

Comments of ACT | The App Association to the ITU Council Working Group on International Internet-Related Public Policy Issues Regarding its Open Consultation, Public Policy Considerations for OTTs

August 18, 2017

ACT | The App Association submits these comments in response to the ITU Council Working Group on International Internet-related Public Policy Issues (CWG-Internet) open consultation request for public policy considerations for “internet-based services,” which CWG-Internet titles “over-the-top” (OTT). Services deemed OTT are those that are accessible over the internet and ride on telecommunications network operators’ networks.

The App Association represents more than 5,000 app makers and connected device companies throughout the mobile economy. In a world where the number of smartphones outnumbers people, our members use mobile technologies to produce innovative solutions that drive the dynamic \$143 billion¹ app ecosystem and the global digital economy.

While the global digital economy holds great promise for small app developers, our members face an array of challenges when entering new markets. These challenges may take the shape of laws, regulations, or policies that exclude goods and services from foreign markets and seek to artificially stimulate domestic industries. While these trade barriers use different means, they have the same end: impeding the availability of the global digital economy to internet end-users. We call on the ITU and CWG-Internet to seek consensus across stakeholder groups to reduce these barriers for the benefit of the billions of internet users around the globe. While larger corporations may be more equipped to absorb the costs associated with unnecessary regulations and trade barriers to market access, small businesses that cannot afford these expenses are effectively excluded from these markets.

As we elaborate below, the App Association supports the ITU’s efforts. However, we believe the ITU’s expansion into OTT would represent an unprecedented overreach that does not align with its mandate or the expectations of its members. We strongly urge the ITU to continue focusing on its core issues, which have generated a robust and diverse body of work.

¹ See http://actonline.org/wp-content/uploads/App_Economy_Report_2017_Digital.pdf.

We offer our responses to the CWG-Internet consultation request for input below.

1. What are the opportunities and implications associated with OTT?

Consumers around the globe benefit from OTT applications and services in a variety of ways. The product of increased competition amongst innovative ways to provide internet connectivity, OTT platforms provide consumers with access to personalized and customizable apps and services at lower costs and higher efficiency. Moreover, OTT services stimulate telecommunications network growth and reduce consumer costs by increasing demand for bandwidth, driving investment in infrastructure, and facilitating innovation. These benefits can already be seen across various economic sectors, including communications, transport, retail, and entertainment, and this trend will likely continue. The global OTT services market is expected to grow at a compound annual growth rate of approximately 17.1 percent over the next 10 years, reaching a value of \$3.49 billion by 2025.²

OTT applications and services are key drivers of the digital economy and the internet of things (IoT), powering a future where more and more everyday products use the internet to share data collected through sensors, inform decisions based on data analytics, and ensure efficiencies in processes, products, and services. The opportunities associated with OTT are projected to add \$1.36 trillion to total global economic output by 2020.³

In many ways, software applications (apps) represent the interface for technological progress for OTT. The app industry is primarily OTT, and though it has been in existence less than a decade, it has experienced explosive growth. While OTT applications and services can help meet nearly every consumer and enterprise need, apps on internet-enabled mobile devices are likely to remain the sole interface for communication amongst these devices. Therefore, the continued rise of innovative OTT services will hinge upon the app economy's sustained innovation, investment, and growth.

Moreover, as billions of people around the world use internet-enabled apps to interact, learn, and do business, the free flow of information across borders is crucial to OTT success. Cross-border data flows support access to international markets, use global computing resources like cloud computing to lower operational costs, and foster diversity amongst new and innovative business models.

² Accuray Research LLP, "Global Over the Top (OTT) Services Market Analysis & Trends - Industry Forecast to 2025" (April 2017), *available at* https://www.researchandmarkets.com/research/4jvzt7/global_over_the.

³ Accenture and Oxford Economics, Digital Density Index (March 2017), *available at* https://www.accenture.com/us-en/insight-digital-density-index-guiding-digital-transformation?c=strat_digidens_10000001&n=otc_0315.

By increasing revenues generated from providing data services, OTT services positively impact the voice and data revenues of traditional networks. We urge the ITU to recognize the relationship between OTT application and service providers and telecommunications network operators as the result of a virtuous innovation and investment cycle.

