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# Balancing Freedom of Expression & Regulation on OTT Platform

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## ABSTRACT

*It's interesting to notice that an increasing number of people are using OTT platforms to express themselves or look for content that aligns with their opinions due to their popularity and ease of use. Though the right to freedom of expression is one that our nation's residents are incredibly grateful for, it is important to remember that this right cannot be violated in the name of "creativity" or "ingenuity." Increasing depictions of drug misuse, sex, nudity, violence, foul language, etc. The government to create regulations governing the digital business due to the content being aired on OTT platforms without any explicit laws in place. Even though the Information Technology Act and the Indian Penal Code contain provisions addressing sensitive content and obscenity, a significant portion of digital information remains uncontrolled, necessitating the creation of industry-specific regulations. The government has responded in accordance with the OTT legislation that have been implemented in several nations. Additionally, focus has been placed on the OTT platforms' self-regulation, which includes self-classification according to age and content, parental controls, ratings display, and a self-regulatory body for the resolution of complaints, among other things.*

**Keywords:** *OTT Platforms, freedom of expression, guidelines, regulations, and digital content.*

## I. INTRODUCTION

For a long time, there has been debate over the freedom of speech and expression guaranteed by the Indian Constitution. The freedom to express one's opinions through visual media, such as movies and short films, is one of the reasons for the broad definition of "speech" and "expression." Our tiny cable TVs have given way to even smaller smartphone screens over time. The Covid times have added to the already sizable fan base of over-the-top (OTT) platforms, which have become increasingly popular in today's world. The government recently released new guidelines that include a strong three-tier grievance redressal procedure, in the midst of the ongoing discussion over the unfiltered and uncontrolled information broadcast on these platforms that are freely accessible over the internet. Furthermore, it's unclear if this is

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genuinely an attempt to govern these video streaming sites or if it's an invasion of the creative space of content creators.

### **(A) Aim and scope of the paper**

In order to put Internet video streaming on the same legal footing as movie theaters and cable TV, the paper will examine the legal gaps that now exist in this area. The purpose of the article is to draw attention to the potential problems that could arise from OTT platforms' lack of regulation. It also explains why the laws that were in place to regulate digital content in the past were insufficient to govern the entire sector. The author additionally endeavors to emphasize the salient features of the recently established guidelines that the government set to manage the business.

Additionally, the paper draws attention to the criticisms leveled against the new restrictions and highlights how they may pose a significant risk to the viewers' and content creators' fundamental right to free speech. While highlighting the arguments made by those who are against the OTT standards, the judiciary's position on censorship and content regulation has also been taken into account. Finally, the study discusses the expanding global trend of over-the-top (OTT) platforms and compares the laws governing OTT in other nations with those in India, highlighting the distinctions and parallels between the two.

## **II. WHY IS DIGITAL CONTENT REGULATION NECESSARY?**

Although there are organizations such as the Central Board of Film Certification that oversee the film industry, the Broadcasting Content Complaints Council that handles complaints about non-news content aired on television, and laws like the Cinematograph Act and the Information Technology Act that control what is shown in theaters and on cable TV, there isn't any particular law that governs digital content. There ought to be some laws in place to level the playing field between films that are released in theaters and those that are viewed online. Dissemination through the internet surpasses cable and broadcasting TV platforms, one of the reasons being the "push" and the "pull" content. While on an OTT platform, the viewer can make an informed choice about what to watch and he himself searches the same on such platforms, the viewer, on the other hand, is pushed to watch the content broadcasted on the TV and cannot choose instead.<sup>2</sup> Not only that, online video streaming platforms have a diverse range of content suitable for people belonging to any age-group. While platforms like Disney+ Hotstar have

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<sup>2</sup> Shruti Sundar Ray, 'Explained: What is the measure of 'obscenity' in India?' *The Indian Express* (Kolkata, 12 November 2020) <https://indianexpress.com/article/explained/explained-milind-soman-obscenity-in-india-6998750/> accessed January 21 2022

content divided as movies, serials, kids, comedy, sports etc., Netflix, on the other hand, has movies classified into genres like romance, thriller, drama, horror etc., thus appealing to a large audience.

