

Indian Media After COVID-19 and It's Perspective

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ABSTRACT

This study is aimed to investigate about after effects of media after facing recent pandemic. The central and state governments of India have taken several unprecedented and drastic measures to curb the spread of the novel corona virus. Which include imposing lockdowns, social distancing and avoiding mass gatherings throughout the country and. In result most of the industry remain shut and postpone their events, production including media. Alternate solution adopted by industry for their employment. In post pandemic era to boost up their growth rate of every industry measure been taken for economy as well as hiring new talent and reprogramming their advertisement platforms to their method for publicity.

Keywords: Spirituality, Gratitude, Demographic Variables, Students

Specifically in the context of the media and entertainment sector, the lockdowns and prohibitions imposed by the governments, along with the stalling of the film and television productions, sporting events and other industry events; shuttering of cinema halls and theatres across the country, and the 'social distancing' and 'stay at home' advisories from authorities, have severely affected operations in the media and entertainment industry, resulting in reduced revenue prospects for several businesses.

The COVID-19 pandemic is changing the way we consume media and entertainment (M&E). With people confined to their homes, our social lives have moved online and entertainment consumption has risen notably within the at-home segments of television, online gaming and over-the-top (OTT). On the other hand, movie theatres, theme parks, museums, and other external consumption models are suffering, as physical distancing norms and lockdowns are enforced.

The central and state governments of India have taken several unprecedented and drastic measures to curb the spread of the novel coronavirus ("COVID-19"), characterized as a pandemic by the World Health Organisation.¹ These measures include imposing lockdowns throughout the country, prohibitions under section 144 of the Criminal Procedure Code, 1973, and issuing various government advisories on social distancing² and mass gatherings.³ Behavioral changes and habit formation post COVID-19: Consumer behavior is rapidly evolving as the world adjusts to a new normal, where social distancing, work from home and virtual meetings are the norm. Demand for at-home digital media is expected to grow

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significantly, as habit-formation and ease of access emerge as drivers. OTT platforms and digital media have already been attracting new consumers and expanding to new locations and demographics. The virus outbreak will magnify the already apparent shift from laptop/digital devices viewing to large screen TVs—providing a significant fillip to broadband internet/ fiber-to-the-home (FTTH) companies.

Even once the crisis passes, the psychological overhang from the virus might mean it would take some time for consumers to embrace external consumptions models again, especially in areas that have been the worst affected by this crisis. Here, the recovery in consumption of outdoor M&E could lag other areas of India that could have been relatively less impacted. This could pave the way for innovation and outreach solutions wherein consumers turn to virtual live events and new delivery models to connect. Technological advancements could play a pivotal role in bringing outdoor entertainment and outreach directly to the consumer in such erstwhile virus hotspots.

This article seeks to discuss the impact on the media and entertainment sector, some of the key measures adopted by various media bodies, legal and contractual remedies available to affected parties, and some key considerations for the post COVID-19 scenario.

Impact On the Media and Entertainment Industry

The state governments of various states announced a complete lockdown of public places like theatres in their states by March 15, 2020. This was followed by the social distancing advisory issued by the Ministry of Health and Family Welfare on March 16, 2020 ("**Advisory on Social Distancing**").⁴ These state and central government measures led to not only a shutdown of theatres countrywide, but also an indefinite halt in production of several films, television ("TV") series, web-series, advertisements, and cancellation or indefinite postponement of all live events including the 13th edition of the Indian Premier League ("IPL").

The release of several big-ticket films was also deferred indefinitely, for example the Akshay Kumar starrer "*Sooryavanshi*", and multi-lingual historical epic "*Marakkar: Lion of the Arabian Sea*". With the extension of the lockdowns (even with some relaxations from the Government), production activities and live events remain suspended, and cinema halls and theatres continue to be shut.⁵

While the segments that rely on social gatherings like films, theatres, live events and theme parks have been affected adversely, the public adhering to the Advisory on Social Distancing has led to an increase in consumption of content on other mediums - such as television, digital streaming platforms, and gaming platforms. In fact, reportedly, viewership across several digital entertainment platforms in India, has increased by almost 20%.

