

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

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Net Neutrality in Correspondence to IPR in India

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ABSTRACT

Net neutrality is the idea of an open, equal internet for everybody, regardless of device, application or platform used and content consumed. Defenders of the idea accept all corporations, including internet service providers (ISPs), ought to treat internet data and users equally. They shouldn't limit access, dial back access speeds or block content for certain users to serve their own advantages. ISPs should also not make special arrangements with any companies to give them further developed network speeds or access. Columbia Law School professor Tim Wu begat the term net neutrality in his June 2002 paper, "A Proposal for Network Neutrality. His proposal for net neutrality attempted to balance the contending interests by "forbidding broadband operators, absent an appearance of harm, from limiting what users do with their internet association, while giving the operator opportunity to manage bandwidth utilization and different matters of local concern. Net neutrality supporters accept that the internet ought to remain free, open and nondiscriminatory and that this is essential for a democratic exchange of ideas and information, ethical strategic policies, fair rivalry and continuous innovation. Net neutrality rivals, including many ISPs, maintain that government legislation of the internet is an unnecessary barrier to innovation and monetary development. The Paper seeks to emphasis upon the concept of Net Neutrality and its applicability in our Country India. In this Paper the author has briefly tried to explain why was net neutrality in news again and what are the related policies and controversies associated with it. The author has also highlighted the issues and challenges associated with it has brought in sight the steps taken by the government in regulation of it.

Keywords: *Net Neutrality, Telecommunications, Internet Service Provider, Network, Policies.*

I. INTRODUCTION

The internet is the world's biggest growing powerful network. Which associates million, billion, huge and little nearby and worldwide associated networks in worldwide network town. Where you join and utilize a computer on your associated work area, cellphone and laptop to the

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internet. Internet is continuously spreading constantly from one side of the planet to the other. The internet local area is making the world local area proficient from one side of the planet to the other, or a typical individual, who is connected with interconnecting information technology or working with technology. These days a large portion of the work is finished with the assistance of computer technology, artificial intelligence, or a machine. Accordingly, after the utilization of the internet in computer technology, it turns out to be more well known with information effectively available.

The Internet took care of more than whatever telecom operators were facilitating, like communication, entertainment, social media, commerce and trade, and so on. And from that point numerous telecom operators expanded their activity to cater as Internet service providers to clients.

In any case, the sum spent by these ISPs and TSPs in creating infrastructure to get to the internet is higher and decreases their profit margin. Furthermore because of OTT platforms, telecom operators are losing out their incomes since clients are currently increasingly preferring talks over calls, and using OTT platforms to settle on video decisions/voice calls. India counted 200 million active users of WhatsApp in India in 2017. Presently in India there are around 200-300million active users of WhatsApp. Consequently, in 2014 Bharti Airtel began charging internet calls made by the client and it sent off Airtel zero arrangement where Airtel offered certain sites and OTT platforms for nothing for use. In any case, after much kickback, Bharti Airtel needed to pull out from the plan. This prompted the development of discussion on Net Neutrality in India. Net Neutrality is the principle that Internet services providers ought to treat all networks similarly and shouldn't charge diversely for admittance to various sites or OTT. It is an idea which states that all traffic present there on the internet should be treated equally and there should be no biasness or unfairness by Telecommunication companies or the Internet Service Providers. The service providers should not differentiate this service with different forms and categories of traffic on the internet.

(A) Research Objective

The Objective of this study are as per the following:

- a) To understand the concept of Net Neutrality in India along with the policies and controversies associated with it.
- b) To emphasis upon the issues and reason of debate in relation to Net Neutrality India.
- c) To study about the Legal Aspect of Net Neutrality in India.

(B) Review of Literature

The present research is the synthesis of various reading and writings by the authors that tends to explain about the concept of Net Neutrality in India and to consider the debate on the role of Telecommunication companies/internet service providers relating to Net Neutrality. Literature of different authors have been brought in consideration for making of this paper, some of them are: “Net Neutrality: Seeking a Free and Fair Internet” by New York Times Company. “Net Neutrality and the Battle for the Open Internet” by Danny Kimball. “Legal Perspectives of Net Neutrality in India” by Mahesh Mathur, Navneet Thanvi. Etc.

(C) Research Hypothesis

The Research is based upon explaining the concept and controversy of Net Neutrality in India. To accomplish the same there has been an attempt to answer some of the material facts like that of:

- H 1: Repealing of net neutrality will have a major impact on consumers all over world.
- H 2: Scrapping of the net neutrality rules in the US sets a dangerous precedent for other countries like India

(D) Research Methodology

There is an active use of doctrinal research methodology for the study of concept, of Net Neutrality in India. The study is based on secondary sources of data such as from journals, research scholarly published papers, articles, websites, published books etc.

