IAMAI
Submission
TRAI Pre-Consultation Paper on 'Net Neutrality'

July 2016

I.   Introduction

IAMAI appreciates the Authority's diligence and commitment to the objective of connecting 1 Billion people to the internet through fair, non discriminatory, transparent and competitive manner. In the past six months, TRAI has shown much avidity to fulfil its vision of universal connectivity.

Since the objective of this pre consultation paper is to design the framework for the actual Consultation, IAMAI suggests that the regulator's primary focus should aim at identifying the basic principles of the Net Neutrality. Once the Net Neutrality Principles are formed and well interpreted, most of the issues that TRAI has sought to resolve via this CP will be resolved.

Clarity on net neutrality will determine a stable and predictable framework for innovation in the digital economy in India. With access remaining a key priority, a competitive marketplace unhampered by heavy-handed regulation is essential to continue the strides taken towards robust economic growth and connectivity. An innovation-friendly,forward-thinking principles based approach is more appropriate than further regulation. It will be prudent for TRAI to keep abreast of developments in order to remain nimble enough to address concerns,rather than to be held down by regulation that may become outdated within months.

Issues such as Privacy, Security and 'Internet Platforms and services'[1] regulation as stated in the TRAI paper are noted and sufficient inputs have been   provided on these issues . They have been adequately dealt with in law and should not be part of the proposed consultation CP on Net Neutrality.

In this paper we set out our inputs by first reinstating the association's standpoint on Net Neutrality followed by our comments.

II.   IAMAI Submission

A. Net Neutrality Principles -IAMAI Standpoint

The following general principles should be maintained by the government, TSPs, internet content providers and platforms to protect net neutrality:

1. All sites must be equally accessible*: there must be no attempts to* **blocking** of sites or apps unless under security or cyber law infringement.
2. All sites must be accessible at the same speed to user*: there must be* **no speeding up or throttling of speed** of sites due to specific business deals.
3. The cost of access must be the same for all sites: there must be **No Discriminatory Pricing** for data services

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[1] IAMAI opposes to the usage of the term OTT. "Over-the-top". The "OTT" terminology is inaccurate in as much internet platforms and services encompass a wide range of services, including VoIP, Instant Messaging, Cloud Services, Internet Television, and Social Networking.

Net neutrality principles should be implemented in a way that protects the free and open Internet while providing flexibility to foster programs designed to expand access and bring the unconnected onto the Internet.

B. IAMAI Comments

1. Traffic Management Techniques

The Pre-CP identifies the following practices as unreasonable and illegitimate Network Management Techniques:

- *Blocking of applications, websites or any other content on the Internet;*
- *Slowing or "throttling" Internet speeds;*
- *Preferential treatment of applications, websites or any other content on the Internet;*
- *Discriminatory tariff for data services based on the applications, websites or other content being accessed by the user, which are prohibited [Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016]*
- *Inspection of the contents of data packets, except to meet lawful requirements or to maintain the security of the network.*

IAMAI Comments: The paper has correctly identified some of the critical aspects to protect the network from unreasonable and illegitimate practices. Once the basic principles of Net Neutrality are identified, formed and well interpreted, the issue of traffic management will be resolved. However, any legitimate traffic management practice must manifest transparency, and full disclosure.

"A network management practice is a practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service. "[2]

There should be strong and effective mechanism that keeps a check on any illegitimate network management practices that violate those NN principles once TRAI forms it.

C. *Security and Privacy aspect of OTTs*

The paper enumerates that OTT communications and OTT media can pose a threat to the privacy and security of individual users. Hence, it calls for a need to examine the legal and regulatory framework required for governing the privacy of users of OTT services.

IAMAI Comments: Internet platforms and services are already well regulated through the IT Act 2000 [amended in 2008]. It is the most comprehensive Act covering all aspect of Internet platforms and services. Any further regulatory intervention would be unwarranted and create a barrier to entry for new entrants in the online services space.

D. *OTT Regulation*

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[2] FCC in the Open Internet Order 2015

DoT committee on Net Neutrality has sought the recommendations of TRAI on the subject of OTT regulation. The committee report stated that in case of VoIP OTT communication services there exists a regulatory and pricing arbitrage which creates a non level playing field between the Telcos and the OTT providers.

