

# CODE OF CONDUCT FOR REDRESSING VIEWERSHIP MALPRACTICES (“Code of Conduct”)

Effective from 11 January, 2021

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## Introduction

Broadcast Audience Research Council, India (“**BARC**”) is an industry led body established to design, commission, supervise and own an accurate, reliable and timely television audience measurement system (“**Ratings**”) for India, which can be utilized by Broadcasters, Advertisers, and Advertising and Media agencies (collectively referred to as “**Subscribers**”). All existing and prospective Subscribers of BARC who subscribed/subscribes to Licensed Data (as defined under the EULA and/or SoW) and ratings are at all times required to adhere to and comply terms and conditions of End Use License Agreement (EULA), Statement of Work (SoW), Code of Conduct(s) and Policies of BARC including its amendments. which will be uploaded by BARC on its website from time to time.

## Objective

BARC is committed to provide a Rating system that is fair, transparent, free of bias and devoid of any malpractice. BARC and its stakeholders, the Indian Broadcasting Foundation (IBF), the Indian Society of Advertisers (ISA), and the Advertising Agencies Association of India (AAAI), have a zero-tolerance policy towards any attempts to influence the integrity of the audience estimates/Ratings.

BARC is required to supervise and maintain a reliable and transparent Rating system, which can be achieved only with the complete cooperation of and adherence to the terms of the EULA, SoW, Code of Conduct(s) and Policies of BARC by its Subscriber.

Panel households form the core of BARC’s Rating system. Panel Households (PHH) means the persons in selected households within the Republic of India, who are used as the reference audience for BARC’s audio-visual audience measurement services, and whose household will be equipped with one or more ‘**Meters**’ (Bar-O-Meters or any variant of that or any form of meter(s) as they may be called).

To offer a level playing field to all the Subscribers, and to provide them with fair Ratings, BARC shall on an ongoing basis investigate any abnormal viewership data recorded by the Meters installed by BARC in Panel Households. Further BARC shall make statistical and objective corrections of abnormal spikes in any Panel Household(s)’s viewership pattern in line with its standard protocols.

BARC is duty bound to ensure the Secrecy and Privacy of the Panel Homes as per the guidelines issued by Ministry of Information and Broadcasting for Television Rating Agencies in India (“**MIB Guidelines**”). The guidelines mandate that secrecy and privacy of the panel homes must be maintained by BARC and in this context BARC can issue voluntary Code of Conduct and policies to be followed by all the stakeholders / subscribers /TV channels / parties obtaining services from BARC under EULA.

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Hence the objective of the Code of Conduct is to prohibit, discourage, prevent and eliminate malpractices related to and resulting in tampering with the Ratings by influencing /or attempted influence of the Panel Households.

## 1. Viewership Malpractice(s)

“Viewership Malpractice(s)” **shall mean** any activity or abstinence from any activity or a promise to do or abstain from doing any activity whether individually or in a group of persons; whether directly or indirectly; with an aim of manipulating or altering or tampering (i) the viewership pattern(s) and / or (ii) habits of a Panel Household(s), and /or (iii) the viewership data and / or (iv) any of the process leading to generation of Ratings , which does or may potentially result in altering the Ratings of any television channel or television programme or any content or an advertisement or any saleable media content in any manner or in a manner which is in breach of a EULA or BARC policies and includes:

- a. Attempt to and/or obtain details of the Panel Households, like address, member names, and any/all related information etc.
- b. Attempt to and/or bribe/influence a Panel Household to watch or not to watch a television programme or Channel or any content;
- c. Attempt to and/or bribe any of the staff appointed by BARC or its agents, service provider or any other entity in possession of any data relating to Panel Households or Ratings.
- d. Any other form of inducement or influence to unnaturally influence the viewing of a particular channel(s).

## 2. Vigilance Team

Vigilance Team means, the team of BARC in-charge of investigating cases/incidents involving Viewership Malpractices.

## 3. Measurement Science and Market & Business Analytics Team

BARC Measurement Science and Market and Business Analytics Team means an in-house team of BARC in charge of overseeing methodology, sample design & control, statistical analysis and data validation.