According to a nationwide survey, the online content market, which is valued at an estimated INR 4000 crores, currently has over 17 crore viewers alone on OTT platforms. Additional data indicates that after the Covid-caused epidemic, the average amount of time each Indian user spends on OTT platforms has increased from 20 minutes to 50 minutes to 1 hour. Even the number of over-the-top (OTT) platforms has grown to 40 from just two in 2012. Fourteen percent of young people consume two to three hours of entertainment online on average. Based on the data, it is reasonable to assume that these OTT behemoths have a loyal fan base and are in desperate need of new material.

According to a nationwide survey, the online content market, which is valued at an estimated INR 4000 crores, currently has over 17 crore viewers alone on OTT platforms.<sup>3</sup> Additional data indicates that after the Covid-caused epidemic, the average amount of time each Indian user spends on OTT platforms has increased from 20 minutes to 50 minutes to 1 hour. Even the number of over-the-top (OTT) platforms has grown to 40 from just two in 2012. Fourteen percent of young people consume two to three hours of entertainment online on average. Based on the data, it is reasonable to assume that these OTT behemoths have a loyal fan base and are in desperate need of new material.<sup>4</sup>

With the rise in the viewership and an ever-increasing avarice to cater to a diverse audience, it becomes imperative to draw a line between creativity and indecency. The use of violence, sex, nudity, obscenity, strong language and drugs on these platforms has raised different controversies over a period of time. Whether it is the petition filed in the Delhi High Court against the series “Sacred Games” alleging that it maligns the reputation of the former Prime Minister Rajiv Gandhi or it is the row over anti-women dialogues or a rape scene in “Paatal Lok” or it is the controversy over a kissing scene in a temple in “A Suitable Boy”, which was accused of hurting religious sentiments, there are many instances which make policing in the digital content industry necessary.<sup>5</sup>

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<sup>3</sup> OTT Media Services Consumer Survey & OTT-CSP Partnership Study’ <https://www.amdocs.com/sites/default/files/Ovum-OTT-market-study-2019-20.pdf> accessed January 19 2022

<sup>4</sup> ‘Future of OTT in India’ (Community by NASSCOM Insights, 27 November 2020) <https://community.nasscom.in/communities/digital-transformation/telecom-media-communities/future-of-ott-in-india.html#:~:text=Production%20houses%20are%20going%20digital,catering%20to%20subscribers%20in%20India> accessed January 19 2022

<sup>5</sup> Big social media changes, new rules for OTT: Government announces new guidelines for social media platforms, OTT players’ (India Today, 25 February 2021) <https://www.indiatoday.in/india/video/ott-platforms-social-media->

Therefore, some kind of regulation is required to keep people's morals from declining, given the lack of legislation that deals specifically with digital content, the growing market for these online platforms, and the expanding content that is displayed under the producer's "creative space."

### **III. LAWS PERTAINING TO DIGITAL CONTENT PRIOR TO THE FRAMING OF THE GUIDELINES**

According to section 292 of the Indian Penal Code, obscenity is anything that is lewd, repulsive, or has the potential to degrade or corrupt someone. Although the IPC does not define these terms, the courts have established a standard for judging what constitutes "obscene." The Supreme Court expanded the definition of "obscene" in 1965<sup>6</sup> by adopting the well-known Hicklin test of obscenity. But as time went on, the term's definition shrank, and the Hicklin test was rejected by the Supreme Court. The Court rather approved the American Roth test in the *Aveek Sarkar* case<sup>7</sup> which leaves obscenity<sup>8</sup> to be determined by applying contemporary community standards from the viewpoint of an average person. It was observed that with the evolution of the society, what may have been considered obscene then, may not be considered obscene now.

