



Response to the Telecom Regulatory Authority of India (TRAI) [call for comments](#) on its Consultation Paper on Net Neutrality

Submitted by the Digital Empowerment Foundation and World Wide Web Foundation

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Q.1 What could be the principles for ensuring nondiscriminatory access to content on the Internet, in the Indian context? [See Chapter 4]

We thank the Telecommunications Regulatory Authority of India for the opportunity to submit comments on the issue of net neutrality in India.

The [Web Foundation](#) (WF) and [Digital Empowerment Foundation](#) (DEF) are firm believers in and work with partners around the world towards an open and non-discriminatory Internet. We maintain that net neutrality is fundamental to ensure equitable access to the Internet, as well as to underpinning innovation, competition, and new business formation in the ICT sector. Based on this position both the [WF](#) and the [DEF](#) submitted comments during the TRAI's pre-consultation on net-neutrality in 2015 and are pleased to contribute now as well.

We appreciate the DoT Committee's guidelines that would inform the core principles of NN in India as well as it staying away from a hard definition of NN. This would allow any principles created to be flexible and adaptable; the hallmarks of appropriate policy design. The EU's definition of user rights is rather comprehensive and seek to protect the user's rights to free expression as well as uphold user choice. We recommend that this be the adopted to the Indian NN principles.

With regard to what should be guiding principles for net neutrality we agree with the TRAI's suggestions of ensuring users' rights (both individual and organizational) to (1) free expression online, (2) to create and access legal content, and to (3) do these via a terminal device of their choice. We also agree that discriminatory practices such as blocking, throttling, improper prioritization etc. should be prohibited as mentioned in Section 4.2 of the consultation paper.

However, the specific question of legal content in the Indian context; as mentioned in the DoT recommendations is worrying as legality is a slippery slope; is often tied intrinsically with politics and subject to sudden changes. We recommend that all content be included under the NN principles. The EU's inclusion of content providers as part of the definition of end-users is laudable and should be included in the final principles.

We also recognize that in the Indian context where mobile broadband penetration is estimated to be only 9.65% (unique subscribers of 3G and 4G services as a % of pop, Q4 2016 - GSMA Intelligence) there is a justified concern for the need to expand affordable access. This may translate to innovative interventions which should be encouraged by the government. However, we argue that efforts to improve broadband connectivity and affordability are in no way attenuated by following the above mentioned principles. Indeed, interventions to provide access for low-income and/or marginalized communities must also adhere to these principles, as they should for all Indians.

One example of an alternative model that we recommend is the provision of free data quota/packs. This model would entail a certain limit of data use free of charge and any data usage above that basic pack would be charged at a rate in accordance to the fair pricing regulations of the Hon'ble Authority. Research by the Alliance for Affordable Internet (A4AI), an initiative of the WF, and which included India, has shown that users prefer unrestricted access to the internet even if time or data limits are enforced. The provision of free data would incentivize individuals to engage online and consequently pay for additional access. This would encourage more users sign on, increasing digital penetration and the revenues for the ISPs.

This free data quota could be implemented in either of the following means:

- Making the provision of free data pack mandatory for mobile operators as part of their license conditions or
- Subsidizing the cost of this free data pack through the USOF as an incentive to mobile operators who implement this free data.

A modification to the above model is the provision of free data during certain times of the day. TSP's can provide free data to everyone without restrictions for a particular part of the day. This would give an incentive to the consumers and would also adhere to the guidelines of TRAI. This would enable traffic management as a particular part of the day with low usage would be off-set by the high usage.

Q.3 In the Indian context, which of the following regulatory approaches would be preferable:
[See Chapter 3]

- (a) Defining what constitutes reasonable TMPs (the broad approach), or
- (b) Identifying a negative list of non reasonable TMPs (the narrow approach).

Please provide reasons.

