

# REQUIREMENT FOR PROTECTING LAWFUL STREAMING IN INDIA



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There has been a shift in watching shows or movies from televisions to online platforms, i.e. Over the Top (OTT) platforms such as Netflix, Amazon, Hotstar, Hulu, Disney Hotstar, etc. What makes OTT distinctive are the variety of content and the flexibility of timings to watch a particular show or movie. The ready internet access is one of the reasons for the growth of OTT platforms. With the rapid growth of OTT's, there is a deliberation on the need to govern OTTs. The two major concerns to be addressed are the type of content shown and the protection of the same<sup>i</sup>.

The Ministry of Information and Broadcasting (MIB) also deemed it necessary to regulate the massive content available online. The Cabinet Secretariat, on November 9, 2020, made two new entries to the Government of India (Allocation of Business) Rules, 1961<sup>ii</sup>: This is concerning digital/online media and reads as:

- 22A-Films and Audio Visual Programmes made available by online content providers
- 22B - News and current affairs content on online platforms.

It is evident from the inclusion that the amended rules are not just limited to OTT but covers all online content, including news and current affairs<sup>iii</sup>. The Information Technology Act, 2000 governs the technology-related issues of OTT platforms. The Information Technology (Intermediaries Guidelines) Rules, 2011<sup>iv</sup>, provides guidelines to the content that can be published online<sup>v</sup>. It also directs intermediaries to publish rules and regulations, privacy policies, and user agreements to access or use the intermediary's computer resource. The intermediary must also publish the name of the Grievance Officer and his contact details on its website for victims to contact in time of need. The Grievance Officer has to redress the complaints within one month from the receipt of the complaint.

The Internet and Mobile Association of India<sup>vi</sup> (IAMAI) is a not-for-profit industry body established to expand and enhance the online and mobile value-added services sectors. IAMAI also puts forward the problems and requirements of the businesses to the consumers, shareholders, investors and the government of India<sup>vii</sup>. IAMAI is a specialized

industry body that represents the interests of the online and mobile value-added services industry<sup>viii</sup>. It introduced the Code of Best Practices for Online Curated Content Providers in January 2019<sup>ix</sup>.

Subsequently, in February 2020, IMAI has presented its latest CodeCode called Code for Self-Regulation of Online Curated Content Providers in its annual India digital summit. However, it has not successfully implemented this CodeCode, as the numbers of signatories have dropped from 9 to a mere 4 entities, i.e. Hotstar, Voot, Jio and SonyLiv. The new CodeCode that is proposed intends to establish an enforcement authority called Digital Content Complaint Council (DCCC)<sup>x</sup>, headed by a retired High Court or Supreme Court judge with three members from national-level statutory commissions like the National Commission for Women (NCW), the National Commission for Protection of Child Rights (NCPCR) or the National Human Rights Commission (NHRC). It is important to note that there is no legal sanction or power given to enforce the CodeCode, but the committee constitutes government representatives. The new CodeCode also mentions self-regulating 'prohibited content' but does not define what would fall under the ambit of what prohibited content is/could be.

Some instances where OTT platforms have come under serious scrutiny and criticized for the content are when the movie 'Sadak 2' was released on Disney+ Hotstar widespread backlash and was criticized for 'hurting Hindu sentiments' as the plot revolves around fake Godmen<sup>xi</sup>. A web series Pataal Lok, an Amazon Original, was called out for disparaging people of the northeast<sup>xii</sup>. After a few sections of the public raised their concerns over the show 'Tandav', Amazon issued a public apology "to anyone who felt hurt" by 'Tandav' and deleted the objectionable scenes<sup>xiii</sup>. There have been police complaints registered against Netflix for the show "A Suitable Boy", which has a scene of a Hindu girl kissing a Muslim boy in a temple<sup>xiv</sup>.

It is imminent to identify the subject matter that needs to be regulated and classify the services provided online (banking, ordering food, comments, communication, etc.). For proper implementation, clear guidelines and rules alone are not sufficient, but it is necessary to have procedures that are to be followed in case of violation. In the current scenario, the

law is applied arbitrarily to curtail artistic freedom, censure and remove content. The creators of online content must be free to explore and present their artistic views on online platforms. One of the key reasons for the success of OTT platforms is the variety of content from all over the world and the freedom and convenience of the audience to watch the same from any part of the world. The clarity on the law will stop media trials and social media boycotts from putting an end to good right content being made available and will act as a check on curbing artistic freedom. The law must provide sufficient freedom for creators/artists to create content, freedom for the audience to choose and finally, to protect the public interest. Hence, it is essential to have a clear framework laid down.

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<sup>i</sup><https://blog.ipleaders.in/online-streaming-need-online-laws/>

<sup>ii</sup><http://egazette.nic.in/WriteReadData/2020/223032.pdf>

<sup>iii</sup><https://www.mondaq.com/india/broadcasting-film-tv-radio/1007904/government-issues-regulations-for-ott-platforms-and-online-content>

<sup>iv</sup>[https://www.prsindia.org/sites/default/files/bill\\_files/TF\\_Rules\\_2011.pdf](https://www.prsindia.org/sites/default/files/bill_files/TF_Rules_2011.pdf)

<sup>v</sup><https://www.jurist.org/commentary/2021/02/bhardwaj-rana-ott-regulation/>

<sup>vi</sup><https://www.iamai.in/AboutUs>

<sup>vii</sup><https://business.mapsofindia.com/communications-industry/internet/association.html>

<sup>viii</sup><http://business.rediff.com/report/2010/jan/05/tech-mobile-internet-users-touch-2-million.html>

<sup>ix</sup><https://internetfreedom.in/online-video-streaming-and-tv-are-not-the-same-so-why-is-the-iamai-trying-to-make-it-so/>

<sup>x</sup> *Supra.*

<sup>xi</sup><https://www.livemint.com/news/india/ott-content-battles-mainstream-pressures-controversies-11598598763287.html>

<sup>xii</sup> *Supra.*

<sup>xiii</sup><https://tech.hindustantimes.com/tech/news/bollywood-streaming-giants-on-edge-as-amazon-gets-flak-for-hurting-religious-beliefs-in-india-71614953903711.html>

<sup>xiv</sup> *Supra.*