While obscenity over the internet has not been specifically dealt with under Section 292 of the IPC, provisions have been laid under the IT Act which stipulates punishment for publishing or transmitting obscene material in the electronic form.<sup>9</sup> Section 67B of the Act lays emphasis on "punishment for depiction of children in sexually explicit act in electronic form". Furthermore, Section 69A gives power to the Central Government to issue directives for blocking public access of any information in the interest of sovereignty and integrity of India, friendly relations with other states or for the security of the state or on the grounds of public order.

Section 295A of the IPC further deals with acts which are deliberate and malicious and intended to outrage religious feelings of any class by humiliating its religion or religious beliefs. The Supreme Court has, however, held that the section only penalises those acts of insult or attempts of insult which are carried out with the deliberate and malicious intent to outrage the religious

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new-government-rules-guidelines-regulations-1773049-2021-02-25 accessed January 21 2022

<sup>6</sup> *Ranjit D. Udeshi v. State of Maharashtra*, (1965) 1 SCR 65.

<sup>7</sup> *Aveek Sarkar v. State of West Bengal*, (2014) 4 SCC 257.

<sup>8</sup> Shruti Sundar Ray, 'Explained: What is the measure of 'obscenity' in India?' *The Indian Express* (Kolkata, 12 November 2020) <https://indianexpress.com/article/explained/explained-milind-soman-obscenity-in-india-6998750/> accessed January 21 2022

<sup>9</sup> The Information Technology Act 2000, s 67.

beliefs of a class.<sup>10</sup>

There are some other acts in place like the Indecent Representation of Women (Prevention) Act, 1986 which forbids representation of women in books, advertisements, movies, paintings etc. in an indecent manner and the Protection of Children from Sexual Offences (POCSO) Act which prohibits selling and distribution of child pornography.<sup>11</sup>

### **(A) What are The New The Regulations?**

The government's 2021 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules introduce a three-tiered regulatory framework for over-the-top (OTT) platforms that is kind on them. The platform itself seeks self-regulation through self-regulatory organizations in the first two layers, while the Center's supervision mechanisms are the main focus of the third tier. The following are some of the guidelines' main points:

- Time bound complaint redressal mechanism.
- Self-classification of content based on age and genre by OTT platforms.
- Proper content ratings for violence, nudity, sex, drug abuse, so that the viewers can make an informed decision.
- Increased accountability of the video streaming platforms.
- Counterbalance in the system against obscenity, indecent depiction of women, child pornography, national integrity, social order etc.<sup>12</sup>
- The first-tier shall be a self-regulation mechanism by the publishers of the content who will appoint a 'Grievance Redressal Officer'. The Officer shall deal with the grievances received and resolve them within a period of 15 days.
- At the second-tier, one or more self-regulatory bodies shall be constituted by the content publishers and the platforms.<sup>13</sup>
- Self-regulatory body to be headed by a retired judge of the Supreme Court or a High Court or by an eminent person who shall be independent and belonging to the field of

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<sup>10</sup> Ramji Lal Modi v. State of U.P., AIR 1957 SC 620.

<sup>11</sup> Ayush Sahay, 'OTT platforms and their regulation' (Ipleaders, 3 December 2020) <https://blog.ipleaders.in/ott-platforms-regulation/> accessed January 24 2022

<sup>12</sup> 'Big social media changes, new rules for OTT: Government announces new guidelines for social media platforms, OTT players' (India Today, 25 February 2021) <https://www.indiatoday.in/india/video/ott-platforms-social-media-new-government-rules-guidelines-regulations-1773049-2021-02-25> accessed January 24 2022

<sup>13</sup> Centre establishes grievance mechanism with I & B Ministry oversight for OTT, digital media platforms' The Wire (New Delhi, 25 February 2021) <https://thewire.in/government/ott-digital-media-grievance-mechanism-rules-information-broadcasting-ministry> accessed January 25 2022

media, entertainment, child rights, human rights or any other relevant field.

