

REGULATION OF OTT VIDEO PLATFORMS IN INDIA: STEPS TOWARDS TRANSPARENCY AND CONSUMER EMPOWERMENT

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Abstract:

The media and entertainment sector in India is witnessing a tectonic shift in the last few years. OTT video platforms like Netflix, Amazon Prime, etc., are fast replacing the traditional TV channels and Cinema, in terms of their customer base and impact. India is among the few countries to come up with regulation of OTT video platforms. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ('OTT Rules'), will soon be completing three years of implementation and it's time to review their impact and efficacy. It is observed that awareness among the public about the OTT Rules is very low. Consumer education needs to be enhanced on OTT apps by way of prominent display of age ratings, content descriptors (to be in respective language of the film) and details of grievance redressal. There is a need for periodic audit of actual existence and efficacy of access control and age verification mechanisms put in by the OTT providers. Instead of mere statistical numbers, the formats prescribed for reporting complaint redressal by OTT Publishers may capture the actual complaint description and summary of decision given by publisher/appellate body. Other measures like inclusion of financial penalties on erring entities, publication of complaint redressal details on public domain, broad basing the membership of Inter-Departmental Committee (IDC), which investigates content violations, etc., will make India's OTT regulation, transparent and effective. India is already a front runner at global level in laying down a legal framework for regulation of OTT platforms and the Government's vision is that India's OTT regime may serve as a model for other nations to emulate. Initiatives suggested in this paper will hopefully help in furthering this objective, realise the efficacy of 'self-regulation' and most importantly, empower millions of OTT consumers in the country.

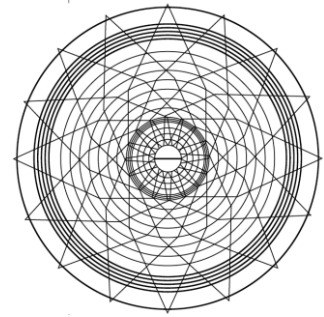
Keywords: OTT rules, online content regulation, digital media ethics code, OTT regulation, consumer protection, broadcast regulation

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Introduction

OTT stands for ‘over-the-top’. It essentially involves streaming content directly over the Internet, thus bypassing traditional media intermediaries like cable, terrestrial TV, or satellite channels. While there are different types of OTT media (e.g. *audio streaming, messaging services, or internet-based voice calling solutions etc.*), the most popular is subscription-based video-on-demand services offering web-based access to films and other video content. Over-the-top content has become hugely popular in the recent times as it comes with a variety of benefits: *Large and diversified audience base, Easy subscription, and content-sharing options; Uninterrupted content – No commercials or distracting ads; Access to nearly unlimited content; Recommendations for users based on audience’ tastes powered by artificial intelligence.*

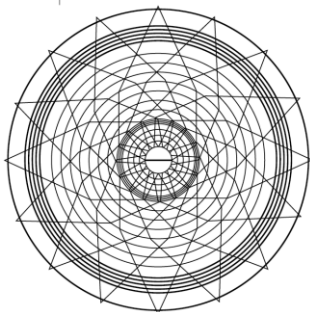
Content on OTT platforms can be ‘pulled’ by a user “on demand” as per his/her convenience. The content can be accessed anytime on multiple devices, such as personal computers, mobile devices, smart TVs, or digital media players. This contrasts with pre-scheduled films in cinema halls and entertainment programmes on TV channels. OTT platforms enable consumers to choose the content of his/her liking and such choice is relatively wider over the internet. Coupled with the diversity and customization of content (through computer algorithms), additional titles/content which was not specifically sought by the user are also readily served up for the consumer. This feature makes OTT platforms unique vis-a-vis traditional entertainment media (films and broadcast television).

It is generally held that the content on OTT platforms is privately consumed at individual level via devices like personal computer/laptop/mobile/tablet, etc. However, the growing popularity and affordability of large screen TVs and the ability to watch/cast content on TV from apps/mobiles had made OTT platforms to be ‘family media’, just like broadcast TV channels.

