURING CREATIVITY

Music streaming platforms have democratised access to music, empowering independent creators to share their work with global audiences. Overregulation of delivery platforms would limit these artists' creative expression, reduce the diversity of content available and stifle innovation. The flexibility offered by streaming platforms allows artists to experiment with new genres, styles, and collaborations. Regulatory constraints could hinder this creative experimentation.

B. INDIA'S CULTURAL DIPLOMACY

Music streaming platforms play a crucial role in promoting Indian music and culture worldwide. They have allowed Indian artists to collaborate with international musicians, contributing to India's cultural diplomacy and enhancing the country's global influence. Restrictive regulations could impair the ability of these platforms to promote India's soft power, limiting their impact on the global stage.

6. REGULATION UNDER THE IT RULES

Compliance with the IT Rules has been successful in the digital music space. Many music streaming platforms have implemented robust mechanisms to ensure content compliance and user safety as envisaged under the amended IT Rules. The existing mechanism under the IT Rules has been working and has served the industry well.

The government should continue regulating music streaming platforms under the IT Rules, rather than alongside traditional broadcasters or other audio-visual OTT streaming services. Music streaming platforms have demonstrated their ability to manage content effectively in compliance with the IT Rules.

²¹ Savage, M. (2018, August 2). Easier streaming services put a dent in illegal downloading. BBC News. <https://www.bbc.com/news/entertainment-arts-45042838>

7. RECOMMENDATIONS

A. EXCLUDE MUSIC STREAMING FROM THE BSR BILL

Music streaming platforms operate on a fundamentally different model from traditional broadcasters or other OTT services. They offer user-driven, on-demand, industry-wide content and should not be subject to the same regulatory constraints as broadcast networks or other OTT streaming services. Excluding music streaming platforms from the scope of the BSR Bill would allow them to continue innovating and contributing to India's creative economy.

B. SUPPORT FOR INDIA'S CREATIVE ECONOMY

The government should focus on promoting India's creative economy by encouraging foreign investment, supporting independent artists, and fostering innovation in the music industry. Regulatory overreach could hinder the industry's growth, reducing its contribution to India's soft power and cultural diplomacy. By supporting self-regulation and tailored regulatory approaches, the government can ensure that the music-streaming industry continues to thrive.

8. CONCLUSION

The BSR Bill, while designed to regulate traditional broadcasting services, poses significant risks to India's burgeoning music streaming industry. Music streaming platforms operate on a user-driven, on-demand model that is fundamentally different from traditional broadcasters. Imposing broadcast-style regulations on these platforms would disrupt their ability to innovate, limit creative freedom, and hinder India's cultural diplomacy efforts.

The government should prioritise self-regulation and engage with industry stakeholders to develop a regulatory framework that supports the unique nature of music streaming platforms. By excluding music streaming from the BSR Bill, India can protect its creative economy, foster innovation, and continue to promote its cultural influence on the global stage.



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