- The self-regulatory body is empowered with the right to delete or modify any content in order to prevent commission of a cognizable offence relating to public order.
- The Ministry of Information and Broadcasting shall administer the third-tier, which will establish an inter-departmental committee to resolve grievances that were not resolved by the other two-tiers.
- The I & B Ministry shall have the power to block public access of any information in case it is expedient and justifiable, without a reasonable hearing of the concerned platform.
- Parental locks to be implemented for contents classified under U/A, 13+ or higher category along with mechanisms for age verification for content classified under “A” category.<sup>14</sup>

#### **IV. ARGUMENTS AGAINST OTT REGULATION: WHAT OTHER SIDE HAS TO SAY AND WHAT IS THE JUDICIAL STANCE ON THE ISSUE?**

The online content producers have been enjoying two major privileges attached to the OTT industry. First, the director has an opportunity of enlarged storytelling and second, the extended runtime unlike the movies released in theatres. The producers can go up to any extent to explore their characters and the story, without any time constraints.<sup>15</sup>

The most indispensable argument is to what extent these guidelines endanger the freedom of expression of not only the content producers but also the viewers and to what extent they can be justified as ‘reasonable restrictions’.

The most important debate revolves around how much these rules violate viewers’ and content creators’ rights to free speech and how much they may be justified as “reasonable restrictions.” In these circumstances, the idea of “Heckler’s veto” becomes relevant. Heckler’s veto is a circumstance in which someone’s freedom of speech and expression is curtailed in order to prevent someone else from acting in a retaliatory manner. The regulations that the government formulated have brought about a situation that is comparable. The rules pose a threat to fundamental rights since they include elements beyond the current legal ban. One of the clauses,

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<sup>14</sup> Sobhana K. Nair, ‘Government to monitor OTT content’ *The Hindu* (New Delhi, 25 February 2021) <https://www.thehindu.com/news/national/centre-frames-guidelines-for-ott-platforms-digital-media/article33932444.ece> accessed January 25 2022

<sup>15</sup> Aditya Mani Jha, ‘New Information Technology rules threaten the creative freedom enjoyed by OTT platforms’ *The Hindu* (14 March 2021) <https://www.thehindu.com/entertainment/movies/new-information-technology-rules-threaten-the-creative-freedom-enjoyed-by-ott-platforms/article34051111.ece> accessed January 26 2022

for example, says that “A publisher shall take into mind India’s multi-racial.”<sup>16</sup>

As a result, it provides more grounds for complaint than are allowed by the reasonable limitations on the exercise of the basic right. Additionally, it states that any complaints against digital content may be made to the Grievance Officer of the relevant platform. The Grievance Officer is required to notice the complaint within 24 hours and resolve it within 15 days. The self-regulatory body, which will make up the second tier of the grievance redressal procedure, may also receive an appeal against the Grievance Officer’s decision. The powers to penalize, such as censure, warning, reprimanding, changing the rating, and even blocking, are granted to the government supervision layers at the second and third tiers.<sup>17</sup>

While the government has emphasised self-regulation of the OTT platforms, it is an undeniable fact that the second and the third-tier are bodies which are to be governed by none other than the government itself. The composition of the self-regulatory body under the second-tier is subject to the approval of the Ministry of Information and Broadcasting. Not only this, the Inter-Departmental Committee constituted under the third-tier consists of various ministries of the government, chaired by the Ministry of Information and Broadcasting Joint Secretary. Thus, to what extent it is self-regulation is a question left unanswered by the government.<sup>18</sup> Talking about the right to freedom of expression, an important judgment of the Supreme Court has to be taken into consideration.