This paper covers regulation of OTT video platforms, i.e. online curated content providers, such as Netflix, Disney Hotstar, etc., and with specific focus on Indian context.

OTT Video Market in India

The media and entertainment sector in India is witnessing a tectonic shift in the last few years. OTT video platforms like Netflix, Amazon Prime, etc., have become dominant players in the home entertainment sector. They are fast replacing the traditional TV channels and Cinema, in terms of their customer base and impact. This transformation is largely due to ubiquitous availability of online media content, growing internet penetration, increase in accessibility via multiple devices, falling prices of smartphones and data, etc.



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In the year 2021, the audience of OTT platforms reached 497 million and this number is expected to cross 600 million by 2024 (FICCI and EY, 2022). Ormax OTT Audience Report 2022 estimates that there are currently 9.6 crore active paid OTT subscriptions in India, and 40.7 million paying audiences (Ormax Media, 2022).

At present, there are about 60 OTT platforms operating in India. India is currently the world's fastest growing OTT (Over-the-Top) streaming market. COVID-19-induced behaviours, such as physical distancing and avoiding unnecessary travel, have led to a change in consuming entertainment media, thereby resulting in a significant increase in the demand for at-home entertainment (PricewaterhouseCoopers, 2020).

There is a growing trend of many films being released directly on OTT platforms without a prior theatrical release. Other key drivers for growth include live sports, bundling of internet data with OTT subscriptions, exclusive reality content, and attractive pricing, etc. The OTT sector has contributed to an increase in India's soft power, with several Indian shows and films released on OTT platforms having received global attention. Content localisation, i.e., the dubbing and subtitling of content in multiple regional and international languages is also helping to expand the reach of Indian content to foreign audiences.

Current OTT Regulation in India

While the OTT video platforms claimed self-regulation since the beginning, their attempts could not inspire much confidence in institutionalising a credible and sustainable self-regulatory regime. Also, there was considerable litigation in High Courts and Supreme Court regarding the content shown on OTT platforms.

In this backdrop, in 2021, the Government issued Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ('OTT Rules' for short). They came into force from 25th February 2021 and were issued in supersession of the Information Technology (Intermediaries Guidelines) Rules, 2011. Further, the Government of India (Allocation of Business) Rules, 1961 were amended giving the mandate of regulating Digital/Online Media to the Ministry of Information and Broadcasting (MIB) on matters, namely: *a) Films and Audio-Visual programmes made available by online content providers and b) News and current affairs content on online platforms.*

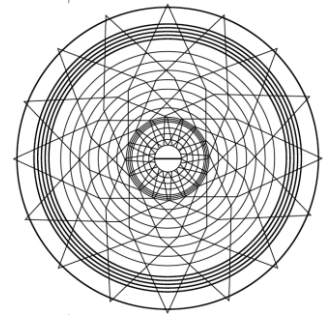
Going by the international scenario, it can be said that India is among the few countries to come up with legal regulation of OTT video platforms. India's approach can be termed as a light-touch 'co-regulation' model whereby the Government gave legal recognition to 'self-regulation' at industry level and an 'oversight mechanism' at

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government level. The Digital Media Ethics Code created an institutional mechanism for digital news portals and also OTT platforms (called ‘Publishers’ as per the Rules).

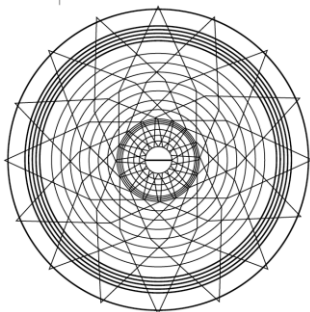
The Ethics Code and Regulatory mechanism enshrined in the OTT Rules, has following broad features:

- a. A three-level grievance redressal mechanism with two levels of self-regulation - *Level I being the ‘publisher’ and Level II being the ‘Self-Regulatory Body’, and the third level being the Oversight Mechanism under the Ministry of Information & Broadcasting* (There can be more than one self-regulating body but every OTT provider should be a member of a self-regulating body.).
- b. Periodic furnishing of grievance redressal information by publishers to the Government.
- c. A Code of Ethics is laid down for OTT platforms with general principles regarding the content and its classification.
- d. Content that is classified as U/A 13+ or higher shall have access control mechanisms, including parental locks.
- e. Programmes classified as “A” (18+) shall implement a reliable age verification mechanism for viewership of such content.

