



**Comments of the
Information Technology Industry Council
In Response to the
ITU CWG-I Online Open Consultation:
“Public Policy Considerations for OTTs”**

On behalf of the member companies of the Information Technology Industry Council, ITI, we welcome the opportunity to respond to the Online Open Consultation of the ITU Council Working Group on International Internet-related Public Policy Issues entitled: “Public Policy considerations for OTTs.” We welcome the opportunity to engage with members of the CWG-Internet and other stakeholders on this important subject.

ITI is the premier voice for the global information and communications technology (ICT) industry. Our member companies include the world’s leading innovation companies, with headquarters worldwide and value chains distributed around the globe. We advocate on behalf of our members for policy and regulatory environments that enable innovation and maximize all the benefits that ICT companies provide, including economic growth, job creation, and the tools to solve the world’s most pressing social, economic, and environmental challenges. We work closely with our partners in government, international organizations, the business community, and civil society to achieve these objectives. One of the core elements of our mission, in every economy in the world, is to position our companies to be genuine partners of governments. We do this because we firmly believe that the interests of our industry are fundamentally aligned with those of the economies and societies in which we operate.

The International Telecommunication Union serves many important roles, including spectrum allocation, promoting the growth of telecom networks in Members States, and developing technical telecommunications-focused standards. Industry applauds these contributions. However, as we have outlined in previous statements, we have serious concerns when the ITU endeavors to move beyond its scope and enters technical and policy areas that are already being addressed very effectively elsewhere or via the marketplace itself, including over-the-top applications and related services. We believe that it is inappropriate for the ITU as an institution to engage in the substance of such policy and regulatory debates.

Our comments below reflect our ongoing interest in promoting the opportunities of OTTs. They should not be interpreted as support for ITU engagement in regulatory or technical policymaking relative to OTTs, which would be unlikely to add to the work already being undertaken and may well disrupt the success new market entrants are achieving via the OTT marketplace.



Background

The global Internet has provided a platform for the development and deployment of a great variety of innovative services. The emergence of OTTs – “over-the-top” applications and related services – is driving growth, creating jobs, and advancing innovation in the global economy. Nevertheless, as with many digital technologies, in many markets where OTTs and their providers have been welcomed by consumers and businesses, they are now facing resistance from some traditional telecom and mobile carriers, and the regulators who oversee them.

The term “OTT” itself poses several challenges, as it is overly broad and poorly characterizes the actual role that these applications play. There is not a single prevailing global definition of the term “OTTs” nor should there be. OTTs are an increasingly important element of the Internet value chain and are diverse and fast-evolving, providing solutions that were previously unavailable or unaffordable to many people and businesses. In response to the growth in these offerings, and their disruptive nature to some traditional telecommunications services industries, some countries are seeking to impose ill-fitting or duplicative regulations onto these technologies, without recognizing the meaningful differences between Internet-based applications and traditional telecommunications services. Often, these regulations are very broad and could be interpreted to cover anything accessed over the Internet.

Typically, providers of OTTs do not supply network access on their own to end users. Rather, they usually leverage available access to provide solutions and capabilities that were previously unavailable or unaffordable to many people and businesses. In turn, OTTs are helping to spur smart device adoption and demand for affordable access to quality high-speed Internet connectivity, contributing to the development of the digital ecosystem and government efforts achieve progress in meeting the United Nations’ Sustainable Development Goals.¹

OTTs have an interdependent, symbiotic relationship with traditional telecommunications network operators and broadband Internet access service providers. Although network operators have built and must operate the networks that supply access to OTT users, online application and content providers also invest significantly in Internet infrastructure, averaging more than \$30 billion per year around the world to deploy networks, facilities, and equipment. Most of this amount – an estimated 76 percent – is direct investment, including investment in hosting facilities, physical cables, and other transport, while the rest is spent by third party providers to ensure that applications, services, and content are routed as efficiently as possible. Many OTT providers purchase transport directly from network providers, and some also invest in submarine cables so that they can quickly and reliably move content across the global Internet. Network operators benefit from this improved performance because it enables them to offer a more valuable product to their Internet access customers, including selling higher speed services and additional

¹ See <https://sustainabledevelopment.un.org/?menu=1300>,



data plans to customers who want to reach desirable broadband content provided by OTT providers and their partners.

