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RESPONSE OF DISH TV INDIA LIMITED TO THE
CONSULTATION PAPER ISSUED BY THE TRAI ON
REGULATORY FRAMEWORK FOR OVER-THE-TOP (OTT)
COMMUNICATION SERVICES

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At the very outset, we, Dish TV India Limited, welcome the endeavor on the part of the Authority to again come up with this consultation paper. However, it has come to us a surprise that despite repeated requests from various stakeholders from the broadcasting industry the Authority has chosen to limit the scope of this consultation paper to focus only on the regulatory issues and economic concerns pertaining to OTT services as can be regarded the same or similar to the services provided by the TSP's whereas broadcasting services provided by the OTT players have been deliberately excluded.

This is all the more shocking because as per the media reports published during the month of February, 2018, the TRAI, in response to the request of the broadcasting industry, was contemplating for issuance of consultation papers to regulate online video streaming platforms. However, the absence of the same in the present consultation paper is certainly unfortunate and is a big setback. The TRAI in its presentation in 'The Claridges Hotel', Delhi on Regional Standardization Forum for Bridging the Standardization Gap (BSG) held on 20.09.2016 has acknowledged the following facts:

1. The rapid growth of OTT services has raised a number of national policy issues relating to regulatory imbalances & security concerns that need to be addressed.
2. The regulatory imbalances need examination at various levels by different agencies of Government.
3. In addition, public safety and privacy issues require attention.

We, therefore, take this opportunity to remind the Authority that as in the case of consultation paper on the issue of renewal of DTH licenses, the Authority *suo moto* and without any reference from the Ministry of Information and Broadcasting extended the scope of consultation to inter-alia cover various issues, the present consultation provides the Authority an ample opportunity to also include the broadcasting services provided by the OTT players within its ambit.

There is thus no prohibition on part of Authority and we would rather call it an opportunity on part of the Authority to pay heed to the several requests made by the stakeholders in the broadcasting industry to extend the scope of the present consultation to also include the broadcasting services provided by the OTT players. The Authority, therefore, must act now before it becomes too late even for the Authority to take any

action in this regard and stop the vices of illegal services provided by the broadcasting companies in the absence of any regulatory mechanism to regulate such services.

OTT service can broadly be classified into following three categories:

1. OTT communication services;
2. OTT broadcasting services;
3. Other OTT services

While the present consultation process covers only the first aspect of the OTT services, it is of utmost importance that this consultation paper shall also include the OTT broadcasting services as well while the Government must initiate actions towards governing different OTT services engaged in different areas by bringing them in parity with the respective service providers in the said different services.

The Authority is aware that OTT services have been proliferating at a very rapid pace and have become a part of life of a large sections of society in India. These are the services where the subscribers can avail the channels and content through internet on their mobile handset/computer or any digital display device through an application (app) e.g. Netflix, Amazon Video, Hotstar, Voot, ZEE5, Sony Liv etc. With advent in the technology, now the subscribers are even streaming and projecting the content available through OTT from their mobile handset on the television screens. In this context it is pertinent to point out that unlike other broadcasting services, no content regulation is applicable on OTT services and as a result thereof the content being delivered through such services is totally unregulated and there have been lot of complaints that in certain OTT services the content being shown is not compliant with the statutory advertising and programming code stipulated by the Government.

It is noteworthy in this regard that while the TRAI regulations have been made applicable for IPTV services by bringing them under the definition of distributor of TV channels, the OTT broadcasting services have completely been left untouched. It is pertinent to note that OTT services are a small segment of IPTV services. In IPTV service, the content as well the internet services provider is same whereas in OTT, the only difference is that the Internet service provider may not be the one which provides the channel and the content. It is stated that there is no other difference between these two services – technologically both the services are same. IPTV and OTT are technologies to deliver audio/visual content to users. Both technologies use the Internet to deliver TV and other audio/video content.

Both IPTV and OTT are applications designed to transmit TV content over the Internet, which is an IP network, and hence have strong similarities at the Application Layer. Both require reliable data transfer and hence would employ TCP at the transport layer. Both are IP-based, and can also use the same DLL and Physical layer technology. Thus the set of protocols, and hence the channel of transmission for both technologies is in terms of the set of protocols is the same.

The definition of IPTV as per the 2006 order by Government Of India, Ministry of Information & Broadcasting (notification - F.No. 16/03 /2006-BP&L Vol.III, Ministry of I&B) states:

“IPTV (Internet Protocol Television) is a system where a digital television service is delivered using the Internet Protocol over a network infrastructure, which may include delivery by a broadband connection. A simpler definition would be, television content that, instead of being delivered through traditional format and cabling, is received by the viewer through the technologies used for computer network. In case of IPTV, it requires either a computer and software media player or an IPTV set top box to decode the images in real time.”

