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INTRODUCTION

The COVID 19 global pandemic forced humankind to shift all its daily activities to an online mode, be it schools or workplaces or courtrooms everything has now become online. Apart from all this, a major industry of the country has also seen a stern shift to the online mode- The Media and Entertainment Industry. Today we have more people sitting in their relaxing couches at the comfort of their homes and watching Netflix or Amazon prime or any content on other OTT platforms for entertainment purposes than people watching TV or booking tickets to watch movies at a cinema hall. It is predicted by the BCG report that by 2023, the OTT market in India alone will surpass USD 5 billion.¹

This has led to a sharp and sudden increase in online media and the entertainment industry. Changes that happen slowly often bring about fewer hassles as the population slowly and steadily adapts to it along with bringing the relevant changes for the problems that the change causes. But this shift from an offline media and entertainment platform to an online one happened suddenly and thus brought about the need to make relevant changes sooner than later. These relevant changes pertain to legislation that can govern the OTT platforms which is similar to the legislation regulating the offline media and entertainment industry.

The OTT platform can provide its viewers the ease to access its content anywhere and at any time. This, coupled with the lack of regulation over its content which allows the platform to make available any kind of content, appeals to a broader audience than that of the film and television industry. In India, since the OTT platform is less governed than its offline counterpart, it gives the OTT platform the freedom of creating creative content as they like. This freedom may not be ethically correct. Some people believe that some of the content available online isn't necessarily appropriate for everyone who has access to it, or that it is inappropriate for other reasons. As a result, there is an increasing demand for some kind of OTT control. Due to the spike in cases filed in courts and police complaints about offensive content on OTT platforms, India started consultations on different approaches to censoring content on these platforms.

The Narendra Modi government recently released The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which require online and OTT platforms to obey the established content codes for television and print media, as well as to create a grievance redressal mechanism to investigate any rule violations. In the event of an emergency, this new rule enables the I&B secretary to guide the blocking of public access to relevant content.

THE LEGAL PROVISIONS THAT REGULATED ONLINE CONTENT BEFORE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

(By: Nandini Biswas)

Since there were no specific laws enacted to regulate the online content available, the online content was loosely regulated by the Constitution and various other sections of different legislations enacted by the Parliament. These are-

- Article 19 (1)² of the Indian Constitution gives its citizens the right to freedom of speech and expression. But this freedom can be restricted by the government. This is provided in Article 19 (2)³ of the Constitution. Therefore, the online content available can be restricted if the material is detrimental to the state’s public order, well-being, or ignites illegal activity.
- The Indian Penal Code⁴ has provisions that can restrict the availability of such online content that relates to obscenity (Section 293), defamatory content (Section 499) aims to deliberately and maliciously hurt religious feelings (Section 295A), or any content that insults any women’s modesty (Section 354). These provisions indirectly restrict the availability of such content as the Indian Penal Code punishes those who do not follow these sections.
- The Indecent Representation of Women (Prevention) Act of 1986⁵ seeks to ensure that indecent depictions of women in advertising, books, movies, and paintings are prohibited. Thus, an indecent depiction of women through online content is also prohibited.
- The POCSO Act (Protection of Children from Sexual Offenses)⁶ makes it illegal to share or sell child pornography. This prevents the online platforms from showing child pornography.
- Sections 67A, 67B, and 67C of the Information Technology Act of 2000⁷ stipulate that anyone who transmits or publishes any pornographic or sexually explicit content, including those depicting children in sexual acts, faces a fine as well as imprisonment. Under section 69A of this Act, the Central Government has powers to issue directives to block certain information from being accessed by the public or allowing public access.
- Self-Regulatory Code by IAMAI

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² INDIA CONST. art. 19, cl.1
³ INDIA CONST. art. 19, cl. 2
⁴ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860
When it comes to the controversy over whether the Government should make legislation governing the content made available on the OTT platforms, one of the most relevant points is that it stifles artistic speech. This obstacle can be overcome by implementing a self-regulation scheme with adequate checks and balances. Given the current situation, self-regulation in this sector appears to be not only a requirement but also a necessity.

