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Business & Legal Affairs (Southeast Asia & Greater China)

5 November 2014

Ms Lee Ee Jia
Director (Policy)
Media Development Authority of Singapore
(Attention: Ms Alicia Chay)
Email: policy_consultations@mda.gov.sg

Dear Ms Lee,

Response to Public Consultation on "Review of Content Protection Measures in MMCC" issued on 24 September 2014 ("Consultation")

Viacom International Media Networks ("**VIMN**") is a division of Viacom Inc. (NASDAQ:VIA, VIAB), a global media entertainment company best known for creating and operating many diverse entertainment media brands, including the MTV music channel, Nickelodeon kids and family channel, VH1, BET, Comedy Central and Paramount Pictures. VIMN represents all of Viacom's international brands and businesses outside of the USA.

Statement of Interest

Singapore has served as VIMN's Asia regional headquarters for nearly two decades, encouraged by a generally open and transparent business climate and strong government support which is vital to promote growth of the media and infocomms industry. In Asia, VIMN owns and/or is licensed by the MDA to distribute the following channels: MTV Asia, Nickelodeon Asia, Comedy Central Asia, MTV China, Nick Philippines, MTV Live HD and Nick Jr. The MTV brand was first established in Singapore over 19 years ago, and quickly captured the imagination of our youths; while Nickelodeon has been in Singapore for over 16 years and today counts as a leading edutertainment offering for kids and preschoolers. Today, our channels and content are carried across the foremost pay TV operators in Singapore, including SingTel Mio; StarHub TV and Mediacorp Toggle.

"removal of material content within a channel" as an instance of unilateral contract variation under the MMCC is manifestly excessive

VIMN submits this Response owing to its deep concerns in relation to the proposed measure relating to "unilateral contract variations", in particular the prohibition against ETCs being imposed where subscribers seek to exit their fixed term pay TV contracts on the basis of "removal of material content within a channel". The MDA added at para 2.4.6 that as a general principle, the Authority will leave it to retailers to assess what constitutes material content within a channel, taking into account facts such as relative viewership of the content; relative proportion of timeslots; and prominence in marketing the service ("**Proposed Regulation**").

At the outset, VIMN applauds the Authority's initiatives to champion consumer interests and to keep consumer interests at the forefront in its review of the MMCC. VIMN believes that the CASBAA submission has detailed the adverse impacts that will be generally felt across the content and creative industry should the Proposed Regulation be imposed, and is in agreement with CASBAA's alternative suggestions for a more balanced approach.

VIMN submits this Response to add a further perspective from the angle of an international channel creator/provider, and we will demonstrate that the Proposed Regulation is flawed and should not be imposed for the following reasons:

(1) **Channels are marketed on the basis of genre/target audience, not specific content**: Unlike certain interest-specific channels (such as sports action channels) which market themselves on the carriage of certain premium sports content (e.g. F1, the tennis grand slams, the golf majors, etc.); a clear distinction must be made with *general entertainment* channels and *kids* channels which typically market themselves not on any specific pieces of content. Rather, such channels position themselves on the basis of genres or target audiences, for example our Viacom channels are marketed as: the destination for all music lovers and anyone who wants to "kill boring" (MTV), or "The Smart Place to Play" (Nick Jr.) or "funny rules!" (Nickelodeon). Nowhere in the world is a Viacom-channel pegged to a specific piece of content, whether "material" or otherwise.

(2) **Content comes and goes, depending on a matrix of factors:** We further submit that the Proposed Regulation – if simply implemented as proposed -- will lead to unintended and commercially-untenable results.

Channels constantly experiment and re-invent to stay relevant: VIMN urges the Authority to recognize the fact that pay TV channels must retain the editorial discretion to programme content in accordance with various considerations: such as brand/channel positioning, audience preference and consumption patterns, market demand and general supply-side concerns (including, in particular, pricing). In this dynamic media environment, channel creators have to constantly make changes to our programme line-up so as to capture and retain eyeballs. We cannot remain static and only broadcast content that is proven to work. Indeed, certain channels – particularly youth and kids-centric channels -- are dependent on an evolving slate of programming as compared to sports channels, because our viewers have a 'shifting preference consumption behavior' and hence it is imperative to have freedom to experiment and allow new content concepts. In fact, the MTV channel constantly stays ahead-of-the-curve by anticipating global viewing trends, introducing fresh content genres before the wave hits the shores of Singapore. In other words, we set the trends; we don't follow them.

Further, at certain times during the year, channels may skew their programming to cater to festivities or promotional drives. As a hypothetical example, Comedy Central channel may run a focus on Stand-Up Comedies for the month of December, and choose not to air our popular *South Park* animated series for this period. As a content creator, we need to retain such flexibility and we urge the Authority to similarly respect our creative discretion.

