

Regulatory framework for *over-the-top* services: is the European Union afraid of OTT?

Purpose:

1. Presenting European Union's approach towards regulating *over-the-top* services.
2. Defining key areas for leveling playing field of OTT's and traditional services considering the 'same services – same rules' attitude.
3. Considering privacy regulation as the most important legal field of regulating OTT's from economic perspective.

Methodology/Approach:

1. Analysis of legal acts considering the topic of OTT services and proposals of directives and regulations which are meant to refer to over-the-top services.
2. Examining the potential juxtaposition of legal aspects of regulating OTT's and its economic value as well as influence on social dimension of everyday life.

Findings:

Over-the-top services are one of key factors which should be considered while completing initiatives included in the strategy of building Digital Single Market for European Union. Due to their differentiation, it is understandable that the topic of OTT services is crucial for the areas of regulations such as telecom rules, audiovisual directive, copyrights and privacy regulation. As OTT's provide alternative to traditional means of communication and broadcasting of audiovisual content it is vital to present the coherent strategy on issue of applying same rules to the same services.

Simultaneously there is no legal definition of *over-the-top* services. Even though they were subject of special reports prepared for European Parliament¹ and the Body of European Regulators for Electronic Communications (BEREC)² European legislators seem to avoid defining *over-the-top* services in the process of creating law. However, *over-the-top* services are being regulated, e.g. interconnection services include some of *over-the-top* services, which results in their fragmentary regulation in proposed European Electronic Communications Code.

I argue that the challenge of regulating *over-the-top* services lies in precise definitions and expressing clear, coherent strategy which would give answers about legal regime concerning OTT both to entrepreneurs and consumers. As one lacks those answers it is crucial to recognize the areas in which European legislator declares to include OTT within the proposed regulation.

¹ Godlovitch I., Kottering B., Marcus S. J., Nooren P., Esmeyjer J., Roosendaal A., *Over-the-Top players (OTTs)*. Study for the IMCO Committee, Directorate General for Internal Policies. Policy Department A: Economic and Scientific Policy 2015.

² BEREC, *Raport on OTT services*, BoR 16 (35).

Privacy regulation seem to be the case which provides one with the most advanced and wide proposal of applying common rules to interconnection services and therefore: OTT.

Originality/Value:

Value of the research lies in searching for an answer to questions which should be raised regarding proposals of regulating *over-the-top* services. The process of making the law concerning new technologies illustrate difficulties regarding most fundamental questions on attitude towards relation between law and technology: should law answer challenges raised by technological innovation by being constantly updated or by clear even though general rules, which would provide sufficient framework for stabilization the legal status of *over-the-top* services.