Since the time of the Pandemic, there has been a significant rise in online video streaming platforms. However, this newness comes with the lack of proper oversight which made people realize the need for certain norms and regulations that can govern such platforms. The Indian film industry too has expressed their concerns over the fact that, while their industry needs a Central Board of Film Certification (CBFC), the online streaming industry does not have any proper laws that regulate their content.\(^8\)

Several PILs were filed in various high courts and the Supreme Court of India that expressed their concern about the non-regulation of the online content. These PILs quoted examples from various movies or web series available on these online video streaming platforms that are delegatory to the nation, hurt religious sentiments, or depict obscenity. They also pointed out that not all content should be viewed by children and since there was no regulation on the online streaming platforms the children were able to view all such content that might harm or corrupt their mental capacities.

Rather than an Act, several OTT platforms signed the Internet and Mobile Association of India’s (IAMAI) “Code of Best Practices for Online Curated Content Providers,” a self-regulatory code\(^9\). IAMAI represents the needs of OTT platforms since they are members of the organization.

According to the code, players should not make available any material that disregards the flag or the national emblem, shows a child engaging in sexual acts, hurts religious sentiments, or any content that promotes or encourages terrorism.

The Code was formulated in January 2019 amidst various petitions filed in the High Courts to bring the OTT platforms under the purview of the Government. It was updated twice, once in February 2020 and September 2020. A comparative analysis of the codes is given below-

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<table>
<thead>
<tr>
<th>Sr No.</th>
<th>Distinguishing Point</th>
<th>Code of Jan 2019&lt;sup&gt;10&lt;/sup&gt;</th>
<th>Code of Feb 2020&lt;sup&gt;11&lt;/sup&gt;</th>
<th>Code of Sept 2020&lt;sup&gt;12&lt;/sup&gt;</th>
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<tbody>
<tr>
<td>1</td>
<td><strong>Prohibited Content</strong></td>
<td>Recognizes 6 kinds of content that are prohibited from being made available on the platform.</td>
<td>Recognizes 5 kinds of content that are prohibited from being made available on the platform. It skips the point which talks about prohibiting to display content that has the potential to hurt religious sentiments</td>
<td>Does not talk about any prohibited content</td>
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<tr>
<td>2</td>
<td><strong>Classification of content based on the age</strong></td>
<td>Categorizes content into- 1. General / Universal Viewing 2. Content requiring Parental Guidance 3. Content that is age sensitive, that is categorizing the content as per age-appropriate audiences. Does not mention any age categories</td>
<td>Categorizes content into- 1. General / Universal Viewing 2. Content that requires Parental Guidance 3. Content as per age-appropriate audiences (12+, 15+, etc.) 4. Content that should only be viewed by mature audiences/Adults (18+)</td>
<td>Specifically categorizes according to age specifies what kind of content should be made available to which age category. The age categories are- 1. All ages 2. 7+ 3. 13+ 4. 16+ 5. 18+</td>
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<tr>
<td>3</td>
<td><strong>Access Control</strong></td>
<td>Mention about parental control</td>
<td>Along with parental guidance, suggests access control measures like setting a PIN/Password to restrict the access of the content solely meant for mature audiences/adult viewing</td>
<td>Along with parental control, mentions securing access control measures such as PIN / Password to restrict/control access to content.</td>
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<td>4</td>
<td><strong>Structure of the Redressal Forum</strong></td>
<td>Mentions that the complaint should be made to the Online Curated Content (OCC) provider’s relevant department</td>
<td>Redressal forum has a two-tier approach 1. Tier-I at the Online Curated Content Providers (OCCP) level- The Digital Content Complaint Forum (DCCF)</td>
<td>The first point of contact will be Consumer Complaints Department (“CCD”). If an OTT does not have CCD or the complainant is not</td>
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<sup>10</sup> IAMAI’s Code of Best Practices for Online Curated Content Providers, Jan. 2019
<sup>11</sup> IAMAI’s Code of Best Practices for Online Curated Content Providers, Feb. 2020
<sup>12</sup> IAMAI’s Code of Best Practices for Online Curated Content Providers, Sept. 2020
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<th>5</th>
<th><strong>Timeline of replying to the complaint</strong></th>
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<td></td>
<td>Should acknowledge the complaint within 3 working days</td>
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<td></td>
<td>If the Department decides that the content in question is in accordance with the Code, the Department may respond to the aggrieved individual within 10 working days of receiving the complaint.</td>
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<td></td>
<td>If more time is required, the Department must respond to the aggrieved individual in a timely manner, indicating when the department expects to be able to respond to the complaint. The time limit to</td>
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<tr>
<td></td>
<td>1. DCCF- Should acknowledge the complaint within 3 working days</td>
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<tr>
<td></td>
<td>If more time is required, the Department will respond to the aggrieved party in a timely manner, indicating when the department intends to be able to respond to the complaint. The</td>
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<td></td>
<td>2. Tier-II at the industry level- The Digital Content Complaint Council (DCCC)</td>
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<td></td>
<td>The matter may escalate to Tier II if the complainant is dissatisfied with the decision of Tier I</td>
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<tr>
<td></td>
<td>The Government may forward any complaint that it receives from a consumer to either Tier I or Tier II for redressal. The Government can also file a complaint by itself with either Tier I or Tier II</td>
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<tr>
<td></td>
<td>satisfied with the order of the CCD or the CCD does not reply, then the second stage will be Internal Committee (IC)</td>
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</table>
respond to the complaint is 30 days from the date of receipt of the complaint. The department cannot take more than 30 days to respond.

