

**Asia Internet Coalition (AIC) Industry Response on OTT Framework Consultation –
Pakistan**

To

Major General (R) Hafeez Ur Rehman, HI (M)
Chairman Pakistan Telecommunication Authority (PTA),
PTA Headquarters,
Sector F- 5/1,
Islamabad, 44000
Pakistan

14 August 2024

Dear Mr Chairman,

Subject: AIC Response to the Consultation Paper On Over-The-Top (OTT) Regulatory Framework

I hope this letter finds you well. On behalf of the Asia Internet Coalition (AIC), I would like to express our sincere appreciation to the Pakistan Telecommunication Authority (PTA) for engaging in a consultative process regarding the draft regulatory framework for Over-The-Top (OTT) services in Pakistan and for granting the AIC an extension for us to submit our comments.

The AIC is an industry association of leading internet and technology companies in the Asia Pacific region that promotes resolution of internet, information and communications technology (ICT) policy issues. We are deeply committed towards the development of Pakistan's digital ecosystem and aim to reconcile the technology industry interests with the growth imperatives of Pakistan's digital economy.

We appreciate the PTA's efforts to create a structured regulatory environment that seeks to facilitate the growth and management of OTT services in Pakistan. As responsible stakeholders in this regulatory formulation process, we would greatly appreciate the opportunity to share our comments on these proposed amendments for PTA's consideration. These suggestions, outlined in Appendix I, are intended to further enhance the framework and ensure that it remains conducive to innovation while addressing the regulatory objectives set forth by the PTA.

We look forward to continued collaboration with the PTA and other relevant authorities in Pakistan to ensure the successful implementation of this framework. If there are any further discussions or consultations required, the AIC is ready to contribute its expertise and resources. In case of any questions or need clarification on any of the recommendations, please contact our Secretariat, Mr. Sarthak Luthra, at Secretariat@aicasia.org or +65 8739 1490.

Thank you for your attention to this important matter.

Sincerely,



Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

APPENDIX I

Question 1: Do you agree with the OTT services classification given in clause 2.1 of the draft OTT Regulatory Framework?

a) Yes / No b) If No, please provide your suggestion (Provided Categories should be merged / Segregated or any new category to be introduced with list of services / details)

Response:

a) No.

b) Internet applications and services (sometimes referred to as 'OTTs') have been essential for economic growth, free expression, and other societal benefits. They have enabled the free flow of information, educational opportunities, media pluralism, culture, creativity, and economic opportunity. The phrase Over-The-Top (OTT) originates in the telecoms industry and describes any application or service traveling over the internet ('on top' of the networks). This phrase therefore applies to any and all services running over the Internet, from banking to government services.

More specifically, the scope of these online services or OTT covers a diverse group of services, which exhibit different business models, technical and product design features, infrastructure, and have varying degrees of business impact and consumer benefits. These services may include but are not limited to: entertainment, media, communication, telework/telepresence, cloud computing/storage, social media, financial services, e-commerce, Internet of Things (IoT), and online gaming.

They provide versatile ways to interact, and often combine a wide range of functionalities, mixing several or almost all functions such as forum posting to video calling and messaging to file sharing and new features we haven't even yet dreamed of.

Crucially, there can be as many applications as our imagination allows: there are applications and services for almost any aspect of our lives, and any economic and social sector. Depending on definitions, there are hundreds of millions of OTT services out there.

Therefore, one could arguably contemplate arranging 'OTTs' into dozens if not hundreds of categories of applications. (as one example, the Apple iOS app store includes categories such as Books; Business; Developer tools; Education; Entertainment; Finance; Food & Drink; Games; Graphic & Design; Health and Fitness; etc etc).

Thus, rather than choosing arbitrarily three categories of applications under the classification of OTT services proposed in clause 2.1 of the draft OTT Regulatory Framework when there could be an almost endless list of many more according to how many sectors of the economy and society one may want to define, it would be more appropriate to consider online applications and services, or 'OTTs', as one broad category, and treat them in a technology-neutral manner.

AIC would also welcome a clarification on the intersection between this particular proposal for regulation and other legislation that also applies to online services and applications, such as PECA and the Social Media rules, in order to ensure that there is no conflict of law and a framework that can be implemented smoothly and effectively, for all parties involved.

Question 2: Do you agree with the classification of OTT Media Services as given in clause 2.1.3 of the draft OTT Regulatory Framework?

a) Yes / No b) If No, please suggest otherwise.

