INTRODUCTION

Our society has been experimenting with various forms of entertainment since ancient times. Classical as well as folk music, dance and drama had been a part of our lives since ancient times. The 20th century saw the dawn of innovations, growth of technology and with advancements in various sectors, made technology the symbol of development for a country. Household living became comfortable with electrification, new appliances like fridge, washing machine and other such appliances.

Over the top (OTT) refers to film and television content provided via a high-speed Internet connection rather than a cable or satellite provider. OTT content can be accessed directly on a computer, but it is often watched on a web-enabled television or through an Internet-enabled device.
Gradually the broadcast/telecast media came in to our lives. While it started as a medium of sharing news, with time they became a means of entertainment at home. Once a luxury, television, referred to as TV is a part of our lives since the last decade of 20th century. However, it is the 21st century which is witnessing unimaginable changes due to the technological advancement in all walks of life. It has made the world a global village with access to anything and everything from our palm. This is also the time which marked social media as a powerful voice of the common man, changing the whole scenario. Therefore, it is no surprise that this digital era has also wrapped the Media and Entertainment industry in this revolution.

The Government’s focus on Digital India and the availability of smart phones at a reasonable cost and the reach of internet to all corners of the country have been key players for the emergence of Over the Top, popularly referred to as the OTT platforms, in India. According to a report, India will be the tenth largest market for OTT in terms of revenue in 20221.

What is OTT and its presence in India

“Over-The-Top” (OTT) media service is any online content provider that offers streaming media as a standalone product. The term is commonly applied to video-on-demand platforms, but also refers to audio streaming, messaging services, or internet-based voice calling solutions.2 OTT services circumvent traditional media distribution channels such as telecommunications networks or cable television providers. As long as you have access to an internet connection — either locally or through a mobile network — you can access the complete service

1 PwC’s Global Entertainment and Media Outlook 2018–2022
2 What Is Ott? – Understanding The Modern Media Streaming Landscape by Meghan McAdams, April 18, 2019
at your leisure. Also the choice it offers to the consumers in terms of content - original as well as diverse genres, at a reasonable cost and with compatibility of multiple devices (smartphone, tablet, gaming console or smart tv) making it popular.

However, it is to be noted that OTT has been in existence in India since 2008\textsuperscript{3}, when Reliance Entertainment launched the first OTT platform. Launched in 2010, NexGTv by Digivive, a group of Media Matrix Worldwide, offered entertainment to users in all devices such mobiles, tablets and laptops, etc\textsuperscript{4}. The Zee Digital Convergence Limited launched in 2012, Ditto TV offered live and Catch up tv. In 2018 it was integrated with ZEE5.

Today, India enjoys services from over 30\textsuperscript{5} OTT providers including domestic and international players like Netflix, Amazon Prime, Disney+ Hotstar, Zee5 and Eros, etc. According Price Waterhouse Coopers Global Entertainment and Media Outlook 2019-23, the over the top (OTT) market in pegged to growth at the rate of 21.8 \% CAGR, from Rs. 4,464 crores in 2018 to Rs. 11,976 crores in 2023.

The audio only market of OTTs makes for a significant share of this market. There are also various other kinds of OTT services including OTT messaging, OTT voice calling, video calling and OTT TV\textsuperscript{6}. COVID-19 caused a surge in OTT content consumption, driving up the demand for OTT content across platforms, which turned to 2D and 3D animated content to fill gaps in live content. The year also saw global players such as Amazon Prime Video and Netflix signed exclusive

\textsuperscript{4}https://economictimes.indiatimes.com/small-biz/money/nexgtv-looks-to-raise-over-10-million/articleshow/56152234.cms- By Gaurav Laghate, Dec 24, 2016,
\textsuperscript{5}https://sambadenglish.com/the-rise-of-ott-platforms-in-india-and-the-fall-that-may-come-soon
\textsuperscript{6}Journal Of Content, Community & Communication Amity School Of Communication Vol. 12 Year 6, December – 2020: Role Of Covid As A Catalyst In Increasing Adoption Of OTTs In India: A Study Of Evolving Consumer Consumption Patterns And Future Business Scope Garima Sharma Nijhawan
content licensing deals with various studios in India. There is no doubt that VFX studios have benefited from the growth in higher-than-television quality content being produced for OTT platforms.