However, despite viewership on television channels and digital platforms increasing, monetisation and revenue earnings of these mediums are seeing a downward curve, as revenues in the media and entertainment sector depend largely on advertising spends from other industries. The impact of the pandemic and the global recession on various industries such as e-commerce, manufacturing, financial services, fashion and retail, automobiles, hospitality and travel among others, has led to reduction in advertising spends from these sectors.

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The Indian Broadcasting Foundation claimed that advertisement bookings have gone down by almost 50%, owing to various factors including cancellation of big events like the IPL, repeat content on television, and slowdown in other industries.⁶ Though, subscription-based revenues could improve over a period of time, as people get more and more accustomed to consume content at home and seek a greater variety of content. However, availability of new content could prove to be a key factor in retaining and increasing the subscriber base for subscription-based platforms.

On the other hand, continuity of business for small to mid-size media and production houses have also been severely affected, and has had a direct impact on sustenance of daily wage earners like chain artists, camera men, spot boys, light boys and other contractors engaged in the entertainment business.

Similarly, the newspaper industry is also reportedly among the worst affected in India, with decreasing revenues from both advertising and circulation, given the nationwide lockdown; and is estimated to have affected lakhs of workers engaged in the news industry.

Parallel Measures Taken by Various Bodies in The Media and Entertainment Industry

Considering the practical and commercial impact on the media and entertainment industry, government departments along with various media bodies implemented several parallel measures relevant to the sector. Some such measures are as below:

Directives/Advisories

The Cellular Operators Association of India ("COAI") on March 22, 2020, requested the Department of Telecommunications to issue orders to ease the pressure on the internet infrastructure and facilitate working from home, online education, digital healthcare, banking and payment systems, and other critical services which are "essential" during a health crisis.⁷

In lieu of this request by the COAI, over the top ("OTT") platforms in India unanimously decided to reduce the streaming quality to standard definition ("SD") on cellular networks in India.

The Ministry of Information and Broadcasting also advised TV channels to broadcast the videos, advising people on the basic do's and don'ts of COVID-19.⁸

Industry Bodies/ Media Companies

The Producers Guild of India ("PGI"), Federation of Western Indian Cine Employees ("FWICE"), Indian Film & Television Directors' Association, Indian Motion Pictures Producers' Association, Western India Film Producers' Association, Indian Film and TV Producers Council ("IFTPC"), Association of Film & Video Editors decided to put all shootings of films, television serials, web series, and advertising films, on hold from March 19, 2020 till March 31, 2020. Due to imposition of the nationwide lockdown, all shooting schedules continue to be suspended.

Social and charitable measures

Several associations and expert bodies operating in the media industry, remarkably took several relief-oriented measures to extend their support to those most affected in the entertainment sector. For example:

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- the Indian Performing Rights Society ("IPRS") declared an emergency relief package to support its authors and music composer members across various geographies;
- the All India Cine Workers Association requested the government of Maharashtra to provide Rs.5,000 per month to each daily wage earner employed in the Indian film industry,
- the Indian Singers Right Association held a three-day virtual concert which streamed on several OTT platforms, with the aim to raise relief funds, and
- the PGI along with the IFTPC and the FWICE set up a relief fund to support those most affected by the industry wide shut down.
- Further, various media companies, including broadcasters and OTT platforms also set up relief funds to aid daily wage earners in their production ecosystem.

Contractual And Legal Remedies

Due to the lockdown and consequential suspension of business and commercial activities, several businesses, such as production houses, content aggregators, event organisers, artistes, and talent managers are bound to suffer substantial business and operational interruptions. This may inevitably lead to their inability to perform their existing contractual obligations. In this context, we analyse below the key legal and contractual remedies that may be available to them.

