

## **Good practice policies for online video content services (‘Over the top’ or OTT)**

The Asia Internet Coalition (AIC) would like to share its perspective and illustrations on good policy and regulatory practice which enable many AIC members and several innovative internet companies to provide online video content services that are invaluable to people and the economy in countries across Asia. AIC members stand willing to work with interested stakeholders and policymakers to foster good policy frameworks and ensure reasonable regulation that recognizes the global nature and tremendous contribution of Internet video content services, which are sometimes referred to as OTT services.

### **Introduction**

In both business and economic terms, the content and media industry is well poised to contribute to a nation’s overall economic growth and prosperity in both the near and long term. To put this into context, the global video on demand market size was USD 53.96 billion in 2019 and is projected to reach USD159.62 billion by 2027, exhibiting a CAGR of 14.8% - with Asia Pacific highlighted as the fastest growing market<sup>1</sup>. Online video content services provide enormous consumer value by enabling users to access a world of content and consume what they want anytime, anywhere. However, we firmly believe that success at this critical stage will depend on the extent to which regulation does not impede these goals.

It is also important to note that online video content services are an essential element of the broadband 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, for incentivising them to upgrade and expand their networks. Therefore, any attempts to impose additional regulation on online content video services would create business uncertainty and lower economic growth and investment. Regulation of online content video services should only proceed once the following questions have been thoroughly answered: On what grounds is it justified? Will it create market barriers and stifle innovation? And is it practical given the pace at which new technologies and business models evolve, and the fact that online video services cut across many different jurisdictions?

As such, we recommend considering the issues and concerns raised in this position paper. We firmly believe that any regulation on online video content services must ensure that it maintains users’ access to the wide and diverse content market, foster healthy competition, and strengthen consumer protection.

### **Siren calls: why ‘OTT regulation’ is an unhelpful backward looking idea**

There have sometimes been calls for extending traditional broadcast regulation to online video services, also referred to as ‘Over The Top’ video : but this would unnecessarily deny citizens access to new and innovative content, information and services, and would harm a country’s creative industry, as well as the economy as a whole. Broadcast regulations are inappropriate for online services.

Best practice regimes for online video services recognize that they are fundamentally different from traditional licensed services, and therefore tailor their approach accordingly. For a start, on an online video service, the customer has greater choice and control over the content they choose

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<sup>1</sup> <https://www.fortunebusinessinsights.com/industry-reports/video-on-demand-market-100140>

to watch. Further, many online video services offer tools (parental controls) that parents can use to set age ratings to protect their children from watching inappropriate content. In such an environment, where there is no linear feed of content which could surprise a viewer, and many more ways for viewers to control and decide for themselves what and when they and their family watch content there is less need and expectation by consumers of advanced protections, and thus less need for strict and overly broad regulation.

Broadcasting regulations were designed for traditional, linear services on which consumer choice in content is limited. For online video services, users are in control and can consume the content they want anytime, anywhere, and are able to set precise and appropriate protections themselves whenever needed. The ensuing consumer expectations and protections are thus vastly different compared to traditional broadcasting.

Legacy broadcasting and cable regulations should not be automatically extended to online video services also because regulations applicable to broadcasting and cable service providers were designed with the technical and practical specificities of those services in mind:

- Free-to-Air broadcasters have tremendous inherent advantages in that they use scarce public spectrum to reach anyone with a television; consumer choice is limited and consumption of their services is not subject to any data limitation.
- Similarly, cable service providers own and control the underlying network infrastructure and connection to the customer's premises, and consumers may have limited choices in their cable provider and may have costs associated with switching. Cable regulations have been structured with those considerations in mind.

By contrast, online video services typically do not control the access infrastructure, and operate in a highly competitive market in which it is easy and often cost-free for consumers to switch between competing apps. Thus, the rationale underpinning legacy broadcast and cable regulations does not apply to online apps.

In particular, local ownership requirements are particularly unusual for companies operating on a global scale. It may prevent companies without a strong business justification from launching their businesses in the country, and leave existing providers with no choice but to exit the market. This would have seriously adverse effects on economic growth and foreign investment, and may prevent citizens from accessing services they've come to know and love.

Online video services create the demand that spurs deployment of broadband service in the nation. Online services have also become increasingly symbiotic with traditional telecommunications providers as new online video services help to grow consumer and business demand for data communications, and as telecommunications providers invest in online video services themselves to bring innovation and further develop the Internet ecosystem.

Furthermore, there could be an unintended negative impact on content creators from both an economic and a freedom of expression perspective: online video applications increase consumer choice, productivity, and innovation, and give local businesses and content creators access to a global customer base, and they provide individuals with platforms for free expression and freedom of speech. This ultimately expands the nation's creative industry and overall economy, as well as personal freedoms.

