

1178 / TRAI/ ISPAI /15

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Mahanagar Doorsanchar Bhavan,
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New Delhi – 110 003

Subject: ISPAI response to TRAI Consultation Paper no. 2/2015 on “Regulatory Framework for Over-the-top (OTT) services

Dear Sir,

We congratulate the Authority to have come out with this consultation paper on the matter captioned above and sincere thanks for providing us the opportunity to submit our response on this important issue.

We have enclosed our comprehensive response for your consideration.

We would also like to draw your kind attention towards the Lok Sabha question no. 1603 of 2013 on the matter of Free voice call and messaging (copy enclosed).

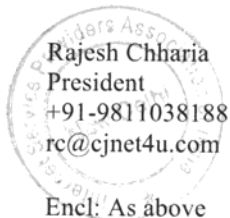
We believe that the Authority would consider our response in positive perspective and incorporate the ISPs concerns on the subject matter.

Looking forward for your favorable consideration.

Thanking you,

With Best Regards,
For Internet Service Providers Association of India

h.h.


Rajesh Chharia
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Encl: As above

ISPAI Response to TRAI Consultation Paper on Regulatory Framework for Over-the-top (OTT) Services

Question 1: Is it too early to establish a regulatory framework for OTT services, since internet penetration is still evolving, access speeds are generally low and there is limited coverage of high-speed broadband in the country? Or, should some beginning be made now with a regulatory framework that could be adapted to changes in the future? Please comment with justifications.

ISPAI Response :

Some of the OTTs are providing services which are substitutable to the licensed telecom services.

In our Opinion "Same Services Same Rule" policy should be adopted and its up to Government to decide the modality.

Question 2: Should the OTT players offering communication services (voice, messaging and video call services) through applications (resident either in the country or outside) be brought under the licensing regime? Please comment with justifications.

ISPAI Response:

As per Answer of Q 1.

Question 3: Is the growth of OTT impacting the traditional revenue stream of TSPs? If so, is the increase in data revenues of the TSPs sufficient to compensate for this impact? Please comment with reasons.

ISPAI Response:

Yes.

As Licensed companies are paying License fees, Service Tax and other taxes on the sme services, which makes services to users costly and further more adhering National Security through network also increase the cost of network.

Question 4: Should the OTT players pay for use of the TSPs network over and above data charges paid by consumers? If yes, what pricing options can be adopted? Could such options include prices based on bandwidth consumption? Can prices be used as a means product/service differentiation? Please comment with justifications.

ISPAI Response:

Its up to government to decide level playing field between Licensed Players and non-licensed players.

Question 5: Do you agree that imbalances exist in the regulatory environment in the operation of OTT players? If so, what should be the framework to address these issues? How can the prevailing laws and regulations be applied to OTT players (who operate in the virtual world) and compliance enforced? What could be the impact on the economy? Please comment with justifications.

ISPAI Response:

Yes. Imbalance exists in regulatory environment. While ISPs are subjected to stringent regulation / laws, OTTs gets free hand.

OTTs do not need any license, don't have to pay license fee & revenue share, they don't need to maintain QoS, no Universal Service Obligations, no security clearances / Legal Intercept requirements, while offering similar services as ISPs/.Further, OTTs are not obliged for consumer safety, security & privacy, neither they are responsible for KYC validation & records.

It's highly unfavourable situation for ISPs who have made huge investments in telecom infrastructure and it further affects their capability to make future investment & upgrade its networks.

Question 6: How should the security concerns be addressed with regard to OTT players providing communication services? What security conditions such as maintaining data records, logs etc. need to be mandated for such OTT players? And, how can compliance with these conditions be ensured if the applications of such OTT players reside outside the country? Please comment with justifications.

ISPAI Response:

Its up to the Licensor, MHA and designated Security Agencies to decide on this issue in the larger interest of National Security.

Question 7: How should the OTT players offering app services ensure security, safety and privacy of the consumer? How should they ensure protection of consumer interest? Please comment with justifications.

ISPAI Response:

We believe OTT-media should provide end users a certain level of security and privacy which is not the case today on Public internet.

The consumer interests & national security should not be ignored and hence it is necessary to bring OTTs offering Communication Service under the folds of regulation as appropriate while applying Same Services Same Rule policy.

Question 8: In what manner can the proposals for a regulatory framework for OTTs in India draw from those of ETNO, referred to in para 4.23 or the best practices summarised in para 4.29? And, what practices should be proscribed by regulatory fiat? Please comment with justifications.

ISPAI Response: As per answers given above.

Question 9: What are your views on net-neutrality in the Indian context? How should the various principles discussed in para 5.47 be dealt with? Please comment with justifications.

ISPAI Response:

We advocate Net Neutrality.

Net Neutrality means all internet traffic must be treated equally. Thus a TSPs/ISP must ensure that consumer has choice to access any App or website without any differential treatment. There should not be any blocking, throttling or paid preferential treatment of retail Broadband traffic by the ISPs.