If the audiences disagree with our programming choices, this will be reflected in a drop in channel ratings. Regulation is not the panacea.

We would add that even popular programmes have been known to be dropped from a channel line-up. The reasons could be multifarious: for instance, the broadcast rights to the show may have been swept up by a competing bidder on an exclusive basis. Even show creators cannot guarantee the longevity of their content, e.g. talents may move on to take on other projects (e.g.: Stephen Colbert, who is leaving *The Colbert Report* to helm another talk show).

In the circumstances, we submit that the Authority's championing of consumer rights cannot conceivably extend to using the MMCC to ensure that "material content" must be continuously made available on a channel. It is manifestly wrong to create a "consumer expectation" that the much-adored *Spongebob Squarepants* can never be removed from our Nickelodeon Asia channel (even though we have no foreseeable plans to do so). In this same connection, consider another hypothetical example: Channel X markets itself as the home of US action dramas, and launches a major advertising campaign based on their popular *The Walking Dead* series. Consequently, if the Proposed Regulation is indeed implemented, Channel X will now be faced with an impossible dilemma: it will come under immense pressure from the pay TV operator(s) to ensure that it must secure subsequent seasons of *The Walking Dead* on the basis that this series is "material content". At the same time, the upstream rights owners of the series will know that Channel X's hands are tied (as they can't drop the content now), and therefore hold Channel X to ransom with inflated content licensing fees. Eventually, the channels' inflated content acquisition costs will trickle down and drive up channel carriage costs for Singapore pay TV operators, and finally resulting in higher subscription fees for Singapore consumers. We respectfully urge the Authority to fully consider the potential ramifications of its proposed regulation.

[**CONFIDENTIAL**: […] **REDACTED**.]

We understand that the Authority's position is that it is not dictating what "material content" entails, and such a decision is left to the pay TV operators and channel providers. However, we urge the Authority to consider the practical implications and reality: the operators will attempt to pass on the burden of such regulation to the upstream channel providers and impose the operator's own interpretation of the measure which may be manifestly disproportionate to the true nature of the problem.

(3) **How to apportion fault in an age of channel bundling?** Pay TV operators typically retail on the basis of channel bundles, not *ala carte*. For example, kids channels are typically packaged under a unified Kids pack. If a parent subscriber desires to drop the Kids pack on the basis of a perceived change in "material content", it will not be possible to definitively apportion fault to any one or two channels.

(4) **Such a measure is unprecedented and will have a chilling effect on the media industry as a whole:** Across the world where Viacom operates more than a hundred channels, we have not noted any territory with regulations analogous to the current Proposed Regulation. We would reiterate that neither the domestic consumers nor pay TV operators of any one single country should be able to dictate the content acquisition decisions of a channel. And in most cases, international channels are supplied across the entire Asia Pacific footprint, not specifically created for the small Singapore market. To re-emphasise the point, we as channel providers make considered decisions on our content acquisitions based on a confluence of factors, ranging from price, general consumer viewing patterns to brand focus – and certainly not on the preferences of one single territory

alone. In a small market like Singapore's, it does not serve the country's media hub goals to be viewed as having heavy-handed government intervention to such extent.

VIMN strongly urges the Authority to fine-tune the measure and subject this to further review, taking into account the legitimate interests across the entire value chain: from the content rights owners, to the channel providers, the pay TV operators and certainly, the consumer interest. To this end, VIMN supports the alternative measures detailed in the CASBAA submission: i.e. (a) consumer education and ensuring that operators notify consumers that changes to programming content are inevitable in any television service; and (b) establishing a voluntary Code of Practice or Guidelines for all pay-TV operators to adopt, whereby they are required to maintain the value of consumer fixed-term contracts. Finally, if there are specific programming content which the Authority is anxious to ensure remains available to viewers, we submit that the correct approach is to have such list of content expressly prescribed under the MMCC (akin to an anti-siphoning list). We respectfully submit that the current Proposed Regulation is adopting a sledgehammer approach to a very limited concern.

In closing, VIMN urges the Authority to recognize that such a move, if implemented as proposed, has the potential to drive costs upwards, distort natural market forces and ultimately, return to hurt Singapore consumers in the longer run, while derailing Singapore's efforts to become an Asia media hub.

VIMN thanks the Authority for the opportunity to hear and consider industry players' legitimate concerns. We seek continued and open dialogues between the Authority and industry stakeholders affected by this proposed regulation.

Yours sincerely,

LOH WEI HAO
Head, Business & Legal Affairs (Asia)
Viacom International Media Networks