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**To:** "Akhilesh Kumar Trivedi" <[advmn@traigov.in](mailto:advmn@traigov.in)>

**Sent:** Friday, August 4, 2023 10:52:50 PM

**Subject:** Comments on Consultation Paper on Regulatory Mechanism for Over- The-Top (OTT) Communication Services, and Selective Banning of OTT Services

To  
V. Raghunandan)  
Secretary, TRAI,

Sir,

Free Speech Collective, which comprises journalists, activists and lawyers from different parts of India, has been working on issues relating to the right to freedom of expression since 2018. We are engaged with monitoring and documenting violations of the right to freedom of expression, especially with regard to media freedom and have documented the impact of internet shutdowns in Kashmir following the abrogation of Art 370.

As the Telecom Regulatory Authority of India has released a Consultation Paper on Regulatory Mechanism for Over-The-Top (OTT) Communication Services, and Selective Banning of OTT Services and sought inputs from stakeholders, we are submitting our comments for your consideration. Please see attached.

Please acknowledge receipt, consider our submissions and oblige.

Regards,

Laxmi Murthy and Geeta Seshu  
Co-editors, Free Speech Collective

## **ISSUES FOR CONSULTATION**

Stakeholders are requested to provide responses to the following questions with detailed justifications:

### **A. Issues Related to Regulatory Mechanism for OTT Communication Services**

Q1: What should be the definition of over-the-top (OTT) services? Kindly provide a detailed response with justification.

Q2: What could be the reasonable classification of OTT services based on an intelligible differentia? Please provide a list of the categories of OTT services based on such classification. Kindly provide a detailed response with justification.

Q3: What should be the definition of OTT communication services? Please provide a list of features which may comprehensively characterize OTT communication services. Kindly provide a detailed response with justification.

Q4: What could be the reasonable classification of OTT communication services based on an intelligible differentia? Please provide a list of the categories of OTT communication services based on such classification. Kindly provide a detailed response with justification.

Q5. Please provide your views on the following aspects of OTT communication services vis-à-vis licensed telecommunication services in India:

- (a) regulatory aspects;
- (b) economic aspects;
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- (c) security aspects;
- (d) privacy aspects;
- (e) safety aspects;
- (f) quality of service aspects;
- (g) consumer grievance redressal aspects; and
- (h) any other aspects (please specify).

Kindly provide a detailed response with justification.

Q6. Whether there is a need to bring OTT communication services under any licensing/regulatory framework to promote a competitive landscape for the benefit of consumers and service innovation? Kindly

provide a detailed response with justification.

Q7. In case it is decided to bring OTT communication services under a licensing/ regulatory framework, what licensing/ regulatory framework(s) would be appropriate for the various classes of OTT communication services as envisaged in the question number 4 above? Specifically, what should be the provisions in the licensing/ regulatory framework(s) for OTT Communication services in respect of the following aspects:

- (a) lawful interception;
- (b) privacy and security;
- (c) emergency services;
- (d) unsolicited commercial communication;
- (e) customer verification;
- (f) quality of service;
- (g) consumer grievance redressal;
- (h) eligibility conditions;
- (i) financial conditions (such as application processing fee, entry fee, license fee, bank guarantees etc.); and
- (j) any other aspects (please specify).

Kindly provide a detailed response in respect of each class of OTT communication services with justification.

Q8. Whether there is a need for a collaborative framework between OTT communication service providers and the licensed telecommunication service providers? If yes, what should be the provisions of such a collaborative framework? Kindly provide a detailed response with justification.

Q9. What could be the potential challenges arising out of the collaborative framework between OTT communication service providers and the licensed telecommunication service providers? How will it impact the aspects of net neutrality, consumer access and consumer choice etc.? What measures can be taken to address such challenges? Kindly provide a detailed response with justification.

## **B. Issues Related to Selective Banning of OTT Services**

Q10. What are the technical challenges in selective banning of specific OTT services and websites in specific regions of the country for a specific period? Please elaborate your response and suggest technical solutions to mitigate the challenges.

Q11. Whether there is a need to put in place a regulatory framework for

selective banning of OTT services under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 or any other law, in force? Please provide a detailed response with justification.