time limit to respond to the complaint is 30 days from the date of receipt of the complaint.

2. DCCC-
A complaint must be lodged with the DCCC within 15 days of receiving the OCCP's final response, or within 30 days if the OCCP does not reply or has not finally replied within 15 days from the date when the aforesaid period of 30 days provided for the OCCP to respond expires.

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A complaint must be lodged with the DCCC within 15 days of receiving the OCCP's final response, or within 30 days if the OCCP does not reply or has not finally replied within 15 days from the date when the aforesaid period of 30 days provided for the OCCP to respond expires.

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<th>6</th>
<th>Penalty</th>
<th>NA</th>
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Except for extraordinary cases, the DCCC can levy financial penalty in cases involving recurring violations of the provisions of this Code relating to prohibited content and age classification.

The financial penalty will be graded according to the extent and seriousness of the breach, with a limit of Rs. 3,00,000/-. The penalty will be set at Rs. NA.
1,00,000/- for the first offense, Rs. 2,00,000/- for the second offense, and Rs. 3,00,000/- for the third offense. When deciding if a financial penalty should be imposed, the DCCC can determine whether the violation was extreme, intentional, or careless.

| 7  | Withdrawal of Complaint | NA | NA | Complaints may be withdrawn by the user at any point in time. A complaint may be deemed to be abandoned, in case a user fails to provide relevant and complete information as contemplated |
| 8  | Reporting of Complaint   | NA | NA | Each OCC Provider shall share information pertaining to complaints received and complaints disposed of in the preceding year with MEITY/ MIB not more than once a year, as and when asked. Each OCC Provider agrees to provide information to MEITY/ MIB within 30 days from the date of receipt of the request from MEITY/ MIB. |
HOW OTT PLATFORMS WILL BE REGULATED UNDER INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021?

The new rules, on the other hand, cast doubt on the universal self-regulatory code, which was signed by 17 OTT majors last year. Although the government rejected the code, the Internet and Mobile Association of India (IAMAI) attempted to resolve the concerns by implementing an "Implementation Toolkit."  

The laws, which aim to control digital news media and video streaming services, are strongly influenced by current broadcast media legislation and structures, such as content codes and grievance redressal mechanisms.

For example, digital news platforms will be required to obey the program code established by the Cable Television Networks Regulation Act and the Press Council of India's Norms of Journalistic Conduct, which govern the content broadcast on television and in print.

Similarly, OTT platforms will not stream material that violates the country's sovereignty and dignity, endangers state security, or is harmful to India's friendly ties with other countries, or is likely to provoke violence or disrupt public order.