Thus, as per the definition of IPTV services given by MIB, OTT falls under the definition of IPTV, since it delivers TV and other multimedia content using the Internet Protocol over network infrastructure.

In view of the above, the Regulations made by the TRAI in respect of IPTV services should be made applicable to OTT services as well, however for the reason best known, no clarification in this behalf has been issued by either by MIB or by TRAI thereby keeping these services out of the Regulatory domain which has left the OTT service providers to disseminate the content as per their whims and fancies, practically without compliance of any regulations by taking the benefit there is no such regulation in place to curb such menace.

As a matter of past practice, it was expected that abovementioned clarification / order would be issued expeditiously by the MIB / TRAI because of such an extensive usage of this service and the situation presently is such that almost every broadcaster has an OTT application of its own which is operating without any regulation. However no such action

has been initiated yet. Taking advantage of such an inaction by the Government, the channel/content providers also started their own OTT services and today every channel/content providers is also in parallel, engaged in providing its own channels through OTT as well.

It is important to note in this regard that the Broadcasters, who have obtained the permissions to uplink / downlink channels from the Ministry of Information and Broadcasting, have started using the internet platform to make their content / channel available. Furthermore, the broadcasters are themselves distributing the same content to the users. Accordingly, the Broadcaster is operating as "Broadcaster" as well as "distributor of televisions channels" on the internet platform.

Now by launching the OTT services the broadcasters /content providers are now able to do everything directly what they were not able to do in the regulatory regime. For example, the up-linking and downlinking guidelines require every broadcaster to comply with the advertising and programme code as enumerated in the Cable Network Regulation Act in order to ensure that the program being shown by the broadcasters on their channel are complied with the restrictions so provided in the said code. Further, the said up-linking and downlinking guidelines also require the Broadcasters to provide the decoders of their channels only to the permitted distribution platforms but in blatant violation of these provisions, the Broadcaster are supplying their decoders and channels to the OTT platforms also.

In this context it may be mentioned that for broadcasting any content by a TV channel, permission under Up-linking and Downlinking Guidelines is required to be obtained from the Ministry of Information and Broadcasting and WPC, Dept. of Telecommunication. The permission granted under the Up-linking and Downlinking Guidelines and other licenses and permissions by MIB stipulate that every broadcaster and distribution platform such as DTH, Digital Cable, IPTV, HITS etc. would comply with the advertising and programme code(s) as enumerated in the Cable Television Network Regulations Act 1995 and the Rules made thereunder in order to ensure that the program being shown by the broadcasters on their channel are compliant with the stipulations/ restrictions so provided in the said code.

In this regards, the following points are important to note:

- In terms of the extant TRAI Regulations, a Broadcaster means any person including an individual, group of persons, public or body corporate, firm or any organization or body who/which is providing broadcasting service and includes his/her authorized distribution agencies.
- Further, the Broadcasting services means the dissemination of any form of communication like signs, signals, writing, pictures, images and sounds of all kinds by transmission of electromagnetic waves through space or through cables intended to be received by the general public either directly or indirectly and all its grammatical variations and cognate expressions shall be construed accordingly.
- A bare perusal of the above two definitions clearly provide that the dissemination of the Television channel content even through internet will amount to broadcasting service and the person broadcasting the same would be broadcaster.

Further, it is also important to note that the content being provided by them are free of cost with an intention to create a captive subscriber base and create a monopolistic situation. Because of 'free of cost' provision of the content by the broadcasters through OTT services, other distributor of TV Channels are heavily prejudiced. This method of streaming of content by the broadcasters directly to the customers, bypassing all the intermediaries would ultimately have the effect of potentially threatening the existence of the other distribution platforms. With the launch of 4G services this trend would only be more and more. Such provision of content completely at no cost would only induce the subscribers to shift their operators for the purpose of channel viewing.

Impacts of the provision of TV Channels / contents by the Broadcaster

- Since the Broadcaster are providing the channels / content directly to the consumers, that too without any charge, this would create a monopolistic situation where the Broadcaster, being the distributor also would also control the end mile solution.
- The TRAI Regulations clearly prohibits any distributors of TV channels or a broadcaster to enter into any exclusive contract. In the present case, on the

internet platform, since the broadcaster is also a distributor of TV channel, the arrangement is clearly exclusive in nature. The reasons for prohibiting exclusivity under TRAI Regulations was to ensure an orderly and equal growth of all distribution platform.

- Furthermore, the instant situation, where the broadcaster is also a distributor of TV channels, is also in breach of the cross holding restrictions notified by the government which clearly prescribes cross holding restriction between broadcaster and distributor. In the absence of similar prescription for internet based provision of channels, the broadcasters are breaching the cross holding restriction while providing the channels directly to the subscriber.