Force Majeure - Not just a boilerplate

Most commercial contracts include a force majeure clause, which provides for either limiting or waiving the liability arising from non-performance of the party affected by occurrence of a 'force majeure event'. A "**force majeure event**" refers to an unforeseen event or condition which is beyond the control of the parties to a contract, and because of which the parties are prevented from performing their obligations.

Such events typically include government actions, war, terrorism, strikes, civil unrest, acts of god, floods, earthquakes, hurricanes and other natural calamities, which are characterized as unforeseeable and outside the control of the contracting parties, making it impossible for the affected party to perform its obligations.

Force majeure provisions usually require that the party seeking such relief, should be affected by the force majeure event such that it cannot perform its obligations. Therefore, the occurrence of COVID-19 in itself may not lead a party to successfully claim relief, but depending on the nature of obligations of a party, such party will be required to demonstrate its inability to perform its obligations under the contract due to the spread of COVID-19.

Typically contracts also set out consequences of occurrence of a force majeure event, which include: (i) termination of the contract, (ii) suspension of performance by the affected party, without liability, during the subsistence of the force majeure event, and (iii) renegotiation of terms of the contract between the parties.

Corporate entities and individuals engaged in the entertainment business, will need to carefully evaluate their key contracts and the feasibility of invoking force majeure provisions, which are routinely included in contracts typical to the entertainment industry, such as talent contracts, production agreements, distribution arrangements, content partnerships, licensing and acquisition agreements, equipment hires, studio rentals,

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marketing agreements, advertising, event management, sponsorships, branding agreements and other industry arrangements. However, these provisions are often regarded as 'boilerplate provisions' and are not extensively negotiated in normal circumstances.

A party seeking to invoke 'force majeure' will need to analyse the specific language of the clause - in light of their facts and circumstances, the governing law of the contract, and the exceptions that may have been carved out - which are critical to understand if the contract remains enforceable, or if parties have sufficient basis to renegotiate terms or delay or alter the scope of their obligations. Further, the procedural terms set out in the contract in this regard, such as requirement of a notice to other parties, will also need attention.

Doctrine of Frustration or Impossibility

In cases where a force majeure provision is absent from the contract, parties adversely affected by the spread of COVID-19 or the lockdown imposed, may take defence under section 56 of the Indian Contract Act, 1872 ("**Contract Act**") for its inability to perform its contractual obligations.

Section 56 of the Contract Act embodies the doctrine of frustration or impossibility, providing that if a contract becomes impossible, impracticable, or unlawful to perform it will be deemed void. However, the threshold to establish impossibility of a contract is high as the courts infer impossibility of performance from the nature of the contract and the surrounding circumstances in which the parties must have made their bargain.⁹

Under section 56 of the Contract Act, on occurrence of a force majeure event, if it can be established that the event has led to a change in circumstances not contemplated under their contract, and render the performance of the contract impossible or impractical, then such a contract will be deemed void and therefore automatically terminate.

Hence, in such a scenario termination may be the only recourse available to parties, as section 56 does not provide for suspension or variation in terms of the contract. Therefore, where a party is affected due to COVID-19 and does not have a force majeure clause in its contract, it may seek relief under section 56 of the Contract Act to avail termination of the contract.

Further, if a contract provides for a force majeure clause which contemplates an epidemic, pandemic or a lockdown situation then the contract will prevail, and the parties cannot seek relief under section 56 of the Contract Act for impossibility of performance.¹⁰

Insurance

Media businesses may also evaluate recourses under their existing insurance policies. In the entertainment industry, insurance is usually procured to cover losses arising during production, including as a result of suspension of shoot or to cover cancellation of a live event, costs incurred for reshoots due to occurrence of specified events.

Businesses also procure business interruption insurances to protect them from critical events and put them into a position "as if" the loss had not occurred, however such insurances typically cover actual losses caused due to any physical damages to premises due to a disaster, and may not cover losses resulting from the pandemic.