The Court in *S. Rangarajan v. Jagjivan Ram*<sup>19</sup> laid down that while reasonable restrictions, including in the interest of public order, can be imposed on the exercise of the right, “freedom of expression cannot be suppressed on account of threats of demonstration, processions or violence.” It was further held that a producer has a right to “think out” and it is a part of democratic give-and-take, which no one could complain about. The State is not empowered to prevent open discussion and open expression, however, hateful it is to its policies.

The Court in another case of *M/S Prakash Jha Productions & Anr v. Union of India & Ors.*<sup>20</sup> has observed that movies on social issues like reservation are important for public discussions and debate on such issues and are necessary for smooth functioning of a healthy democracy, which in fact help in the growth of the society.

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<sup>16</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, cl. II(A)(c).

<sup>17</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, s 13.

<sup>18</sup> Tandav is a case study for OTT censorship under the IT Rules, 2021 #Letuschill’ (Internet Freedom Foundation, 27 March 2021) <https://internetfreedom.in/tandav-case-study/> accessed January 29 2022

<sup>19</sup> S. Rangarajan v. Jagjivan Ram, (1989) SCC 2 574.

<sup>20</sup> M/S Prakash Jha Productions & Anr v. Union of India & Ors., (2011) 8 SCC 372.



In another case of *Bobby Art International & Ors. Vs. Om Pal Singh Hoon & Ors.*,<sup>21</sup> the Supreme Court noted that the right to freedom of expression of a producer cannot be restricted. It was further held that movies that deal with themes that are socially relevant must be susceptible to the least censorship. The Courts have customarily supported free speech and expression. It has also been held by the Supreme Court in the case of *K. A. Abbas v Union of India & Anr*<sup>22</sup>, that “the standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some of its foibles along with what is good.” In another judgment by the Karnataka High Court, it was observed that the digital content aired on the OTT platforms should not be considered as public exhibitions and should not be subject to censorship on grounds as absurd as “social interests matter over individual freedom”.<sup>23</sup>

It may, further, not be wrong to argue that the OTT regulations are an attempt to protect the government from being pictured in a bad light or the politicians from being negatively depicted. A recent controversy revolving around the series ‘Tandav’ very well explains the driving force behind the government’s steps towards the OTT platforms. The series touched a lot of raw nerves, whether it is depicting JNU protests or the arrest of former JNU student Umar Khalid under the Unlawful Activities (Prevention) Act (UAPA) for his alleged involvement in the protests against the Citizenship Amendment Act (CAA) or it is depicting the farmers’ protests, there has been a clear attempt to bring out the loopholes in the current government’s policies.<sup>24</sup> Though the series was accused of hurting religious sentiments which led to all the controversy, the government in the guise of protecting religious sentiments tried to subdue the burning issues raised by the series. The list also includes the controversy relating to the series ‘Mirzapur’, which was accused of portraying the state of Uttar Pradesh in a bad light and the blocking of comedian John Oliver’s show critical of the Prime Minister on Hotstar.

The growing popularity of these platforms clearly point out to the fact that It is the increased freedom to express which has led to a mixed audience coming together. We have seen stories, content and perspectives like never before. Actors and writers, who couldn’t leave their mark while performing in movies, have come out more confident now because of a platform which is diverse and wide-ranging.

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<sup>21</sup> Bobby Art International & Ors. V. Om Pal Singh Hoon & Ors., (1996) 4 SCC 1.

<sup>22</sup> K. A. Abbas v. Union of India & Anr., 1971 SCR (2) 446.

<sup>23</sup> Padmanabh Shankar v. Union Of India & Ors., W.P. No. 6050/2019.