OTT Regulation in Other Countries

A survey of OTT regulation in different countries suggests that most of them are yet to come up with a clear statute-backed framework. Even countries like the UK which have a mature and elaborate regulation for traditional broadcast media, are still in the process of evolving a regulatory mechanism for OTT content. In Australia, online media is regulated through the Broadcasting Services Act, 1992 and the Enhancing Online Safety Act, 2015. For matters related to online safety (including digital media), the office of “eSafety Commissioner” was established as an independent statutory office.

OTT regulation in Singapore is particularly noteworthy. In Singapore, the Infocomm Media Development Authority (IMDA), established under the Broadcasting Act, 1994 is the common regulatory body for different media. A Content Code for OTT, Video-on-Demand and Niche services is in effect since 2018 and provides, *inter alia*, for classification of content; parental lock and age verification; display of rating and content elements; and specific provisions for news, current affairs and educational programmes. Singapore is one of the few countries in the world where there is systematic regulation of online media, including OTT platforms. Singapore’s three-Pronged Approach to Regulation (involving the Government, industry partners and members of the public)



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comprises the following: 1. *Instituting a balanced and pragmatic framework embodied in a statute*, 2. *Promotion of greater industry self-regulation to complement existing content regulations*; and 3. *Promoting media literacy and cyber wellness through public education - creating awareness on advantages as well as the downsides of the information superhighway, initiating programmes to promote media literacy and the discerning use of the media*. To further the efforts on the media literacy front, Singapore established the Media Literacy Council (MLC) way back in 2012. The remit of this Council is to spearhead public education programmes and initiatives on digital literacy and cyber wellness and to promote responsible online participation.

A purported benefit of self-regulation is that the industry will voluntarily act to prevent further regulation. However, international experience demonstrates industry commitment to regulation is debatable in most of the co-regulatory systems. In his 2009 study titled “Children, Media and Regulation”, Charlotte Simmons says that all the systems of co-regulation share similar regulatory loopholes. Those relevant to India are: *Industry unwilling to voluntarily adhere to regulatory codes/guidelines; Lack of mechanisms available to monitor industry adherence; Lack of or weakness in sanctions to deter industry contraventions*. In response to above flaws, the study made some recommendations: 1) the need for an independent body to monitor and audit industry application of regulations, 2) the need for penalties to encourage industry compliance, 3) the need for an independent body to review regulatory operations, decisions and funding, and 4) a coherent and evidence-based approach to enhance ‘media literacy’ which is a key competent in the future of regulation (Simmons, 2009).

Some Policy Suggestions for Indian Context

Considering the above, following suggestions can be made for the Indian context:

Consumer Awareness

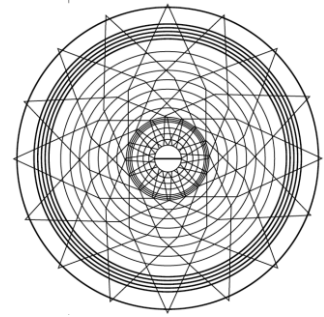
1) Presently, the film’s age ratings (e.g. 13+) and the content descriptors are merely flashed for a few seconds on a corner of the screen. This vital information aimed at consumer advice may be shown prominently in full-screen mode. Also, the display of age-rating/interpretation/content descriptors may be for a mandated minimum duration (e.g., 10 seconds) so that the contents can be read by the viewers. These vital aspects may be incorporated in Rules so that the legally mandated age-ratings serves their purpose of effective consumer advice. It is pertinent to note that such a rule is already existing for exhibition of films under Cinematograph (Certification) Rules, 1983 (Rule 35(3)). Such practice is in vogue at global level too.

