

# OTT apps may have to take license, share revenues with Govt.

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- **The draft bill includes over-the-top, or OTT, communication services in the definition of telecom services**

NEW DELHI: Social media apps such as WhatsApp, Signal and Telegram may require licences to operate in India, with the government proposing to broaden the definition of telecommunication services to include over-the-top (OTT) communication services, internet-based communication services and broadcasting services in the draft telecom bill.

Sector experts said the new definition could trigger a debate as telecom service providers have insisted that the same rules govern similar services. Moreover, as licensed entities, the OTT communication services providers may also have to share revenue with the government.

"There is anxiety regarding what the licensing would be since telecom companies argue for same-service, same rules or even need for data localization. This can create challenges for smaller, independent apps that are not as big as WhatsApp and may exit India," said Apar Gupta, executive director at Internet Freedom Foundation.

The draft bill includes OTT communication services in the definition of telecom services, which by extension means WhatsApp, Signal, Telegram and others could be brought under a licensing framework, he added.

"OTT communication services being included in the ambit of telecom indicates licensing, licence fee, and share of revenue from AGR (adjusted gross revenue) with the government could be in the works," said Rohan Dhamija, managing partner, India and the Middle East at Analysys Mason.

Some experts said the apps could also fall under the regulatory ambit of the Telecom Regulatory Authority of India (Trai), the autonomous body tasked with regulating the sector, but some disagreed, stating that such apps were already regulated under the IT intermediary rules issued in 2021.

"Potentially, Trai could come into the picture again for regulating such service providers or apps," Dhamija added. The Trai Act empowers it to regulate telecom services, including broadcasting and cable services.

Trai issued a consultation paper in 2018 for bringing a regulatory framework for OTT apps that permitted communication over voice or data. But in September 2020, it decided against proceeding with any regulations after consultations with stakeholders. However, it had noted that it could review the decision later.

"The way things appear, there may possibly be a licensing regime (or regulations by Trai or DoT) for these services, but it is still early days," said Arun Prabhu, partner and head of telecom, media and technology practice at law firm Cyril Amarchand Mangaldas.

## **Making Corporate India Comply**

The government has increased the scope of telecom services by including OTT, internet-based and satellite-based communication services besides in-flight, maritime, broadcasting, internet and broadband services within its ambit. "The new definitions are comprehensive and relevant to present day realities," the government said in the explanatory note along with the bill.