Response:

a) No

b) If there is to be a category of Internet application or 'OTT' specific to those that have a 'media' component, the classification of OTT Media Services in clause 2.1.3 should differentiate between curated content providers and catalog-based content providers. Curated content providers offer personalized content based on user preferences, while catalog-based providers offer a vast library organized into categories or genres. In addition, content distribution platform should be excluded from "e-commerce" category. Recognizing these differences is crucial for fair regulation.

Question 3: Do you think there is a level playing field between Over-the-top (OTT) providers and Telecom Service Providers (TSPs) providing similar services?

a) Yes / No b) If No, please suggest measures to address this issue

Response:

a) No

b) We would posit that the question is less about a level playing field between online applications and historic telecommunications services, but rather of the interaction between services which operate on different layers of the Internet ecosystem, ie the infrastructure layer (TSPs) and content layers (online services or 'OTTs').

‘OTTs’ and TSPs are overwhelmingly different services, that elicit vastly different consumer and market protection considerations from a public policy perspective.

The vast majority of online communications services, sometimes referred to as ‘OTTs’, are NOT substitutes to traditional telecommunications (or broadcasting) services: indeed, they offer many more, richer features and choice. These services which are different from traditional, legacy telecom services also elicit different needs and different expectations. A blanket extension of traditional telephony regulation to all so-called ‘over the top’ (OTT), online communication services is unwarranted, as they are normally not substitutes to telephony, nor does the market or consumer situation call for regulation.

We would highlight that the UN’s International Telecommunications Agency (ITU) recommends regulatory restraint concerning ‘over the top applications’. They underlined that *“[c]onsideration of the economic impact of OTTs should be based upon recognition of the fundamental differences between traditional telecommunication operators and OTTs, including inter alia, control of broadband Internet access, level of regulatory exposure, barriers to entry, competitive environment, level of substitutability between OTTs and traditional telecom services and interconnection to public networks.”*

The [ITU-T Recommendation D.262](#) standard then [states](#), *“Member States should foster enabling legal and regulatory environments, and develop policies that are fair, transparent, stable, predictable and non-discriminatory; and that promote competition, foster technological and service innovation and encourage private sector investment incentives, in order to ensure the continuing growth and adoption of OTTs.”*

It is in this vein of ITU recommending that a legislative framework is put in place to facilitate the investment and development in Internet applications and services that AIC has a suggestion to make : even though they offer substantially different services, OTTs and TSPs are related, in that users of online services and applications can only access them through the services provided by telecommunications operators who own the infrastructure over which online services can be accessed.

This gives TSPs an inherent ability to exert control over access to these online services and applications, for instance are in a position to a) throttle or block OTT services; b) launch competitive services and c) change the pricing of data at will.

This ‘gatekeeping’ ability by TSPs raises fair competition concerns, which have resulted in the enactment of ‘net neutrality rules’ in a number of jurisdictions worldwide such as with the EU’s Open Internet rules.

AIC would therefore request the Ministry to ensure that TSPs are prevented from undertaking anti-competitive practices for the growth of the creator economy in Pakistan. One vehicle to achieve this could be the development of guidelines or legislation that protects network neutrality, i.e. ensure the right of end users to access and distribute lawful content, require

service providers to treat lawful traffic equally, and to treat all internet traffic equally. (see for example [Qatar's](#) or [Saudi Arabia's proposed net neutrality framework](#) or the [European Union's Open Internet rules](#)).

Question 4: As per clause 4 of the draft OTT Regulatory Framework, should OTT Communication Services be authorized to promote a competitive landscape?

a) Yes / No b) Please provide justification

Response: Question is not clear.

Question 5: Should Telecom Service Provider (TSP) licensees intending to provide OTT services (own service or through third party) in Pakistan (clause 4.1.1 of the draft OTT Regulatory Framework), be required to obtain OTT Authorization from PTA?

a) Yes/No b) Please provide supporting arguments / justification

Response:

There is a fundamental difference between services that are delivered over the internet and more traditional, linear broadcasting services or historic telecom services. Licensing is usually required where resources are scarce and operators obtain something of value in turn for a license, such as spectrum for mobile, TV or radio channels. When it comes to online services, there is a virtually infinite number of services that can be offered which do not require the allocation of such finite resources.

As such, we do not believe that a licensing or authorisation regime is appropriate or necessary for online applications and services. This is the case in a number of jurisdictions around the world with best practice, such as the UK. Online services marketed for use in the country are subject to the local legal framework, with no need for a formal and cumbersome licensing procedure.