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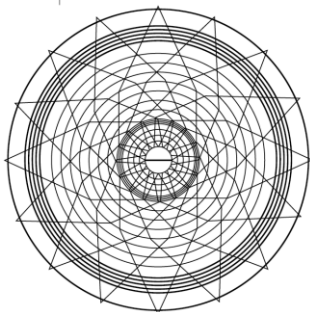
2) In a developing country like India with low levels of literacy and much lower levels of English knowledge, the importance of parental responsibility, awareness and media literacy cannot be overemphasised. In view of this, the display of age-rating may be accompanied by its interpretation in the respective language of the film. Also the content descriptors may be in the respective language of the film, apart from English (presently it is only in English, irrespective of the language of the film). Such audience-friendly provisions are embedded in law for anti-tobacco warnings/messages in films which mandate that the language of the scroll/message to be in the language of the film and specifically stipulating about the legibility, readability, font colour and background colour, etc., of the scroll/message.

3) About the availability of grievance redressal and appellate mechanisms, the OTT providers and self-regulatory bodies did not initiate any consumer awareness measures through their own websites/apps, let alone any proactive campaigns through print and electronic media. Like in the case of satellite TV channels, information regarding OTT content grievance redressal and appellate mechanisms may be mandatorily displayed by way of scrolls and in-app notifications, etc. The manner, text, language and frequency of such scrolls may be enshrined in Rules which is vital for consumer awareness and empowerment.

4) Current Rules have a consumer-friendly provision mandating all OTT publishers to include classification rating of their programmes in any print, televised or online promotional or publicity material and prominently display the classification rating. Like in the case of CBFC¹- certified films, it is observed that this rule is not being followed scrupulously. Where followed, in some cases, the rating is indicated so inconspicuously small (in comparison with the font of the film's name) that it can be hardly noticed as part of the advertisement. In the case of adult/18+ films, some advertisers may deliberately indulge in this because a higher rating like "A" may deter some audiences from watching the film. In view of this, provision may be inserted to mandate the legibility and govern the size of age rating in the advertisement (e.g., not less than 50% of the font size of the film title in the advertisement).

5) While OTT platforms are generally expected to be giving ad-free experience, many providers are promoting their content in a variety of ways: *showing 'screensaver' sort of images promoting titles of current/upcoming films, making user to mandatorily watch a film promo before starting the desired video, listing of 'top searches' thereby influencing the user to watch certain titles, prominent ranking for certain films in 'search' results and recommendations, etc.* This calls for the need to closely examine and regulate the

¹ Central Board for Film Certification, the statutory body in India that certifies films for theatrical exhibition.



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different ways in which content in OTT is being promoted, especially where such practices are likely to be detrimental to the interests of children. For example, OTT Rules may provide that any promotions on the platform shall be clearly distinguishable and indicated as 'ad', promotional content relating to films of higher age-rating (e.g. 16+) and unsuitable for kids shall not be shown before or as part of films with lower age rating (e.g. 7+), images of film titles not to be titillating in case of listings in kids' profiles etc.

6) The OTT Rules provide that the content that is classified as U/A 13+ or higher shall have access control mechanisms, including parental locks. However, many providers are yet to come up with age-based 'profiles' protected with parental locks/PINs. Even in the case of some of the popular OTT apps, switching from 'kid-safe' mode to adult mode is a toggle away. In many cases, no locking mechanisms are available for parents at the level of opening the OTT app. This calls for the need for periodic audit of actual existence and efficacy of access control and age verification mechanisms put in by each publisher of online curated content. Ministry of Information and Broadcasting may ensure this exercise is undertaken by an independent body.

Transparency

1) Though the OTT Rules were notified in February 2021, there is little awareness among the audience about the same. Rule 11(2) indeed provides that each OTT publisher shall, *inter alia*, appoint a Grievance Officer based in India and display his/her name and contact details at an appropriate place on its website or interface, as the case may be.