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Whether losses arising from suspension of business activities during the lockdown due to COVID-19 will be covered under insurance policies will have to be examined on a case-by-case basis. This would largely depend on whether the terms of insurance include a pandemic, or a lockdown, as an insured event; and whether the insurance policy covers indirect losses at all, such as a loss arising as a result of disruption in supply chains.

Business Measures

While there can be no universal approach to navigate through the impact of the pandemic, following are some key business considerations that management teams of media companies may assess to deal with the crisis:

Obtaining Loans and Availing Borrowing Facilities

Several media companies may have availed borrowing facilities or obtained debts by offering their assets as security to lenders, which assets may include their content libraries. In addition to focusing on liquidity to ensure continuity of operations, companies may also need to keep sufficient liquidity buffer to account for any decline in valuation of such content. Further, they must review their obligations under the existing debt facility agreements, to ensure they are not in default in the foreseeable future.

Additionally, if a company contemplates further drawdown from their sanctioned borrowing limits, it will need to examine the provisions of their facility agreements, which may include further drawdown being conditional on solvency, and absence of any change in events which have a 'material adverse effect' on business and operations.

Workforce and Salary Revision

The prolonged financial impact, similar to many other industries, may force media companies to consider workforce reduction or salary reduction of employees, as a cost-cutting measure. However, such measures need to be carefully planned to ensure that all steps are taken in compliance with applicable labour laws and regulations, and government advisories in this regard.

Any inadvertence or non-compliance in this regard could potentially lead to legal actions against companies and even monetary penalties. In this context, companies could also consider granting equity linked stock options to employees, as a measure to make up for the reduction in salaries or other payments, if any, and to retain key employees and talent.

POST COVID-19 ERA

While entering into commercial arrangements in future, in addition to re-evaluating the force majeure provisions, contracting parties will need to consider several other aspects afresh in light of the pandemic. We have summarized below some key aspects that we believe may be considered in the most common contractual arrangements in the entertainment industry:

Production Arrangements

Production of new content may be one of the most challenging segments to manage once shootings are resumed, considering that production processes rely heavily on physical gatherings and interactions amongst people.

This may, therefore, require planning production schedules, timelines and budgets with a whole new perspective - including by possibly dividing the shoot schedules in a manner that shootings are undertaken with smaller groups of people on a given day; choosing shooting

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spots and locations in areas that are least affected by the pandemic; making additional contingency provisions in the budgets for delay in supplies, reshooting, illness of a crew member who may require time for recovery as well as quarantining among others.

Studios or platforms funding the production of any content, may consider including appropriate legal covenants in their contracts with production companies, in light of the above, and also specifically requiring them to adhere to all Government regulations and advisories regarding social distancing norms and mass gatherings as applicable to areas where shootings are undertaken.

Talent Engagements

Companies such as production houses, studios or platforms, directly engaging talent may consider inclusion of appropriate representations and covenants from the talents to ensure: adherence to all health advisories by the talent, disclosure of symptoms of any kind of contagion; necessarily adhering to self - quarantining measures, if and when required; restrictions from undertaking travel to regions most affected with COVID-19 during the term of engagement; obtaining adequate personal health insurances among others.

Further, such companies may also want to take appropriate waivers from the talents against any claims in respect of contracting of COVID-19 or any similar contagion in future, in the course of production and shootings.

On the other hand, talents should review and evaluate their contracts carefully to ensure that they are not bound to disclose their personal and sensitive information to any person; that they are protected against any chances of contracting a contagion on the shoot locations; that the production house or the relevant contracting party is obligated to take all health precautions and safety measures; and most importantly, that they are not forced to travel to locations and regions that are most affected by COVID-19. Alternately, if shootings are proposed in such locations then this must be disclosed to the talent much in advance and before commencing the shoot.

There may also be other provisions to consider such as replacement of talent in case of contracting a contagion or prolonged illness, suspension or termination on this account and consequences thereafter. However, these may need to be negotiated on a case to case basis between the parties.

Content acquisitions and licensing

Parties to licensing and content acquisition contracts may examine their delivery requirements and obligations, since there may be delays on various accounts, such as delays in supplies; delay in completion of production due to non-availability or illness of crew members, non-availability of shoot locations, or a possible change in shoot locations in light of the pandemic, among others.