<sup>24</sup> Shivam Parashar, ‘The real stories Saif Ali Khan’s Tandav reminds us of’ (India Today, January 18 2021) <https://www.indiatoday.in/binge-watch/story/the-real-stories-saif-ali-khan-s-tandav-reminds-us-of-1760162-2021-01-18> accessed February 3 2022

In a recent interview, actor Manoj Bajpayee acknowledged the fact that people no longer watch movies just as a source of entertainment. The audience is more demanding these days and they want actual picture to come out and with the OTT platforms this has become possible.<sup>25</sup> We have seen content based on rampant corruption in our country, homosexuality, rising number of crimes against women, justice system of our country, situation of women in a patriarchal society and what they truly want and many other issues, which are not just limited to our country but which are present all across the world. This freedom of the writers to explore novel areas can thus be attributed to the OTT platforms.

Another important aspect of the argument deals with non-consultation with the concerned stakeholders like the Internet and Mobile Association of India (IAMAI), the OTT platforms which are signatories to the IAMAI's Universal Self regulatory Code, producers, actors and others. The IAMAI in fact expressed surprise at not being consulted and added that consultation with the stakeholders would have led to more effective and implementable guidelines. The government not only turned its back on the fact that the association was working on drafting a toolkit according to the issues and concerns raised by the government for effective guidelines on the platforms, but also omitted to deliberate with them on the new guidelines.<sup>26</sup>

Furthermore, it has also been apprehended that the guidelines may lead to over-regulation and instances like CBFC (Central Board of Film Certification) overreach that happened in the case of 'Padmaavat' or 'Udta Punjab'. From time to time the Censor Board has acted in the direction of repudiating movie scenes which oppose socially accepted narratives as in the case of the movie 'Lipstick under my Burkha' where the depiction of sexual desire of a woman was condemned and was held as potentially sensitive towards some sections of the society. The advent of OTT platforms is headway towards an open society where the lurking demon of "socially assumed narratives" could be defeated.<sup>27</sup> The fact that movies play a significant role in shaping societal beliefs cannot be emphasised enough and till the time we do not supplement them with the required creative space, we will not be able to reach to the desired solution.

Moreover, what further seems to be a valid argument is while streamlining the OTT platforms; the government has overlooked the actual adult content creators, which are porn websites. The

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<sup>25</sup> Ektaa Malik, 'Manoj Bajpayee: OTT has proved that writers are superstars, it's a writer's medium' *The Indian Express* (New Delhi, 14 August 2021) <https://indianexpress.com/article/entertainment/ott-media-manoj-bajpayee-hindi-cinema-bollywood-7452886/> accessed February 3 2022

<sup>26</sup> Amrita Nayak Dutta, 'Upset we are not being consulted, OTT platforms body says about govt 'plan' to frame guidelines' (*The Print*, 25 February 2021) <https://theprint.in/india/governance/upset-were-not-being-consulted-ott-platform-body-says-about-govt-plan-to-frame-guidelines/611451/> accessed February 3 2022

<sup>27</sup> Padmapriya Govindarajan, 'Sex and sensibility: India's censor board and overreach' (*The Diplomat*, 9 April 2017) <<https://thediplomat.com/2017/04/sex-and-sensibility-indias-censor-board-and-overreach/>> accessed February 5 2022

regulation of content over the OTT appears to give these websites the leeway of expanding more and cater to an increased viewership. With the recent arrest of businessman Raj Kundra, the question arises as to what extent is regulation necessary when it comes to adult content. While there has been a significant increase in porn viewing since the lockdown similar to as seen in the case of OTT platforms, it should not happen that the organised sector is subjected to excessive scrutiny and the unorganised entities go unregulated.<sup>28</sup>

## V. COMPARATIVE ANALYSIS: INTERNET CONTENT LAWS IN VARIOUS NATIONS

India is not the only country where there are increasing examples of digital material on over-the-top (OTT) platforms behaving insensitively to political and popular mood. As a result of seeing the growth of these platforms, governments everywhere are requesting the removal of sensitive and undesirable content in addition to controlling what reaches their citizens. The rules have been formulated by the Government of India after careful examination of foreign laws pertaining to online material. While some nations, like Singapore and Turkey, have established specialized regulatory organizations, other nations, including the UK, Australia, Indonesia, and Saudi Arabia, have legislation and regulatory frameworks in place that expressly address over-the-top (OTT) content.<sup>29</sup>