2) In practice, it is seen that many OTT providers are either not publishing the details of grievance redressal/appellate mechanism or publishing them so inconspicuously that it is difficult for any consumer to find those details. In some cases, the details are not included as part of the OTT app but only on their website. Further, in many cases, only an online form is provided and any alternative contact details, such as telephone number or e-mail or postal address, are not provided. This underlines the need for uniformity in the way the OTT publishers display key information prominently on their apps as well as websites: *Applicable Rules and Content code, Publishers' obligations and timelines for grievance redressal, name and contact details of grievance officers, appellate authority/self-regulatory body etc.* Further, in case of some OTTs, while displaying grievance redressal details, abstruse words, such as "Content Grievances", etc., are used, thereby obscuring their very utility for consumers, and effectively 'hiding' such vital information. This calls for the need to mandate naming of relevant links in simple/plain language, for example, "Complain to Us" etc.

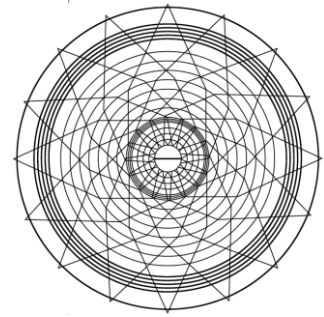
3) Rule 19 of OTT Rules provides that publishers and self-regulating bodies shall make monthly disclosure of information regarding the grievances, orders and directions

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received and action taken thereupon. However, the prescribed reporting formats only seek the number of grievances received and decided rather than the substantive/descriptive details of the complaints and the decisions. This statistical data has limited utility either for the Government or the consumers at large. The formats may capture the summary of the complaint and the summary of decisions made along with the links to access the copy of decision/order issued (To ensure privacy, the details of the complainant may not be published.). This practice promotes much-needed transparency and avoids repeated complaints by consumers on the same issue which were already decided at the level of OTT publishers or the self-regulatory body. Such format/publication is already followed by self-regulatory bodies like Broadcast Content Complaints Council² (BCCC) in case of complaints against entertainment TV channels.

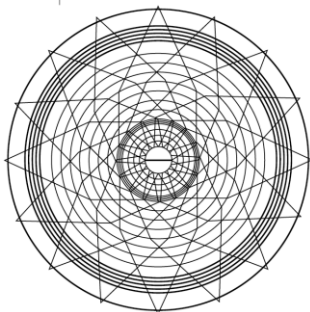
4) The Ministry of I&B may consider hosting/facilitating a dedicated umbrella website wherein details of all applicable Rules, Codes, advisories, media literacy material, contact details for grievance redressal, etc., can be published and the OTT providers and self-regulatory bodies can upload (through secure log in), the details of grievances and decisions which will be visible for public and government authorities. This online 'self-service' approach will be convenient for all stakeholders and greatly aid in enhancing transparency of the current regulatory mechanism. It greatly contributes to what is sometimes called 'disclosure regulation', which enhances consumer confidence and deterrence, especially in the current era of co-regulation. Such a portal is an imperative also in view of the growing number of OTT providers, existence of multiple self-regulatory bodies/Industry Associations and the resultant need for the consumer awareness about the same.

5) As it is possible that the same film is available on different platforms, self-regulatory bodies may be mandated to ensure uniformity in classification of content across all platforms.

Other measures to strengthen OTT Regulation

1) Current rules provide for the third/final tier as IDC (Inter-Departmental Committee) comprising officer-nominees from various ministries of Central Government and domain experts. The mechanism is such that while IDC recommends the course of action on OTT content violations, the Secretary, I&B is competent to take final decision. In the context of content regulation TV and Radio channels, in *Indraprashta People & ANR vs. Union of India (2013)*, Hon'ble Delhi High Court observed thus:

² Broadcasting Content Complaints Council (BCCC), the independent self-regulatory body for non-news general entertainment channels set up by the Indian Broadcasting Foundation (IBF) in June 2011. The publication of decisions by BCCC can be accessed at <https://www.ibfindia.com/decisions>