According to the rules, the platforms must also understand India's multi-racial and multi-religious background, and use caution and discretion when promoting the actions, values, traditions, or views of any racial or religious community.

The grievance redressal structure that they are mandated to set up will be a three-tier structure.

- The first tier will be a grievance redressal mechanism to be established by the platforms themselves.

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The second tier will be a self-regulatory body to be headed by a retired Supreme Court or high court judge or an eminent person.

The third tier will be an ‘oversight mechanism’ by the government as part of which an inter-ministerial committee (IMC) will be set up — on the same lines as followed for the TV industry.

Self-regulatory sector bodies in the television industry, such as the BCCC (Broadcasting Content Complaints Council) for non-news channels and the NBSA (News Broadcasting Standards Authority) for news channels, decide on complaints about program code violations.

An IMC decides on individual violations and may prescribe a variety of measures, such as keeping the channel off the air for a set time.

In the case of online curated content, self-regulatory bodies will order the publisher to reclassify relevant content scores, make necessary changes to the content descriptor, age classification, and access control steps, and edit the relevant content synopsis.

The rules mandate OTT platforms to classify their content into five age-based categories — U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult) and implement parental locks for content classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as “A”.

According to the rules, platforms must implement additional access control measures and prominently display the classification rating assigned to each material or program, as well as a content descriptor that informs users about the content's existence.

According to the regulations, both digital news media and OTTs operating in India will be required to notify the I&B Ministry of their entity's information, as well as publish monthly enforcement reports detailing the details of complaints received and actions taken.14

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14 Information Technology (Intermediary Guidelines And Digital Media Ethics Code) Rules, 2021, (NOTIFICATION BY MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY)
As it is evident, the main features of the Rules like age classification, access controls, and redressal forum structure are inspired by the Self-Regulatory Code developed by IAMAI and signed by the OTT players.

**HOW IS THE ONLINE CONTENT BEING REGULATED IN COUNTRIES OUTSIDE INDIA?**

As India mulls its approach, it is worthwhile to look at how other countries around the world regulate OTT content.

**Singapore**

Singapore has clear laws that govern the regulation of OTT content. The Infocomm Media Development Authority (IMDA), which is Singapore’s media regulatory agency, from March 1, 2018, made it compulsory for all the OTT providers to practice the code that they had formulated. This code requires the service providers to classify their content in the same way as is practiced in online films. The classification is as follows-

- a) G: General
- b) PG: Parental Guidance
- c) PG13: Parental Guidance for children under the age of 13
- d) NC16: No children under the age of 16
- e) M18: Adult Audiences (18 and up)
- f) R21: Content limited to people aged 21 and up only.

Further, there are certain restrictions on the kind of content that the OTT platforms can provide. Only those OTT platforms can show content rated NC 16 and higher which have a parental lock feature on their platform. Similarly, only those platforms that can show content rated are R21 which has a default locking system and the service provider uses a secure age verification method. The platforms are also bound to make visible to the viewers the reasons/advisory warnings (violence, nudity, sex, language, substance use, and terror) for such classification before they choose.

The code also lists down the dos and don'ts for the service providers. The service providers cannot show any content that is not in accordance with Singaporean laws. The platforms cannot show anything that may harm the national or public interest or compromise the national or public protection or hurt ethnic or religious peace among other things. The code also requires service providers to-
a) maintain a balance of views in news, current events, and educational programs (factual programs)
b) make appropriate efforts to ensure factual accuracy
c) correct any substantial errors in factual programs as soon as possible
d) prohibit flashing and repetitive images and programs with subliminal messaging from their platforms.  

