## ITU OPEN CONSULTATION

## ICANN Contribution: Public Policy Considerations for OTTs

## August 2017

Introduction

ICANN is delighted to have this opportunity to contribute to this Open Consultation. We believe the subject matter is of considerable importance, especially given the significant role the provision of such Internet services has played in the economic growth in many countries, not least in the developing world.

Rather than address each of these thoughtful questions in turn, we would propose to cover three general themes. The first concerns the advantages that Internet services have brought to economies, businesses and citizens. The second concerns the steps which governments and other stakeholders can take in ensuring they derive maximum leverage through the use of these services, while ensuring the safety and security of users. Finally, the brief Paper looks at the way stakeholders can work together regionally and globally to enhance provision of Internet Services.

1. Economic and Social Forces

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

Has society shaped the Internet or has the Internet shaped society? Some years ago, there may have been only one answer to this question, but now the situation is probably more nuanced. The Internet, as will be outlined below, has indeed had tremendous transformational force, not least on developed economies, on the way business is conducted, the way public services (in many countries) are provided and consumed and the way many personal lives are conducted. At the trivial, but illustrative level, Internet services have reduced map reading skills, changed the way many engage with friends and family (when did we last write thank-you letters) and made telephone directories almost redundant. Society, though has not allowed the Internet a free rein and nor have governments. Illegal behavior conducted on line (libel, defamation, IP violations) has, in the main, always been illegal. More recently the majority of consumer protection and data protection legislation which governments have introduced also applies equally to conduct on the Internet. And also new specific legislation has been crafted such as on cybersecurity, on child abuse content, on pornography or on computer misuse.

The argument that the Internet, or the services provided by global providers, are not regulated is therefore somewhat of a fallacy as will be explored further below.

The Economic benefit brought forward through the provision and use of Internet services has been a topic of debate and analysis for some years. A number of studies have clearly demonstrated how take-up of Internet services by businesses and in the public sector have enhanced the Gross Domestic Product (GDP) in the Countries concerned, made business more competitive and enhanced inward investment. Similar studies have also clearly demonstrated that the rate of growth of Internet services in a society is directly related to the policies and regulations adopted. In a study[[1]](#footnote-1)

entitled “Greasing the wheels of the Internet Economy” that the Boston Consulting Group (BCG) produced back in January 2004 (Commissioned by ICANN) it was noted that of the 65 countries assessed in terms of Internet usage there was a difference of up to 2.5GDP between those countries which had embraced the Internet Economy and those that had not. Significant factors for this difference included infrastructure spends, skills but also the policy and regulatory environment. Having competitive markets between providers, independent regulation and consumer protection were all positive factors.

In other words, ensuring that Internet services have a beneficial and positive influence in economies involves both the application of appropriate policies and legislation (for example in ensuring competitive markets) but also forbearance on others to encourage innovation and growth.

2. Regulation and Policy

*2. What are the policy and regulatory matters associated with OTT?
3. How do the OTT players and other stakeholders offering app services contribute in aspects related to security, safety and privacy of the consumer?*

The debate concerning the regulation, or otherwise, of Internet services, has been long-running. Long before the legitimate concerns of today regarding illegal content or the use of social media for cyber-bullying there were calls to impose taxes on data transfers of one nature or another. A global “bit tax” has been advocated from time to time and was discussed at the WTO since before 1999. Most recently the E-commerce moratorium was re-affirmed at the Nairobi Ministerial in 2016, a decision taken by WTO members which entails that they should not impose customs duties on electronic transactions.

There have also a number of national initiatives to look into how revenue could be raised from the provision of Internet services, whether based on the consumption of data by a user, the potential speed of a connection or the hardware deployed. Proposals have also been put forward for taxation to be levied on the provision of IP addresses and domain names. These, in the main, had (or have) little real policy underpinning other than raising revenue in a captive market.

The more serious approaches to regulation have concerned the applicability of Competition Law and the types of ex-ante regulation found in the Telecommunications Sector. In Europe discussion has focused, for example, on the Telecommunications Framework and whether some of the provisions in the associated directives and Regulations should apply to providers of OTT services (such as Facebook and Google). Proposed measures from the European Commission that *would* impose some additional regulation on such players are currently being discussed[[2]](#footnote-2).

Competition Law has, of course been applied to providers of Internet services in many different circumstances and in various jurisdictions. Again, in refuting that Internet providers are in some way immune to regulation, providers *have* been found to be potentially dominant in some specific markets, not only in relation to their dominance but also in the way (for example in Internet search) that services are provided.