## Global Regulation of online video services

As shown in the examples below, when regulators around the world have crafted regulations for online video, they have repeatedly rejected the calls from traditional broadcasters to saddle a dynamic, wildly competitive, and hugely popular service with broadcast rules--rules that were designed for businesses with substantial barriers to entry and that use scarce public spectrum or rights of way.

**Hong Kong:** The Commerce and Economic Development Bureau (CEDB) has initiated a review of its broadcasting regulatory framework “with the aim of relaxing obsolete statutory requirements.” The CEDB did not propose to extend existing obligations for traditional audiovisual services to online apps in part because “[t]hrough OTT and other Internet TV and radio programme services are gaining their prominence, traditional media ... are still highly pervasive and accessible to all in the family, young and old.”<sup>2</sup>

**Singapore:** Singapore’s Infocomm Media Development Authority uses a "class license" scheme. Under the scheme, Video On-Demand services automatically receive permission to provide their services,<sup>3</sup> contingent upon their continued compliance with the "Code of Conduct for Over-the-Top, Video-on-Demand and Niche Services."<sup>4</sup>

**Malaysia:** Although the Malaysian Communications and Multimedia Commission (MCMC) regulates online video services, those services remain exempt from the licensing regime, rate regulation, local content quota and “made in Malaysia” requirements.<sup>5</sup>

**European Union:** The European Union’s Audio Visual Media Services Directive (AVMSD), signed at the end of 2018 and now being transposed into national law across Europe, recognizes traditional broadcasters as distinct from on-demand programming services like Netflix and video sharing platform services like YouTube. “Taking into account the degree of choice and user control over services, the AVMSD makes a distinction between linear (television broadcasts) and non-linear (on-demand) services.”<sup>6</sup>

**Brazil:** Brazil’s Law no. 9,472, of July 16, 1997 (General Telecommunications Law or “LGT”) expressly distinguishes between the activities that “add, to a telecommunications service that supports it, new features related to the access, storage, presentation, handling or recovery of information,” and the more heavily-regulated telecommunications services, which are “the transmission, emission or reception, by wire, radio, optical means or any other electromagnetic process, of symbols, characters, signals, writing, images, sounds or information of any nature”.

**Commonwealth Telecommunications Organization:** The CTO, a non-profit international treaty organization and the oldest and largest Commonwealth intergovernmental organisation in the field

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<sup>2</sup>Hong Kong Commerce and Economic Development Bureau, Review of Television and Sound Broadcasting Regulatory Regimes, Consultation Paper, February 2018, available at [https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview\\_1%28eng%29.pdf](https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview_1%28eng%29.pdf).

<sup>3</sup> See <https://www.imda.gov.sg/regulations-and-licensing/Licensing>.

<sup>4</sup> Singapore INFOCOMM Media Development Authority, Content Code for Over-the-Top, Video-on-Demand and Niche Services, available at <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/OTT-VOD-Niche-Services-Content-Code-updated-29-April-2019.pdf>.

<sup>5</sup> See <https://www.mcmc.gov.my/en/sectors/broadband/types-of-licenses-application-procedures>.

<sup>6</sup> Shaping Europe’s Digital Future, Policy, General Principles, available at <https://ec.europa.eu/digital-single-market/en/general-principles>.

of Information and Communication Technologies (ICT), has a diverse range of members spanning Asia, Africa, Europe, and the Caribbean, including developed countries, developing countries, Least Developed Countries, Small Island Developing States and Landlocked Developing Countries. In its 2020 report *Over The Top (OTT) Applications & the Internet Value Chain: Recommendations to Regulators, Policy Makers and Tax Authorities*, the CTO noted that “[r]ushing to regulate OTTs resulted in clear negative impacts on consumers, the ICT sector and economic growth in several countries.” It concluded that “if the calls from the many stakeholders to regulate OTTs do not point to any market failure nor to any evidence of unhappiness on the part of consumers and citizens in relation to their OTT services, they should be treated cautiously. Regulators must continue to follow best-practice regulatory theory and practice.”<sup>7</sup>

**Frontier Economics:** Based on a paper published in December 2020 titled *Broadcasters Adapting to Digital Transformation in APAC*<sup>8</sup>, the paper concluded that OTTs are different to traditional broadcasters. Therefore, policy makers should be sceptical of requests to “level the playing field” and any such efforts must be evidence-based and proportionate.

