

**IPR, INNOVATION AND REGULATION OF THE OTT MEDIA AND ENTERTAINMENT INDUSTRY**- Aastha Prakash<sup>1</sup>**Abstract**

One of the world's largest media markets is now the OTT Platform. They are governed by the laws of the State they reside in. There is no specific body or organ in charge of enforcing regulations or controlling the content that is streamed, so these platforms are entirely free with the broadcasting part.

There are no laws or regulations controlling OTT platforms in India because they are a new kind of entertainment. These platforms offer a variety of content and make content recommendations based on your previous interactions with the site using artificial intelligence. Monitoring internet space or the OTT Platform isn't an easy task for any authority as the internet space is not entirely controlled by any country aside from North Korea and China. This article focuses on the crime and violence-related content and programs available on the OTT platform and examines whether any rules and regulations around intellectual property and content censorship are in place to protect viewers' minds. India's booming online streaming market and widespread content consumption are both having a detrimental effect on young people. Since COVID, the utilization of the OTT platform has doubled.

The purpose of the research is to gain a clear understanding of the censorship of the OTT platform and any IP concerns related to violent content. Even if the content on these sites violates numerous national laws, the Supreme Court continues to monitor it. A significant concern is whether the platform will be governed by a self-regulatory agency or by legitimate law that establishes a statutory entity to oversee and filter the content streaming on such platforms. The proposed outcome of placing regulations on this OTT platform may have some good effects owing to how much exposure is given to violent and criminal-related content which affects people's minds and the country's overall crime rate. Regulation is required to curb obscenity, child pornography, and violence. Research Methodology –The

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methodology used focuses mostly on analysis and description. The use of secondary materials like books and articles has been heavily emphasized. The news and webinars were rich with valuable suggestions that guided the research. The OTT shows are being drawn into legal battles over things like pornography, defamation and offending religious beliefs, national security, and other things. The lack of OTT-specific regulations and the large number of lawsuits brought against OTT platforms have slowed down the growth of OTT platforms. In the past, no one felt that legislation was necessary. However, there is currently a need for a body to control the content that OTT platforms offer.

A unique piece of legislation to address the problems at hand, which in a sense will create a secure atmosphere for audiences and platforms to prosper and thrive.

## Introduction

A streaming video service known as over-the-top (OTT) is one that is made available to users directly over the internet. This platform has surpassed television on cable, satellite, etc. in terms of functionality. In India, there are many OTT platforms operating, including Netflix, Amazon Prime, Hotstar, Voot, and others. Contrary to film or television content, which is subject to regulation by the CBFC, BCCC, etc., OTT platforms are free to stream content without interference from any regulatory authority. Nowadays, few people openly admit to watching TV or going to the cinema. The days of watching video content only on television or in movie theatres are over because everyone is preoccupied with numerous internet platforms. The creation and distribution of films, feature films, documentaries, and web series have all been added to over-the-top platforms, commonly known as OTT platform services. Over-the-top platforms originally served as content hosting platforms. India has seen a marked rise in the consumption of video content over the past several years thanks to these sizable online platforms. There are no laws or regulations controlling OTT platforms in India because they are a new kind of entertainment. These platforms offer a variety of contents and provide content recommendations based upon your previous engagements with the site using ai algorithms. The majority of platforms that are entirely for-profit offer some of their material for free while also charging a monthly subscription price for exclusive prime video.<sup>2</sup>The members to this contract must adhere to certain rules about the online service that

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<sup>2</sup>ANUBHOOTI SAW, *Censorship and OTT Platforms: Critical Analysis*, LATESTLAW.COM, (JULY. 07, 2021), <https://www.latestlaws.com/articles/censorship-and-ott-platforms-critical-analysis>, (last visited on Nov 04, 2022)

is offered. Online streaming services occasionally feature offensive content like vulgarity, nudity, violence, and uncensored video.

For everyone to feel comfortable and accepted in our society, they need different kinds of freedom or forms of liberty. The freedom to receive and seek material unrestrictedly is referred to as intellectual freedom. The first type of censorship is the prohibition of informational resources that are thought to be harmful or likely to spark a contentious public discussion in our local community, country, or even overseas.

