

# Regulatory and tax treatment of OTTs in Africa

CONTINENTAL WORKSHOP: ICT harmonization in Africa



Alice Munyua  
Policy Advisor, Africa  
Mozilla

# Introduction

- Additional ICT sector taxes are being discussed across the region. End-user consumption taxes for social media, IP communication, general data use, etc
- Demands to subject OTT providers to ICT sector-specific regulations frequently raised
- Taxes and regulations justified by a misconceived understanding of the internet value chain and the role of OTTs.

AUC and Mozilla conducted an analysis and evaluation of taxation/regulation regimes across the region based on available evidence and a select number of case studies from around the world.

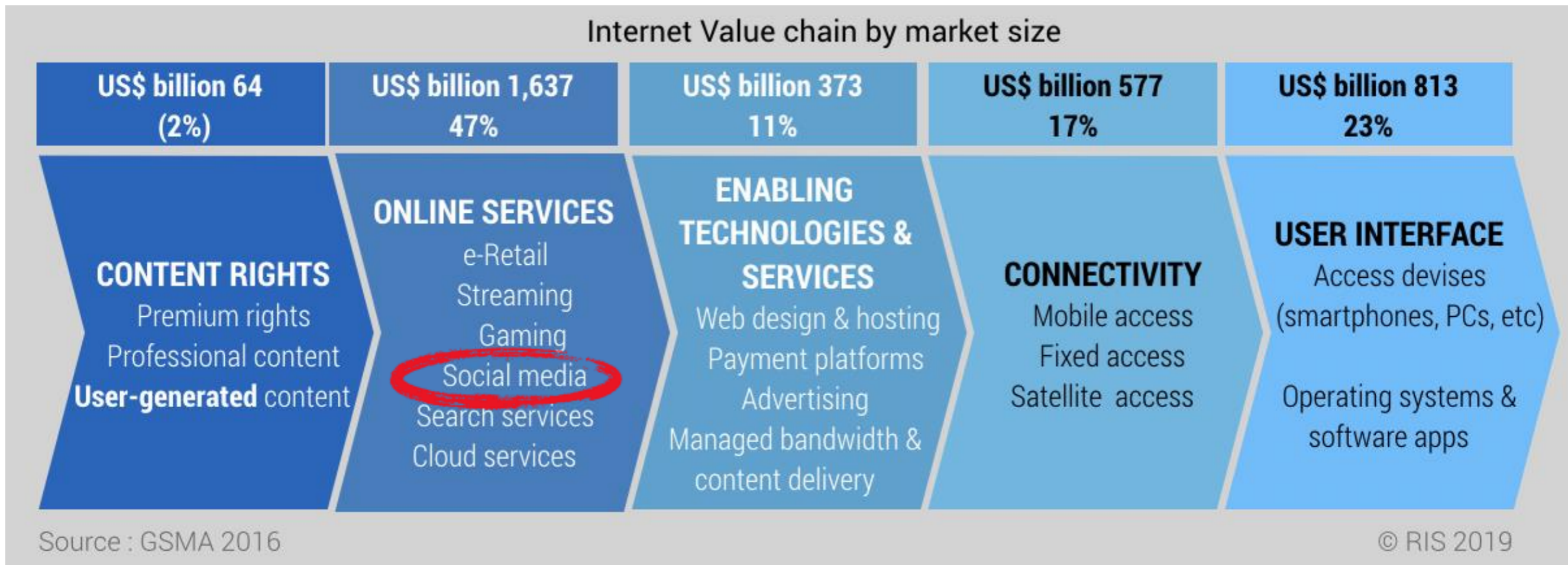
The study found:

1. Lack of a clear definition, makes evidence-based discussion difficult. Further exacerbated by misunderstanding of the impact of OTTs on the Internet Value Chain.
1. Social media taxes has a negative impact on all segments of the value chain
2. Rise of OTTs has coincided with changing business model for MNOs. Circuit-switched to packet-switched networks. Data revenues replacing 'traditional' voice and SMS revenues. Investments to create faster data networks, data demand driven by user-generated content/social media.
3. Obstructing OTTs, specifically social media, would reduce demand for data and data revenues.
4. OTT providers not subject to telecommunication regulation. Some regulators assessing the impact of OTTs on mobile telecommunication revenues in response to complaints.
5. OTTs complement not substitute for voice and SMS due to issues such as interoperability and quality of service. OTTs may act as substitutes in the future.
6. No cost/benefit analysis. No rigorous impact assessment on the impact of these taxes. Processes for arriving at new regimes opaque, no public consultation.