Further, the manner of delivery of content will also need to be assessed, since physical deliveries may be a challenge or may take longer in the near future, especially in case of cross border licensing and acquisitions. Drafting of the force majeure provisions in these contracts will also be of utmost significance and will need to be prudently negotiated between the parties.

CONCLUSION

The onslaught of the COVID - 19 pandemic has changed the social lives of people across regions and economic sections. The lockdowns and restriction on movement of people has not only led to an increased demand for content but has also changed content consumption patterns. While traditional and outdoor mediums of distribution of content, such as cinema theatres, continue to be unavailable; the home consumption mediums, such as television channels and OTT platforms have gained even more popularity and viewership. However, despite the rise in viewership, monetisation and revenues are hugely impacted, considering reduction in ad-spends by other industries owing to the global recession.

In addition to the lockdowns adversely impacting a large number of daily wage earners, and freelance creative talents, decreasing revenues and uncertainly around recovery from the pandemic, unfortunately also triggered a number of layoffs and pay-cuts in the media industry. In these circumstances the social and charitable measures taken by several media bodies, including broadcasters, IPRS, Producers Guild of India and other industry bodies, are certainly a much-needed lifeboat to sustain livelihoods of composers, artists, singers, authors, and daily wage earners in the entertainment industry.

Going forward, the industry will need to re-think various operational and legal aspects of the business, such as timelines, production costs and schedules, legal commitments etc., in order to adjust to the 'new normal' being presented to the world. OTT platforms, where a large chunk of the content library comprises of acquired content, or is dependent on partnerships with third parties, may have to think of innovative ways of updating their existing content libraries, given that the production of new content may take much longer than anticipated earlier.

Media companies including production houses will also need to find ways of increasing their use and reliance on technology. In addition, contractual arrangements and legal provisions will need to be re-evaluated wherever possible, so as to appropriately account for such risks occurring in future and mitigate losses.

However, on the bright side, the demand for home consumption mediums including digital streaming services, which are hugely popular since even before the pandemic, is likely to increase even further. In the long run, this may in fact benefit subscription-based services which may be able to penetrate even further amongst viewers.