### **Controversies are being sparked by OTT platforms**

In the recent past, there has been a tremendous increase in the number of OTT platforms (local and international) launched in India to satisfy to the diversified sensibilities of the Indian audience. This has made India the fastest growing OTT market in the world, but it has also caused a great deal of controversy, with many Indian and foreign webseries being dragged into conflicts over issues like pornography, defamation, insulting religious sentiments, etc. Concern on the part of the authorities grew after multiple complaints of obscenity and disrespect for religion were made. Web series have faced criticism for their gruesome depictions of bloodshed, There were requests to prohibit Netflix and Amazon Prime due to allegations that they offended people's religious sensibilities.

Concerns about a movie or web series plot, degrading a culture, the use of inappropriate language, the portrayal of a particular region, or overuse of sexual content are frequently raised. Countless lawsuits have been brought against various shows on the Ott platforms. A lawsuit was brought against the well-known programme Mirzapur on the grounds that it was tarnishing the reputation of the real place. This criticism was largely meant to draw attention to the fact that while this regulation may limit the creative freedom of filmmakers, it may also be useful in limiting the types of content that kids should be safeguarded from<sup>3</sup>. The John Oliver show on Hotstar<sup>4</sup>, where he sharply insulted Narendra Modi and CAA, was another problem with OTTs. Hotstar afterward blocked the show. Additionally, the government has put pressure on businesses to create a committee that would decide whether or not to ban

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<sup>3</sup>Ritesh Sidhwani And Another vs State Of U.P. And Others

<sup>4</sup>JOHN OLIVER CRITICISES HOTSTAR FOR CENSORING HIS SHOW'S EPISODE ON MODI, THE WIRE, (MAR. 09, 2020), <https://thewire.in/media/john-oliver-hotstar-censorship-narendra-modi-episode>, (last visited on Nov. 05, 2022)

content that offends religious sensibilities, violates court orders, and encourages violence against the state, among other things. Yet another very famous web-series, Sacred Games<sup>5</sup>, received criticism for including dubious statements regarding Rajeev Gandhi and the Bofors scandal. Viewers harshly criticized it. However, Sacred Games, the first Netflix original series from India, was not banned as a result of the criticism. The famous Amazon Prime web-series named “Tandav”, Ashram, Patal Lok, A suitable created a havoc across the nation, there was a demand to ban these shows because of hurting sentiments of people.

Also, screen addiction and excessive internet use can result in a range of psychological problems. Children and teenagers who are under the age of 18 may face another problem. We are all conscious that some of the broadcast content is inappropriate for children and may harm their mental health. Parents find it challenging to forewarn or stop their children from viewing material that is unsuitable for their age group since teenagers are inherently more attracted in what they observe adults doing.

Censorship and self-regulation are yet another area where the government and OTT applications disagree. Concerns about censorship were raised by cases brought out involving obscenity and violations of peoples' religious beliefs. There is a large population which prefers to see the original stuff than have half of it censored. They like and value the creator's effort of respect.<sup>6</sup>

The online streaming market in India has become risky and controversial. The Information and Technology department is the main regulatory authority for online content. The Government of India Rule, 1961, which gives the Ministry of Electronic and Information Technology (MEITY) administrative authority, governs its administration.

The copyright, trademark, intellectual property right, IT act, IPC, Protection of Children from Sexual Offences Act, 2012 they seek to preserve and safeguard the creative freedom of OTT content providers as well as the interests of consumers consuming content of their own choice.

## **DIGITAL CONTENT COMPLAINT COUNCIL (DCCC)**

The discussion of content control on OTT platforms has India at its centre. Online obscenity has caused controversy in the nation and raised more questions than it has resolved, as

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<sup>5</sup> Nikhil Bhalla v. Union of India, W.P. (C) No. 7123/2018.

