

TRAI Regulatory framework for OTT Content Providers

Q.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.

A.1

Following services by the OTT providers may be regarded as the same or similar to services provided by TSPs -

- *Personal Messaging – Messages among individuals*
- *Messages from Businesses – Messages from businesses to Individuals*
- *Calling (video and voice)*

Q.2

Are there issues related to lawful interception of OTT communication that are required to be resolved in the interest of national security or any other safeguards that need to be instituted? Should the responsibilities of OTT service providers and TSPs be separated?

A.2

There have been instances in the past wherein an OTT provider has failed in monitoring fake news spreading through their platform resulting deaths of our fellow Indians. In such situations, it becomes necessary that OTT providers also be subject to appropriate regulations such as those applicable to TSPs. (Section 69 of IT Act, 2000 gives the power to the Govt. to intercept, monitor or decrypt any computer resource). This can prevent spreading of fake news and help law authorities in getting to perpetrators of fake news, thereby helping maintain law and order in the country.

Further, for National security and supervisory/ regulatory control Indian authorities must have absolute and unrestricted access to the Indian data. However, any data stored outside India will be under the jurisdiction of the destination country which also makes it open for potential misuse. Since most OTT providers store, process and transfer data belonging to Indian citizens or companies in another country, it becomes difficult for law enforcement authorities to investigate or gather evidence in criminal and taxation matters, as evidence data may be hosted in a different jurisdiction. Hence, it becomes imperative that OTT providers are also mandated like TSPs to store and process data locally.

Q.3

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.

A.3

OTT providers should be subject to the following regulations-

- i. OTT providers should be subject to IT Act, 2000 in interest of National Security
There have been instances in the past wherein an OTT provider has failed in monitoring fake news spreading through their platform resulting deaths of our fellow Indians. In such situations, it becomes necessary that OTT providers also be subject to appropriate regulations such as those applicable to TSPs. (Section 69 of IT Act, 2000 gives the power to the Govt. to intercept, monitor or decrypt any computer resource). This can prevent spreading of fake news and help law authorities in getting to perpetrators of fake news, thereby helping maintain law and order in the country.

- ii. OTT providers should be subject to Data localization
For National security and supervisory/ regulatory control, Indian authorities must have absolute and unrestricted access to the Indian data. However, any data stored outside India will be under the jurisdiction of the destination country which also makes it open for potential misuse. Since most OTT service providers store, process and transfer data belonging to Indian citizens or companies in another country, it becomes difficult for law enforcement authorities to investigate or gather evidence in criminal and taxation matters, as evidence data may be hosted in a different jurisdiction from where the offence was committed. Hence, it becomes imperative that OTT providers are also mandated like TSPs to store and process data locally.

Q.4

Should there be provisions for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers?

A.4

Yes