

INTRODUCTION

Global Partners Digital is pleased to respond to this Open Consultation and to provide our perspectives on OTT.

Global Partners Digital is a social purpose company dedicated to fostering a digital environment underpinned by human rights and democratic values. We work with a range of stakeholders around the world – including governments, businesses and civil society organisations – in pursuit of two core aims: to empower a wider diversity of voices to engage in internet-related decision-making processes; and to make these processes more open, transparent and inclusive.

Summary

In this consultation response, we set out how new and/or cheaper OTT services, as well as the increased range of relevant media and content that they provide, present a multitude of opportunities, particularly with respect to their potential to promote sustainable development and enhance the enjoyment of human rights. However we also highlight that there are potential adverse implications resulting from OTT services, particularly with respect to privacy and data protection, that need to be considered.

With respect to policy and regulatory responses to OTT services, we note the importance of ensuring that the privacy and data protection rights of OTT service users are sufficiently protected. We also recommend that consideration be given to ensuring that responses do not adversely impact upon freedom of expression. We caution against simple replication of existing responses to traditional services, which may not be relevant or appropriate.

Finally, we set out a range of principles that should guide the development of any policy or regulatory responses to OTT: (i) responses should be developed in an open, inclusive and transparent manner; (ii) relevant regional economic unions should play a role in developing common responses, alongside national level responses; (iii) responses should be consistent with international human rights law and standards; and (iv) responses should not undermine or inhibit the benefits and opportunities presented by OTT services. We believe that the best way for OTT players and operators to cooperate, whether at the local or international level, is through dialogue and, where possible, the agreement on common principles and standards to ensure that the rights of users are protected. We do not believe that model partnership agreements would be effective or appropriate tools to leverage the opportunities and benefits of OTT services.

QUESTION ONE

What are the opportunities and implications associated with OTT?

New and/or cheaper OTT services, as well as the increased range of locally relevant media and content that they can provide, present a multitude of opportunities, particularly with respect to their potential to promote sustainable development and enhance the enjoyment of human rights.

(a) Promoting Sustainable Development

Supporting Business Creation and Growth: Businesses of whatever size depend on communication services in order to operate successfully, whether that communication be within the business, or externally with clients, suppliers or other partners within a supply chain. Reducing the costs for businesses for this critical component of their work therefore makes it easier for existing businesses to operate and for new businesses to be set up. Using Skype and WhatsApp in place of telephone, for example, significantly reduces communication-related costs for business, especially when communicating across national borders. By making it cheaper, and therefore easier, for businesses to be set up and to operate, OTT services have the potential to contribute towards economic growth, one of the UN's Sustainable Development Goals (Goal 8).

Encouraging Internet Access: The availability of innovative and attractive OTT services is a strong driver for individuals to become connected to the internet, with consequent benefits to sustainable development. In its Resolution 70/125, the UN General Assembly adopted the outcomes of the WSIS Review, which highlighted the links between greater access to and innovation within the internet, and sustainable development. Indeed, the Resolution recognised that “access to information and communications technologies has also become a development indicator and aspiration in and of itself”.¹ By offering new and exciting services, OTT services such as Facebook, Youtube and Netflix have encouraged individuals to connect to the internet, opening up a range of further benefits to themselves in fields such as education, health and employment, all of which are UN Sustainable Development Goals (Goals 4, 3 and 8 respectively). We have set out in more detail the links between increased internet access and sustainable development in our response to the CWG-Internet's earlier consultation on developmental aspects of the internet, available [here](#).

(b) Enhancing the Enjoyment of Human Rights

Freedom of Expression: The availability of communication services offered at substantially lower prices, or even at no cost, particularly VoIP and messaging applications, such as Skype, WhatsApp, Viber, Facebook Messenger and FaceTime has provided new means for individuals to exercise their right to freedom of expression (as well as other connected rights

¹ United Nations General Assembly, Resolution 70/125, Outcome document of the high-level meeting of the General Assembly on the overall review of the outcome of the World Summit on the Information Society, UN Doc. A/RES/70/125, 1 February 2016, Para 5.

such as freedom of association). Furthermore, the right to freedom of expression also includes the right to seek and receive information and ideas. OTT services which allow for content and information sharing, such as YouTube, support the ability of individuals to seek, receive (and share) such information and ideas worldwide in a way that is simply not possible with traditional services.