Since there is no regulation for OTT services, the content being shown by the channel/content providers through such services are not compliant with the advertising and programing code. Since the content provided/delivered through these OTT services has no control as these content are not regulated by any type of content code as prescribed in Cable TV Act 1995, the content shown to the people by these OTT services are vulgar and pornographic content is being made available freely through the OTT services without any restriction. The content shown in the show of most of the major OTT broadcasting platform are completely uncensored which is a clear and blatant violation of the aforementioned code. In fact, one of the program was propagating un-natural sex. It is thus clear that under the garb of the OTT services, the channel/content providers are bypassing the regulatory stipulations and that there is absolutely no control over the content being shown on such services. The channel/content providers are getting away by contending that the OTT Services are not channels and hence they do not require any license.

Further, there are plenty of child pornographic content and unnatural sex which are widely available in one way or the other through these OTT applications. Since no effective action has been taken in this regard, this has led to exposure of the children to these banned content.

The above has resulted in a shift of viewers (especially youth and adolescents) moving towards vulgar content rather than normal socially acceptable content that can be watched in the presence of family. These OTT content is consumed more in privacy. Only instrument required to access OTT content is a smartphone/computer/any digital display

device. As a result we can see huge increase in number of crime against women, girl child rape, rape cases against women incidents which is the direct effect of these OTT content.

Pornographic and Sexually Explicit content is exploding via OTT

- (i) Over the last one year, the Original Cinemas, Dramas and other content which has been produced for OTT networks has been sexually explicit, has violence, Child sex, terrorist acts, and is completely unrestrained. Stars which were noted for pornographic movies are now openly acting for "Original Content" cinemas or dramas.
- (ii) Such content sells well as the same is not available via censored media such as Films and TV channels.
- (iii) Access to OTT is not restricted to any viewing age such as adults. Even children from 5 years onwards have open access to highest levels of pornography, sexual violence, horror and child exploitation.
- (iv) Audience for viewership is larger than TV or cinema: With 400 Million users (expected to reach 600 million or 60 crores in one year) the audience is larger than Cable, Satellite TV and Cinemas put together. Hence it is very lucrative for original content producers, whose content would never have passed via any certification, to exhibit content via OTT networks.

OTT Services are now mainstream for Television and Public Exhibition

Over the last 3 years the OTT mode of delivery has become mainstream for Television as well as Public Exhibition. Major OTT providers now provide for up to 600 TV channels to a population base of over 400 Million active viewers via 4G networks as per data provided by the networks. In addition to the TV channels, the OTT providers now have a very large amount of "**Original Content**".

Original Content Exhibition to Public are Violating various Acts of Parliament, CBFC certification with appropriate brackets for Adults or universal viewing, and all MIB regulations on Content guidelines or self-certification.

As a result there is a very rapid growth in so called "**Original Programming**" whereby a horde of content developers are developing content. They are using OTT providers to deliver the content due to a vacuum in regulations whereby such content need not be approved by CBFC or be subject to monitoring by the Ministry of Information & Broadcasting.

The Authority must take notice of the fact that there are writ petitions filed before the Bombay and Delhi High Court specifically on the issue pertaining to the kind of content being disseminated by the OTT players which is purely because of absence of regulatory mechanism for the same.

Further, the absence of any regulation in this sector has also resulted in direct access of channels to the public at large which are specifically prohibited by the Government to be downlinked. For example: all the prohibited channels including the Pakistani channels like Peace TV, ARY Digital, Hum TV etc. are available in 'Google playstore' and by downloading such channels, anyone can have access to these banned channels which defeats the entire purpose of the Government to ban these channels.

The absence of regulation has further led to a situation where the said services are promoting and showing advertisement / or not giving required disclaimer for the products, promotion and advertisement of which are prohibited under law. There are other advertisement also which depicts banned articles/substance. Since the OTT applications are downloaded from Google Playstore, they only follow the rules applicable in western countries and the compliance of Indian regulations are being given a complete go by.

Netflix is considering spending \$13 Billion on original content in next year. This translates to Rs 9200 Crores, whereas the revenues from original content would be over 30,000 Crores. Other producers, such as Amazon Prime, Sony, Fox which are spending large amounts on original content programming. Recently Indian production houses have also joined hands for original content programming. It is estimated that over 20,000 crores would be generated by revenues from "Original Programming" and its monetization via OTT networks.

Why OTT Networks are used for Original Programming

OTT networks in India are now used for display of original programming on a very large scale. This is due to the following reasons:

- (i) OTT Viewers are over 400 Million in India-larger than Cable and Satellite homes at 200 Million. The large viewership means reaching large audiences immediately and effectively.

