

Government Issues Regulations For OTT Platforms And Online Content

written by Nivetha George | November 19, 2020



OTT Rules and Regulations: The Future of Online Entertainment in India
News about the Indian Government's moderation of Over the Top ("OTT") platforms and online content have been abuzz in recent times due to the notification released by the Central Government of India aimed at bringing digital/online media platforms, films release on OTT and audio visual programmes, provided by content providers, within the ambit of the Ministry of Information and Broadcasting (MIB).

The notification as issued by the Cabinet Secretariat on November 9, 2020^[1] has made amends to the Government of India (Allocation of Business) Rules, 1961 by including two new entries - 22A and 22B - to the Second Schedule of the Rules.

The two new entries are as follows:

1. *Films and Audio Visual programmes made available by online content providers*
2. *News and Current Affairs on online platforms*

By way of this inclusion, online content released in India is hereafter regulated. This includes content not only from OTT platforms but also news platforms, social media platforms and current affairs available online. The reasoning for this ott rules and regulations is believed to be, the vast expanse of unregulated content made available online amidst the lack of any proper regulatory mechanism that can offer protection to its viewers.

According to a national survey, the online content industry has an estimated value of INR 4,000 Crores, with a current viewership of more than 17+ Crores from OTT platforms alone, and all of this is currently unregulated with little to no scrutiny^[2]. The information and content portrayed on such platforms can impact its viewers, which includes minors.

It is noteworthy to mention that many governments over the world including Singapore, UK and the United States, have either already implemented online content regulations or are in the process of doing so. This has finally added a modicum of clarity and regulatory framework to a major grey area.

Furthermore, there is a need for a level playing field among other online content providers.

For instance,

- Print media is regulated by the Press Council of India;
- News regulations were offered by the News Broadcasters Association (NBA,);

- Advertisements are regulated by the Advertising Standards Council of India;
- Films are regulated by the Central Board of Film Certification (CBFC); and
- Television, both News and Entertainment, are being regulated by the Cable Networks Regulation Act (2005) respectively.

However, online content was in dire need of a regulatory architecture; more so to offer a protective measure to its audience, than to curb the freedom of content providers.

Prior Measures

Anticipating the government's intervention, in January 2019, video streaming service providers had signed a self-regulatory code that laid down a set of guiding principles for regulating and prohibiting five types of content:

1. Content that deliberately and maliciously disrespects the national emblem or national flag
2. Any visual or storyline that promotes child pornography
3. Any content that "maliciously" intends to outrage religious sentiments
4. Content that "deliberately and maliciously" promotes or encourages terrorism, and
5. Any content that has been banned for exhibition or distribution by law or court

The current regulation does not come as a surprise. The Apex court sought the centre's response on a Public Interest Litigation (PIL) last month, for the regulation of OTT platforms by an autonomous body. The PIL alleged that no regulation was imposed on these platforms wherein the digital content is made available to the general public without any form of filter or screening.

Following which the bench comprising of Chief Justice SA Bobde and Justices AS Bopanna and V Ramasubramanian, issued notices to the central government, Ministry of Information and Broadcasting (MIB) and Internet and Mobile Association of India(IAMAI)[3].

Current Implementation

There is very scarce information on how the MIB is proposing to regulate online content. A possibility is that the Programme Code[4] that governs content portrayed on television networks, would be considered as a template for this purpose. Another deliberation is that the Programme Code may be amended to include OTT platforms and online content within its ambit.

The Road Ahead

- The regulatory authority needs to throw more light on whether it plans to induce licensing, guidelines or curbs in the monitoring of digital content.
- Distinction between digital media content providers and aggregators is not clear.
- Online content unlike other media so far regulated has a 24x7 content structure. More clarity is required as to how the regulatory authorities are planning on monitoring such a load of content and associated complaints.

[1] OVUM: Market Study on OTT 2019 - 20

[2] OTT rules and regulations

[3] Shashank Shekhar Jha vs Union Of India on 15 October, 2020 - Writ Petition(s)(Civil) No(s).1080/2020

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