<sup>6</sup>LATEST SELF-REGULATION CODE FOR STREAMING SERVICES IN INDIA RAISES TROUBLING QUESTIONS, THE WIRE <https://thewire.in/government/online-video-streaming-self-regulation-code> (last visited Nov 07, 2022)

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evidenced by the latest call for legislation enacting OTT platform and web channel control to remove pornographic content. The media and entertainment scene will change as a result of the legislation in this area. The Ministry of Information and Broadcasting has approved a guideline for self-regulation for online video streaming platforms that was created by the Internet and Mobile Association of India (IAMAI). The Digital Content Complaint Council, an industry organization, will be established as a result of the Internet and Mobile Association of India's adoption of a new material code to regulate content on online streaming platforms (DCCC)<sup>7</sup>. The code forbids several materials that deal with child pornography, terrorist acts, and contempt for national symbols. It requested that the platform owners categorize and arrange the content in accordance with the audiences or viewers of various ages. A guiding statement that is displayed on the platform display as a content descriptor, as well as content that is age-appropriate for minors, is also necessary for identifying the type of content.

A number of items that discuss child pornography, terrorism, and disrespect for national symbols are prohibited by the code. The platform owners were tasked with categorizing and organizing the content in accordance with the consumers or viewers of varied ages. It is also required to identify the sort of content by using a guiding statement that is posted on the platform as a content descriptor and content that is suitable for minors<sup>8</sup>.

### **Global Viewpoint**

Regulating agencies are in place in nations like Singapore and the UK to keep an eye on OTT sites. In Singapore, service providers are required to include explicit content that includes aspects like violence, drugs, sex, and other explicit material.

The OTT platforms are examined just like any other public service broadcaster in the UK, though. Whereas in Turkey, there is a licensing system in place that grants OTT platforms a 10-year license. There are stringent laws in nations like Saudi Arabia, Turkey, and Indonesia. They want the government to have unlimited authority. Netflix is among the OTT services that have been blocked. The Broadcasting Services Act, 1992, which has specific criteria, a

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<sup>7</sup> Exclusive: IAMAI's new code for online content streaming sets up a self-regulatory body, incorporates penalties, <https://www.medianama.com/2020/02/223-iamai-content-code-dccc/> (last visited Nov. 07 2022).

<sup>8</sup> Majority of Indians Feel Censorship Should Be Mandatory for OTT Platforms, <https://inc42.com/buzz/majority-of-indians-feel-censorship-should-be-mandatory-for-ott-platforms/> (last visited Nov 8, 2022).

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complaint procedure, and a "refused classification" to be forbidden, regulates content in Australia and other nations where OTT is still being controlled. Australia has an "e-Safety Commissioner" for digital media.

### **OTT platform and Freedom of Speech and Expression**

The government prefers OTT Applications and on-demand entertainment platforms like Netflix, Amazon Prime, Hotstar, and other apps to self-regulate the content transmitted online. The government supports the freedom of creation and refuses to restrict these apps<sup>9</sup>. Currently, a body that controls the content offered by OTT platforms is necessary. According to a recent report, MEITY has declined to enact censorship but instead intends to create a self-regulatory organisation. To cope with the content offered by these platforms and prevent the enforcement of the Government's own restrictions on them, Hotstar, Sony Liv, Jio, and Eros founded the Digital Curated Content Complaint Council (DCCCC) last year.

However, the majority of OTT services, including Netflix, Amazon Prime, Alt Balaji, MX Player, Zee, etc., oppose this action since it is akin to the Broadcast Content Complaints Council (BCCC), a self-regulatory body for entertainment channels that do not air news. . They believe that their right to free speech under Article 19(1)(a) (freedom of speech and expression) will be breached due to the indistinct boundaries between a broadcasting channel and an OTT platform. OTT platforms violate Article 19(2) of the Constitution<sup>10</sup>, which allows for reasonable restrictions on freedom of speech and expression when doing so serves the interests of national security, public safety, morality, decency, or other factors. In accordance with Section 69A of the IT Act<sup>11</sup>, the Government may delete any content that is undesirable and/or jeopardizes India's national security. The government is well aware that censoring digital content is impracticable because the entire business and inventive model of OTT applications and on-demand streaming platforms is completely different from that of movies and television programs. Government censorship of the content offered by these platforms was requested.