II. BACKGROUND OF THE STUDY

(A) Origin and Development of Net Neutrality

2005 - The Federal Communications Commission (FCC) made the first strides supporting net neutrality, precluding ISPs from impeding legitimate content or keeping users from connecting to the internet with their chosen gadget. It fined Madison River, an ISP in North Carolina, ordering it to stop hindering phone calls over the internet.

2008 - The FCC ordered Comcast to stop slowing down BitTorrent connections on Comcast's network. Comcast denied doing so yet said it has the option to set connection speeds as it sees fit. A federal court later sided with Comcast, saying the FCC had not demonstrated it could lawfully implement its strategy.

2010 - The FCC supported the Open Internet Order, making two classes of internet access: one for fixed-line providers and one more for the wireless net. The order confronted resistance,

including a lawsuit filed by Verizon in January 2011.

2014 - A court decided that the FCC is not qualified for impose net neutrality rules on services that are not common carriers.

2015 - The FCC issued another Open Internet Order, reclassifying ISPs as Title II services and giving them clear position to implement net neutrality. A federal court maintained the rules despite objections from ISP advocate groups. The rules prohibited ISPs from intentionally changing their network speeds to or from specific websites based on demand or preferences.²

2017- The FCC moved back the Open Internet Order despite congressional efforts to stay the annulment.

2018 - Several state attorneys general sued the FCC to annul new rules and restore net neutrality provisions.

2019 - A federal appeals court decided that the FCC can reclassify ISPs as Title I or II and can't hinder state-or nearby level net neutrality requirement. Various states, including California, Oregon and Washington, subsequently passed such laws. Several different states passed leader orders that restriction state agencies from working with ISPs that don't stick to net neutrality principles.³

(B) Net Neutrality in India

The net neutrality rule is viewed as a foundation of a free and open internet that gives equivalent admittance to all and boycotts "any structure" of data discrimination. Indeed, even before the discussion on net neutrality gathered public consideration, there have previously been a couple of infringement of net neutrality standards by some Indian service providers. It (began in the year 2014 when Airtel declared to charge supporters use over-the-top (OTT) like Skype, Viber, Whatsapp and so on that prompted reactions and eventually Airtel needed to move and the arrangement was required to be postponed. The idea of Net Neutrality began streaming in December 2014 in India, after telecom operator Bharti Airtel (Airtel) chose to charge extra for settling on Internet decisions. This prompted boundless fights, which constrained Airtel to roll-back its arrangement. To keep an open and non-biased character of the Internet, it was chosen to have standards set up to guarantee Net Neutrality to Indian Citizens. The Cellular Operators Association of India (COAI), which represents Bharti Airtel, Vodafone Idea, and Reliance Jio,

² Jomile Nakutaviute, what is net neutrality: its history and importance, NordVPN, (April 25, 2023, 12:30 Pm) <https://nordvpn.com/blog/what-is-net-neutrality/>

³ Rahul Awati, Net Neutrality, Tech Target (April 25, 2023, 1:01 Pm) [<https://www.techtarget.com/searchnetworking/definition/Net-neutrality>]

the three significant telecom operators in India, has been demanding that stages, for example, YouTube and WhatsApp pay a portion of income to compensate for the network costs.⁴

Enormous development in reach of Internet in the past has been made conceivable through universal telecom access made accessible in each niche and corner of the country from one perspective and a lively substance and application biological system on the other. Effect of arising new plans of action through Internet and want to save and safeguard the open idea of the public Internet has brought about issues concerning Net Neutrality. This has reignited the discussion around net neutrality.⁵

(C) Participants in Net Neutrality in India

There are various members in the internet space that might be impacted by the issue of net-neutrality. They are the consumers of any internet service, the Telecom Service Providers (TSPs) or Internet Service Providers (ISPs), the over-the-top (OTT) service providers (the people who give internet access services like sites and applications), and the Government, who might manage and characterize connections between these players. Telecom and Regulatory Authority of India (TRAI) is an independent regulator in the telecom sector, which chiefly controls TSPs and their permitting conditions, and so forth.⁶

(D) Impact of Net Neutrality to a Consumers.