**Australia**

In Australia, the OTT industry is mainly governed by the Broadcasting Service Act of 1992 (BSA). Apart from this there also exists an online content regulatory system which is a complaint-based framework that came into effect on January 1, 2000. Schedule 5 of BSA dealing with content hosted outside Australia and Schedule 7 of BSA dealing with the content which has an Australian connection, specify the rules and regulations for the kind of content that can be hosted on the online platforms in Australia. The scheme explicitly deals with material that has been categorized as-
1) 'RC': Refused Classification is assigned to content that is not allowed to be advertised, imported, or marketed in Australia.
2) 'X': 18+ denotes content intended for adults only due to its sexually-explicit nature.
3) 'R': 18+ is assigned to content that is restricted to adults because it is considered high-impact for the audience and may offend some segments of the adult population,
4) 'MA': 15+ is assigned to content that is restricted to people over the age of 15 because it is considered high-impact for the audience and may offend some segments of the adult community.  

The Australian Classification Board has categorized all online and offline material up to this stage. However, in Australia Netflix has received permission to classify its content on its own using its tools. According to the monitoring program, the tools used by Netflix can classify and identify content as per the Australian norms with an accuracy of 94%. The tool helps Netflix release the content without any major delays by classifying the content and issuing proper advisory warnings.  

**The United Kingdom**

15 Content Code For Over-The-Top, Video-On-Demand And Niche Services, 2019 (Singapore)
16 Broadcasting Service Act (BSA), 1992 (Amended in 2018)
In September 2018, oversight of video streaming platforms like Netflix and Amazon was called by the director-general of the British Broadcasting Corporation (BBC)\textsuperscript{18}. The UK cultural secretary was of the opinion that the OTT platforms should be monitored in the same way as other public service broadcasters are monitored.\textsuperscript{19} Though there were no strict rules and regulations for monitoring the online content, The British Board of Film Certification came to an agreement with Netflix which allowed Netflix to start its rating program that would trade the movies and TV shows of their platform\textsuperscript{20}. After this, a white paper was published by the UK government that enlisted the dangers that unregulated content shown over the OTT platforms can cause. It also discussed the ways in which it could be resolved. The white paper introduced a new regulator and regulatory system to ensure the online safety of British citizens. The regulator's responsibilities will include, among other things-

- a) overseeing and enforcing the regulatory process
- b) establishing codes of practice
- c) overseeing user redressal mechanisms
- d) promoting education and information about online safety
- e) commissioning and conducting research to strengthen online safety standards.

The proposed regulatory structure would include:

- a) a responsibility on companies to take fair measures to keep their customers safe
- b) a regulation on companies to curb illicit and unsafe activities on their services
- c) a requirement that firms publish a disclosure report once a year
- d) among other items, a requirement that organizations have an efficient and easy-to-use user complaint system.\textsuperscript{21}

Concerned companies and stakeholders were asked to respond to concerns about accountability, complaint redress, and the regulator's reach, among other items, in the white paper.


\textsuperscript{19} Netflix And Amazon Could Face More Regulation In UK, Hints Culture Secretary, SCREEN DAILY, (Mar 8, 2019), https://www.screendaily.com/news/netflix-and-amazon-could-face-more-regulation-in-uk-hints-culture-secretary/5137492.article


Turkey

The main body responsible for Turkey’s media service control and supervision of radio, television, and on-demand media services is the Radio and Television Supreme Council RTUK of Turkey. The RTUK published legislation that regulates the content disseminated over the Internet. If the local joint-stock companies want to offer radio, television, or on-demand media services over the internet, they will have to obtain a license. The legislation requires the license holders to grant RTUK monitoring access so that they can monitor the content being shared on the Internet. Further, the license holders also have to compulsorily encrypt audio and video streams and share their IP licenses with the RTUK so that the RTUK can record the content that is being broadcasted over the Internet. There has been anticipation that after the mandating of licensing there will be mandates regarding OTT content censorship. According to reports, Netflix has applied for an abroad broadcasting license due to the new rules.

Indonesia

Currently, there are no legislations to regulate the OTT platforms in Indonesia. However, in 2016, Telkom, which is Indonesia's largest telecom provider, blocked Netflix by alleging that it breached Indonesia's local censorship rules. Indonesia’s Ministry of Communication and Information Technology gave Netflix a month to comply with the local regulations which needed it to partner with a local operator or establish a local unit. To again regain its control, Netflix mended its relations with Telkom and the telecom unblocked Netflix’s user access. The Indonesian Broadcasting Commission, a government agency that regulates all the offline broadcasts, on August 7th, 2019 said that it would issue rules that would allow it to control the digital media content being broadcasted over YouTube Netflix in other social media platforms.