The target audience wants to consume the content in its original, unadulterated form.

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<sup>9</sup> Govt. refuses to censor Netflix, Amazon Prime, Hotstar; Self-Regulation will be supported! <https://trak.in/tags/business/2019/11/16/govt-refuses-to-censor-netflix-amazon-prime-hotstar-self-regulation-will-be-supported/> (last visited Nov 08, 2022).

<sup>10</sup>INDIA CONST. art. 19, cl. 1

The Delhi High Court received a Public Interest Litigation regarding the prohibition of Netflix and Amazon Prime. An argument was made for distinct regulations to control material on internet streaming platforms in a public interest lawsuit brought by the Justice for Rights Foundation before the Delhi High Court. The content on these apps is "inappropriate, sexually explicit, religiously forbidden, and legally restricted," according to the petition submitted<sup>12</sup>.

The honourable court ruled that there is already a sufficient amount of stringent legislation in place that there is no need for a separate provision for additional guidance<sup>13</sup>. According to the court, the Information and Technology Act of 2000 already exists and provides sufficient procedural safeguards, thus there is no need to reintroduce any advice, statutory provision, or regulation for the stated purpose. The Information and Technology Act of 2000 allows for action to be done if broadcasters or organisations engage in any banned behaviour over the internet or in an online platform. The Information Technology Act of 2000 specifically prohibits the publication or transmission of any pornographic or sexually explicit material as well as any material that shows youngsters engaging in such behaviour under section 67, 67A and 67B. Everyone is granted the freedom to speak and express themselves under Article 19(1) of our Constitution, but this freedom is not unrestricted and is subject to limitations (in the interests of India's sovereignty and integrity, the security of the State, friendly relations with foreign States, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to commit an offence under Article 19(2)<sup>14</sup>.

### **OTT growing influence and IPR**

The legal concept of "intellectual property rights" grants some rights to authors of creative works (IPRs). Examples of intellectual property rights that confer property rights are patents, copyrights, and trademarks. The Copyright Act of 1957 is one of many Indian laws that protects creators' intellectual property rights. The protection of original works of authorship that are fixed in a tangible expressive medium is known as copyright protection. The branding and names that are representative of a certain good or service are what trademarks are all about. There are various components in streaming services that need to be carefully

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<sup>12</sup>Netflix, Amazon Prime face ban in India – Delhi HC will hear PIL against vulgar content, <https://trak.in/tags/business/2018/10/16/netflix-amazon-prime-face-ban-in-india-delhi-hc-will-hear-pil-against-vulgar-content/> (last visited on Nov 06, 2022).

<sup>13</sup> Justice for Rights Foundation v. Union of India, W.P. (C) 11164/2018.

<sup>14</sup>INDIAN CONST. art.19 cl.2

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examined. Since there are no special regulatory agencies or regulations that can apply to OTT content, anyone wishing to remove it off the platform must depend on already-existing legal mechanisms offered by other related laws. Making an infringing copy is defined as such in Section 2(m) of the Copyright Act of 1957. The Copyright Act's Section 14 explains what copyright is and outlines the many exclusive rights that a copyright owner has, including the right to reproduce and store the work. Since these platforms essentially hold the intellectual property of the original material in their streaming services, there are prospects for future licencing and revenue generation. The copyright law specifically aims to achieve the goal of granting ownership of the original creation to its creators and requiring that the public derive their right to information. This is because copyright infringement is incredibly simple to do on the internet, which can be viewed as a media without boundaries. Most internet streaming services have historically relied on obtaining content licences from major television and film studios to support their business models. This would enable these platforms to quickly assemble a sizable content library in order to draw subscribers and earn money. Therefore, it is not shocking that internet platforms have begun to make investments in creating their own content. High-quality original content production is costly, as the aforementioned examples show, but it allows the platform to provide an ever-more-exclusive and distinctive offering. The best new and original content becomes the new point of differentiation throughout the market as subscription rates become competitive across the various platforms. Self-produced material therefore has the potential to be less expensive in the long run. Possessing the fundamental intellectual property rights allows for the possibility of future cash streams from licencing, despite the higher initial cost.