2. What are the policy and regulatory matters associated with OTT?

The App Association has vigilantly responded to various governments' proposals to regulate OTT, whether by name or in effect. The scope of proposed regulations over OTT would be, in effect, an attempt to introduce a new layer of regulation over the entire digital economy, which is not feasible. The impact of regulation on OTT provision, deployment, and uptake would not only be detrimental, but it also would create an overly-burdensome regulatory environment that hampers economic growth. An OTT-specific regulatory framework within a local jurisdiction would jeopardize the growth and availability of OTT applications and services in that area, especially considering the great lengths to which OTT providers already go to comply with general consumer protection laws in their field.

Establishing an OTT regulatory framework would also create significant trade barriers, and ultimately impact consumers. In our experience, these barriers can take many forms, including a local presence requirement, unique national standards that impede interoperability, and data localization requirements. Regardless of their form, they each effectively impede local investment in new and innovative OTT offerings and limit consumer choice.

The imposition of fees, levies, or taxes negatively impacts the ability to provide OTT services globally, takes away from resources dedicated to investment in these services and their delivery, and can represent insurmountable barriers to market entry for small businesses. For OTT application and service providers to grow and create jobs, they must expand to new customers across the global digital economy. Targeted fees and other trade barriers can pose legal liability concerns that jeopardize the ability of startups and small businesses to reach a global scale, resulting in reduced availability and higher prices for the consumer.

OTT providers already bear significant costs to ensure content delivery networks can provide their application or service. Not only do OTT services stimulate telecommunications network growth, increase demand for data uptake, and drive the need for bandwidth, but they also help reduce consumer costs. OTT should not be regulated, doing so would undermine the existing virtuous cycle that encourages greater investment in infrastructure and inspires future app development.

3. How do the OTT players and other stakeholders offering app services contribute in aspects related to security, safety, and privacy of the consumer?

While the rise of IoT holds great promise, it also raises security threats. Ultimately, IoT innovations broaden the attack vector and necessitate more evolved and dynamic risk management practices. No data is more important to internet users than their own personal information, and app developers put extensive resources into ensuring the security and privacy of end-user data to earn and maintain consumer trust. These practices include fully leveraging technical measures (e.g., end-to-end encryption) to protect data broadly, as well as implementing standardized approaches to “security-by-design” methods (e.g., those recommended by the voluntary U.S. government National Institute of Standards and Technology [NIST] Cybersecurity Framework⁴), among others.

Prescriptive and/or sector-specific approaches to cybersecurity threaten the ability of OTT organizations of all sizes to detect, respond, and mitigate dynamic cyber-based attacks. By creating the illusion that adhering to a stagnant, finite list of requirements could “secure” an organization, the government creates an artificial limit to the innovative approaches to deal with cybersecurity threats. For this reason, we strongly recommend that policymakers promote flexible and scalable risk management approaches to address cybersecurity.

4. What approaches might be considered regarding OTT to help the creation of environment in which all stakeholders are able to prosper and thrive?

In the hyper-competitive OTT application and service provider world, customer service and quality assurance are key market differentiators. Failure to innovate in either area will quickly drive customers to a competing OTT application or service provider, especially because switching costs remain very low. OTT service provider competition and market power issues are best addressed through the same consumer protection frameworks used in other economic sectors and segments. We reiterate, making OTT-specific rules and regulations is infeasible and contradicts core regulatory concepts like technology neutrality. OTT does not need new action by the government or the ITU to prosper and thrive; to the contrary, intervention by the ITU or other government entity would inhibit OTT’s continued growth.

⁴ NIST, *Framework for Improving Critical Infrastructure Cybersecurity*, Version 1.0 (Feb. 12, 2014), available at <https://www.nist.gov/cyberframework>.

5. How can OTT players and operators best cooperate at local and international level?
Are there model partnership agreements that could be developed?

We believe voluntary public-private partnerships are a useful vehicle for cooperation amongst industry and governments, and can help each entity work together to create opportunities and mitigate emerging risks. We are committed to working with all public and private stakeholders to promote partnerships that will bring the app economy's innovations to end-users across the globe.

While we appreciate the ITU's interest in OTT, the App Association does not support the ITU operating outside of its remit. ITU interference into OTT would be an unprecedented overreach and we strongly urge the ITU to focus on issues within its core competencies.

Lastly, access to OTTs requires a reliable and robust internet connection. Therefore, we strongly encourage the adoption of government policies that will spur the buildout of broadband infrastructure. Existing programs within the ITU's remit should strive to improve the deployment of new infrastructure to support mobile broadband connections across the globe.

Sincerely,



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