IAMAI Comments: Many nations have not touched Online Service regulation while implementing Net Neutrality laws or principles. Such rules are necessary to ensure that TSPs do not leverage their control over the underlying access infrastructure to disadvantage consumers or content providers in violation of the free and open internet.

It is also critical to note that Net Neutrality should form no part of the justification to regulate Online Services. Net Neutrality directly relates to the ability of TSPs to influence internet traffic to their advantage by leveraging their exclusive control over access infrastructure – an issue far removed from the regulation of Online Services. Any attempts to conflate the two issues should be strongly resisted.

The association has submitted in detail to the DOT Committee on Net Neutrality that it is a fallacious argument that the Internet apps and services are "bypassing the existing licensing and regulatory regime" and that there is a regulatory and pricing arbitrage. As already emphasized, Online Services already are subject to adequate regulations in India.

E. *International Examples*

The paper illustrates the diverse range of approaches being followed in international jurisdictions where some countries have followed the path of 'Active Reform' and sought to prohibit illegitimate network management practices. While some countries have chosen to enact a comprehensive law on the subject of Net Neutrality, there are others that have opted for non statutory mechanisms like issuance of guidelines by the regulator or cooperation mechanisms between the regulator and TSPs.

IAMAI Comments: It is noteworthy that the regulator has cited international examples to formulate the right framework for Net Neutrality in India. The association however suggests that the net neutrality regulation has to be different from all the countries that the paper mentions due to India's inherent differences with any other geography. India has world's second highest internet users yet 80% of people are not connected to the internet and the entire digital ecosystem has just started to proliferate. Hence, if the government decides to bring any regulation to ensure network neutrality, there should be a light touch regulation.

III.   Questions

1) What should be regarded as the core principles of net neutrality in the Indian context? What are the key issues that are required to be considered so that the principles of net neutrality are ensured?

Answer: The following general principles must be maintained to protect the internet from fragmenting:

1. All sites must be equally accessible*: there must be no attempts to* blocking of sites or apps unless under security or cyber law infringement.

2. All sites must be accessible at the same speed to user*: there must be* no speeding up or throttling of speed of sites due to specific business deals.

3. The cost of access must be the same for all sites: *there must be No Discriminatory Pricing for data services*

If the government decides to bring in any regulations to ensure network neutrality, there should be a light touch regulation and the following cardinal principles should be followed:

- Internet Platforms and services' regulation issue should not be a part of Net Neutrality Debate[3]
- Net Neutrality Principles should not differentiate between the Internet Platform and Services, which opens the door for competitive forces to be distorted and consumer choice to be affected.

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

Answer: The network traffic management practices should be 'tested' against the core principles of Net Neutrality. Once the basic principles of Net Neutrality are identified, formed and well interpreted, the issue of traffic management will be self resolved. There should be strong and effective mechanism that keeps a check on any illegitimate practices that violate those Net Neutrality principles once TRAI forms it.

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

Answer: India has world's second highest internet users[4] yet 80% of people are not connected to the internet and the entire digital ecosystem has just started to proliferate. Hence the government needs to ensure network neutrality with a light touch regulation and those issues that do not fall under the purview of net neutrality should not be discussed in the main consultation.

4) 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.
Answer: As mentioned above, the issues related to privacy and security have no direct bearing on Net Neutrality.

5) What precautions must be taken with respect to the activities of TSPs and content providers to maintain customer privacy? Please comment with justification.
Answer: Answered in Question No. 4.

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[3] IAMAI Submission to DOT on NN- Many nations have not touched the OTTs while deciding the Net Neutrality laws or principles.. Regulators around the world have adopted net neutrality legislations due to the violation of free and open internet rules by the TSPs and ISPs. Netherland banned all mobile telephone operators from blocking or charging consumers extra for using Internet-based communications services . Similar was the response in Singapore when Singtel wanted to impose additional charges for the usage of VOIP applications. Singapore regulator passed a regulation to restrict Singtel and other such TSPs from charging for VoIP services.
[4] Internet in India Report 2015-IAMAI-IMRB

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

Answer: The relationship between the TSPs and the Internet Platforms and services should be left to free market mechanisms. It should enable free and open access to internet which is important to achieve net neutrality. Internet should not in any case favour any app/site/service over others

TRAI must ensure that it grants primacy to innovation, maximisation of consumer welfare, and, market competition when evolving an approach to issues such as net neutrality and online service regulation.