## 4. BARC Disciplinary Council

BARC Board has constituted a Disciplinary Council to address concerns related to Viewership Malpractices and recommend penalties. The BARC Disciplinary Council (BDC) shall be a six (6) Member body consisting of a Chairperson and 5 other Members. The Chairperson and the Members will be appointed by Board of Directors of BARC (“**BARC Board**”) by a majority decision.

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## 5. Constitution of the BARC Disciplinary Council:

The BARC Disciplinary Committee will consist of following members:

- a. Chairperson – a retired judge of the Supreme Court or of a High Court. In the event the current Chairperson is unable to participate in any BDC proceedings for any reason whatsoever, the BDC shall appoint an “Interim Chairperson” from the empanelled Judge as approved by the Board;
- b. One Representative from the Indian Broadcasting Foundation;
- c. One Representative from the Indian Society of Advertisers;
- d. One Representative from the Advertising Agencies Association of India;
- e. One person who is well versed in the field of statistics, technology, broadcasting and the working of BARC but not any employee of BARC;
- f. One person who has earlier held a senior position not below the rank of Commissioner or equivalent in any Law Enforcement authorities such as Police /CBI.

## 6. Terms and Conditions of BDC:

- a. The Chairperson (including the Interim Chairperson) and other Members, excepting IBF, ISA, AAI Members (Stakeholder Members), shall hold office for a period of three (3) years. However, the term of IBF, ISA, AAI Members shall be of two (2) years.
- b. The process of appointment of new BDC Member shall be initiated by the BARC Board at least 30 days prior to the expiry of the term of the concerned BDC Member. Provided also that where a person nominated as a Member of the BDC is found unfit to hold office as Member of the BDC, the BARC Board may remove such person from being Member and thereupon, such Member shall forthwith cease to be a Member of the BDC.
- c. All Members including the Chairperson nominated in the BDC shall be eligible for re-nomination after expiry of his/her tenure of 2 years or 3 years as applicable.
- d. The Chairperson and any other Member may resign from BDC by giving thirty (30) days’ notice in writing to the BARC Board, and upon such resignation being accepted by the BARC Board and after completion of the notice period of thirty (30) days, the Chairperson or the Member shall be deemed to have vacated his/her office.
- e. Any vacancy arising as above or otherwise shall be filled, as soon as may be, by nomination in the same manner in which the Member vacating office was nominated.

## 7. Meetings of the BARC Disciplinary Council [BDC]:

- a. The BDC shall ordinarily meet once in a month or at any other frequency as required but the Chairperson may at any time call an extraordinary meeting, if he considers it necessary to do so.

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- b. Meetings of the BDC shall ordinarily be held at BARC’s office in Mumbai. The BDC meetings can also be conducted entirely through video conferencing, WebEx or any other suitable method as per the sole discretion of BARC.
8. Quorum:
- At every meeting of the BDC, four (4) members including the Chairperson or in his absence by the “Interim Chairperson” shall form a quorum.
9. Chairperson of the BDC:
- Meetings of the BDC shall be presided over by the Chairperson or in his absence by the “Interim Chairperson”.
10. Decision to be decided by majority of Votes:
- Every decision before the BDC shall be decided by majority of votes and in the case of equality of votes, the Chairperson or in his absence by the “Interim Chairperson” or the member elected to preside shall have a second or casting vote.
11. Who can complain and Where?
- a. Subscribers of BARC, Panel Household members, any concerned agencies and any independent entity or firm or an individual can register a complaint with BARC Vigilance Team.
- b. The complaint must relate to Viewership Malpractice as defined under this Code of Conduct and shall be e-mailed to : [vigilance@barcindia.co.in](mailto:vigilance@barcindia.co.in).
- c. Upon receipt of such complaints BARC Vigilance Team shall forward it to BARC Measurement Science and Market Analytics Team, which shall conduct necessary statistical analysis.
- d. BARC can also initiate *suo moto* investigation into the activities of any Subscriber(s) where BARC reasonably believes that there may have been a Viewership Malpractice or violation of the EULA, SOW, violation of Code of Conduct and policies of BARC.
12. Show Cause Notice by BDC:
- a. Upon identification of abnormal viewership data recorded by the Meters at Panel Households or upon receipt of a complaint regarding Viewership Malpractice, the Measurement Science and Market & Business Analytics (“**MSMBA**”) team will carry out an statistical analysis on the viewership data. The MSMBA team shall submit an Analytics Report (“**AR**”) before the BDC. The AR would contain all the information