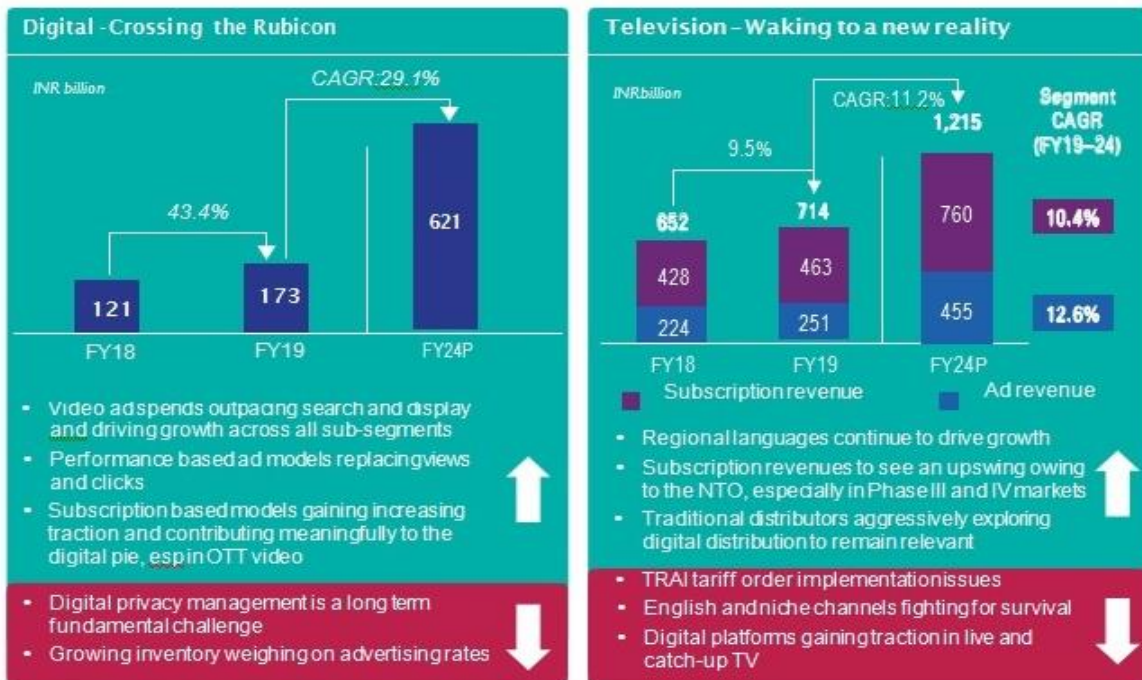
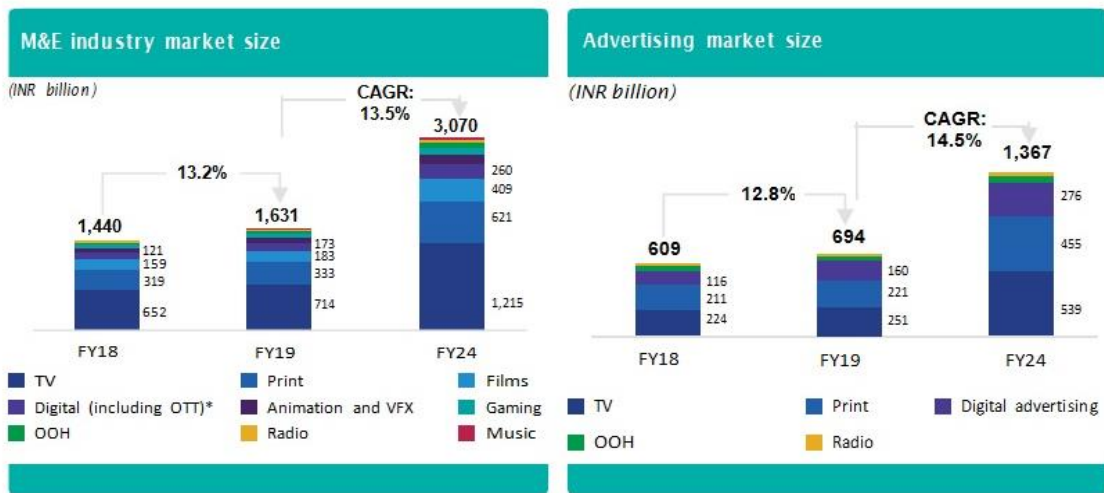
Given a rise in demand for content and increasing viewership, and the halts in production of new content, existing content is likely to become more valuable, and in time may increase competition not only for existing film and television libraries, but also for all new content. To meet the demand for content, the industry may also see increased partnerships between domestic and international media companies, leading to a rise in acquisition of foreign language content, and distribution of localized versions of such foreign content to suit different segments of the domestic audience.

Given the above, while the media and entertainment sector is currently grappling with various challenging issues, however, as people strive to return to normalcy, eventually the sector may be amongst the first few to recover, and continue to provide to everyone across all mediums and segments, the much-needed entertainment.

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Industry performance

The Indian Media and Entertainment (M&E) industry grew at 13.2 per cent in FY19 over FY18 to reach INR1,631 billion on the back of rapid growth in digital user base and consumption combined with growing regional demand and monetization. However, there have been headwinds in the form of NTO implementation uncertainties and early signs of economic slowdown, which have pulled down the overall growth. Going forward, the industry is expected to grow at 13.5 per cent CAGR during FY19–24 to reach INR3,070 billion in FY24 on the back of greater focus on monetization of emerging digital business models, strong regional opportunities and favorable regulatory and operating scenario across traditional.



Source: KPMG in India analysis based on primary and secondary discussions

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Conflict of Interest

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