



WORLD WIDE WEB
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Net Neutrality in India

*A submission to the Department of
Telecommunications, Ministry of Communications
and Information Technology*

1 May 2015



1. Introduction and Background

India is a case study in the power and potential of a free, neutral and open Web. Positive steps in recent years such as Digital India and the Right to Information Act have brought benefits to millions of Indians, while internet penetration rates are rising fast. We have no doubt that the current debate over net neutrality and zero-rating will reverberate around the world, and India - already estimated to have the second-highest number of internet users in the world - now has a chance to lead the way. Consequently, the World Wide Web Foundation (Web Foundation) is grateful for the opportunity to make a submission on this important topic.

The Web Foundation was established in 2009 by Web inventor Sir Tim Berners-Lee. We believe that the Web is a public good and that access is a basic right. Our work focuses on securing and enhancing the three rights of access, voice and participation. Our team of more than 30 experts comprises around 20 different nationalities (many from the Global South), working from four hubs around the world. We work in close partnership with over 150 organisations to reach into around 60 countries. Our annual Web Index - a study covering 86 countries - produced the world's first ever overview of Net Neutrality in 2014¹.

¹ The Web Index, World Wide Web Foundation, 2014. http://thewebindex.org/report/#3.3.1_net_neutrality



2. Net Neutrality: An Overview

The Web Foundation's view on net neutrality in India is not different from that of its previously expressed views on the same subject in other geographies such as the United States or in the European Union.² Namely, we believe that each 'packet' of data transmitted on the Web must be treated equally by the entire network, without censorship or prioritisation for any political or business reason. This applies equally to negative measures (blocking or throttling content or services) or positive incentivisation (paid prioritisation of data or zero rating of specific content or services).

Why? We know that a neutral, non-discriminatory internet is fundamental to economic growth and social progress, and that a number of important principles are at stake. Two are the most important are:

- **Freedom of Speech and Expression:** Article 19 of the Indian Constitution guarantees all citizens of India the right to freedom of speech and expression. This applies online as well as offline. Any restrictions placed on access to platforms of data are tantamount to a restriction of freedom of expression.
- **Citizen-focused markets:** Tampering with net neutrality could undermine the competitive functioning of both the telecoms and content provider markets, resulting in a poorer internet experience for citizens. Allowing paid prioritisation could lead to cartel-type collusion between telcos and OTTs, squeezing out smaller players as they try to enter the market and stifling innovation. The success of Digital India will depend heavily on efficiently functioning broadband markets that deliver high-speed internet access at affordable prices to all Indians. (We will deal with the complex issues surrounding zero-rating in a separate section).

It is worth noting here that research commissioned by the Dutch government³ in June 2013 showed that net neutrality stimulates a virtuous circle between more competition, lower prices, higher connectivity and greater innovation, benefiting all citizens, as well as internet companies large and small. Of course, proliferation of affordable telecom infrastructure is required to unlock these benefits.

² See, for instance, Sir Tim Berners-Lee's blog on the topic for the European Commission, available at: http://ec.europa.eu/commission/2014-2019/ansip/blog/guest-blog-sir-tim-berners-lee-founding-director-world-wide-web-foundation_en

³ 'The Innovation Enhancing Effects of Network Neutrality', SEO Economic Research (2013). Available via: http://www.seo.nl/uploads/media/2013-33_The_innovation-enhancing_effects_of_network_neutrality.pdf



3. The Zero-Rating Debate

The issues around positive price discrimination, commonly known as “zero-rating”, are complex, with debate hindered by the failure of mobile operators and content providers to release sufficient data on such arrangements. Based on the available data however, the Web Foundation cannot support zero-rating when it is limited to specific services or networks.

Note that the Web Foundation is not opposed to the provision of “free data” per se. Rather - our opposition is to limiting users of this data to a specific bundle of services - with the decision as to which services will be free determined by he who has the deepest pockets, or the closest links to those putting together the platform in question. Under current models - where zero-rating is restricted to specific networks, sites or services - we believe that there is a strong risk that this practice will have anti-competitive impacts, stifling innovation and undermining the fundamental principles of openness and freedom that underpins the Web’s ability to act as an engine for socio-economic progress.

