

Websites Review

International Telecommunication Union (ITU) **[ICT Regulation Toolkit. Regulating “Over-the-top” Services](#)**

The ITU is the United Nations agency responsible for governing telecommunications. Its member states take executive decisions in areas such as the allocation of the global radio spectrum. One particular feature of this specialist UN agency is its openness and accessibility for non-state parties, such as technology firms which enjoy considerable presence and influence in furthering the organisation's debates.

The ITU has developed a specific website of regulation tools with a section devoted to over-the-top (OTT) services. In general, “OTT” is the service provided by an ICT provider which does not own a distribution network or rents capacity to use one; OTT players use the networks of telecom service operators to reach their users. Many of the services offered are related to audiovisual communication or content and require considerable bandwidth. However, they are free or available at a lower cost than traditional distribution systems. Skype, WhatsApp, Facebook Messenger, Google Talks are all examples of OTT services. US legislation covers OTT media such as content aggregators as well as services with editorial responsibility, such as Netflix. In Catalan legislation, however, Netflix could be considered as a provider of audiovisual services subject to prior communication (articles 60 to 64 of Law 22/2005, of 29 December, on the audiovisual communication of Catalonia). Such providers are treated in a similar way in European countries such as [France](#) and [Belgium](#).

[The Rise of OTT Players - What is the appropriate response?](#)

This link is for a document presented at the ITU Jakarta Conference in 2014 providing an overview of the main characteristics of OTT players and the challenges posed for their regulation. First it states that OTT players have a strong impact on the market and are drivers of innovation and demand. But with the current business model, resulting from regulations, OTT players are taking value away from state markets. They are also taking resources away from the telecom companies operating in the area for the investment required by regulators in infrastructures. Moreover, telecom companies are subject to regulations in terms of licences and fees, service quality and universality, interconnection, consumer protection, data protection, security and legal interception, taxation, etc. OTT players, however, are exempt from all such regulations. The document concludes that these dysfunctions in market regulations require a review aimed at unified governance of the internet and its value chain.

Comisión Nacional del Mercado y la Competencia (CNMC)

[Caracterización del uso de algunos servicios over the top en España](#)

Although not a website, along the same lines as the previous entry we would like to draw attention to this document presented by the CNMC [National Market and Competition Commission] in December 2014. The regulator defines OTT services as those provided on the internet without any control or specific management by network operators. Given their newness and changing nature, a certain lack of definition is allowed for the term “OTT”, which can refer both to any demand service online and also to a sub-category of services available via specific apps or even all those services not offered by traditional operators from the communications sector.

These services can be categorised according to a range of features, such as whether they are for-profit or not-for-profit. Among the former, there are various ways of generating revenue: payment per consumption and/or by subscription, revenue from advertising and even income from selling data related to users' patterns of behaviour and characteristics. For audiovisual services there are also differences between transmission via streaming (live in real time) and downloading; while in the former users consume content as it is being downloaded, in the latter the content must first be downloaded and then consumed. Real-time broadcasting therefore requires a bandwidth that exceeds or at least equals the transfer rate required by the service. As stated by the CNMC, broadband OTT services (with similar features to the traditional services of telephony, messaging and audiovisuals offered by telecom operators) have reduced the demand for traditional services and limited the ability of the latter to generate revenue.

European Parliament

[Over-the-Top \(OTTs\) players: Market dynamics and policy challenges](#)

In December 2015 the European Parliament published this extensive study which analyses OTT business models (internet voice services, instant messaging, streamed video and music). The document ends with a series of measures to strengthen this sector in Europe, a generator of innovation, high value added and high quality employment. In this respect it recommends strengthening technology start-up policies in Europe and promoting financing systems such as venture capital. As a fundamental priority it highlights the achievement of a digital single market in Europe, the Commission's initiative to harmonise the 28 national regulations for this sector.

European Commission**[Public consultation on the evaluation and the review of the regulatory framework for electronic communications networks and services](#)**

From 11 September to 7 December 2015, the European Commission launched a public consultation to review the legal framework for electronic communications. One of the main objectives of the current European Commission is to create a genuine digital single market, designed and implemented by the *Digital Single Market Strategy*. Among the 16 actions proposed in the DSMS, of note is the implementation of a high speed broadband infrastructure throughout the continent, with the profits produced by this infrastructure acting as an incentive for telecom operators to make the required investment. However, the emergence of OTT players has now jeopardised this outcome. OTT players are new agents that use existing infrastructures to provide services directly to the consumer but without having to invest or being subject to regulations. For this reason telecom operators doubt the profitability of the commitments proposed by the European authorities if there isn't at least some balance between the obligations of all the parties involved.