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collated during the analysis, including the viewership data and other material such as the indexed raw data (which should not contain any information that compromises secrecy and privacy of a Panel Household), which could be in physical or electronic format, and the same shall be presented before the BDC.

- b. If the BDC *prima facie* is of the view that Viewership Malpractice has taken place, the BDC will issue a Show Cause Notice along with the AR (“**SCN**”) to the Subscriber(s)/ TV Channel(s) to mail id’s of Subscribers which are used to communicate with BARC during normal course of business.
- c. The Subscriber(s)/ TV Channel(s) shall have 14 (fourteen) calendar days from the date of receipt of the SCN by the Subscriber/ TV Channel(s) to reply to the SCN within the period stipulated above.
- d. Upon perusing the SCN and the reply thereto of the Subscriber(s)/ TV Channel(s), it will be open to the BDC to seek further information from BARC and/ or Subscriber / TV Channel(s) and / or proceed further in the matter.

## 13. Procedure to be followed by the BDC:

- a. If the BDC, after considering all the information and evidence available before it is of the opinion, that no case is made out against the Subscriber(s), it may close the complaint and inform the Subscriber(s) of its decision on its official email id or to email ids of the Subscribers which are used to communicate with BARC during the normal course of business.
- b. However, if the BDC after considering all the information and evidence available before it is of the *prima facie* opinion that Viewership Malpractice has taken place, the BDC shall issue a written communication on the official email(s) of the Subscriber(s) or to email ids of the Subscribers which are used to communicate with BARC during the normal course of business and provide the Subscriber(s) an opportunity to be present for a personal hearing before the BDC on a particular date, venue and time. The BDC proceedings are in-house disciplinary proceedings and hence counsel representation is not permitted in the BDC proceedings. The Subscriber(s) shall have a period of 14 (fourteen) calendar days to respond to the BDC if it wishes to be heard in person. However, BDC shall proceed with the matter if there is no reply received on the written communication from the relevant Subscriber(s).

## 14. Procedure for hearing

In view of the need for expeditious disposal of complaints and instances of Viewership Malpractice, the following procedure shall be adopted –

- a. The Subscriber(s)/ TV Channel(s) will not be allowed to cross-examine any of the Panel Households in order to comply with the Policy Guidelines for Television Ratings in India,

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as notified by the Ministry of Information and Broadcasting, Government of India and in particular clauses 5.4.1. which is reproduced as under:

*“Secrecy and privacy of the panel homes must be maintained. In this context the industry body will issue a voluntary code of conduct to be followed by all stakeholders, including penal provisions for breach of the code.”*

- b. It will be open to members of the BDC to participate in the proceedings via video conference.
- c. The Parties shall be provided with not more than forty-five minutes to make submissions during the hearing.
- d. The BDC may, in its discretion, consider a request for adjournment of a hearing made by a party. However, a party shall not be entitled to seek more than two adjournments.
- e. The BDC will make efforts to arrive at a decision by consensus, failing which the majority view shall prevail.
- f. Post the hearing, if the BDC is of the opinion that a case is made out against the Subscriber(s)/TV Channel(s), it will decide on the course of action, to be taken against the relevant Subscriber/ TV Channel as stipulated in Clause 14 herein below and communicate the same in writing (“**Order**”) on the official email.
- g. The quorum shall pass the Order and it shall be signed by the Chairman digitally and/or by signing the physical copy. The signed Order shall be pronounced with or without the same members that formed the quorum.