- i. **Singapore** – The laws of Singapore mandate digital content providers to classify contents the same as their offline movies on the basis of age as general, parental guidance, maturity audience, audience above 21 years of age etc. Other provisions include parental lock, age verification mechanisms and ratings display along with the theme and the genre of the content. The regulatory body, the Infocomm Media Development Authority (IMDA), has additionally issued the do's and don'ts for the video streaming agencies.
- ii. **Australia** – The Broadcasting Services Act, 1992 provides for the guidelines to be complied with while hosting digital content. Similar to the Singapore laws, the Australian guidelines also stipulate content classification and restricted access of some contents. The Australian Classification Board also recently allowed Netflix to self-classify its content. The law further allows viewers to lodge complaint against

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<sup>28</sup> Increased scrutiny of OTT platforms may benefit unorganised adult content sector' (Livemint, 9 August 2021) <https://www.livemint.com/industry/media/increased-scrutiny-of-ott-platforms-may-benefit-unorganised-adult-content-sector-11628501896551.html> accessed February 5 2022

<sup>29</sup> Abhishek Malhotra, 'OTT content regulation across the globe: Will India follow the suit?' (The Mobile Indian, 26 January 2021) <https://www.themobileindian.com/news/ott-content-regulation-across-the-globe-will-india-follow-the-suit-34688> accessed February 6 2022

objectionable or offensive content and action can be taken on such content.<sup>30</sup>

- iii. **Indonesia** – While some countries have taken a slightly lenient approach towards the online content industry, countries like Indonesia have come down strictly and in fact blocked Netflix after its global rollout in 2016 for infringing the laws of the land. However, in 2017, the concerned Ministry of Indonesia allowed Netflix to function with the condition to tie up with a local operator.<sup>31</sup>
- iv. **Japan** – Japan, as compared to other countries, has been a strong consumer market for OTT platforms but has not specifically regulated the OTT industry. Most of the content is uncensored and unfiltered; however, measures have been taken to protect children and young people, depending on the broadcasting time of a program. The only content that is censored is pornography.
- v. **China** – Unlike any other country, China has banned foreign OTT operators and instead replaced them with local video streaming platforms like Tencent Video, Youku etc. The local operators are subject to the same regulations as cable TV service providers and have to obtain a license for “Spreading Audio-visual Programs via Information Networks”.<sup>32</sup>

## **VI. UNDERSTANDING THE SIMILARITIES AND DIFFERENCES IN THE OTT TREND ACROSS DIFFERENT NATIONS**

Around the world, the market for internet video streaming is growing, with the US leading the pack. According to a survey, with over 67.66 million Netflix subscribers in the US and Canada in 2019, North America alone accounted for 46.2% of revenue. According to estimates, during the Covid-19-induced pandemic, US viewers had watched 204 million hours of Netflix daily on average. Furthermore, it has been stated that, in 2017, the US had the fastest-ever OTT platform takeover of Cable TV of any country in the world, thanks to Netflix and other services. According to a different survey, 82% of OTT users.<sup>33</sup>

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<sup>30</sup> Harsh Jain and Sankalp Jain, ‘Regulation of content on OTT platforms: An Explainer’ (Tech Law Forum @ NALSAR, 21 December 2020) <https://techlawforum.nalsar.ac.in/regulation-of-content-on-ott-platforms-an-explainer/> accessed February 6 2022

<sup>31</sup> Baker McKenzie, ‘Indonesia: Constitutional Court confirms OTT services remain subject to the EIT law; Broadcasting law does not apply in OTT platforms’ (Lexology, 22 January 2021) <https://www.lexology.com/library/detail.aspx?g=4c21e876-dd27-47c1-b6c0-68927a1e013c#:~:text=The%20MOCI%20issued%20a%20regulation,MOCI%20and%20moderate%20their%20contents.> Accessed February 9 2022