With the pandemic Covid 19 leading to a complete lock down jilting the entertainment- movie industry in the country, it would be no exaggeration that over-the-top (OTT) streaming platforms came to the film industry’s rescue. During this period some movies premiered on OTT platforms instead of theatres. Industry and internet search data show viewership on OTT platforms indeed spiked last year, especially in smaller towns and cities. The early effect has not sustained for all platforms alike, but net viewership continues to be much higher than pre-pandemic months. Low budget films enjoyed on smaller screens increasing their direct-to-digital releases and being more affordable for OTT platforms, can become a parallel source of revenue for production houses.

**OTT-driven music:** India always prefers to watch its music and as OTT content volumes will cross 3,000 hours by 2023, the music they use in their content will begin to garner a larger share of listenership.

**Current OTT trends in India**

As on 2020, 29 million subscribers paid for 53 million OTT video subscriptions (not counting subscriptions bundled along with data plans) in India.

- Key drivers for growth included Hotstar putting the IPL behind a paywall, release of direct to digital films during the pandemic and lack of fresh content on television for four months.
- Around 1,200 hours of original content were created for OTT platforms across films and episodic content, which led to OTT players spent upwards of INR10.2 billion on creating across 220 titles in 2020, excluding acquired movie rights and sports.

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- Netflix invested INR 30 billion in content in India across 2019 and 2020; it has announced over 60 titles in India and launched 17 films and 11 series in 2020 alone, making India one of its largest content production hubs worldwide.
- Disney+ Hotstar claimed 26 million paid subscribers by the end of November 2020 on the back of the IPL going behind a paywall.
- OTT players are expected to increase spends on original content to around INR19.2 billion in 2021 (a 17% growth over 2019) and further increase their total investment in content (including sports) during 2021-25 to INR300 billion.
- Around 500 original titles are expected to be released in 2021 across platforms.
- A key trend in 2020 was the entry of language OTT products like aha (Telugu), Koode (Malayalam) and City Shor TV (Gujarati). The Marathi OTT space will also see the entry of Planet Marathi and Letsflix.
- 284 million consumers consumed video content through data bundles.
- Telcos and aggregators provided premium OTT subscriptions bundled along with data and/or devices for as little as INR150 per month.
- Up to 85% of viewership volumes of certain OTT platforms were generated by telcos. The amount telcos paid for content was around INR7 billion in 2020 and is expected to grow.
- It is expected around 400 million consumers to consume content via telco and aggregator bundles by 2025 across a mix of minimum guarantee and per-stream deals.
- Digital advertising saw a spend of 450 million thereby an increase of revenues from the digital platforms.
FDI in digital media permitted up to 26% through government approval route⁸:

The Department for Promotion of Industry and Internal Trade (DPIIT) under the Department of Commerce and Industry under Press Note No. 4 of 2019 dated 18 September 2019 (PN4)⁹, mandated that FDI in entities engaged in uploading/streaming of news and current affairs through digital media should be up to 26% under the government approval route. Prior to issuance of PN4, FDI in such entities was not subject to restriction.

DPIIT issued a clarification on 16 October 2020 (Clarification)¹⁰ setting out the following categories of entities that could be classified as “digital media”. The Clarification makes no distinction between digital media entities that are purely engaged in “news” as compared to entities, including over-the-top (OTT) players, which deal in “social” and “entertainment content” in addition to “news” content.

While the Ministry of Electronics and Information and Technology (MEITY) and the Telecom Regulatory Authority of India (TRAI) maintained that they do not have control over online content, the courts established the capacity of the IT Act to regulate this space. Courts have held that actions against OTT players could be taken under (a) Section 69 of the IT Act which includes direction for interception, monitoring or decryption of information, blocking of content etc.; (b) Sections 66A and 67B of the IT Act that prescribe the punishment for offences such as sending offensive messages through communication service, publishing or transmitting obscene material in any electronic form, publishing or transmitting material containing sexually explicit material, publishing or transmitting material depicting children in bad taste etc.