As noted in the WF's previous [submission](#), we maintain that net neutrality is fundamental to ensure equitable access to the Internet, as well as to underpinning innovation, competition, and new business formation in the ICT sector. We also noted that in certain cases TMPs are required and reasonable. We therefore agree with the TRAI for making the important point that the use of TMPs may not always be a breach of net neutrality principles, as defined above. To better define these cases, here we suggest a broad approach, as it will be impossible to outline (and predict) an exhaustive list of non-reasonable TMPs. Reasonable TMPs will be required at certain times to maintain network efficiency for all users. Where TMPs are used, TSPs must make clear the reasons for doing so in a transparent and prompt manner, as required by TRAI or another relevant authority.

Further, all traffic management techniques/ methodologies that can be used by ISPs and TSPs should be based on suitable methodologies recommended by TRAI. Further, any traffic management techniques utilised should be subject to scrutiny by TRAI or a suitably empowered and independent committee (see below) as notified by the competent authority. This committee should include representatives from civil society organisations and other network neutrality advocates. Efforts should be taken to ensure there is no conflict of interest.

TSPs may choose to engage in TMPs based on categories of traffic (i.e., video) but this (as with all TMPs) must be done on a temporary and justifiable basis, subject to the conditions above. In addition, there must not be application specific discrimination in traffic management (see exception in response to Q4.c. below). Such discrimination implies that the TSP is creating different online experiences for different applications without the user's consent, and should be prohibited.

Q.4 If a broad regulatory approach, as suggested in Q3, is to be followed: [See Chapter 3]

(a) What should be regarded as reasonable TMPs and how should different categories of traffic be objectively defined from a technical point of view for this purpose?

(b) Should application-specific discrimination within a category of traffic be viewed more strictly than discrimination between categories?

(c) How should preferential treatment of particular content, activated by a user's choice and without any arrangement between a TSP and content provider, be treated?

(a) We do not believe that traffic management practices should discriminate between different types of traffic (subject to certain conditions described in Q3 above). As mentioned in our response to Question 1 of this paper, packet inspection; which should be prohibited under the principles of network neutrality; would allow the TSP an opportunity to discriminate on the basis of application or traffic type.

We would leave the classification and identification of reasonable TMPs to the regulator. However, we would like to recommend a 'negative-list' of TMPs that should not be allowed under any circumstances:

- Blocking Content e.g. spam, illegal website content
- Throttling/ degrading some types of traffic e.g. P2P
- Priority given to some service provider's content or application over others (perhaps for a fee. Potential revenue for ISPs) and
- Blocking rival content or application e.g. rival IPTV services

(b) As noted above application specific traffic discrimination should not be allowed (with an exception below); we argue that this should apply whether within the same category of traffic (i.e., video) or across categories. Application specific discrimination that are determined solely by the TSP can lead to uncompetitive effects on the market (where the content is exclusively available to the TSP in question), and will reduce end-user control over their Internet experiences.

(c) Preferential treatment to particular content based on users' choice should be treated as an exception to the application specific discrimination prohibition above where there is no arrangement between the TSP and content provider. Examples of this are what we term service-specific plans in the research by the Alliance for Affordable Internet (an initiative of the Web Foundation) on mobile data services in India (and 7 other countries). This includes data plans that provide the user with access to specific content (e.g., Facebook or a movie platform) at a cheaper rate than if she or he were to access the content using a regular priced data plan. This can in theory lead to the use of TMPs to ensure a certain level of quality for that content.

Crucially, such service-specific plans are typically offered by TSPs to the end-user with no agreement between the TSP and content provider (this also should mean that neither the TSP nor content provider has a financial or non-financial interest in the other). This exception means that that the TSP and content provider cannot together arrange to benefit from certain traffic prioritization, while allowing the TSP to offer services that it deems relevant to its market and customer demand.

For the proposed exception (among TSPs) to work, it is important that the full details of relationships between TSPs and content providers be transparent and available to the TRAI or another relevant authority. In addition, the content in question must be available on a non-exclusive basis to all operators.

Q.8 Which of the following models of transparency would be preferred in the Indian context:
[See Chapter 5]

- (a) Disclosures provided directly by a TSP to its consumers;
- (b) Disclosures to the regulator;
- (c) Disclosures to the general public; or
- (d) A combination of the above.