# OTT related challenges and potential approaches and fora to resolve them

Claims		Potential Resolution	Primary Fora
OTTs harm the ICT Sector	MNO's lose revenues	Analyse overall revenues not segment revenues of MNOs	Telecommunication regulators
	MNOs have to pay local taxes while OTTs are effectively exempt	Understand each segment of the Internet value chain with its specific investment and revenue models	
	OTTs benefit from MNO investment but don't pay for it.		
Broadcasting Sector	OTTs undermine broadcasting standards	Subject pay TV streaming services to national broadcasting standards	Broadcasting regulator
	Speed of disinformation	Increased emphasis on information literacy in education	Ministry of education
	Streaming services to not pay local taxes and thus disadvantage pay TV providers that are registered in the country	Reviewing GATTs commitments and tax treatment of export of services	World Trade Organisation
Multilateral companies ship profits to countries where they pay the least Corporate Income Tax	Closing loopholes that allow multinational companies to shift profits where taxes are lowest.		

# The Internet Value Chain



- Social media such as Facebook and Whatsapp are applications that run over the public internet. So are streaming services such as Netflix.
- While online services made up the bulk of value in the value chain (47%), social media and communication applications make up less than 3.4% of the total online services, USD 55 billion. The main value contributors are e-retailers (GSMA, 2016a).

# Example laws, rules and regulations and corresponding institutions shaping the Internet Value Chain

Internet Value Chain	Institutions	Laws	Other
Content Rights	<ul style="list-style-type: none"> <li>Broadcasting regulator</li> <li>Film and Publication Board</li> <li>Registration of copyright</li> <li>Courts</li> <li>Competition Commission</li> </ul>	<ul style="list-style-type: none"> <li>Broadcasting Code</li> <li>Patent/copy right/trademark laws</li> </ul>	Self regulation based on company policies
Online services	<ul style="list-style-type: none"> <li>Courts</li> <li>Competition Commission</li> <li>Consumer protection agencies</li> </ul>	<ul style="list-style-type: none"> <li>Consumer protection law</li> <li>Hate speech laws</li> <li>Privacy laws</li> <li>Cyber security laws</li> <li>Patent/copy right/trademark laws</li> <li>Gambling legislation</li> </ul>	
Enabling technologies & services	<ul style="list-style-type: none"> <li>Courts</li> <li>Competition Commission</li> </ul>	<ul style="list-style-type: none"> <li>Privacy laws</li> <li>Cyber security laws</li> <li>Financial sector regulation &amp; laws</li> </ul>	
Connectivity	<ul style="list-style-type: none"> <li>Telecommunication regulator</li> <li>Communications, science &amp; technology agencies</li> <li>Courts</li> <li>Competition Commission</li> <li>Local authorities &amp; municipalities</li> </ul>	Communications laws	
User interface	<ul style="list-style-type: none"> <li>Telecommunication regulator</li> <li>Consumer protection agencies</li> </ul>	<ul style="list-style-type: none"> <li>Consumer protection laws</li> <li>Type approval from telecom regulation</li> </ul>	

# ICT sector taxes & regulatory fees

## A. ICT Sector taxes include

- Share of operator revenues (Niger eg)
- Excise duties on airtime (Zambia, Niger, Uganda eg)
- End user tax on OTT use (Uganda eg)
- Mobile money taxes on agent fees (Uganda, Kenya eg)
- Mobile money taxes on transaction value (Uganda eg)

## B. Regulatory Fees

- UAS Fess
- Spectrum Fees
- Regulator fee as share of turnover
- Numbering fees
- R&D fess (Niger eg)

# Unintended consequences of ICT sector taxes and regulatory fees on the Internet value chain

Internet Value Chain	Consequence of lower Internet adoption as a result of taxes
Content Rights	Less revenue for local content rights
Online services	Fewer online sales
Enabling technologies & services	Fewer incentives to move CDNs to the edge of the network
Connectivity	Lower revenues for MNOs and ISPs and thus lower investment incentives
User interface	Potentially lower sales of smartphones



# Tax Best Practice Principles

---

- **Broad-based:** A broad base of taxation means that a lower tax rate is required to raise the same revenue, while sector specific taxes distort incentives and require higher levels of taxation to get the same revenue.
- **Take into account externalities:** Sector specific taxes should be imposed on activities with negative externalities where the objective is to lower consumption, such as alcohol or tobacco, and should not be imposed on sectors with positive externalities, such as telecoms.
- **Simple and enforceable:** Taxes should be clear, easy to understand, and predictable, thereby reducing investor uncertainty and ensuring better compliance.
- **Incentives for competition and investment should be unaffected:** Higher taxes for one sector in comparison to the rest of the economy could reduce investment in that sector.
- **Progressive not regressive:** The tax rate should increase as the taxable amount increases. Specific value taxes on small amounts should be avoided because they make the poor pay more.

# Conclusion

- Develop a clear definition of OTTs that allows discussions to address each of the issues in its respective context, ie telecom regulation, broadcasting regulation and taxation, each having typically their own supervisory institution
- Utilize the ICT sector for economic growth and social inclusion
- Unintended consequences to the Internet architecture and the Internet value chain need to be considered when introducing ICT sector taxes
- Taxes should be broad-based and not single out the ICT sector
- Any new taxes must be subject to a detailed economic impact assessment



Thank you!

Alice Munyua  
Policy Advisor, Mozilla  
[amunyua@mozilla.com](mailto:amunyua@mozilla.com)