**Mexico:** In its September, 2015 Resolution “Process to Determine Dominant carrier in the Pay-TV Market” Mexico’s Instituto Federal de Telecomunicaciones concluded: “Currently over the top (OTT) services are not substitutes for Pay TV service. OTT services, such as Netflix, are not substitutes for Pay TV, since: i) they mainly focus on offering a catalog of audiovisual content that has previously been provided on other platforms (cinema, movie rental, restricted television or broadcast television ); ii) unlike those of Pay TV, they do not offer linear programming in particular and do not offer the signal with the highest audience, and iii) they depend on the capacity of Internet connection, which in Mexico registers low speeds.”<sup>9</sup>

**ITU:** The International Telecommunication Union in its report *Economic impact of OTTs on National Telecommunication/ICT Markets*,<sup>10</sup> released in 2020, concluded “[n]ew disruptive models of service delivery should not be regulated merely because they threaten an existing model, since such innovation and competition serve consumer interest. Regulators must also be cautious about the impact of their actions on innovation and competition. While important public policy considerations need to be addressed, regulation of OTTs driven solely by the motivation of “levelling the playing field” between traditional and digital modes of service delivery would be detrimental to consumer interests.”<sup>11</sup> The report states that, “[t]here are several different facets and features of new regulatory frameworks. Many regulators believe that the best route forward is for a light-touch, flexible approach to regulation. Such an approach is based more on principles – including consumer protection, investment promotion, and competition – than on codified rules that require strict adherence. Interestingly, some have argued that if governments were to design new models of regulation that are light-touch, flexible, and recognize the scale and quantity of market impact of an OTT player, they may encourage more OTT players to conform to regulation.”<sup>12</sup>

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<sup>7</sup> Commonwealth Telecommunications Organisation, *Over The Top (OTT) Applications & the Internet Value Chain Recommendations to Regulators, Policy Makers and Tax Authorities*, 2020, at p. 32, available at <https://cto.int/wp-content/uploads/2020/05/CTO-OTT-REPORT-2020.pdf>.

<sup>8</sup> Frontier Economics - *Broadcasters Adapting to Digital Transformation in APAC*

<sup>9</sup> [http://www.ift.org.mx/sites/default/files/contenidogeneral/unidad-de-competencia-economica/versionpublicaresolucionai-dc-002-2015\\_0.pdf](http://www.ift.org.mx/sites/default/files/contenidogeneral/unidad-de-competencia-economica/versionpublicaresolucionai-dc-002-2015_0.pdf)

<sup>10</sup> Available at <https://www.itu.int/en/ITU-D/Study-Groups/2018-2021/Pages/OngoingWork.aspx>.

<sup>11</sup> Id. at 19.

<sup>12</sup> Id. at 20.

**United States:** The Federal Communications Commission, which regulates broadcasters and telecommunications carriers in the United States, has never regulated online video providers like Netflix.<sup>13</sup>

## Conclusion

Before any additional regulation is enacted, we strongly recommend for Regulators to study the immense potential of important technological developments in Internet platforms and on-demand services, and the role these will play in the nation's economic transformation journey. Accordingly, the ideal regulatory approach taken in this realm should be aligned to the nation's development and aspirations of successfully transitioning into the digital economy era. In turn, this will translate into local growth and opportunity, innovation, investment, and jobs.

Referring to industry best practices, AIC has also launched two OTT studies in [Indonesia](#)<sup>14</sup> and [Thailand](#)<sup>15</sup>, which supplement this mini-position paper. The Indonesian report examines the value of RIA (Real Interactive Applications) or OTT, to the Indonesian economy, specifically on jobs, GDP and income, especially its impact on SMEs and key sectors of healthcare, education, tourism and employment. The Thai report on the other hand examines the impact and value to the Thai economy coming from Video-on-Demand (VOD services), specifically on income, GDP impact and job creation. We hope you find these useful as references on the potential impacts of this sector on the whole economy value chain.

As responsible stakeholders, we appreciate the importance and ability to participate in discussion and the opportunity to provide inputs to governments and other stakeholder groups interested in this issue. There is a tremendous value in the digital delivery of content, and the right policy framework can deliver much for people, culture and the economy in our region.

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<sup>13</sup> See, e.g., <https://thehill.com/policy/technology/274847-fcc-in-agreement-agency-cant-regulate-netflix>.

<sup>14</sup> <https://www.aicasia.org/wp-content/uploads/2018/05/Rich-Interactive-Application-RIA-Final-Report.pdf>

<sup>15</sup> <https://www.aicasia.org/wp-content/uploads/2018/09/Final-AIC-and-Thamassat-University-report-Video-OTT-in-Thailand.pdf>

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