### **Legal protections concerning OTT platforms**

Due to the fact that the Cinematograph Act of 1952 only applies to movies intended for theatrical release, movies that are broadcast online do not fall under its requirements. OTT platforms enjoyed complete freedom in contrast to traditional cinema, which resulted in many instances where a vast number of grievances were lodged on grounds of immorality, hurting of religious sentiments, pornographic material, etc., hence the need of the hour to regulate this space. Any certifications of a film by the CBFC do not apply to the contents streaming live on OTT platforms. The existing laws in effect in India addressing the content of OTT platforms:

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1. **Indian Penal Code, 1860:** Any person who indulges in the activities of selling and distributing any work of literature which is obscene is a punishable offence under Section 293. Any person who has the intention of outraging the religious sentiments with malice is punishable offence under Section 295A, releasing of defamatory content is punishable under Section 499 and if/and when any person insults the modesty of a woman is punishable under Section 354<sup>15</sup>.
2. **The POSH Act (Protection of Children from Sexual Offences):** to safeguard kids from crimes committed both offline and online. One of the most important pieces of legislation that guarantees children's protection from numerous crimes like sexual assault, other forms of harassment, and cyber pornography is this one.
3. **The Indecent Representation of Women (Prevention) Act of 1986:** expressly forbids the degrading depiction of women in print, film, television, and online media.
4. **Information Technology Act, 2000:** Section 67-A of the act punishes publishing or transmitting sexually explicit acts, etc. in electronic form. Section 67-B of the act punishes publishing or transmitting children in sexual acts, etc. in electronic form. Section 69A of the act gives the government the authority to restrict access to certain materials for public consumption.
5. **“IT Rules” Guidelines for Intermediaries and the Digital Media Ethics Code, 2021 -** The Government of India released this piece of legislation that lays out the rules for the intermediaries to follow, which includes the OTT platforms under Information Technology Act, after the Ministry of Information and Broadcasting (MIB) discussed and consulted with various stakeholders regarding any form of regulation of OTT platforms to make the sector more efficient. The five age-based groups that the OTT platforms must self-categorize into are U (universal), U/A (7 years), U/A (13 years), U/A (16 years), and A (adult). OTT platforms need to offer parental lock. The Press Council of India's Norms of Journalistic Conduct and the Cable Television Networks Regulation Act's Program Code must both be followed by the digital media. to create a three-tiered grievance resolution process Additionally, it calls for the recruitment of an Indian-based grievance officer who will respond to complaints within 15 days. Additionally, there must be a separate self-regulatory organisation of publishers

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<sup>15</sup>RATANLAL AND DHIRAJLAL, INDIAN PENAL CODE, 1860, 35<sup>TH</sup> EDITION, 2021, LEXIS NEXIS

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made up of no more than two former Supreme Court or High Court judges, one eminent individual, or both<sup>16</sup>.

6. **The Digital India Act** -Digital India Act To Monitor OTT and Social Media Platforms<sup>17</sup>By the winter session of Parliament, Ministry of Electronics and IT (MeitY) hopes to update the current IT Act 2000.The Digital India Act would cover web3 applications like the metaverse and blockchain in addition to social media and OTT platforms and online apps. It is stated that the proposed Digital India Act will oversee regulations governing e-commerce and cybercrime. Additionally, the DIA will be responsible for any content policy violations by OTT platforms like Netflix and Amazon Prime, including distributing false information or inciting violence. Everything digital, including social media platforms, OTT platforms, online apps, and web applications like the metaverse and blockchain, would be covered by the Digital India Act.