<sup>32</sup> OTT TV Policies in India’ <https://avia.org/wp-content/uploads/2018/08/PUB-OTT-TV-Policies-in-Asia-2018.pdf> accessed February 9 2022

<sup>33</sup> Mansoor Iqbal, ‘Netflix Revenue and Usage Statistics (2022)’ (Business Of Apps, 11 January 2022) <https://www.businessofapps.com/data/netflix-statistics/> accessed February 11 2022

In a similar vein, online streaming platforms have gradually replaced traditional satellite or cable TV services in the UK. According to reports, 45% of adults who are “online” own a Netflix subscription. With a 23.8% compound annual growth rate (CAGR) from 2020 to 2027, the Asian Pacific area is predicted to emerge as the fastest-growing regional market very soon.<sup>34</sup> With 68 subscriptions per 100 households in 2020, China has the highest number of OTT subscribers after the US and Canada. Chile, Mexico, Argentina, Colombia, and Brazil are the next most popular countries.<sup>35</sup>

Unlike the countries discussed above, France has not seen a drastic change in its television market and has placed some regulatory obstacles for the video streaming platforms. The laws are strict in the sense that the OTT platforms are not allowed to function in the country if they don't adhere to the French laws with respect to financing local content and investing in local content production. As a result, the growth of the OTT industry has slowed down to a great extent.<sup>36</sup>

Similar is the case in China which has shut the doors for every internet service provider from abroad. The platforms have to obtain a special licence before entering the Chinese market. While the most important goal of all the online streaming services is attracting as many subscribers as possible, what differs in different countries is how the government and the audience influence them. While some countries have accepted it with open arms, some have been a bit reluctant to do so and have regulated the industry accordingly.

## VII. CONCLUSION

The formerly unregulated internet video streaming market is intended to be streamlined by the new laws. It is important to realize that the fundamental tenets of our society—democracy, freedom of speech and expression, equal rights, and the greater welfare of society—must all be harmoniously balanced. Without jeopardizing the integrity of the entertainment sector, the freedom of expression must yield to other rights of the populace. In order to reduce negative effects and increase accountability from the involved parties, the guidelines must be correctly

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<sup>34</sup> OTT devices and services market size, share and trends analysis report by Content, by revenue source, by platform, by deployment, by device type and segment forecasts, 2020-2027' (Grand View Research, October 2020) <https://www.grandviewresearch.com/industry-analysis/over-the-top-ott-devices-services-market> accessed February 11 2022

<sup>35</sup> Number of OTT subscriptions per 100 households in select countries worldwide in 2020' (Statista, 10 November 2021) <https://www.statista.com/statistics/673800/ott-video-penetration-rate-country/#:~:text=OTT%20video%20services%20penetration%20rate%202020%2C%20by%20country&text=As%20of%20January%202020%2C%20there,68%20subscriptions%20per%20100%20homes.> Accessed February 12 2022

<sup>36</sup> Pascale Paoli-Lebailly, 'OTT platforms: “No investment in local creation, no streaming in France”' (Advanced Television, 3 September 2019) <https://advanced-television.com/2019/09/03/ott-platforms-no-investment-in-local-creation-no-streaming-in-france/> accessed February 15 2022

executed. In order to guarantee that digital content is examined with the same rigor as movies theaters and cable television, laws are also required. In order to prevent greater involvement than is necessary, the regulations must also be applied in line with the rulings of the courts. Accurately identifying content and appropriately displaying age-ratings are the responsibilities of both content creators and OTT platforms. It is equally the responsibility of the viewers to make an informed decision and to report objectionable information. Furthermore, in a culture that is open and progressive, everything relies on the audience's openness to ideas that differ from their own. In summary, it remains to be observed how far the regulatory mechanism restricts the fundamental right to free speech and whether it is self-regulatory or censor board.

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