Within this context of laying the foundations for the digital single market, the Commission is proposing, among other issues, the regulation of OTT services. The aforementioned consultation covers aspects such as the business model of new electronic services, consumer defence, the role of regulatory authorities and fostering European entrepreneurship in the sector.

Media Policy Project Blog. London School of Economics and Political Science (LSE)**[Digital Single Market strategy shouldn't go 'over the top' with regard to future regulation of OTT services](#)**

This LSE blog on communication policy deals with various subjects such as public service and the BBC, data and privacy protection, spectrum policy, media literacy and new issues such as the transparency of algorithms (*Algorithmic Accountability*), among others. It has contributions by experts from all over Europe. This entry describes the hypothetical desire of the European Commission to achieve a level playing field in terms of regulation for OTT players and ECS (electronic communication services). It discusses the difficulty in striking a balance between protecting consumers and the regulatory flexibility required by such a highly innovative sector. According to the expert collaborator, too much regulation could pose additional (and unnecessary) difficulties for these initiatives and start-ups.

Telecom Regulatory Authority of India (TRAI)**[Consultation Paper On Regulatory Framework for Over-the-top \(OTT\) services](#)**

The regulatory treatment of OTT services is an issue of global scope. In the case of India, an emerging economy but with deficiencies in terms of the implementation of infrastructures and guaranteed universal service and access to the internet, the public consultation of this country's regulatory authority (TRAI) has found that, even in developed markets, the net neutrality principle is difficult to apply. By virtue of this principle, telecom operators cannot discriminate between the data traffic circulating via their networks, even when these are free services for which the operators themselves would charge (for example, instant messaging via mobile, internet telephony or VoIP/mVoIP, pay-TV via a cloud or video streaming services). These services may also require significant bandwidth and could saturate the network. This problem, moreover, is accentuated in countries with limited or insufficient infrastructures. As a consequence of this asymmetry between the treatment received by OTT players and telecom operators, the Indian regulator is proposing to reopen the debate regarding net neutrality, the principle by virtue of which telecom operators cannot prioritise their own internet services above those of other companies. Net neutrality had been one of the bones of contention, both of the previous European Commission with Noëlie Kroes at its head and also of the Obama Administration, and had been considered as a progressive anti-trust policy.

United States Court Appeals**[USA: legal endorsement of the net neutrality principle](#)**

Net neutrality (sometimes NN) is an issue that runs in parallel with OTT regulation. On 14 June 2016, the US Court of Appeals endorsed the new regulation passed by the FCC (the communications sector regulator in the US), which entered into force on 12 June 2015. This regulation toughened up the NN criteria required from internet service providers (ISP), prohibiting the blocking or slowing down of the internet data service for end users, as well as prohibiting the prioritisation or speeding up of the transmission of those websites paying a fee to the ISP. Internet service firms, start-ups and technology innovation sectors have implemented actions in favour of NN (see: [The Washington Post](#)).

The Structure-Conduct-Performance Analysis of OTT Media

Professors Qiling Qin and Ping Wei, from the University of Huazhong (China), claim that the structure of the OTT media market tends towards concentration and monopoly. This article reviews the role played by OTT licences, content providers, telecoms, internet service providers and other players and analyses market mechanisms such as economies of scale and resource allocation in a digital environment. In services that distribute content via OTT platforms, the prevailing logic is the market approach of “winner takes all”, clearly limiting the diversity of ownership and supply in the medium term and therefore requiring public intervention to correct the market dysfunctions.

Over-the-Top Content and Content Regulation

This is a personally produced report by the legal head of economic monitoring of Brazil’s Ministry of Planning, Roberto Taufick. The author explains that the OTT sector is made up of an open market without barriers of access to new players. And this is due to the principle of net neutrality which permits direct, global access by consumers to these over-the-top services. This lack of regulation results in a proliferation of start-ups, many of which will fail in the near future but without this being seen as a problem. The role played by potential national regulations would be detrimental to local competition and innovation although Taufick does believe that global governance of the internet is required.