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TRAI Pre-Consultation Paper on Net Neutrality

1) What should be regarded as the core principles of net neutrality in the Indian context?

“Network neutrality is the principle that all Internet traffic should be treated equally”.^[1] According to Columbia Law School professor Tim Wu, “the best way to explain network neutrality is that a public information network will end up being most useful if all content, sites, and platforms are treated equally”.^[2]

The core principle of Net Neutrality that all TSP’s/Regulators should adhere to is, all data - irrelevant of protocol, OSI Layer or content should be treated equally. This should also take into account the origination of the data and that the TSP should not discriminate based on Network Subscription (2G - GPRS/EDGE/3G - HSDPA/HSPA/4G -LTE). All people should have equal access to all content on the internet.

In the context of India, her people, her TSP’s “and governments should treat all data on the Internet the same, not discriminating or charging differentially by user, content, site, platform, application, type of attached equipment, or mode of communication.”^[3]

^[1]Honan, Matthew (12 February 2008). "[Inside Net Neutrality: Is your ISP filtering content?](#)"

^[2]Wu, Tim. "[Network Neutrality FAQ](#)"

^[3]Tim Wu (2003). "[Network Neutrality, Broadband Discrimination](#)" (PDF).

2) What are the key issues that are required to be considered so that the principles of net neutrality are ensured?

The main issue that should be considered to ensure the core principles of Net Neutrality are kept is:

Discrimination

“Net neutrality is this: If I pay to connect to the Net with a certain quality of service, and you pay to connect with that or greater quality of service, then we can communicate at that level. That’s all. It is up to the ISPs to make sure they interoperate so that that happens.”^[1]

The FCC's Open Internet rules protect your ability to go where you want when you want online. Broadband service providers cannot block or deliberately slow speeds for internet services or apps, create special "fast lanes" for content, or engage in other practices that harm internet openness. The principle is often referred to as "Net Neutrality."^[2]

To summarize, if I have paid to access the internet with 2GB of Data, I should be able to access any and all content (within the context of the law) at the highest quality of service possible and without prejudice up until my 2GB of data usage is depleted.

^[1] [Berners-Lee, Tim](#) (21 June 2006). "Net Neutrality: This is serious".

^[2] <https://www.fcc.gov/consumers/guides/open-internet>

3) What are the reasonable traffic management practices that may need to be followed by TSPs while providing Internet access services and in what manner could these be misused?

Traffic management should be allowed within a TSP Network under relevant circumstances, this can and should include heavily congested area's/BTS/Base Stations/eNode's where the actions of one user can and will affect the ability of other users to access or distribute content or communicate in general.

“However, they should not be used for:

- Blocking: Broadband providers may not block access to lawful content, applications, services or non-harmful devices.
- Throttling: Broadband providers may not deliberately target some lawful internet traffic to be delivered to users more slowly than other traffic.
- Paid prioritization: Broadband providers may not favor some internet traffic in exchange for consideration of any kind — in other words, no "fast lanes." Internet service providers are also banned from prioritizing content and services of their affiliates.

The rules also put in place standards going forward to ensure that ISPs cannot engage in new or different practices—outside those three prohibitions—that would cause similar harms to the open internet.”^[1]

Traffic management tools can be misused in order to generate more revenue through paid prioritization/differential pricing of data services in relation to certain internet destinations. Additionally, discriminating certain types of users (throttling those who download large quantities of legal content) may be interpreted as misuse. Please note that Net Neutrality should apply to all types of data access and communication (Mobile and Fixed).

^[1] <https://www.fcc.gov/consumers/guides/open-internet>

^[2] <https://www.washingtonpost.com/news/the-switch/wp/2015/06/17/att-just-got-hit-with-a-100-million-fine-after-slowing-down-its-unlimited-data/>

4) Are there any other current or potential practices in India that may give rise to concerns about net neutrality?

Currently, our understanding of practices that violate Net Neutrality appear in the Indian Telegraph Act, 1885.

This act discriminates against communication over the Internet, specifically VoIP, but could potentially be interpreted as any sort of data (as all data access is a form of “Communication”) and could potentially be used maliciously against content, platform and application providers operating inside and outside of India.

Please see an example below:

Regulations of the Telecom Regulatory Authority of India (TRAI) require that voice traffic over the enterprise data network and the Public Switched Telephone Network (PSTN) must be strictly separated and no mixing of calls between the two networks can occur for the purpose of toll bypass.