What are the opportunities and implications associated with OTT?

OTTs provide users, developers, and SMEs around the world with access to jobs, education, news, trading platforms, productivity tools, enterprise services, app stores, and entertainment choices that were unheard of just a decade ago. OTT application entrepreneurs are leveraging the current “low-barrier-to-entry” advantages to enter the digital economy, fueling startup communities and clusters in developed and developing countries alike. Many of these OTTs are becoming “household names” in their own countries and regions, such as:

- **1doc3 of Colombia**: a digital platform that helps doctors respond to medical questions and collaborate with government agencies to launch education campaigns on sound hygiene practices and effective treatments
- **Maya Apa of Bangladesh**: an intuitive, anonymous messaging service aimed at breaking the social, financial and geographical barriers women face every day, connecting them with qualified experts who can respond to health questions and other matters
- **Fynd of India**: billing itself as “Fashion for the Now generation,” the shopping app features contemporary clothing and accessories for women and men, essentially bringing the in-store buying experience directly to consumers while also providing brick-and-mortar retailers with new flexibility via “offline-to-online” inventory management and marketing options;
- **M-Farm of Kenya**: a platform for connecting farmers and farm produce consumers, providing information on pricing and market trends in Kenya, while also hosting an array of “how-to” information on a variety of subjects, including improving plant yields, starting an agribusiness and more; and
- **Tambero.com of Argentina**: a global platform for dairy cattle farming, beef cattle, and agriculture that has scaled from a focus on Latin America in two languages to a global presence supporting 21 languages.

These are just a few of the OTT applications that are thriving across the world, providing access to local information and content, and generating increasing demand and local added value that helps amplify government investments in broadband infrastructure and Internet access.



In its May 2017 report entitled “The Economic and Societal Value of Rich Interaction Applications (RIA),”² the Germany-based WIK, “an independent think tank” that advises governments, institutions and industry, concluded that “rich interaction applications” – software programs developed utilizing Internet-based architectures that are distinct from more common OTT telecom-based services – are a “significant component of the socioeconomic impact of digitization and utilization of the Internet itself,”³ generating billions of dollars U.S. annually across the world, even exceeding the average economic benefit of traditional telecommunications services. Rather than repeat the findings of this excellent study, ITI highly recommends it to governments and other colleagues in the ITU community.

What are the policy and regulatory matters associated with OTT?

As ITI and its members continue to engage with government policymakers, regulators and other stakeholders around the globe, we often encounter what seem like conflicting objectives regarding OTTs and ICTs in general. On one side are the economic, finance, and digital economy ministries. Charged with developing long-range policies and strategies to advance digital transformation and the creation of indigenous tech startup “cultures,” these agencies focus on attracting sustainable investment and delivering economic growth and opportunity, including by fostering and accelerating the development of OTTs and related skills.

By contrast, revenue collection, telecommunication and other government authorities⁴ may have shorter-term perspectives, seeking to constrain OTTs by bringing them under traditional regulatory strictures under the guise of minimizing impacts on infrastructure and bandwidth, among other things. When the topic of OTTs is taken up by these agencies, the exchanges often transition into discussions on how best to corral OTTs and their providers so that governments and telecom providers can recapture revenues and fees that sustain existing operations and the bureaucracies that manage them. The assumption is that, by forcing OTT applications to conform to the same regulatory framework governing traditional communications, governments and revenue collectors will be able to impose a “level playing field” for two very different sets of market participants.

² WIK Wissenschaftliches Institut für Infrastruktur und Kommunikationsdienste GmbH, “The Economic and Societal Value of Rich Interaction Applications (RIA),” R.Arnold, C.Hildebrandt, P.Kroon, S.Taş, May 2017, http://www.wik.org/fileadmin/Studien/2017/CCIA_RIA_Report.pdf, accessed on 27 July 2017.