### **Crime and Violence based Webseries/Movie – Are they matter of Concern**

Many web-series are showing tremendous amount of bloodshed and crime.The producers and creators argue that they are depicting truth and that no one was harmed during production. The web-series are either inspired by real events or are based on them. Young people want to view reality as it is, without any filters.The general audience today is looking for information that exposes the social truth, addresses sociopolitical issues, offers geographical variety, and, most importantly, doesn't offend anyone group of people. These regulatory holes and ambiguities are thus concerning.“Good literature and content are all the audience's responsibility, not the author's. You can choose to purchase unhealthy or nutritious food in the market. The fact that you prefer the latter does not necessarily mean that junk food businesses will stop selling their goods. The same is true with OTT.A censor board should be composed of qualified psychiatrists, clinical psychologists, and sociologists who can

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<sup>16</sup>MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, IT (INTERMEDIARIES GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021,G.S.R. 139(E).(February, 25, 2021) , <https://mib.gov.in/sites/default/files/IT%20Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20English.pdf>, (last visited on Nov. 7 2022)

<sup>17</sup>DIGITAL INDIA ACT TO MONITOR OTT AND SOCIAL MEDIA PLATFORMS, SAYS REPORT, ( AUGUST, 17,2022) THE QUINT, <https://www.thequint.com/tech-and-auto/tech-news/digital-india-act-to-monitor-streaming-social-mediaplatformsreport#:~:text=For%20OTT%20platforms%2C%20the%20Digital,and%20above%20the%20Censor%20Board.&text=The%20upcoming%20Digital%20India%20Act,development%20told%20The%20Economic%20Times>. (last visited on 9 Nov, 2022)

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determine what material is beneficial to people's emotional and mental health”<sup>18</sup>. A content warning remark is added for graphic images that may cause trauma scenarios; these images are often found in action movies or documentaries regarding mental health. A content warning statement is not censorship; rather, it informs prospective viewers of what to anticipate from the movie. Since there are no objective restrictions and instead relies heavily on the viewer's moral sensibility, which is highly subjective. Parents and other adults at home are the ones who sign up for packages on these OTT platforms, and they are the ones who ultimately decide what is suitable for their kids to watch as well as what isn't.

### Conclusion

It should be emphasised that the present IT Act was passed about 22 years ago, and the Internet has undergone significant transformation since then. When the IT Act was first enacted into law, Google was only a modest search engine, and other tech titans like Meta and Twitter did not exist. Since there were no notions for digital financial crimes or other types of digital crimes, combating these crimes today is difficult. Popular platforms like SonyLIV, Hotstar, Zee 5, Amazon Prime, Netflix, Voot and others have made steps to establish a new Digital Content Complaint Council (DCCC). The Digital Content Complaint Council, which unites the majority of online streaming services, has established a method for complaint redress (DCCC). Customers can go to the DCCC if the platform owner is not helpful in resolving their complaints. Both the Indian government and its citizens believe that censorship is necessary. Through an amendment to Section 79 of the Information Technology Act of 2000, the government advocated internet restriction. Censorship is necessary for the internet streaming content seen on services like Netflix, Amazon Prime, Voot, and similar ones. The platforms must be able to self-regulate how online information is streamed. For content producers, there are also some legal considerations. Regardless of copyright, trademark, and other intellectual property rights, along with privacy rights and more, they must maintain certain features in the open. Along with creators, there are also rules for directors who are involved in producing content for the general audience. Concerns range from privacy to the right to publicity. An individual's name cannot be used for profit-making or commercial purposes.

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<sup>18</sup>Syed Iba Fatima, Is ottgoing to far with gory content?, The Hindustan Times, (OCTOBER 23, 2022), <https://www.hindustantimes.com/entertainment/web-series/is-ott-going-too-far-with-gory-content-101666518843989.html>

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More crucially, the Digital India Act would establish protections for women's and children's safety as well as rules to stop the dissemination of false information. In order to prevent the spread of false information, the Digital India Act will also monitor the material on OTT services like Netflix and Amazon Prime. In this regard, the government will also release a set of "content standards" for OTT services. Engagement between the government and the owners of OTT platforms is necessary to develop a system that preserves the fine balance amid creativity and regulation. Working together, the government and OTT platforms may put a stop to this problem once and for all. OTT platforms are currently in their infancy around the world. When creating legislation, India must make careful to address the requirements of the populace.

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