Q12. In case it is decided to put in place a regulatory framework for selective banning of OTT services in the country, -

(a) Which class(es) of OTT services should be covered under selective banning of OTT services? Please provide a detailed response with justification and illustrations.

(b) What should be the provisions and mechanism for such a regulatory framework? Kindly provide a detailed response with justification.

Q13. Whether there is a need to selectively ban specific websites apart from OTT services to meet the purposes? If yes, which class(es) of websites should be included for this purpose? Kindly provide a detailed response with justification.

Q14. Are there any other relevant issues or suggestions related to regulatory mechanism for OTT communication services, and selective banning of OTT services? Please provide a detailed explanation and justification for any such concerns or suggestions.

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Our comments:

In general, we believe that OTT communication services should not be seen as “substitutes” for traditional telecom services and collaboration is important so as to serve the best interests of end users of both services. However, Net Neutrality must be protected and preserved in any collaborative arrangement between telecom service providers and OTT communication services. Any kind of pricing that will further burden users and deny access to them must be actively discouraged.

Our detailed comments are confined to Part B (B. Issues Related to Selective Banning of OTT Services ) of the Issues for Consultation as these are relevant to freedom of expression and our work regarding the same.

In India, a ban on telecom/internet shutdowns may be ordered on grounds of public emergency and public safety under the Indian Telegraph Act, 1885 and the Temporary Suspension of Telecom Services (Public Emergency & Public Safety) Rules, 2017, under the act.

However, both public emergency and public safety are terms that have not been defined even in this Consultation paper.

This was also pointed out by the the Parliamentary Standing Committee on Communications and Information Technology, headed by Dr. Shashi Tharoor, in its report on the 'Suspension of Telecom Services/Internet and its Impact', submitted on December 1, 2021.

India is infamously known as the 'Internet shutdown" capital of the world, due to the number of times the Internet services have been suspended or shutdown in the country. We maintain that any ban on Internet services, either total or selective, has proved to be counter productive in curbing misinformation and in dealing with public safety.

In fact, rumours and panic spread faster in an atmosphere where there is no authentic, accurate and verified information that emanates from trusted sources. In situations of conflict or strife, it is the primary responsibility of both official administration and the media to disseminate verified news quickly.

Till date, there has not been a single instance of an internet ban succeeding in curbing violence or misinformation. There is instead overwhelming evidence to the contrary - that a ban has only caused immense anguish and alienation, panic and fear and untold economic disruption.

As our experience in the most recent ban on the Internet in Manipur has showed us, public safety and security has been further compromised in the absence of any authentic information about the gravity of a situation, of the escalation of violence and the desperate cries for help by victims. Much needed and timely assistance was denied to them and the important and crucial responsibility of the media to hold the powerful accountable and generate public opinion against violence and conflict was lost.

Even in the prolonged total communication shutdown in Kashmir following the abrogation of Art 370, the brunt was borne by ordinary citizens. Students were unable to access their classes, students seeking admissions or job applicants had to forgo these opportunities and even doctors dealing with the emerging Covid 19 pandemic had to battle an abject lack of vital medical information.

The break out of violence and the consequent breakdown of law and order is a failure of local administration and law enforcing agencies. In Haryana's Nuh, inflammatory and inciting videos were circulating on social media for

two weeks prior to the violence. Bajrang Dal leader Monu Manesar and Bittu Bajrangi figure in these videos and they are still not arrested.

### **Selective Ban on OTT services**

Specific to the issues raised by this consultation, we believe that a selective ban will only exacerbate an already fraught situation. It is moreover, inherently discriminatory and undemocratic. It is also dangerous as it will entitle some accounts and therefore, some narratives and viewpoints will get free rein to spread only a certain kind of information without any counter-balancing of information or views.

It will entail a whitelisting of some accounts based on arbitrary criteria and result in privileging of some accounts over others. It will further divide the digital haves and cast the have-nots into a penumbra of confusion and ignorance.

In sum, there should be no blanket bans on Internet services or on OTT Communication services.

Stronger attempts must be made to curb hate speech and fake news through autonomous regulatory bodies set up through a transparent and rational process in consultation with relevant stakeholders.

These include responsible official agencies, civil society groups with a track record in upholding constitutionally guaranteed freedom of speech and expression and trusted and verified news media.

The process must be sustained by long-term efforts at media literacy starting from school levels, and covering all sections of society.