³ Ibid. Page i

⁴ In some countries, for example, this issue is being played out before ministries or agencies related to sectors in the process of being transformed or disrupted, such as transport (Uber, Grab) and tourism (Airbnb, Booking.com). In these cases, the tendency of the sectoral agencies has been to side with incumbents' interests. In contrast, countries like Malaysia are taking steps to revise relevant laws and regulations to expand consumer and business access to mobile-based services.



We believe such a policy approach is short-sighted and detrimental to many governments' intentions to modernize their economies and help spur the creation of new technology-based jobs and businesses. Further, it is unlikely that efforts to constrain OTT applications and related services will succeed, given growing consumer interest and demand.⁵ While the two perspectives outlined above are not necessarily mutually exclusive, the policy choices that flow from them pose substantially different consequences for national and regional economies.

Rather than regulating access to OTT applications and related services, a more productive objective would be to reduce or even eliminate regulatory constraints on traditional telecom services, giving network providers greater freedom and flexibility to respond to market trends and consumer demand. Ultimately, consumers and businesses would be the main beneficiaries, due to a greater array of options and increased competition.

Given the rapid innovation in OTT applications and to ensure that OTTs continue to deliver on their vast transformational potential, ITI urges policymakers to embrace the following principles:

Recognize Meaningful Differences in Delivery, Function, and the Range of Services Provided: Many traditional telecommunications regulations were designed for 20th century network services that were provided on a country-by-country basis in markets with very high barriers to entry and strict licensing requirements. Such regulations are necessary to ensure that the limited number of telecommunication operators in a market did not leverage their control over network access points to limit consumer access or reduce competition between services. Online and mobile OTT applications are offered in a fundamentally different environment. The online services marketplace is global, with competitive applications and products traversing national boundaries that do not have the same characteristics as traditional telecommunications and broadcast services. OTT providers typically do not own or control the underlying broadband access points. Additionally, communications services accessed over a broadband network do not necessarily require a phone number or other resources, and many OTT applications are often only offered as a single feature in a suite of services provided to corporate customers or consumers. Additionally, such services are often not limited to a single device (i.e., a mobile phone), but can be accessed on multiple devices (e.g., mobile phone, tablet, laptop, gaming device, television or media player, and/or desktop computer). Forcing OTTs to conform to the same regulation as services that provide direct network access to

⁵ By illustration, similar efforts to diminish consumer interest or access to innovative VoIP services ultimately proved unsuccessful and were abandoned by network operators, many of which later embraced the technology as part of an enhanced service offering. *See* OECD background report: "[Digital Convergence and Beyond: Innovation, Investment, and Competition in Communication Policy and Regulation for the 21st Century](#)," pp22-23, 24 May 2016.

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP\(2015\)2/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/ICCP/CISP(2015)2/FINAL&docLanguage=En), accessed on 7 August 2017.



users would reduce the choice and other consumer benefits that these services provide and undermine the meaningful distinctions in these services and their values to consumers.

Protect the Free Flow of Data to Support the Growth of the Digital Ecosystem: Data is the lifeblood of the global economy. In today's connected world, international commerce simply cannot function without constant streams of data flowing across borders. The free movement of data allows companies of all sizes and in all industries to bring new innovations to global markets, driving investment, growth and job creation. The free flow of data is critical for OTTs to provide the benefits to consumers and users, enabling small- and medium-sized enterprises (SMEs), to compete in the global economy with access to and provision of digital products and services, such as messaging, entertainment, or cloud applications.

Enable and Encourage Increased Investment in Networks: As cutting-edge online applications create increased demand for broadband resources, OTTs highlight the critical importance of the network itself, and the need for continued network investment to support the health of the digital economy. In addition to other benefits from a robust network, none of the benefits from OTTs would be possible without continued investment in broadband and wireless infrastructure, by OTT providers themselves as well as traditional network operators. As a result, regulators should refrain from disrupting the virtuous cycle of investment that currently exists between OTT providers and network operators. In considering goals such as the promotion of innovation and investment, regulators should take care to consider the achievement of those goals across the entire digital services ecosystem and not just traditional telecom networks and services.