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...as we find pertaining to cinema and print media, there is no reason why the legislature does not put in place a statutory, regulatory body, and taking cue from The Cinematograph Act 1952 and The Press Council Act 1978 legislate to have a statutory Board comprising men and women of eminence in the field of Law, Science, Art and Culture, Literature, History and Social Sciences...finding no statutory regulatory body constituted, meaning thereby, as per the extant law the duty would fall on the executive to ensure that the mandate of the legislation is complied with, a situation which would be an anathema in a democratic set up inasmuch as it would put broadcast under the direct control of the state, we recommend that a statutory regulatory body be constituted consisting of men and women of eminence. Security of tenure of a kind should be provided for the Members of the Board so that they are free from Government interference. (Indraprashta People & ANR v Union of India, 2013)

In 'Airwaves Case' (1995) and other subsequent judgements, Hon'ble Supreme Court also underlined the need for establishing a statutory body for regulation of broadcast content. Pending the constitution of a dedicated statutory regulator for media, the membership of IDC may be made more broad-based and representative and with security of tenure.

2) Inclusion of financial penalties on erring OTT publishers may be considered which will act as deterrent and also creates level-playing field on par with similarly-placed entities like television broadcasters, DTH Providers, etc.

3) Consumer advocacy groups, National Commission for Protection of Child Rights (NCPCR), Parents' Associations may be made part of consultations during revision of OTT Rules so that all nuances relating to interests of children and consumer protection can be suitably examined and incorporated in the Rules. Their representatives/nominees may also be inducted into IDC.

4) While the provisions for warning/censure, etc., and requiring apology by the publisher are available, currently there is no provision for disclosure or publication of such apology/warning/censure on the platform or website so that the public at large are made aware of the same. Such a deterrent provision already exists in case of newspapers in the Press Council of India Act. The same may be incorporated in OTT Rules also.

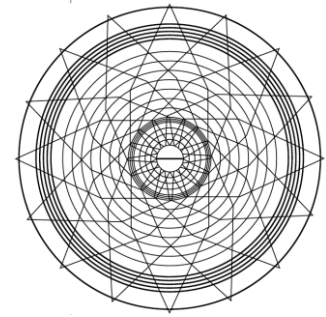
5) Being nascent regulation, the outreach so far appears more for the industry stakeholders rather than for consumers at large. MIB may ensure that the self-regulatory bodies run periodic campaigns in print and electronic media regarding the availability of grievance redressal and appellate mechanisms. Public campaigns in print and digital

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media against fake news and rumours by WhatsApp is an example of such a proactive, Industry-led approach for consumer awareness.

6) In the present era of media convergence, it is high time for evolving a common set of Guidelines for Content and its classification, age ratings and their manner of display, violations, and penalties, etc., so that content across platforms (TV/Cinema/OTT) is governed uniformly.

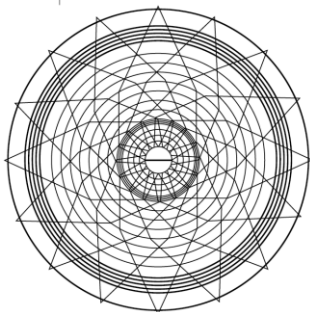
Government of India had on 10th November 2023 proposed a draft Broadcasting Services (Regulation) Bill³ and floated the same for consultation with public and stakeholders. Regulation of OTT Video content also forms part of this Bill, and it is likely that the provisions under current OTT Rules will be subsumed under the proposed comprehensive law. The Cinematograph Act was also recently amended, and the Rules are currently under revision. The Government may use this occasion to ensure that the regulatory provisions for content of CBFC-certified films, OTT Video platforms and the Broadcast TV Channels are aligned uniformly.

Conclusion

India is already a front runner at global level in laying down a progressive framework for regulation of OTT platforms. India's model seeks to be an efficacious combination of self-regulation and legal recognition. This is in line with the global trend whereby governments increasingly prefer a more hands-off approach for media regulation and for transfer of State responsibility to industry bodies, parents, and reliance on media literacy. However, it is important to note that the success of this approach is contingent on transparency in co-regulation process, publication of grievance details, sustained efforts for media literacy among the audience, deterrent penalties by self-regulatory bodies etc.