ICANN has, historically been keen to enhance competition and consumer choice in the DNS market, one of the main reasons behind the significant expansion in the number of generic top-level domains (gTLDs) through the 2012 application process. This increased the number of gTLDs from 22 in 2012 to over 1200 today, but perhaps more importantly there has been an increase in gTLD registry operators from 15, prior to the Programme’s introduction, to 775 today, more than 77% of which are new entrants to the market.

A number of international organisations have also recognised the importance of not imposing undue burdens on Internet Services; such as the OECD in the Cancun Ministerial Conference on the Digital Economy in June last year. Paragraphs 4 and 6 of the Declaration[[3]](#footnote-3) are perhaps the most relevant in this respect.

3. Working together

*4. What approaches might be considered regarding OTT to help the creation of environment in which all stakeholders are able to prosper and thrive?
5. How can OTT players and operators best cooperate at local and international level? Are there model* partnership agreements that could be developed?"

The Internet has been (and still is) a disruptive force in society. As noted above, while it has, in the main, been a force for good, it has also facilitated activities and practices that detract from this and have led some to question the long-term benefits of an Internet based society. Indeed, some governments have taken direct action, whether through censoring content or blocking the DNS, to prevent the provision of some Internet services to their citizens. While such actions are understandable, they do not tend to tackle the problem itself. Information Security (or Cybersecurity) while highly relevant and necessary is not a complete solution to undesirable and illegal practices on the Internet. It does not prevent the Internet being used to intimidate users or for the promulgation of false rumors or facts.

While simply saying that the solution lies in all parties working together, is somewhat trite and simplistic, this is slightly more constructive than individual actions by stakeholders that sometimes do more harm than good. One is not suggesting that stakeholders talking together are going to prevent all types of terrorist or homophobic content on the Internet but at least this would be a start. The alternative (see for example the excellent WEF Paper on Fragmentation[[4]](#footnote-4)) is an Internet that will not deliver what, arguably, societies and economies need or what users have come to expect.

The involvement of OTT players (or simply put those that provide any form of Internet service) is of course crucial in the debate on evolving an Internet that benefits everyone. Cybersecurity incidents (by whomever propagated) and cyber-terrorism affect us all. A hospital unable to provide services is not solely a governmental issue. Thus, it is not surprising that detailed discussions on finding solutions to these issues do not always prosper if only governments are involved. Whether solutions involve technical issues (such as protecting the DNS), data standards or enhanced forms of cross border cooperation, it is important the right stakeholders are in the room. It is simply not credible any longer to discuss global Internet Governance issues with just governments in the room.

An initiative that does, at a global level seek to address some of these issues is the Internet and Jurisdiction Project[[5]](#footnote-5) which, inter-alia, has considered how one might facilitate the take-down of highly damaging on the Internet which may not be illegal where it is hosted.

At the National level the involvement of Internet players in the deliberation of national policies and legislation makes equal sense. Some mistakes of governments of all shapes and sizes, with respect to the Internet, could have potentially been avoided had the right players had been in the room. Progress has been made here with the establishment of multi-stakeholder platforms in several countries (for example the Brazilian Internet Steering Committee[[6]](#footnote-6) and the Multi-Stakeholder Advisory Group on IG (MAGIG) in the UK) but there is certainly more to do.

Globally the IGF has been the predominant platform for discussion and deliberation on Internet related issues and there is no reason why there could not be an enhanced focus on the issues thrown up in this consultation at the 2017 IGF in Geneva. Clearly an analysis on what is contributed in writing and spoken on (in September) is only beneficial with all stakeholders being able to contribute.

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1. (<https://www.icann.org/en/system/files/files/bcg-internet-economy-27jan14-en.pdf> [↑](#footnote-ref-1)
2. <https://www.chambersandpartners.com/article/1368/the-european-union-targets-ott-players> [↑](#footnote-ref-2)
3. <https://www.oecd.org/internet/Digital-Economy-Ministerial-Declaration-2016.pdf> [↑](#footnote-ref-3)
4. <http://www3.weforum.org/docs/WEF_FII_Internet_Fragmentation_An_Overview_2016.pdf> [↑](#footnote-ref-4)
5. <https://www.internetjurisdiction.net/> [↑](#footnote-ref-5)
6. <https://icannwiki.org/CGI.br> [↑](#footnote-ref-6)