BSA Submission on
TRAI Consultation Paper on Regulatory Framework for
Over-The-Top (OTT) Communication Services

Shri Asit Kadayan,
Advisor (QOS)
Telecom Regulatory Authority of India (TRAI)
Mahanahgar Door Sanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi – 110012

January 7, 2019

Dear Sir,

Subject: BSA Submission on TRAI Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services

We submit the following comments in reference to the Telecommunications Regulatory Authority of India's (**TRAI**) *Consultation Paper on Regulatory Framework for Over-The-Top (OTT) Communication Services* **(Consultation Paper),** released for public comment on November 12, 2018.

BSA | The Software Alliance (**BSA**)[1] is thankful for the opportunity to offer comments on the Consultation Paper. As the leading advocate for the global software industry, BSA is keen to contribute to initiatives that are designed to introduce a predictable, industry-led, and solution-driven regulatory framework for software enabled technologies and services.

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[1] *BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 60 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.*

BSA's members include: Adobe, Akamai, Amazon Web Services, ANSYS, Apple, Autodesk, AVEVA, Bentley Systems, Box, CA Technologies, Cadence, Cisco, CNC/Mastercam, DataStax, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, SAS Institute, Siemens PLM Software, Slack, Splunk, Symantec, Synopsys, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday.

The OTT services sector has, in the past few years, seen both rapid innovation as well as increased adoption amongst consumers. This is due to the light-touch regulatory approach adopted by many governments. In turn, this has allowed the industry to develop and deliver better technologies, services, and user experiences. In some areas, limited government regulations are appropriate. For example, in order to promote consumer protection and establish the necessary institutional frameworks for trust in emerging technologies, it is appropriate for governments to establish effective data privacy and cybersecurity frameworks.

Regarding the subject matter of the Consultation Paper, it is important for the Government of India to keep its regulatory and policy approaches in line with emerging international trends and best practices. An over-regulated approach for many of the issues raised in the Consultation Paper is likely to inhibit the development, deployment, and growth of OTT services, to the detriment of Indian businesses and consumers. Therefore, BSA wishes to highlight three crucial concerns meriting the consideration of the Government of India which must be addressed in order to ensure that India can develop an effective, trusted, transparent, and proportionate regulatory environment.

1. Policy Proposal Requires Wider Consultations within Indian Government

Regulations on OTT could easily impact a wide range of Information Technology (**IT**)-related policies areas, including cybersecurity and privacy. As such, they could affect IT services ranging from communications services to cloud computing, data analytics, and other Internet-enabled services.

Our understanding is that TRAI's authority, granted under the Telecom Regulatory Authority of India Act, 1997, pertains to matters related to service providers providing services subject to a license issued by the Government of India. At the same time, we understand that the Ministry of Electronics and Information Technology (**MeitY**) is empowered to design policy frameworks around matters related to IT, electronics, and the Internet under the Information Technology Act, 2000 (as amended).

Accordingly, BSA recommends that the Government of India undertake a wider consultation process involving other relevant Indian government agencies and Ministries before undertaking any efforts to develop new regulatory frameworks regarding OTT services.

Further, it is critical that the Government of India continue to seek the input of interested and relevant private sector stakeholders to inform policy making in this area. This will assist the Government of India in providing clear and predictable indications to the market on the policies to be adopted and the objectives that such policies seek to achieve. In turn, this will allow

Le-Meridien
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investors to plan and execute long term strategies in the Indian market and will allow Indian businesses and consumers to fully benefit from existing and future opportunities presented by innovation in OTT communications and related services.

2. Policies Should be Technology-Neutral and Outcome-Focused

OTT services are characterized by a wide range of functional diversity. These services are also characterized by robust competition, with consumers and enterprises choosing from a variety of options, frequently using several different services simultaneously. It is therefore critical that governments avoid imposing regulatory requirements that would reduce competition, increase costs, and slow demand for Internet-enabled solutions.

Specifically, governments should recognize that OTT services are often technologically distinct from and cover a much wider range than the services typically offered by Telecom Service Providers (**TSPs**).

As the Consultation Paper notes, there are a variety of ways to define OTT. Broad definitions of OTT associated with some of the regulatory proposals in the Consultation Paper could apply limitations on a wide range of Internet-enabled services, such as cloud computing, that would be inappropriate, inconsistent with the considerations raised under the Consultation Paper, and, as stated above, may be outside the jurisdiction of the TRAI. But even applying restrictions to a narrower definition of OTT, such as messaging and voice applications, could have greater negative consequences than intended.

OTT services depend on access to the Internet, provided by TSPs. Demand for these OTT services drives demand for Internet access and data. Furthermore, once users acquire Internet access, for whatever reason, they become part of the digital ecosystem consistent with the stated goals of the Government of India to enhance Internet access and use in the population. For these reasons and others, policies that may raise costs, reduce competition or availability of services, and otherwise suppress demand for Internet access should be avoided.

BSA recommends that TRAI take a technology-neutral and outcome-focused approach to considering whether regulation is needed, with the objective of establishing policies that facilitate businesses, government agencies, and consumers freely choosing and selecting which products and services provide the best value.

Further, we urge the Government of India to continue to develop a policy and regulatory framework that facilitates the development and deployment of new technologies and services in India and supports robust competition and innovation among the market participants. This will drive value to consumers who will then increasingly turn to greater investments in on-line

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access, contributing to Prime Minister Modi's vision of a "Digital India" with its benefits of economic growth and development and job creation.

3. [Any Measure Should Support Cross-Border Data Flows and Strong Encryption](#)

The movement of data across borders is essential to the global economy. Cross-border data flows are critical for the services that sustain global commerce, improve health and safety, promote social good, and enable the technologies of the future.[2] Similarly, the widespread availability and use of security technologies, most notably encryption, is an essential feature of the modern technologies and plays an increasingly vital role in economic growth and development.[3]

As such, BSA urges that any policy measures the Government of India undertakes in the digital ecosystem, including OTT services, must promote cross-border data flow and strong encryption.

We thank you for providing us with the opportunity to participate in this consultation process. We hope our submissions are useful to the consultation process and will merit your kind consideration. We look forward to participating in this important discussion and stand ready to answer any questions you may have.

Yours sincerely,

Venkatesh Krishnamoorthy
Country Manager- India
BSA | The Software Alliance

Cc: Dr. R.S.Sharma, Chairman, TRAI
Cc: Shri.S.K.Gupta, Secretary, TRAI
Cc: Smt. Aruna Sudararajan, Secretary, DoT, Ministry of Communications
Cc: Shri. Ajay Prakash Sawhney, Secretary, MeitY

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[2] See https://www.bsa.org/~/media/Files/Policy/BSA_2017CrossBorderDataFlows

[3] See material at https://encryption.bsa.org/

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