Avoid Regulation Except Where Rooted in Legitimate Public Policy Objectives: The digital ecosystem is in its infancy, and it would be premature to apply new regulations in the absence of an evidence-based assessment that existing regulation is insufficient to achieve a government's public policy goals. For example, OTTs are subject to all generally applicable regulations that ensure protection of consumers and their data, protection of technical networks, and competition regulation. Additionally, it may not be appropriate or useful to group a large set of services, such as messaging apps, email services, collaboration software, social media sites, video platforms, search engines, and cloud and enterprise services, all within the same regulatory category. Given the value already being generated by OTTs and expectations for even greater economic benefits as more countries enter the field, governments need to carefully assess the potential impact of new rules and regulations on this nascent technology, as well as potential unintended consequences on their national digital agendas. Governments should ensure that any regulation is narrowly tailored to correct an observed market failure and achieves the sought-after policy objectives. In general, regulation should be applied ex-post facto and on a case-by-case basis where those unique conditions exist.



Ensure Consistency with Trade Obligations and Principles: Many trade agreements already contain commitments that ensure services delivered online can continue to be traded without undue friction and enjoy non-discriminatory, pro-competitive access to telecommunications networks. These agreements may also include relevant commitments that govern computer services, telecommunications services, and other related services, so policies should seek to avoid interfering with these commitments, either directly or indirectly. Against this backdrop, regulators should carefully consider whether there is any need to impose infrastructure-specific regulation to these services on top of existing legal and regulatory protections that are already in place.

How do the OTT players and other stakeholders offering app services contribute in aspects related to security, safety and privacy of the consumer?

ITI highlighted our views and recommendations on these topics in a recent document entitled: “Global Guiding Principles for Trust, Technology and Government Access in the Digital Age.”⁶ We commend it to all members of the ITU community.

What approaches might be considered regarding OTT to help the creation of environment in which all stakeholders are able to prosper and thrive?

As we mentioned earlier, rather than seeking to incorporate OTTs into a legacy regulatory framework, governments should explore ways to reduce the number and impact of legacy regulations which may have been relevant in the past but no longer have efficacy in an era of expanding mobile and digital communications. By alleviating at least some of the regulatory pressure on service providers, the cost savings could be significant, providing operators with capital to expand their offerings in ways that enable them to partner or even compete with OTTs.

Because of the open architecture of the Internet and the increasing affordability and availability of computing power, the entry barriers for Internet-based services are inherently low. As a result, new opportunities to provide, deliver, or access services online are accessible to small and medium enterprises, which extends the reach of many services that were previously unavailable or unaffordable to small businesses and individuals. Today, OTT applications are making available new suites of products to businesses and consumers on a broader range of devices and to serve a broader range of functions, often at a lower cost and with more availability, spurring rapid and inclusive economic growth. Policymakers should avoid onerous requirements or mandates that could restrict small businesses from entering this space or reduce consumer choice or access.

⁶ Information Technology Industry Council, “Global Guiding Principles for Trust, Technology and Government Access in the Digital Age,” January 2017. <http://tiny.cc/ch4smy>.



How can OTT players and operators best cooperate at local and international level? Are there model partnership agreements that could be developed?

At a fundamental level, governments and telecommunications service providers need to embrace OTTs as a new business and economic opportunity that adds distinct value to consumers and businesses. Many governments are also stepping in with new investments in infrastructure and to increase access to smart devices, seeking to benefit from the multiplier effect generated by enhancing citizen access to the Internet and broadband capabilities.

Rather than trying to resist OTT trends, telecommunication service providers should explore ways to embrace this opportunity. As OTTs drive demand for increased data allowances, speed and quality of service, many providers are offering new data packages and incentives that empower rather than impede consumer access to local and global social networking, educational and medical services, file sharing, and video and audio streaming. New businesses and opportunities will be created, further increasing demand for access, quality of service and data. We speak with authority, as we have witnessed this cycle in communities and nations around the world.

ITI and our member companies appreciate the opportunity to provide these comments. OTTs are a critical component of digital transformation. We stand ready to partner with governments and policymakers to help identify policies and programs that can help promote local innovation and tech entrepreneurship.

To learn more about the ICT industry perspective on OTTs or ideas for a developing an effective policy road map for digital transformation, please contact ITI directly at ITI-OTT@itic.org.