Please provide reasons. What should be the mode, trigger and frequency to publish

such information?

We recommend a combination to be used similar to disclosures that companies are mandated to make under the Companies Act. Detailed and technically substantiated filings should be made with the TRAI on a quarterly or half-yearly basis with summarised, publically available documents to be made available on the company's' website.

This would make all the relevant information accessible to citizens as well as intermediaries such as consumer groups, civil society, and all government agencies. We would go further and argue that where such disclosures include specific metrics such as those related to QoS, they be made available in open data formats. This can improve the ability of TRAI and the public to analyze the extent to which TSPs are meeting these and other guidelines.

Q.9 Please provide comments or suggestions on the Information Disclosure Template at Table 5.1? Should this vary for each category of stakeholders identified above? Please provide reasons for any suggested changes. [See Chapter 5]

We do not believe that the template in Table 5.1 needs any significant modification at this point in time. The template should form part of the detailed disclosures discussed in our response to previous question (Q8) and may be made available to access on the website. However, a summary, as mentioned above should include some aspects of the template.

Q.10 What would be the most effective legal/policy instrument for implementing a NN framework in India? [See Chapter 6]

(a) Which body should be responsible for monitoring and supervision?

(b) What actions should such body be empowered to take in case of any detected violation?

(c) If the Authority opts for QoS regulation on this subject, what should be the scope of such regulations?

(a) We believe that TRAI should support the DoT in the creation of an independent, multi-stakeholder oversight committee that would work alongside TRAI to monitor violations of network neutrality, make recommendations on punitive measures and explore opportunities to evolve the neutrality principles over time. This committee should be comprised of at least two representatives from the following stakeholder groups

(i) Academia

(ii) Civil Society

(iii) Private Sector - One representative each from TSP/ISPs and content creators

(iv) Public Sector - One representative each from TRAI and DoT

(b) We do not envision this body as one that can take actions in case of any violation of network neutrality. However, the committee will be able to make recommendations directly

to TRAI. One of the most important mandates of this committee would be to explore the implications of emerging technologies on the principles of network neutrality, which TRAI should revisit every 2 years to allow for agile policy design.

Q.12 Can we consider adopting a collaborative mechanism, with representation from TSPs, content providers, consumer groups and other stakeholders, for managing the operational aspects of any NN framework? [See Chapter 6]

- (a) What should be its design and functions?
- (b) What role should the Authority play in its functioning?

The multi stakeholder committee that we have proposed in Question 10 is the best way to ensure a collaborative mechanism to manage the operational aspects of network neutrality.

- (a) The design and functions of the committee have been detailed in our response to Question 10
- (b) We recommend that senior representatives of TRAI should be part of the committee; however, the committee would remain independent.

Q.13 What mechanisms could be deployed so that the NN policy/regulatory framework maybe updated on account of evolution of technology and use cases? [See Chapter 6]

TRAI, in an earlier consultation paper highlighted the potential of revisiting the network neutrality principles on a regular basis to keep up with evolving technologies. We recommend that the multi-stakeholder committee work with TRAI to ensure the principles of network neutrality are kept agile (i.e. conduct a periodic review every two years).

Q.14 The quality of Internet experienced by a user may also be impacted by factors such as the type of device, browser, operating system being used. How should these aspects be considered in the NN context? Please explain with reasons. [See Chapter 4]

The focus of these comments is to ensure that the operations of TSPs are net neutral. It is therefore important to limit the scope of the comments to those factors that are within control of TSPs. If TSPs abide by the principles laid out above (including allowing end-users to connect via a device of their choice) then factors such as device types, OS, etc. that impact on the end-user experience should not be considered here as relevant to net neutrality.

Instead, these issues are relevant to content providers in determining the nature of service they provide to end-users. In cases where end-users have problems in accessing or using content because of the type of OS or browser they use, then they should address the content provider directly and rely on consumer protections rules, where applicable.