Barbara van Schewick of Stanford Law School has written eloquently about the dangers of allowing network providers to decide how or when to prioritise traffic in a recent paper. She says: *“Network providers’ decisions about whether, when and how to engage in discrimination will not necessarily result in socially desired outcomes. Network providers are not beneficial stewards of the Internet platform. They are private actors that pursue their private interests. Network providers’ private interests often differ from users’ interests, and even if they do not, network providers do not know what exactly users want. Network providers’ private interests and the public interests with respect to the evolution of the Internet diverge as well.”*⁴

Of course, we understand the powerful attraction of zero-rating to bring millions online, fast. Furthermore, we recognise and commend India’s efforts to connect all her citizens to the life-changing potential of the Web. However, we believe that alternative policy options to site- or service-specific zero-rating exist, which offer the same benefits without the severe risks.

These include:

- A free allowance of mobile data for each citizen, funded through a universal service fund (a practice that is [currently being rolled out in neighbouring Sri Lanka](#))
- Enhanced investment in public wifi access points, anchored around public access facilities such as libraries, hospitals, schools or mixed use entrepreneurial areas, a

⁴ Barbara van Schewick, "Network Neutrality and Quality of Service: What a Non-Discrimination Rule Should Look Like," Public Law and Legal Theory Working Paper Series Research Paper No. 2459568; John M. Olin Program in Law and Economics Working Paper Series Paper No. 462; Forthcoming, Stanford Law Review, Volume 67, Issue 1 (2015), <http://cyberlaw.stanford.edu/downloads/20120611-NetworkNeutrality.pdf>.



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practice which is a cornerstone of many national broadband plans, and [we note](#) is being pursued in India too.



4. What about traffic management? Is any type of traffic discrimination reasonable?

There is a clear difference between paid prioritisation or zero-rating as opposed to reasonable network management designed to maintain, protect, and ensure the efficient operation of the network. Such reasonable network management should be carried out under rules that permit only application-agnostic interventions, resulting in as little discrimination as possible. Traffic discrimination based on application-specific criteria should not be permitted.

Application-agnostic traffic management would allow providers to give an end-user customer a larger share of available bandwidth during periods of congestion, if that person has paid for a higher tier of service. It would not allow providers to speed up or throttle a specific application or class of applications (online video, for example). It is important here that it is the end user who makes a choice to pay for all of their data to be delivered faster.

Application-agnostic network management techniques of course allow network providers to charge for different Quality of Service packages. However, this solution creates an incentive for network providers to degrade the baseline Quality of Service, and therefore requires regulatory agencies to establish, monitor and enforce minimum QoS standards independently of providers' advertised speeds.

The measures outlined above are important to ensure the freedom to share, receive and transmit information by any party, unencumbered by political or business ties. It is this openness that makes the Web the powerful engine of economic and social progress it is today.

The only case in immediate which application-specific traffic management should be permitted is in that of a genuine national emergency, for which ministerial approval must be sought, with reasons for traffic management publicly and transparently communicated within 24 hours of the decision. Such measures should be strictly temporary in nature. Zero-rating or other prioritisation of specific government sites on an ongoing basis is problematic as it is highly vulnerable to political abuse and could have the unintended consequence of stifling criticism and inhibiting transparency.



5. How might India address these challenges?

It is clear that that country is already on the right path to hear the voices of all stakeholders, crucially including many of her citizens' voices. The inputs from the TRAI consultation process should be combined with the inputs received during this consultation process. We further urge that after this consultation period, the government should hold online and offline public discussions across India, accessible to users, voluntary organisations, businesses and startups, before making any recommendations.

Once these discussions have been concluded, a clear and strongly enforced legal and regulatory regime is the only answer. It will be necessary for India should pass a clear law on this matter. Should the decision be to enshrine net neutrality into law (as we very much hope it will be), India will be amongst the world's first countries to do this, joining Chile and the Netherlands, to name two examples.



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