Question 10: What forms of discrimination or traffic management practices are reasonable and consistent with a pragmatic approach? What should or can be permitted? Please comment with justifications.

ISPAI Response: Its up to Regulator to decide in present situation.

Question 11: Should the TSPs be mandated to publish various traffic management techniques used for different OTT applications? Is this a sufficient condition to ensure transparency and a fair regulatory regime?

ISPAI Response:

Its up to Regulator to decide in present situation.

Question 12: How should a conducive and balanced environment be created such that TSPs are able to invest in network infrastructure and CAPs are able to innovate and grow? Who should bear the network upgradation costs? Please comment with justifications

ISPAI Response:

As per Answer of Q 1

Question 13: Should TSPs be allowed to implement non-price based discrimination of services? If so, under what circumstances are such practices acceptable? What restrictions, if any, need to be placed so that such measures are not abused? What measures should be adopted to ensure transparency to consumers? Please comment with justifications.

ISPAI Response:

Its up to Government to decide.

Question 14: Is there a justification for allowing differential pricing for data access and OTT communication services? If so, what changes need to be brought about in the present tariff and regulatory framework for telecommunication services in the country? Please comment with justifications.

ISPAI Response:

Its up to Government to decide how to protect licenseed service providers Interest who are paying all fees, taxes and duties along with investing for national security.

Question 15: Should OTT communication service players be treated as Bulk User of Telecom Services (BuTS)? How should the framework be structured to prevent any discrimination and protect stakeholder interest? Please comment with justification.

ISPAI Response:

Its up to Government to take call to take care of the interest of Licensed Service Providers viz a viz OTT players.

Question 16: What framework should be adopted to encourage India-specific OTT apps? Please comment with justifications.

ISPAI Response:

Government Regulator/Government can decide for fair facilitation to all players whether licensed or non licensed.

Question 17: If the OTT communication service players are to be licensed, should they be categorised as ASP or CSP? If so, what should be the framework? Please comment with justifications.

ISPAI Response:

Same as response to Q1.It up to government to decide on it on the principle of same services same rule .

Question 18: Is there a need to regulate subscription charges for OTT communication services? Please comment with justifications.

ISPAI Response:

Same Services Same Rule principel to be adopted.

Question 19: What steps should be taken by the Government for regulation of non-communication OTT players? Please comment with justifications.

ISPAI Response:

Govt must consider consumer security, equal opportunity to licensed organization, safety & privacy while regulating non-communication OTT players.


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GOVERNMENT OF INDIA

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

LOK SABHA

UNSTARRED QUESTION NO 1603

ANSWERED ON 14.08.2013

FREE VOICECALL AND MESSAGING

1603 Manian Shri O. S.

Singh Shri Sushil Kumar

Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:-

(a) whether some unlicensed service providers including google and skype are providing voice call, instant messaging, video conferencing services etc. through internet which is causing huge revenue loss to the Government and a threat to national security;

(b) if so, the details thereof along with the names of such service providers and the action taken against them;

(c) whether chat applications which are accessible on laptops, mobile tablets, etc, are under any monitoring system similar to other access services;

(d) if so, the details thereof and if not, the security regulations applicable to these applications;

(e) the steps being taken by the Government to regulate such activities to prevent abuse of these services and also measures taken to support domestic service providers against such activities?

ANSWER

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI MILIND DEORA)

(a) to (e) Licenses for provision of Telecom Services are issued to Indian companies under Indian Telegraph Act, 1885. Unrestricted Internet telephony Services are permitted under the scope of Unified Access Service (UAS) in terms of the UAS Guidelines dated 14th December 2005. Similar provisions are there in Cellular Mobile Telephone Service (CMTS) and Basic Service Licence. Restricted Internet telephony Services [without connectivity to Public Switch Telephone Network (PSTN) / Public Land Mobile Network (PLMN) in India] are permitted under the scope of Internet Service Licence in terms of Internet Service guidelines dated 1st April 2002 and 24th August 2007.

Further, services like voice call, chat, messaging, video conferencing etc. offered by certain foreign websites including Google, Skype etc. are available in public domain for free use and may be accessible to users through Internet services provided by Licensed Telecom Operators. Applicable charges for Internet services are accordingly levied.

Telecom service providers are to provide the facility of interception of communication passing through their network as per the terms and conditions of their respective Licence Agreement and as per the terms and conditions of Indian Telegraph Act 1885 read with Rule 419 (a) of Indian Telegraph Amendment Rules, 2007.

In an endeavor to curb illegal telecom services, 34 Telecom Enforcement, Resource and Monitoring (TERM) units have been created in the country by the Government. Continuous efforts are made for curbing the illegal telecom operations through the TERM units. Also, Other Service Providers(OSPs) have been directed to have Internet connectivity from the authorised Internet Service Providers.

Further, Information Technology Act 2000 has been amended by the Information Technology (Amendment) Act, 2008 w.e.f. 27.10.2009 wherein enabling provisions have been made with reference to services being provided using computer resources including provisions for interception, monitoring and blocking for public access of any information through any computer resource.

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