



# REGULATORY UNCERTAINTY FOR ONLINE VIDEO PROVIDERS IN INDIA

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## OVERVIEW

With Indian consumers rapidly embracing internet use and mobile devices, the demand for video streaming in India, including user-generated video, is soaring. Multinational companies providing video services are therefore strengthening their offerings in India and considering India integral to their growth plans. But caution must accompany this optimism, given the uncertain and evolving regulatory landscape for video streaming in India.

Companies looking to enter or expand in India's video streaming space should craft strategies that anticipate and navigate regulatory hurdles. Below are some of the key regulatory issues video streaming companies should closely track.

## ISSUES

- **Content regulation.** In April, India's Information and Broadcasting (I&B) Ministry established a committee to design a regulatory framework for online content, including video, noting that "there are no norms or guidelines to regulate... online media websites" in India. The decision to establish this committee came after the ministry said, on multiple occasions, that it had no plans to regulate online content. In May, a cabinet reshuffle resulted in a new I&B minister, who appears to have taken a softer stance on online content, expressing a preference for self-regulation. That said, companies should carefully watch how this issue evolves. Some of these developments suggest stakeholders believe that India has no or few rules governing online content including video.
- **Laws against offensive speech.** In 2015, the Indian Supreme Court declared Section 66A of the Information Technology (IT) Act – a law against offensive speech – unconstitutional for being too ambiguous and broad. This law applied to, among other things, online communications that were "grossly offensive" or had a "menacing character," and led to numerous high-profile arrests, including of individuals posting online content criticizing politicians. Parts of the Indian government supported the law, telling the Supreme Court that the internet, given its wide impact, merits stronger restrictions than traditional media. Once the Court abolished Section 66A, India's Ministry of Home Affairs and other stakeholders began developing a new law against offensive speech. The draft of the new law expressly applies to online video, among other things, and risks construing offense vaguely and broadly, even if differently from the old law. Also, Section 67 of the IT Act, intended to target online obscenity, remains unaffected by the Supreme Court's decision. Section 67 been criticized as being

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overbroad and ambiguous, similar to Section 66A, and has spurred numerous arrests including for reasons other than obscenity. These developments risk significantly stifling online video content.

- ***Social media monitoring.*** Earlier this year, India's I&B Ministry revealed a proposal to monitor content on social media. The proposal expressly applies to (among other things) websites offering video content. The ministry's stated goal is to assess public sentiment and disseminate content online to promote a positive sentiment regarding the government's programs. Critics fear the proposal may dramatically chill free expression online; some have even approached the judiciary with their concerns. Since the ministry announced the proposal, its stance appears to have evolved, with reports suggesting scepticism among new personnel at the ministry and that the ministry may alter its proposal. Closely tracking this issue's evolution is key for social media companies offering video content, given their critical reliance on free expression.
- ***Economic regulation.*** The Telecom Regulatory Authority of India (TRAI) is contemplating an economic regulatory framework for online video services in India. Industry representatives, including cable network operators, approached TRAI to express concern that several streaming services offer free videos online but charge for the same videos to air on cable, to the detriment of the cable network operator. TRAI's interest in the video space is recent, but it has for some time been considering a similar issue in the non-video space – *i.e.* mobile network operators' concern that free over-the-top (OTT) communication services like Skype or Viber hurt the operators, because they offer users a free alternative. Such operators seek what they consider a level playing field, which could entail requiring providers of a free online service (*e.g.*, particular videos or the ability to make calls) to pay the network operator providing a paid version of the same service. Alternatively, it could entail requiring online players to charge users for services that are currently free. Such measures risk hurting the demand for online players in India, raising their costs, and stifling innovation, especially because users already pay data charges for accessing online content.
- ***Data protection.*** India's Ministry of Electronics & Information Technology (MeitY) is developing a [cross-sector data protection law](#) which could impact companies everywhere, including online video providers, processing the data of customers residing in India. Commentary and government activity since the Cambridge Analytica incident (including multiple sections of the government launching data protection initiatives in parallel to MeitY's) may foreshadow stringent obligations including data localization, which risk raising costs and hampering innovation.

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*ASG's South Asia Practice* has extensive experience helping clients navigate markets across South Asia. For questions or to arrange a follow-up conversation please contact [Nikhil Sud](#).

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