Together with regulatory complexity, introducing licensing requirements brings a layer of concern and regulatory unpredictability which may raise questions of potential investors and new entrants in the Pakistani market for a viable business to be launched and operated in the country, if it is subject to such an approval process of sorts. This risks chilling investment in the technology sector and the making available of new services to Pakistani business and individual users, for fear of having to go through a possibly cumbersome licensing process.

Question 6: Should the validity period of OTT Authorization be 15 years, as proposed in clause 4.1.2.1 of the draft OTT Regulatory Framework?

a) Yes/No b) If No, should it be shorter/longer?

Response:

a) No

b) **Concern on the Proposed Licensing Regime:** Introducing a licensing regime adds unnecessary complexity and administrative burden. The unique nature of OTT services requires a tailored approach rather than a one-size-fits-all model.

Question 7: Do you suggest any changes / additions pertaining to Confidentiality of Information, Data Retention, Data Privacy & Security and Data Localization as stipulated in the draft OTT Regulatory Framework?

Response:

Yes, the following changes are suggested:

- **Confidentiality of Information:** Strengthen provisions to ensure user data is protected and only shared with explicit user consent.
- **Data Retention:** Implement clear guidelines on data retention periods that balance regulatory needs with user privacy.
- **Data Privacy & Security:** Ensure robust security measures are in place, including encryption and regular security audits.
- **Data Localization:** Avoid mandatory data localization requirements that could limit innovation, and hamper development and delivery of products and services for local markets, while increasing costs and complexity for global OTT providers. Instead, focus on global solutions such as the APEC Cross Border Privacy Rules System that facilitate data flows while ensuring privacy protections for data transfers.

Question 8: What is the impact of increased OTT traffic on licensed operators' Data & Voice/messaging revenue? Is there any commercial arrangement or revenue-sharing agreement between licensed operators and any OTT service provider?

Response: Not required. OTT services are an essential element of the broadband and ICT value chain. Innovation in this field has led to a rich and diverse internet, and has stimulated

consumer demand for broadband internet access, which in turn is a key driver for network operators' revenues, incentivising and rewarding them to upgrade and expand their networks.

Question 9: How can a conducive and balanced environment be created such that OTT service providers are able to invest in network infrastructure development?

Response:

OTT services already invest in facilities that complement telecom operators' network infrastructure (such as caches, subsea cables, etc). Recognising and welcoming that investment would be welcome.

Some of the supporting procedures that Governments can bring to encourage complementary investment in the form of subsea cables, for instance, include:

- Transparent and clearly laid out procedure to obtain licenses and permits for laying and landing submarine cables
- A single agency should provide a central point of contact to facilitate the process for license and permit applications
- Open cable landing station provides non-discriminatory and cost-oriented access to landing parties
- Open investment policy allows majority submarine cable ownership by foreign investors

Protection and maintenance of deployed submarine cables

- Fast-tracked permit application process for inspection and repair works on submarine cables
- Create a diverse list of cable corridors that enables cable route resilience and are well patrolled and protected
- Exemption of submarine cable works from existing cabotage laws
- Implementation and effective enforcement of cable protection laws

Question 10: Please suggest if there are any other issues/ aspects that need to be addressed in the draft OTT Regulatory Framework.

Response:

- **Adopt an evidence-based and outcomes-focused approach to policy and regulation of the online space that allows for innovation and future-proofing.** The

framework should be based on achieving desired outcomes, without prescriptively dictating the means of achieving that outcome. This will allow services to design the most appropriate/effective solution for their particular services. Not tying compliance to a specific method/technology will also avoid stifling innovation in technological solutions to safety challenges.

- **Transparency reporting obligations should be simple, easy to adopt and scale:** Transparency reporting obligations should be industry friendly and easy for OTT services to adopt and scale at reasonable costs. There should also be scope to provide a supporting narrative to any requested metrics, as context is essential in order to derive meaning from content moderation statistics.
- **Provide flexibility for platforms to promote user controls:** OTT Platforms should have sufficient flexibility to design user controls to mitigate exposure. They are in the position of understanding user preferences on their services. For example, some services (or types of content, such as content sensitive for minors) may work better with a single/general option to toggle on/off, to avoid excessive pop-ups or other disruptions with the user experience.
- **Look for opportunities to adopt internationally consistent approaches where possible.** Examples from around the world demonstrate that regulators have consistently rejected calls to burden dynamic online video services with traditional broadcast rules. Each region tailors its regulatory framework to the unique nature of online video services.
- **Concerning areas of the Framework: Suggest removal of:**
 - data retention, data provision, and content removal upon request
 - reporting data breach to PTA and users within 72 hours