The background note on the Digital Media Ethics Code proclaims thus: *"At a time when the digital media governance is in a state of flux across the globe, the Digital Media Ethics Code is thus a transformative step which would raise India's stature at an international level and serve as a model for other nations to emulate."* Initiatives suggested in this paper will help in furthering this objective, realise the efficacy of 'self-regulation' and most importantly, empower millions of OTT consumers and parents in the country.

³https://mib.gov.in/sites/default/files/Public%20Notice_0.pdf



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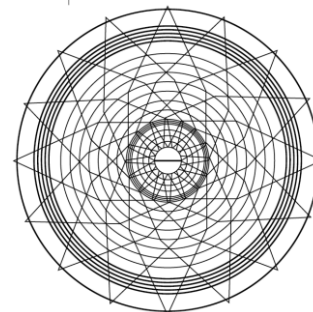
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НОРМАТИВНОЕ РЕГУЛИРОВАНИЕ ОТТ-ВИДЕОПЛАТФОРМ В ИНДИИ: ШАГИ НАВСТРЕЧУ ПРОЗРАЧНОСТИ И РАСШИРЕНИЮ ПРАВ И ВОЗМОЖНОСТЕЙ ПОТРЕБИТЕЛЕЙ

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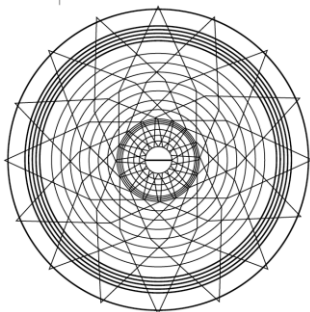
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Аннотация:

В последние несколько лет в секторе средств массовой информации и развлечений в Индии происходит настоящий тектонический сдвиг. Такие ОТТ-видеоплатформы, как Netflix, Amazon Prime и т. д., быстро вытесняют традиционные телеканалы и кинотеатры, исходя из показателей клиентской базы и влияния. Индия входит в число немногих стран, которые ввели нормативное регулирование ОТТ-видеоплатформ. Правила информационных технологий (Руководство для операторов и Этический кодекс цифровых медиа) 2021 года (далее – правила ОТТ) вскоре завершат трехлетнюю реализацию, и пришло время проанализировать их влияние и эффективность. Нужно отметить, что осведомленность людей о правилах ОТТ находится на низком уровне. Необходимо усилить просвещение потребителей в ОТТ-приложениях путем наглядного отображения возрастных оценок, описаний контента (на языке фильма) и подробной информации о рассмотрении жалоб. Существует необходимость в периодическом аудите наличия и эффективности механизмов контроля доступа и проверки возраста, внедренных провайдерами ОТТ. Форматы, предписанные для представления отчетов о рассмотрении жалоб издателями ОТТ, вместо обычной статистики могут содержать фактическое описание жалобы и краткое изложение решения, вынесенного издателем или апелляционным органом. Такие меры, как введение финансовых санкций в отношении нарушителей, публикация сведений о рассмотрении жалоб в открытом доступе, расширение членского состава Межведомственного комитета, который рассматривает нарушения, касающиеся контента, и т. д., также сделают нормативное регулирование ОТТ в Индии прозрачным и эффективным. Индия уже занимает лидирующее положение в создании нормативной базы для регулирования платформ ОТТ на глобальном уровне, и



[Scientific Articles]

Edara R. K.

Regulation of OTT Video Platforms in India: Steps Towards Transparency and Consumer Empowerment

наше правительство полагает, что порядок регулирования OTT, принятый в стране, может послужить примером для подражания для других стран. Мы надеемся, что решения, предложенные в этой статье, помогут в достижении озвученной выше цели, позволят осознать эффективность регулирования с использованием собственных норм и, самое главное, расширят возможности миллионов потребителей OTT в стране.

Ключевые слова: правила OTT, нормативное регулирование онлайн-контента, Кодекс этики цифровых медиа, нормативное регулирование OTT, защита прав потребителей, нормативное регулирование в сфере вещания