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Courts have taken the view that though there is no specific regulation of OTT platforms in India, if OTT platforms carry any information or material which is not permissible under the law, then the provisions of the IT Act would come into play for deterrent action to be taken against them. Courts have also taken the view that online content on OTT platforms would not fall under the ambit of the Cinematography Act, 1952 and have frequently dismissed broad petitions seeking censorship of online streaming services.

In November 2020, the Union Government amended the Government of India (Allocation of Business) Rules, 1961 to bring digital / online media under the purview of the Ministry of Information and Broadcasting (MIB) w.e.f. 9 November 2020\(^\text{11}\). Under the notification, digital / online media includes (a) films and audio-visual programs made available by online content providers; and (b) news and current affairs content on online platforms. Pursuant to this notification online content providers have now been brought under the jurisdiction of the MIB who will regulate this space.


The Intermediaries Rules have been made applicable to all publishers of news and current affairs content (including OTT Platforms), as long as they have a physical presence in India or conduct a systematic business activity by making their content available in India. The Intermediary Rules also prescribes for code of ethics for all publishers of news and current affairs content (including OTT Platforms) which will be administered by MIB.

**The main provisions of the Rules are**\(^\text{12}\):

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\(^{11}\) [https://egazette.nic.in/WriteReadData/2020/223032.pdf](https://egazette.nic.in/WriteReadData/2020/223032.pdf)

Self-Classification of Content: The OTT platforms, called as the publishers of online curated content in the rules, would self-classify the content into five age based categories- U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult). Platforms would be required to implement parental locks for content classified as U/A 13+ or higher and reliable age verification mechanisms for content classified as “A”.

Publishers of news on digital media would be required to observe Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television Networks Regulation Act thereby providing a level playing field between the offline (Print, TV) and digital media.

A three-level grievance redressal mechanism has been established under the rules with different levels of self-regulation.

- Level-I: Self-regulation by the publishers;
- Level-II: Self-regulation by the self-regulating bodies of the publishers;
- Level-III: Oversight mechanism.

Self-regulation by the Publisher: Publisher shall appoint a Grievance Redressal Officer based in India who shall be responsible for the redressal of grievances received by it. The officer shall take decision on every grievance received by it within 15 days.

Self-Regulatory Body: There may be one or more self-regulatory bodies of publishers. Such a body shall be headed by a retired judge of the Supreme Court, a High Court or independent eminent person and have not more than six members. Such a body will have to register with the Ministry of Information and Broadcasting. This body will oversee the adherence by the publisher to the Code of Ethics and address grievances that have not be been resolved by the publisher within 15 days.

Oversight Mechanism: Ministry of Information and Broadcasting shall formulate an oversight mechanism. It shall publish a charter for self-regulating bodies, including Codes of Practices. It shall establish an Inter-Departmental Committee for hearing grievances.

**Future trends**:

- It is expected that the demand for original content will double by 2023 from 2019 levels to over 3,000 hours per year.
- Curated short video platforms are to garner 25% of total time spent on online video viewing by 2023.

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• Share of regional language consumption on OTT platforms is to cross 50% of total time spent by 2025, easing past Hindi at 45%.
• Sports are to play an increasingly important role in growing subscription revenues and this could lead to a growth in valuation of digital media rights.
• The proposed content code will require implementation of processes for content curation, checks and monitoring controls.
• Content costs will continue to increase as the overall quality benchmark rises to address the needs of a more aware audience, particularly across regional markets.

Regulation of OTT Platforms and other social media intermediaries
• Digital platforms in India have been unregulated, having no specific regulatory framework barring the provisions of the IT Act that they are subject to. Through several case laws and consultation papers and self-regulation codes formulated in the recent past, several attempts have been made to understand the need for and method of regulating digital content. Attempts were made by OTT players towards developing a more transparent system of self regulation.

References

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