



**KEY PRINCIPLES FOR APPLICATION OF SECTOR SPECIFIC
REGULATORY FRAMEWORKS
TO “OVER-THE-TOP” COMMUNICATIONS AND CONTENT SERVICES**

The global internet has provided a platform for the development and deployment of a great variety of innovative services. The emergence of online services provided over traditional telecommunications networks – often referred to as “over the top” or “OTT” services – is driving growth, creating jobs, and advancing innovation in the global economy.

Although there is not a single prevailing global definition of the term, OTT services can be defined as communications and content delivery services and applications that end users access using their own internet connections. Typically providers of OTT services do not supply network access on their own to end users. These services are an increasingly important element of the broadband value chain and are diverse and fast evolving, providing solutions that were previously unavailable or unaffordable to many people and businesses. OTT services provide users, developers, and SMEs around the world with access to jobs, education, news, trading platforms, productivity tools, enterprise services, app stores, and entertainment choices that were unheard of just a decade ago.

OTT services have an interdependent relationship with traditional telecommunications network operators and service providers. Although network operators have built and must operate the networks that supply access to OTT users, online application and content providers also invest significantly in internet infrastructure -- more than \$30 billion per year around the world to deploy the networks, facilities, and equipment that make OTT services possible. The majority of this amount, 76%, is direct investment, including investment in hosting facilities, physical cables, and other transport, while the rest is spent by third party providers to ensure that applications, services, and content travel as efficiently as possible. Many OTT providers purchase transport directly from network providers, and some also invest in submarine cables so that they can quickly and reliably move content across the global internet. Network operators benefit from this improved performance, as they are able to offer a more valuable product to their Internet access customers, including selling higher speed services and additional data plans to customers who want to reach desirable broadband content provided, by OTT providers and their partners.

Given the rapid innovation in OTT services and to ensure that OTT services deliver on their vast transformational potential, the Information Technology Industry Council (ITI) urges policymakers to embrace the following principles:

Recognize Meaningful Differences in Delivery, Function, and the Range of Services Provided: Many traditional telecommunications regulations were designed for 20th century network services that were provided on a country-by-country basis in markets with very high barriers to entry and strict licensing requirements. Such regulations are necessary to ensure that the limited number of telecommunication operators in a market did not leverage their control over network access points to limit consumer access or reduce competition between services. Online and OTT services are offered in a fundamentally different environment. The online services marketplace is global, with competitive services traversing national boundaries that do not have the same characteristics as traditional telecommunications and broadcast services. OTT providers typically do not own or control the underlying broadband access points. Additionally, communications services accessed over a broadband network do not necessarily



require a phone number or other resources, and many OTT services are often only offered as a single feature in a suite of services provided to corporate customers or consumers. Additionally, such services are often not limited to a single device (i.e. a mobile phone), but can be accessed on multiple devices (e.g. mobile phone, tablet, laptop, gaming device, television or media player, and/or desktop computer). Forcing OTT services to conform to the same regulation as services that provide direct network access to users would reduce the choice and other consumer benefits that these services provide and undermine the meaningful distinctions in these services and their values to consumers.

Protect the Free Flow of Data to Support the Growth of the Internet Ecosystem: Data is the lifeblood of the global economy. In today's connected world, international commerce simply cannot function without constant streams of data flowing across borders. The free movement of data allows companies of all sizes and in all industries to bring new innovations to global markets, driving investment, growth and job creation. The free flow of data is critical for OTT services to provide the benefits to consumers and users, enabling small- and medium-sized enterprises (SMEs), to compete in the global economy with access to and provision of digital products and services, such as messaging, entertainment, or cloud applications.

Enable and Encourage Increased Investment in Networks: As cutting-edge applications and online services create increased demand for broadband resources, OTT services highlight the critical importance of the network itself, and the need for continued network investment to support the health of the internet economy. In addition to other benefits from a robust network, none of the benefits from OTT services would be possible without continued investment in broadband and wireless infrastructure, by OTT providers themselves as well as traditional network operators. As a result, regulators should refrain from disrupting the virtuous cycle of investment that currently exists between OTT providers and network operators. In considering goals such as the promotion of innovation and investment, regulators should take care to consider the achievement of those goals across the entire digital services ecosystem and not just traditional telecom networks and services.

Avoid Regulation Except Where Rooted in Legitimate Public Policy Objectives: The internet ecosystem is in its infancy, and it would be premature to apply new regulations in the absence of an evidence-based assessment that existing regulation is insufficient to achieve a government's public policy goals. For example, OTT services are subject to all generally applicable regulations that ensure protection of consumers and their data, protection of technical networks, and competition regulation. Additionally, it may not be appropriate or useful to group a large set of services, such as messaging apps, email services, collaboration software, social media sites, video platforms, search engines, and cloud and enterprise services, all within the same regulatory category. Governments should ensure that any regulation is narrowly tailored to correct an observed market failure and achieves the sought-after policy objectives. In general, regulation should be applied ex-post facto and on a case-by-case basis where those unique conditions exist.

Ensure Consistency with Trade Obligations and Principles: Many trade agreements already contain commitments that ensure services delivered online can continue to be traded without undue friction and enjoy non-discriminatory, pro-competitive access to telecommunications networks. These agreements may also include relevant commitments that govern computer services, telecommunications services, and other related services, so policies should seek to avoid interfering with these commitments, either directly or indirectly. Against this backdrop, regulators should carefully



consider whether there is any need to impose infrastructure-specific regulation to these services on top of existing legal and regulatory protections that are already in place.

Promote Global Consistency and Standardization: Because the internet is inherently global, the use of OTT services is inherently global. Regulations that set unique, country-specific standards or requirements, or that require duplicative infrastructures or local data storage can be highly disruptive to trade in these internet-based services, and can represent a high entry barrier, particularly for small firms. A patchwork of divergent regulations across countries will serve only to fragment the network, thereby eliminating many of the social and economic benefits of global connectivity and communications that these technologies can create. Wherever possible, policy makers and regulators should strive to promote and adopt consistent and standardized regulatory frameworks.

Enable Small and Medium Businesses to Compete: Because of the open architecture of the internet and the increasing affordability and availability of computing power, the entry barriers for internet-based services are inherently low. As a result, new opportunities to provide, deliver, or access services online are accessible to small and medium enterprises, which extends the reach of many services that were previously unavailable or unaffordable to small businesses and individuals. Today, OTT services are making available new suites of products to businesses and consumers on a broader range of devices and to serve a broader range of functions, often at a lower cost and with more availability, spurring rapid and inclusive economic growth. Policymakers should avoid onerous requirements or mandates that could restrict small businesses from entering this space or reduce consumer choice or access.

About ITI:

ITI is the premier voice for the global information and communications technology (ICT) industry. Our member companies include the world's leading innovation companies, with headquarters worldwide and value chains distributed around the globe. We advocate on behalf of our members for policy and regulatory environments that enable innovation and maximize all of the benefits that ICT companies provide, including economic growth, job creation, and the tools to solve the world's most pressing social, economic, and environmental challenges. We work closely with our partners in government, international organizations, the business community, and civil society to achieve these objectives. One of the core elements of our mission, in every economy in the world, is to position our companies to be genuine partners of governments. We do this because we firmly believe that the interests of our industry are fundamentally aligned with those of the economies and societies in which we operate.