Privacy: An additional advantage of some OTT communication services, is the ability for those communications to have end-to-end encryption (as is the case, for example, with WhatsApp). The protections provided by encryption allows users to have confidence in the security, confidentiality and integrity of those communications, and to exercise their right to privacy and, in particular, to private correspondence.

QUESTION TWO

What are the policy and regulatory matters associated with OTT?

There are a range of policy and regulatory matters associated with OTT, however in response to this question, we focus on those matters which have the most significant implications for human rights. The development of responses to such matters should be consistent with the principles which we set out in our response to question four.

(a) Data Protection and Privacy

Providers of OTT services collect a large amount of data relating to their users. Some of this will be personal data voluntarily provided by the users in order to receive the service (such as name, contact details, and financial information where the service requires payment). Some may also be data which is generated by means of the users' use of those OTT services, such as:

- The contact details of individuals with whom the user has communicated via a communications service provider (for example, Skype) as well as the dates and times of those communications and the length of the communications;
- The content of any communications between individuals using communications services (for example, WhatsApp) and any files or other data shared;
- A list of television programmes or films watched by the user using a broadcasting service provider (for example, Netflix);
- A list of pieces of music or podcasts listened to by the user using an audio broadcasting service provider (for example, Spotify);
- A list of videos watched by the user, and comments made on those videos by the user, using a video service provider (for example, YouTube).

Whilst much of this data may be innocuous, there is the potential for such data to reveal a significant amount of personal, sensitive and private information about the user. As such, it is

crucial that there exist strong protections for any personal data which is provided or generated by an individual's use of OTT services.

(b) Freedom of Expression

As noted in our response to question one, OTT services provide new (and cheaper) ways for individuals to express themselves, receive information and communicate at a global level. These opportunities are simply not possible - or not affordable to many - using existing, traditional services. As such, enjoyment of the right to freedom of expression is enabled and enhanced through the availability of OTT services. In considering the appropriate policy and regulatory responses for OTT services, it is therefore critical that freedom of expression is not adversely impacted.

Careful consideration should therefore be given when devising appropriate policy and regulatory responses for OTT services. Because of the differences between the means by which OTT services and traditional services are delivered, many of the regulatory requirements which apply to traditional services are simply not relevant or necessary when it comes to OTT services. Further, other aspects of policy or regulation which are applied to traditional services - such as those which unjustifiably restrict certain content, in breach of international human rights law - should not be replicated for OTT services. Instead, they should be revised entirely to ensure that all forms of services - whether OTT or traditional - are consistent with international human rights law and standards.

QUESTION THREE

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

We have set out our views on how the providers of OTT services, and those who regulate them, should consider issues of privacy in our response to question two.

QUESTION FOUR

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

We have understood the question, in effect, to ask how a legal, policy, regulatory or other form of response could be developed which best ensures that (i) the maximum benefits of OTT services are enjoyed by both the providers of those services and their users; (ii) the security, safety and privacy of users is sufficiently protected; and (iii) any adverse impacts of the growing use of OTT services, whether upon states or users, are sufficiently mitigated.

The situation is complex, and there are a range of interests amongst different stakeholders which may sometimes be competing and sometimes be mutually supportive. We do not propose to set out what any such response should look like, but we consider that the following principles are crucial in the development of any such response:

- Responses should be developed in an open, inclusive and transparent manner, and with the full consultation and engagement of all relevant stakeholders, including government, telecommunication service providers, OTT service providers and civil society.
- In addition to responses developed at the national level, relevant regional economic unions such as the EU could play a role in developing common responses within their particular regions.
- Responses should be consistent with international human rights law and standards, particularly in relation to the rights to privacy and freedom of expression, as set out by relevant bodies such as the UN Human Rights Council, Human Rights Committee and Special Rapporteurs.
- Responses should not undermine or inhibit the other benefits and opportunities presented by OTT services which we have outlined (particularly in our response to question one) including the promotion of sustainable development, greater innovation and competition, and the development of locally relevant content and media.

QUESTION FIVE

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

We believe that the best way for OTT players and operators to cooperate, whether at the local or international level, is through dialogue and, where possible, the agreement on common principles and standards to ensure that the rights of users are protected. We have included this point as a principle for the development of any response in our response to question four. In addition, due to the diversity of ICT environments, levels of competition and market development, model partnership agreements may not be effective or appropriate tools to leverage the opportunities and benefits of OTT services.