



Ayana Legal

THE BUZZ

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Network Management

Some countries provide certain exceptions to net neutrality principles which are termed as reasonable 'traffic management practices' or 'network management'. The Federal Communications Commission in the US in their 2009 proposal has suggested certain network management practices which would act as exceptions:

- Managing congestion on networks
- Addressing harmful traffic (viruses, spam)
- Blocking unlawful content (child porn)
- Blocking unlawful transfers of content (copyright infringement)

NET NEUTRALITY

A term coined by Prof. Tim Wu, who is a professor at Columbia Law School, Net Neutrality is defined as when "a maximally useful public information network aspires to treat all content, sites and platforms equally". Net Neutrality concerns the delivery of content over the Internet by an Internet or telecom service provider (ISP/TSP). Net neutrality ensures that all content on the internet is treated equally focusing on aspects like (1) no prioritization and no throttling, that is: slowing down the speed of transmission; (2) no blocking; (3) no extra charges to deliver content (4) no discrimination in price for different content providers; and (5) no preferences for an ISP's own content.

RULES OF NET NEUTRALITY

Net Neutrality can be broadly simplified into the following rules:

Rule 1: Transparency - ISPs shall publicly disclose accurate information as maybe required by consumers to make informed choices, such as commercial terms of its broadband internet access services

Rule 2: No Blocking - ISPs shall not block consumers from accessing lawful websites, nor block applications that compete with the provider's services.

Rule 3: No Unreasonable Discrimination - ISPs shall not unreasonably discriminate in transmitting lawful network traffic over a consumer's broadband Internet access service.

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In Chile, there is a specific exception allowing ISPs to “take the measures or actions necessary for traffic management and network management... provided that this is not designed to perform actions that affect or may affect free competition”.

Thank You

We at Ayana Legal thank you for your continued support and patronage to our newsletter and capsules. We look forward to being back with our next edition soon.

Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

INDIAN CONTEXT

There is no legislation in India that specifically deals with net neutrality. In defining net neutrality, the Department of Telecommunications Committee has suggested the following as Core Principles of Net Neutrality:

- (1.) User rights - Subject to lawful restrictions, the fundamental right to freedom of expression and nondiscriminatory access to the internet will apply.
- (2.) Content - Right to create and to access any legal content, applications or services without any restrictions
- (3.) Devices - Freedom to connect all kinds of devices, which are not harmful to the network and services
- (4.) Harmful practices - Practices like blocking, throttling and improper (paid or otherwise) prioritization may not be permitted.

The Telecom and Regulatory Authority of India (TRAI) released the Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016, in an attempt at ensuring net neutrality. It states that no service provider shall offer or charge discriminatory tariffs for data services on the basis of content. Further, no service provider shall enter into any arrangement that has the effect of discriminatory tariffs for data services being offered or charged to the consumer on the basis of content. Such tariffs will only be permitted in closed electronic communications networks, which are networks where data is neither received nor transmitted over the internet.

In its recommendations made in November 2017, the TRAI restricted the “discriminatory treatment of content”. It recommended that the license agreement should clarify that ISPs cannot discriminate between different types of content on the Internet, based on aspects such as who the sender or receiver of the data packets are.