

OTT Regulatory Framework (Draft)

Preamble

The Telecommunications Act, 2053 vested responsibility to Nepal Telecommunications Authority to grant license, regulate and systematize telecommunications services. In addition, the Authority is also empowered to specify terms and conditions for the use of such telecommunications services.

Due to the rapid development in the technology and services, specifically Over the Top (OTT) Services, new range of services are available for the consumer. The consumers should get benefit from the emerging services leveraged by the development of the technology, but issues such as regulatory imbalance, security threats, government tax, revenue of the telecom operators are also need to be considered. In this context, this regulatory framework is formulated to regulate the communication-based OTT services.

Scope

Recommendation ITU-T D.262 of Telecommunication Standardization Sector of International Telecommunications Union (ITU-T) defines Over-the-Top (OTT) as an application accessed and delivered over the public Internet that may be a direct technical/functional substitute for traditional international telecommunication services.

The OTT services can be broadly categorized as

- Communication Services: Messaging, Telephony (voice/video, conferencing);
- Content Services: Video/Audio;

This framework has the scope of regulating the OTT Communication Services inside the territory of Nepal.

Definitions

For executing and implementing the clauses of this framework, the following definitions shall have the meaning ascribed thereto hereunder.

Act means the Telecommunications Act, 2053.

Authority means Nepal Telecommunications Authority.

Telecommunications Service Provider (TSP) means the person or entity having obtained the License to operate the Telecommunications Service as per the Act.

Over-the-top (OTT) means online services accessed and delivered over the public Internet that may be a direct technical/functional substitute for voice/video telephony and text messages.

OTT Provider means the person or entity that delivers the OTT Services to the end users.

OTT Consumer means the person who uses the services provided by the OTT Provider.

Intermediary means the person or entity who is authorized to act as an official and legal representative of the International OTT Provider in Nepal

Objectives

The Objectives of this Regulatory Framework are:

- To stipulate the process and requirements for the registration of OTT services in Nepal.
- To encourage and promote the mutual cooperation between OTT Providers and TSPs.
- To protect the rights of the OTT Consumers in regard to the service usage, data protection, and privacy.
- To protect the national interest while promoting the OTT services.

Licensing

- OTT Providers shall be registered in Nepal for providing the OTT Services in Nepal.
- In order to apply for the Authorization, a foreign OTT Provider is required to register a branch office in Nepal, pursuant to the Companies Act, 2006. All OTT Providers shall complete these processes. Alternatively, the foreign OTT Provider can appoint an Intermediary. Such Intermediary must be registered, as per the Companies Act.
- Any person wishing to register as an OTT Provider shall file an application/proposal to the Authority, including their legal status and the describing the services they offer.
- The Authority, after carefully studying and analyzing the legal and technical aspects of the request letter, may issue the authorization to provide OTT service in Nepal.

Cooperation with TSPs

Considering the interdependence between connectivity and services, mutual cooperation as far as practical between OTT Providers and Telecommunications Service Provider (TSP)s is encouraged, with a view to fostering innovative, sustainable, viable business models and their positive roles in fostering socio-economic benefits.

Consumer Protection

- OTT Providers shall maintain the security and privacy including network security and data protection issues, related to the consumers.
- OTT Providers shall comply with international and national standards regarding customer redress and protection.
- As per prevailing laws of Nepal, the OTT Providers shall maintain and provide the consumer related information to the authorized agency.
- OTT Providers are encouraged to establish the Content Delivery Network (CDN) inside Nepal, for the purpose of providing faster and secure services to the customers of Nepal.

Comply with the Directives

- The Authority may require the particulars of the activities related to the services carried out by the OTT Provider and it shall be the duty of the OTT Provider or Intermediary to provide such particulars.
- The OTT Provider and Intermediary shall comply with the directives issued by the Authority from time to time.

Revision and Interpretation

- The provisions of this framework may be reviewed and revised by the Authority, as and when necessary.
- In case of any doubt regarding interpretation of any provisions of this framework, the explanation by the Authority shall be final and binding.