Kenya

22 Regulation on the Presentation of Radio, Television and On-Demand Broadcasting on the Internet (Turkey Regulation), 2019
23 Netflix Applies For License Under New Turkish Broadcasting Rules, REUTERS, (Sept. 3, 2019)
24 Netflix Blocked By Indonesia In Censorship Row, BBC, (Jan 28, 2016),
26 Indonesia’s Broadcasting Watchdog To Monitor Netflix, Youtube, THE JAKARTA POST, (Aug 7, 2019),
Two weeks after Netflix launched its services in Kenya, Kenya's Film Classification Board known as Kenya Film Classification Board (KBFC) banned Netflix alleging that the services offered by Netflix are against their moral values and their national security. Following this KBFC decided to pass legislation that would allow it to regulate all the content being broadcasted by the OTT platforms or any other content being broadcasted over the Internet. But this decision was not accepted by the citizens. After a lot of outcries that happened in Kenya, KBFC had to reverse its decision. Currently, Kenya is finishing the framework of legislation that requires all the international OTT platforms to pay taxes. Therefore, the country is currently allowing all the services to continue without any sort of regulation or classification of the content.

**Saudi Arabia**

It is not very clear whether Saudi Arabia has a specialized legislation dealing specifically with the regulation of OTT content or not. But Saudi Arabia has an Anti-Cyber Crime Law (ACCL) which regulates all the facets of the Internet. This legislation empowers the government to censor all the activities happening on the Internet. Therefore, broadly it gives the government the power to also regulate the OTT content. Recently, The Communication and Information Technology Commission, a government department, using Article 6 of the ACCL demanded Netflix to delete an episode from its domestic library from the series called ‘Patriotic Act’ as it was critical of the government. Since Netflix complied with the request made by the government department, it attracted widespread criticism for giving-in to the country’s strict restriction policy. Netflix was criticized as it did not fight to uphold its freedom of expression.

**CONCLUSION**

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29 *Anti-Cyber Crime Law, 2009 (Saudi Arabia)*


The OTT content industry is still in its infancy around the world. The number of customers using Over-The-Top (OTT) services has increased dramatically in most countries. Some countries have already adopted or are considering making a legislation to regulate the content shown available on the OTT platforms. The need for the laws seems to stem from a variety of voids that the countries are attempting to fill.

From the current given situation, 2 schools of thought arise- first, understanding if there is any imbalance in the level playing field between the online and the offline players in the media and entertainment industry, and second, how much power should the government have in regulating the content available on the OTT platforms. India has addressed both these schools of thought in its 2018 consultation paper where it asked its stakeholders their views on both the issues\(^{32}\). Therefore we can say that India has given a lot of thought before coming up with its legislation that regulates the OTT platforms.

For foreign countries who still haven't come up with any sort of proper regulation, they would have to carefully consider the exact need for the laws before drafting them. They need to decide if the legislation aims to protect the audience or to close any regulatory gap that exists by equating the level playing field between the OTT platforms and their offline counterparts.

Given the sudden shift of the media and entertainment industry to the online mode, the viewers are having a plethora of choices between the content that they can watch. The vast choices offered by the OTT platforms diversify the viewers' interest into watching all forms of creativity and genre and the same is enjoyed by the viewers. Therefore, in the haste of making legislation to regulate the content, the governments have to keep in mind the interest of their citizens as well. The need of the hour is to step back and understand how to create a balance between the interests of the people as well as monitor the OTT platforms before rushing into any ideology of a regulation.

\(^{32}\)Consultation Paper On Regulatory Framework For OTT Communication Services, TELECOM REGULATORY AUTHORITY OF INDIA, (Nov 12, 2018), [https://www.trai.gov.in/sites/default/files/CPOTT12112018_0.pdf](https://www.trai.gov.in/sites/default/files/CPOTT12112018_0.pdf)