

**“CONSULTATION PAPER ON REGULATORY FRAMEWORK FOR OVER-THE-TOP (OTT)  
COMMUNICATION SERVICES” ISSUED BY THE TELECOM REGULATORY AUTHORITY OF INDIA DATED  
NOVEMBER 12, 2018**

**TO  
THE TELECOM REGULATORY AUTHORITY OF INDIA**

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



**Dated: January 21, 2019**

In relation to the Consultation Paper on Regulatory Framework for the Over-The-Top Communication Services issued by the Telecom Regulatory Authority of India (TRAI) on November 12, 2018 (“**Consultation Paper**”), we have already submitted our comments on January 07, 2019.

We have provided below our counter-comments on comments of some of the stakeholder(s) raised in the Consultation Paper as under:

**Query 1:**

**Which service(s) when provided by the OTT service provider(s) should be regarded as the same or similar to service(s) being provided by the TSPs. Please list all such OTT services with descriptions comparing it with services being provided by TSPs.**

**Query 2**

**Should substitutability be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers? Please suggest factors or aspects, with justification, which should be considered to identify and discover the extent of substitutability.**

**Counter Comment 1 and 2:**

We disagree with the view of some of the stakeholders that broadcasters should also be included within the scope of the Consultation Paper for comparison with OTTs providing video/audio content and broadcast services. As mentioned by TRAI in The Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017, since OTT distribution platforms are not granted permission/license by the Ministry of Information and Broadcasting (MIB), they are not comparable with broadcasters. Hence, the licensing/regulatory provision applicable to broadcasters, cannot be applied to OTT distribution platform. OTT services also do not use spectrum for providing their services but ride on the top of data services provided by licensed telcos unlike broadcasters who require uplink/downlink spectrum for transmission of signals. OTT audio/video/other media content are delivered over the internet (without involvement of intermediaries). Hence, OTTs providing content/media services have rightly been kept outside the purview of the Consultation Paper and cannot be brought within the ambit of substitutability with broadcasting service.

**Query 5:**

**Whether regulatory or licensing imbalance is impacting infusion of investments in the telecom networks especially required from time to time for network capacity expansions and technology upgradations? If yes, how OTT service providers may participate in infusing investment in the telecom networks? Please justify your answer with reasons.**

**Counter Comment 5:**

Some of the stakeholders have mentioned that OTT service providers offering similar broadcast services through the internet do not have any responsibility, liability or accountability. This assertion is wholly incorrect. There is an entire realm of laws in place governing copyright infringement, obscenity and defamation including stringent provisions of the Information Technology Act and Rules. In fact almost all the laws that require to be complied with by broadcasters are also applicable to OTT platforms. Above all, the sector is well regulated by the Information Technology Act, 2000. In addition, the platforms are following an approach of self-regulation through an industry led body - Internet and Mobile Association of India (IAMAI). The members of IAMAI have recently adopted a ‘Code for Best Practices for Online Curated

Content Providers' which aims at protecting consumer interest while offering viewers a variety of content choices.

Further, a claim from one of the stakeholders alleging certain broadcasts on OTT platforms being against national security appears to be baseless in the absence of any supporting data. In light of the entire set of regulations governing the OTT platforms coupled with judicial interventions from time to time, there are sufficient checks and balances in place to ensure that content provided on such platforms are not in violation of law of the land.

**Query 6:**

**Should there be provisions for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers? Please provide suggestions with justification.**

**Counter Comment 6:**

We disagree with comments of some of the stakeholders that emergency services should be made mandatorily accessible via OTT content service providers. Unlike the offering of telecom services which are solely consumed for the purposes of communication, essentially on a real-time basis, OTT content (except for live content) are consumed at consumer's discretion (not at specified time intervals). Hence, display of such communications over OTT content platforms may not reach the consumers on a real-time basis which would defeat the purpose of making emergency communications available on OTT content platforms. The nature of consumption on the platform varies from consumer to consumer and availability of such emergency services should be primarily with TSPs and Doordarshan. In any event, we have seen in times of emergency government bodies and disaster relief agencies using social media to communicate emergency contact numbers, helpline numbers and provide updates.

**Query 7:**

**Is there an issue of non-level playing field between OTT providers and TSPs providing same or similar services? In case the answer is yes, should any regulatory or licensing norms be made applicable to OTT service providers to make it a level playing field? List all such regulation(s) and license(s), with justifications.**

**Counter Comment 7:**

One of the stakeholders has recommended that OTT service providers should adhere to certain basic norms like any OTT platform carrying live TV channels should mandatorily carry all Doordarshan channels, all OTT service providers offering news should be registered with the MIB. We do not agree with this view for the reasons mentioned above. Further, the mode of operation, revenue generation and the nature of offerings of OTT service providers are not comparable with that of broadcasters/TSPs. Hence, the same yardsticks cannot be made applicable on two inherently distinct platforms. Nonetheless, on the carriage of Doordarshan channels, those that are unencrypted and FTA may be made available at the option of the OTT service providers.

**Query 9:**

**Are there any other issues that you would like to bring to the attention of the Authority?**

**Counter Comment 9:**

On the recommendation for audience measurement system to be devised for OTTs carrying live television channels by certain stakeholders, the OTT players already have their internal mechanisms in place for audience measurement systems. This apart there are several private players providing audience measurement services. Hence attempting to mandate one only for those OTT players carrying television content will be a fruitless exercise. The way forward would be to unify the broadcast TV measurement system so that it captures consumption of television content even when shown on any other platform including second screens

On incidents of fake news being carried by OTT players as reported by certain stakeholders, in the absence of any data backed while making the assertion, the same does not demand consideration at this stage.

Lastly, we urge the DOT and TRAI to continue the policy of forbearance for the OTT sector which would enable the industry to grow to its fullest potential.

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