

NET NEUTRALITY IN ASIA – PACIFIC

**Introduction, contemporary legal
developments & future**

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Introduction : What is net neutrality?

- A service provider should treat all data bits in the same manner without discrimination, restriction or interference irrespective of its source, destination and the application that generated it.
- Based on the principle, “All bits are created equal”.
- Legally, it means that content should not be blocked or throttled.
- In the context of OTTs, it also means that prioritization of payment either by the OTT provider or its subscriber is prohibited

Why are we talking about it?

- The issue gained importance in early 2000's when some ISP's imposed imposed restrictions on connection of devices to their Internet access services.
- Rise of OTT services in the region, including the recent launch of Netflix across several ASEAN jurisdictions
- It has implications on:
 - Consumer choice
 - Freedom of expression
 - Online innovation
 - Data protection
 - Privacy

REGULATORY FRAMEWORK :

MAJOR INTERNATIONAL JURISDICTIONS & APAC

Important International Developments

- Chile became the first country in the world to pass net neutrality legislation in 2010.
- Other countries such Brazil and Netherlands have also enacted tough net neutrality targeted legislation.
- Many countries lack legislation directly addressing net neutrality. However, it can sometimes be enforced based on other laws, such as those preventing anti-competitive practices.

Regulation in EU

- EU Regulation 2015/2120 of 26 Nov 2015 sets the basic framework.
- It came into force on 30 April 2016.
- **Article 3(3) : Provides for safeguarding of open internet access** : Obligates providers of internet access services to treat all traffic equally irrespective of the sender & receiver, the content accessed or distributed, the applications or services used or provided or the terminal equipment used.

Regulation in U.S.

- Federal Communications Commission (FCC) issued Open Internet rules : Effective from 12 June 2015.
- On 14 June 2016, US Court of Appeals for the DC Circuit ruled in favour of net neutrality by upholding the Open Internet rules.
- **Key provisions : 5 Principles**
 - No blocking
 - No throttling
 - No paid prioritisation
 - No unreasonable interference
 - Enhanced transparency

Regulation in India : A Specific Case Study

2014

- Intense public debate began when telecom carrier Bharti Airtel decided to charge extra for using applications for making VoIP.

2015

- Facebook's internet.org initiative further triggered the debate.
- Telecom Regulatory Authority of India (TRAI) initiated policy interventions.
- On March 27th, TRAI issued consultation paper on 'Regulatory Framework for OTT'.
- On December 9th, noticing differentials tariffs based on content / websites/applications, it issued another paper.

2016

- In February, after massive open public consultations, TRAI introduced Prohibition of Discriminatory Tariffs for Data Services Regulation, 2016.

Prohibition of Discriminatory Tariffs for Data Services Regulation 2016

Key provisions :

- **Regulation 3 (1)** : Prohibits service providers from offering or charging discriminatory tariffs for data services on the basis of content.
- **Regulation 3 (2)** : Prohibits agreements or arrangements that have the effect of discriminatory tariffs for data services being offered or charged to consumers.
- **Exceptions** : Differential pricing is permitted in case of grave public emergencies.

Regulation in Singapore

- Infocomm Development Authority (IDA), issued the net neutrality policy in 2011 making it the few regulators in ASEAN to take a stand on the issue.
- **Key provisions :**
 - No blocking of legitimate internet content.
 - Compliance with competition & interconnection rules.
 - Provide Information Transparency to end users.
 - Compliance with minimum Quality of Service (QoS) standards.
 - Niche or differentiated internet services allowed.
- **No ban on throttling (Key difference from US' Open Internet Rules)**

Way forward : Conclusion

- Recent blocking by Telekomunikasi Indonesia (the state-owned telecommunications company) of Netflix and rise of OTT players will pressurise regulators in the region to clarify their stand on net neutrality.
- Possible trade implications with the passing of Trans – Pacific Partnership Agreement (Article 14.10) calls for a common position on the issue within the APAC region.

THANK YOU