



## **KICTANet's Response to ITU CWG-Internet Online Open Consultation: Public Policy considerations for OTTs August 29, 2017**

### **Summary**

The Kenya ICT Action Network (KICTANet) welcomes the efforts by the ITU and its Council working group on international internet related public policy issues to hold this open public consultation through the use of the multi stakeholder model.

KICTANet appreciates the opportunity to provide the working group with its position on public policy considerations for over the top services. Further, the Network is keen on the discussions that will take place during the face to face consultations in Geneva in September.

The Kenya ICT Action Network (KICTANet) is a multi-stakeholder platform for people and institutions interested and involved in ICT policy and regulation. The network aims to act as a catalyst for reform in the ICT sector in support of the national aim of ICT enabled growth and development.

The network has a listserv with more than 1000 members that represent different stakeholder groups that include government, technical community, media, civil society, technical community, academia and Internet users. Through this listserv, discussions and open consultations on a variety of public policy issues related to the use of Internet and ICTs in Kenya and beyond are conducted. Ultimately, these discussions shape policy direction and regulation in the ICT realm in Kenya.

KICTANet has been conducting public consultations on over the top services (OTTs) for the last two years in particular to contribute to the ICT Draft Policy Bill 2016, and the Kenya Internet Governance Forum 2016 and 2017. It is with this backdrop that the Network contributes to this ITU open consultation, based on the feedback received from members during the mailing list discussions, as well as the face to face dialogue in its various forums. KICTANet responds to ITU questions as follows:

## **Responses to the Public Policy considerations for OTTs**

### *QUESTIONS*

"Considering the rapid development of information and communications technology (ICT) which led to the advent of Internet-based services commonly known as "over-the-top" (hereafter: OTT), all stakeholders are invited to submit their inputs on the following key aspects from policy perspective:

#### **1. What are the opportunities and implications associated with OTT**

Over The Top services (OTTs) are services provided to end users, and which ride on already existing networks and infrastructure. OTTs have acted as a catalyst in Kenya by encouraging more citizens to utilize the Internet for social and economic purposes. Some of the opportunities include e-government services such as application and renewal of national identity cards, passports, driving licenses, all facilitated on the e-citizen platform. Other opportunities include payment of utility bills such as electricity, rent, water, Internet and pay TV.

Over the top services have resulted in an exponential increase in the number of Internet users by virtue of the benefits they bring. Such benefits include lowered transaction costs, flexibility, convenience and increased transactions speeds.

Concerns have been raised on the one hand over the fact that OTTs consume telecommunication bandwidth without having to enter into agreements with telecom operators who are the owners of the telecommunication infrastructure. Further, that using free infrastructure and deriving benefits, they deny operators requisite revenues. Information available locally indicates that there is a high demand of OTT services by local consumers who continue to use the platforms, a sign that consumers desire useful content.

On the other hand, increased uptake of OTTs by consumers has resulted in increased demand for bandwidth and amplified traffic on local networks. This has in turn been seen to create more revenue for the service providers. It is important that there be collaboration between the telcos and OTTs for the benefit of the end users.

There is general agreement that OTTs promote business efficiency for baseline infrastructure providers. As such, there is need for infrastructure service providers to develop creative business models that would identify and tap into new revenue streams brought by OTTs. In other words, Telcos need to be innovative and develop creative solutions in order to identify new revenue streams.

## **2. What are the policy and regulatory matters associated with OTT?**

Kenyan stakeholders have been reluctant to support OTTs regulation since the industry is in its nascent stages and therefore requires incentives to grow. OTTs cannot survive without the underlying infrastructure which has already been subjected to regulation. As such, stakeholders have suggested that there should be no regulation to govern OTTs because of the opportunities presented and the difficulty of reciprocity in other jurisdictions. Further, it would be important to allow market dynamics to lead rather than draft guiding regulation.

Nonetheless, local stakeholders have identified the need for a suitable balance between commercial interests and public interest with regard to the content carried by OTT's. The same balance is also necessary for the promotion of local content where developing countries such as Kenya are concerned.

Data Protection and Privacy issues are areas of concern due to the use of Personally Identifiable Information (PII).

There is need for Industry collaboration and cross jurisdictional responsibility for example between Communications Authority, Music Copyright Society of Kenya and Kenya Film Classification Board (KFCB), all who have regulatory powers and sometimes seem to 'eat' into each other's space.

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

OTT players and other stakeholders offering app services can contribute to aspects of security and privacy of the consumers by adhering to Consumer protection provisions in the National Consumer act. OTT players must ensure that they have in place data protection and frameworks that guarantee the privacy of their customers.

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

There is need for Net Neutrality to be promoted. It is important to have a clear framework on how issues such as third party liability, fair and equitable treatment of internet traffic and zero rating of services are handled. This will determine the willingness of infrastructure service providers to host local content that could spur innovation and a surge in traffic on local networks. Tied to this, it would be important to consider waiver or reduction of costs charged to filmmakers for classification of films and local content to spur more content development and creative industries.

And since different countries have cultural sensitivities, it would be prudent to allow for freedom of choice, respect of fundamental rights and freedoms for distinct consumers. For example espousal of Kenyan film ratings by OTTs for products which may be unsuitable for minors and contain harmful content.

In addition, there is need to create awareness on methods of reporting of negative content on social media, OTTs and digital platforms.

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

OTT players and operators should participate actively in local, regional and international multistakeholder initiatives and networks, where issues of public policy are debated by stakeholders on equal footing without obligations to binding decisions. Examples of such cooperation with players include the Kenya ICT Action Network (KICTANet) forums, the annual Kenya Internet Governance Forum (KIGF), the Kenya School for Internet Governance (KeSIG), the East Africa Internet Governance Forum and the United Nations Internet Governance Forum. OTT players and operators can come up with model partnership agreements that can be used as best practices.

## **Other concerns**

### **Culture and content control**

With increased access to the Internet in Kenya, there is a clash with content regulators such as Kenya Film Classification Board (KFCB) which attempts to regulate OTTs. This is an ongoing tension that should be handled through local multistakeholder discussions and not at the ITU.

### **The future**

During the 2017 Kenya's General election, KICTANet was involved in observing technology deployment from a user perspective. KICTANet noted massive use of social media for political discourse. There were instances of misuse of social media and circulation of fake news. It is therefore important that such challenges are handled through localised processes such as platform responsibility and user education.

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### **For any queries on this submission, please contact:**

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