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| **Council Working Group on InternationalInternet-related Public Policy Issues****Tenth meeting – Geneva, 20-22 September 2017** |  |
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|  | **Document CWG-Internet-10/5-E** |
| **6 September 2017** |
| **English only** |

Contribution by Brazil (Federative Republic of)

BRAZILIAN CONTRIBUTIONS TO THE PUBLIC CONSULTATION ON “PUBLIC POLICY CONSIDERATIONS ON OTTS”

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| SummaryThis document describes the outcomes of Brazil’s national multistakeholder process to respond to CWG-Internet’s online open consultation on “Public policy considerations on OTTs”. The objective is to inform the global community of the efforts in Brazil to discuss OTTs and the public policy challenges involved. |

# **1. Introduction**

1.1 This document describes the outcomes of Brazil’s national multi-stakeholder consulting process undertaken by the Brazilian National Telecommunication Agency (ANATEL) to respond to CWG-Internet’s online open consultation on “Public policy considerations on OTTs” (henceforth “ITU public consultation”). This process encouraged Brazilian stakeholders to present their own views on the topic directly to the ITU, and fostered the presentation of eight contributions to the ITU public consultation.

1.2 Brazil’s preparation to the ITU Council Working Group on international Internet-related public policy issues (CWG-Internet) is an open process aligned with the multi-stakeholder Internet Governance principles established by the World Summit on the Information Society (WSIS). The process undertaken by ANATEL involved all segments of society in debates surrounding Internet-related topics, including government agencies and ministries, the private sector, civil society, the technical and academic community, and the press.

1.3 Three meetings were held in July and August to respond to the ITU public consultation. There were 77 participants in total representing ANATEL; other government agencies and ministries; telecommunication providers; national and international associations of telecommunications and Internet service providers; global providers of OTT services and applications; global ICT equipment and software developers and vendors; the ICT industry association; the broadcast industry association; the Brazilian chamber of e-commerce; universities; research centers; civil society organizations, and the press.

1.4 These meetings aimed for the following main objectives:

* Fostering an open and inclusive debate among all stakeholders on the five questions raised by the ITU public consultation;
* Encouraging Brazilian stakeholders to express their points of view and debate the questions at the meetings; to present formal contributions directly to the ITU public consultation; and to participate in the public consultation either in person in Geneva or remotely;
* Elaborating a Brazilian contribution to CWG-Internet on the ITU public consultation.

1.5 Eight contributions were submitted by Brazilian entities to the ITU public consultation (i.e, Brasscom; Sinditelebrasil; Claro Brasil; ABRANET; PK+IDEC; ABRINT; Brazilian chamber of e-commerce; ABO2O). These contributions present important views on OTTs, and should be considered by ITU members as important inputs in CWG-Internet and in following discussions surrounding the issue.

# **2. The Brazilian framework for OTT governance**

2.1 OTT services and applications have a vast applicability and produce opportunities and implications across numerous industries. The several public policy issues surrounding OTTs are being discussed within the Brazilian government and society, and it is clear that the issue is still in a very early development stage.

2.2 Within the scope of communication services, Brazil’s desired outcome is an ecosystem in which all stakeholders collaborate in their unique roles for the sustainable and continuous provision and development of telecommunications and OTT services and applications.

2.3 Telecommunication services and value-added services in Brazil are offered under the provisions of the General Law on Telecommunications (Law 9,472/1997 – “LGT”)[[1]](#footnote-2), the Civil Rights Framework for the Internet (Law 12,965/2014 – “Marco Civil”)[[2]](#footnote-3), and Presidential Decree 8,771/2016. Any future legal provisions on OTTs in Brazil should follow the principles and rules established in these three instruments in a process with deep regulatory impact analysis.

2.4 ANATEL is currently holding a public consultation on draft regulations on interconnection that as proposed addresses the relationship between telecommunication providers and value-added service providers, and determines that conflicts will be mitigated *ex post* by ANATEL. There is still no final decision on this regulation, as the due process for its approval is still ongoing. This, however, shows that Brazil is currently undergoing important developments in the provision of value-added services over the telecommunications infrastructure.

2.5 The Brazilian National Cinema Agency (ANCINE) is also carrying a public consultation on a study on demand content distribution that could result in a new regulation on video streaming services over the Internet.[[3]](#footnote-4)

# **3. Policy and regulatory matters related to OTTs**

3.1 The following matters related to OTTs were identified as relevant to the OTT ecosystem. They require further discussions and the jurisdiction, scope and venue for discussion should be defined case by case.

* Infrastructure and ecosystem financing;
* Taxation;
* Asymmetric regulation and competition;
* Cross-border capital flow;
* Market power and market failures;
* Trade and e-commerce;
* Cost and price transparency;
* Net neutrality;
* Privacy;
* Security of data/information;
* Property of data/information;
* Data/information flow;
* Consumer protection;
* Illicit content (e.g., drug trade; child pornography; terrorism);
* Impact on users consumption of data traffic;
* Content Delivered Network (CDN);
* Internet Exchange Point (IXP);
* Obligatory content (e.g., must carry);
* Promoting innovation;
* Investigation mechanisms (e.g., lawful interception; equipment; software).

# **4. Conclusions**

4.1 OTTs will increasingly enable most socioeconomic interactions and industries; thus it would be useful to develop a classification and taxonomy that accurately circumscribes the scope of public policies involving OTTs. In this sense, Brazil considers BEREC’s proposal of taxonomy of OTTs[[4]](#footnote-5) a useful foundation for further in-depth public policy discussions in telecommunication-related OTTs and other OTTs.

4.2 Brazil sees with satisfaction the wide-ranging multi-stakeholder participation in the ITU public consultation, with 70 contributions from governments, the private sector, civil society and the academia from all regions. ITU’s role in the information society has been improving with the participation of external stakeholders in its work. ITU should continue to enhance inclusiveness and transparency in its decisions with initiatives such as CWG-Internet’s open consultations.

4.3 Brazil will continue to actively contribute to the work of the ITU in policy issues related to OTTs, including economic and regulatory issues discussed at ITU-T Study Group 3.

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1. <http://www.anatel.gov.br/legislacao/en/laws/608-law-9472> [↑](#footnote-ref-2)
2. <https://www.cgi.br/pagina/marco-civil-law-of-the-internet-in-brazil/180> [↑](#footnote-ref-3)
3. <http://www.ancine.gov.br/sites/default/files/CSC%20-%20Consolida%C3%A7%C3%A3o%20Desafios%20VoD%2017%2012%2015_1.pdf> [↑](#footnote-ref-4)
4. BEREC, January 2016. *Report on OTT services*. [↑](#footnote-ref-5)