## 15. Scheme of sanctions

15.1. The Disciplinary Council can initiate any of the following actions:

- 15.1.1 First Offense: Written warning to the relevant Subscriber or a penalty upto Rs.25 Lakh (twenty five lakhs only), or both, to be complied within 30 (thirty) calendar days of receipt of the BDC’s Order by the relevant Subscriber/ TV Channel;
- 15.1.2 Second Offense: Written warning to the relevant Subscriber/ TV Channel; Subscriber/ TV Channel’s name to be published in the watch list on the website of BARC for a period of

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4(four) weeks and a penalty upto Rs.50 Lakh (fifty lakhs only) to be complied within 30 (thirty) calendar days of receipt of the written warning by the relevant Subscriber;

15.1.3 Third Offense: Written warning will be issued to the relevant Subscriber(s) TV Channel(s) and the name of such Subscriber(s) /TV Channel(s) shall be published in the watch list on the BARC Website. In addition to the above, relevant Subscriber(s)/TV Channel(s) viewership data shall be suspended and shall not form a part of the Ratings for one month and a penalty upto Rs.1 Crore (one crore only) to be complied within 30 (thirty) calendar days of receipt of the written warning by the relevant Subscriber(s);

15.1.4 Fourth Offense: Termination of the EULA with respect to relevant Subscriber(s)/TV Channel(s), BARC shall be entitled to retain and/or demand the License Fees accrued by BARC till such date of termination.

## 15.2. Cost of investigation, Statistician, Panel Churn and BDC Proceedings:

The efforts taken by BARC to identify, monitor and evidence any violation under this Code of Conduct by a Subscriber and adjudicated by the BDC involves financial impact. If a subscriber has violated this code of conduct and confirmed by BDC under its order/award, then such subscriber shall be required to pay the cost with respect to the following:

- a. Cost incurred by BARC for Statistical and Data Analysis Cost including man hours spent by various person for analysing and preparing data.
- b. If the household is influenced/compromised, then to maintain the confidentiality and privacy of Household's, BARC will de-install the meter(s). BARC will conduct listing study to identify new household and recruit new household. The cost of the above activities.
- c. The administrative cost to conduct Disciplinary Proceedings.
- d. Cost of any internal/third-party investigation agency, statistician and expert advice to ascertain and identify the panel tampering/influence.

15.3. The cost is calculated as per the table mentioned below:

S.NO	TYPE	COST in INR
1	Statistical and Data Analysis Cost including man hours spent by various persons for analysing and preparing data @ 14,000/hour (Average 20 Hours for a case from inception till closure)	14,000.00
2	Cost of deinstallation of meters from tampered house and reinstallation in a new Household	50,000.00
3	Listing study for finding a new Household	6000.00

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4	Any internal/third-party investigation agency, statistician and expert advice to ascertain and identify the panel tampering/influence (Calculated based on an average of 25 Households )	11,000.00
5	BARC Disciplinary Committee administrative Cost (Sitting fee for members, issuing notice, infrastructure & utility, stationary and other overheads). Calculated at an average of 2 hearings.	4,00,000.00

15.4. BARC shall submit the quantum of cost incurred to BDC on the above which shall not exceed Rs. 12.5 lakhs per case/offense (twelve lakhs and fifty thousand only) and exclusive of applicable taxes. BDC shall also order any other cost(s) as it may deem fit for conducting the proceedings including those incurred by BARC related to this Code of Conduct apart from the above. BDC shall decide the amount which shall be paid by the subscriber(s) under its order and shall be in addition to the penalties as specified under clause 14 hereinabove.

15.5. Provided that in case Subscriber(s)/TV Channel(s) fail to comply with; the Order passed by the BDC within the period stipulated under that Order, the BDC can take further action against the non-compliance of the Order by way of:

- a. Issuing First Warning Notice to the Subscriber(s)/TV Channel(s) providing 15 (fifteen) calendar days to comply with said Order; failing which;
- b. Issuing Second Warning Notice to the Subscriber(s)/TV Channel(s) providing further 15 (fifteen) calendar days to comply with said Order; failing which;
- c. Direct BARC to suspend or terminate the EULA, as required.

16. Confidentiality:

All information relating to the complaint, minutes of meetings, all proceedings, hearings, Order shall be kept confidential subject to compliance/enforcement of these guidelines.