“The following list shows basic scenarios that are restricted (that is, not allowed):

- The call that passes through a PSTN gateway connects directly by using WAN to a VoIP phone or VoIP PSTN gateway in a different geographic location
- If the PSTN gateway is located in India, this remains strictly restricted. If the PSTN is in another country and a VoIP phone is in India and if connection results in revenue loss to Indian telecom service providers, the connection gets considered restricted

The following list gives basic scenarios that are permitted:

- Call directly between two VoIP phones in different geographic locations
- Call from a VoIP phone to a PSTN gateway in the same geographic location
- A call that passes through a PSTN gateway must never connect directly to a VoIP phone or VoIP PSTN gateway in a different site or geographic location (geolocation) through use of IP telephony”^[1]

The above is directly against Net Neutrality, discriminating data in order to preserve the monopoly of the incumbent TSP. This in turn, also prevents smaller companies trying to enter the market using emerging and new technology, which inhibits fair competition.

As a result, this inhibits technological innovation in the telecommunication space. As an example, please look towards nations such as the UAE, where the TSP’s have a complete monopoly on telecommunications and communications infrastructure. There has been no notable innovation due to these issues.

^[1] <https://supportforums.cisco.com/discussion/12531631/trai-india-regulations-regarding-voip>

5) What should be India's policy and/or regulatory approach in dealing with issues relating to net neutrality? Please comment with justifications.

India should take an approach similar to the United Kingdom/Australia and grant the TRAI similar abilities to that of an Ombudsman (an official appointed to investigate individuals' complaints against a company or organization, especially a public authority.)

The Ombudsman role is to act as an intermediary and consumer oriented public body, investigating and creating a legal case against the relevant parties to bring to the Judicial system in order to either obtain a resolution or fine and to provide further investigations to ensure the same does not reoccur.^[1]

As an alternative, the TRAI could be appointed in a similar aspect as the FCC in the US, who have direct authority and Judicial powers against the TSP's in the case of breaking or ignoring the rules of Net Neutrality.

The justification behind either of these policies is to ensure that TSP's do not simply ignore the policies of the TRAI and DOT in regards to Net Neutrality and to ensure that these entities are brought to justice in the case of breaking these regulations.^[2]

^[1] <http://www.ombudsman.sa.gov.au/complaints/what-powers-does-the-ombudsman-have/>

^[2] <http://gizmodo.com/the-fcc-just-won-a-huge-net-neutrality-victory-in-feder-1781954855>

6) What precautions must be taken with respect to the activities of TSPs and content providers to ensure that national security interests are preserved? Please comment with justification.

It is suggested that all OTT operators that offer services in India must sign a declaration that they will submit to the Indian Authorities all relevant and necessary available data pursuant to a court order.

7) What precautions must be taken with respect to the activities of TSPs and content providers to maintain customer privacy? Please comment with justification.

As with current regulations, all Platforms, TSP's, Content Providers and Application's must comply with Personal Data Protection laws. This should be enforceable by the relevant Data Protection Authorities.

As an example, Singapore, has created a commission (Personal Data Protection Commission) who regulate and enforce this space.

With the latest regulations, the PDPC now has the power to fine entities up to SGD\$1,000,000 for any breach of personal Data.

Offences Related to the PDPC's Powers of Investigation

An organisation or a person is also guilty of an offence if any of the following is committed:

- If the organization or person with an intent to evade a request for access or correction under the Act, disposes of, alters, falsifies, conceals or destroys, or directs another person to dispose of, alter, falsify, conceal or destroy, a record containing –
 - i. Personal data; or
 - ii. Information about the collection, use or disclosure of personal data
- If the organization or person obstructs the PDPC or an authorized officer in the performance of their duties or exercise of their powers under the Act;
- If the organization or person knowingly or recklessly makes a false statement to the PDPC, or knowingly misleads or attempts to mislead the PDPC, in the course of the performance of its duties or powers under the Act; and
- If a person makes a request for access or correction under the Act to obtain access to or to change the personal data of another individual without that individual's authority.^[1]

^[1]<https://www.pdpc.gov.sg/legislation-and-guidelines/enforcement-of-the-act>

8) What further issues should be considered for a comprehensive policy framework for defining the relationship between TSPs and OTT content providers?

In relation to net neutrality core principles, it is suggested that with the implementation of full net neutrality, the governing bodies should encourage collaboration between OTTs and TSPs but not regulate these relationships and allow market dynamics to encourage innovation that will promote economic development based on operational and technical fit for purpose as adopted by India consumers.

This is in line with common practice and the direction taken by the FCC and EU.