- (ii) CBFC Certification is not needed: CBFC certification which would have been normally needed for exhibiting "Original films" to over 400 million people or homes is avoided
- (iii) Ministry of I&B is unable to regulate content in absence of guidelines: There is a vacuum for acts of parliament which are applicable to OTT content
- (iv) There are no tariff guidelines or distribution guidelines for OTT content, whereas these are applicable for Cable and TV content, as well as cinematographic content.
- (v) There are no advertising codes or disclaimers which need to be shown for OTT content.

From the above it is clear that OTT services are operating without any regulatory restrictions whatsoever. If appropriate regulations are not framed immediately, it would become impossible to regulate these services in future. These OTT service providers, when operating in countries outside India, are operating in full compliance of the Government guidelines however when in India, flagrant violation of the Government laws have become a norm of day for them.

India has a well-established system of Certification and Exhibition of Content

India has a well-established system of certification of content which can be exhibited to the Public. This system which has been put in place by the Acts of parliament includes the following:

- (i) The Cinematograph Act, 1952; enacted by the Parliament
- (ii) Central Board of Film Certification (CBFC) - a Statutory body under Ministry of Information and Broadcasting, regulating the public exhibition of films under the provisions of the Cinematograph Act, 1952.
- (iii) The Cable Television Networks (Regulation) Amendment Act, 1995, Enacted by the Parliament and administered by the Ministry of Information and Broadcasting
- (iv) Up-linking & down-linking policy for TV channels-Dec 2011, administered by the Ministry of Information and Broadcasting
- (v) Protection of children from adult websites –control on Internet Service Providers (ISPs) under section 79 3(b) of Information Technology Act, 2000
- (vi) Indian Child Pornographic Prevention Act, 2016 (Bill C-506, Second Session, 39th Parliament)

The Parliament by virtue of Acts of Parliament and enacting laws to grant specific powers to organs of Government being Administrative Ministries has put in place a desire to ensure that sexually explicit or offensive content is not exhibited or delivered to users in any manner which would be violates of any of the acts or rules so framed.

Even for content to be shown on the Cable and TV networks, the permission granted under the Up-linking and Downlinking Guidelines and other licenses and permissions by MIB stipulate that every broadcaster and distribution platform such as DTH, Digital Cable, IPTV, HITS etc would comply with the advertising and programme code(s) as enumerated in the Cable Television Network Regulations Act 1995 and the Rules made thereunder in order to ensure that the program being shown by the broadcasters on their channel are compliant with the stipulations/ restrictions so provided in the said code.

Parliament must enact Laws to govern OTT

In the last two years, crime which can be attributed to OTT has grown manifold and includes sexual offences, murders, and horrific acts of violence. The problem is much more sever that the problem of drugs which destroyed over two generations in Punjab. The type of content shown strikes at the very roots and ethos of Indian culture, and incites viewers to acts of violence, crime and sexual offences. OTT services are now larger than TV or cinema, and must be looked into by parliamentary committees to frame laws and empowers Ministries of I&B, Telecom and IT to effective curb this serious menace.

Law of land is applicable on all type of content aired /distributed to consumers. A regulatory framework for OTT platforms is also imperative. OTT is just another form of IPTV hence it should be brought under the content and other regulatory framework. When all other TV distribution platforms and mediums such as DTH, Cable TV, IPTV are regulated in India then OTT should not be an exception.

Therefore, OTT Service Provider shall strictly:

- A) comply with the rule and regulations in India in:
 - a) prohibition of monopoly practice and unhealthy business competition;
 - b) tax; (compulsory a permanent establishment in India)
 - c) The Cinematograph Act, 1952
 - d) The Cable Television Act 1995;
 - e) Content and Advertisement regulation under Cable TV Act 1995;

- f) Indecent Representation of Women (Prohibition) Act, 1986);
- g) Downlinking permission just as for TV channels; and/or
- h) Other rule of regulations applicable for dissemination of content.

- B) conduct data protection and data privacy;
- C) conduct content filtering and censor mechanism;
- D) utilize national payment gateway, particularly for paid OTT Service;
- E) guarantee access for lawful information interception and evidence collection for investigation or inquiry needs for criminal case by law enforcement;

In this regard, we would also like to state that the primary objective for establishment of the TRAI was to protect the interest of the service providers and consumers and to promote and ensure the orderly growth of the telecom sector which includes the DTH sector. This objective is enshrined in the preamble of the TRAI Act, and the same is mentioned as under:

“To provide for the establishment of (Telecom Regulatory Authority India and the Telecom Disputes Settlement and Appellate Tribunal to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interest of service providers and consumers of the telecom sector, to promote and ensure orderly growth of the telecom sector) and for matters connected therewith or incidental thereto.”

With the enormous increase in the users availing the channels through internet, it is imperative that the TRAI steps in right now to notify certain regulation to cease the advent of monopolistic activities. We therefore expect that the TRAI would notify necessary regulations to ensure the orderly growth of the industry and also to provide a level playing field to the distributor of TV channels.