Telecom service providers can affect net neutrality in different ways, for example, by blocking content, throttling Internet speed or by focusing on content of websites and OTT applications that pay them. In the Airtel Zero plan Airtel had offered partnership to E-commerce stage Flipkart with the goal that Flipkart could enjoy free access by users. Under the arrangement Flipkart would have to pay Airtel a subscription amount to remain free for users and to enjoy privilege over other ecommerce platforms. All the end users who have subscribed to the Airtel network would then have free access to Flipkart however would have to pay for access to other e-commerce platforms or services by such other e-commerce platforms couldn't be availed altogether.⁷

1. Net neutrality safeguards the consumer interests and assists with making a more pleasant

⁴ Venancio D'Costa and Astha Ojha, India: Net Neutrality in India: Regulating Evolving Technology, mondaq, (14 August 2020) [<https://www.mondaq.com/india/telecoms-mobile--cable-communications/976168/net-neutrality-in-india-regulating-evolving-technology>]

⁵ Department of Telecommunications, Government of India, [<https://dot.gov.in/net-neutrality>] (last visited April 25,2023)

⁶ Harshita Shah, Net neutrality and its applicability in India, I pleaders, [April 25, 2023 5:15 PM] <https://blog.ipleaders.in/net-neutrality-applicability-india/>

⁷ Apporva, The Net Neutrality Debate in India, PRS Legislative Research, (April 25, 2023, 6:09 Pm) [<https://prsindia.org/theprsblog/the-net-neutrality-debate-in-india>]

and more open internet in more ways than one. For one, it keeps ISPs from purposefully decreasing the speed of internet services or charging consumers cash for admittance to specific region of the internet.

2. Without net neutrality rules, ISPs can prioritize specific types of traffic over others, possibly focusing on competitors and making a worse encounter for the consumer. They might make clients and organizations pay for a fast track, giving better velocities to the people who can afford them.⁸

III. ANALYSIS & INTERPRETATION OF STUDY

(A) Complaints of Internet Service Providers

- Telecom companies/internet service providers (ISP) say that they pay a great many dollars to the government to get the spectrum license. In this manner one can contend securely, to a degree, why the internet isn't free.
- They pay a specific add up to the government as subscription charge for the spectrum portions as well.
- Invest billions of dollars to dollars to construct the infrastructure for the network and compensation for their workers, come up a notice to make a vast network called the internet that permits us to get to the internet numerous websites
- In any case, the over-the-top services companies like Skype, Viber, WhatsApp utilize their network for their services and produce more revenue and there are great many applications that ride on such service providers network with the expectation of complimentary which the service providers can't bear.
- These OTT services utilizing the internet service providers (ISP) network straightforwardly compete the voice and message services of the ISP for which the OTTs pay nothing to the ISP.⁹

(B) Regulation of Net Neutrality in India

The system for establishing guidelines ensuring Net Neutrality in India are at present mainly enforced by TRAI. In India, TRAI released a formal discussion paper on Regulatory framework OTT services, in Walk 2015, seeking remarks from general society at large. In June 2015 Spot comprised a six-part panel on Net Neutrality to suggest overall policy Regulations and Technical responses. Finally, TRAI released the Prohibition of Discriminatory Tariffs for Data

⁸ Nord VPN, [<https://nordvpn.com/blog/net-neutrality-pros-and-cons/>] (last visited April 25, 2023)

⁹ Byjus, <https://byjus.com/free-ias-prep/net-neutrality/>, (last visited April 26,2023)

Services Regulations, 2016 on 08.02.2016.¹⁰ These Regulations express that no service provider is allowed to go into any agreement or agreement that would bring about discriminatory tariffs being charged to a consumer based on content (data services). It further gives that such tariffs might be allowed in shut electronic communications networks, which are networks where data is neither received nor sent over the internet. Further, a service provider might diminish levy for accessing or providing emergency services. In the event of contravention of these Regulations, the service provider might need to pay Rs 50,000 every day of contravention, dependent upon a limit of Rs 50 lakh, and so on.

- i. Firstly, according to the said Regulations, no service provider can offer or charge discriminatory tariffs for data services based on content.
- ii. Secondly, no service provider shall go into any course of action, agreement or agreement, by anything name called, with any individual, regular or legitimate, that the impact of discriminatory tariffs for data services being offered or charged by the service provider for the motivation of evading the prohibition in this guideline.
- iii. Thirdly, diminished duty for accessing or providing emergency services, or on occasion of public emergency has been allowed.
- iv. Fourthly, financial disincentives for contravention of the guideline have likewise been indicated.
- v. Finally, TRAI might survey these regulations following a time of two years.

In November, 2017, TRAI suggested that the permit agreement went into between the public authority and ISPs ought to be altered to explain that ISPs are not allowed to discriminate between various sorts of content on the Internet, including in view of factors, for example, the source or collector of the data parcels, the protocols being conveyed or the gear being utilized. This recommendation came to be known as TRAI, 2017.¹¹

Finally, TRAI on 31.07.2018 released the Regulatory framework on "Net Neutrality". The said Regulations accommodate principle of non-discriminatory treatment, according to which, Speck has chosen to revise the particulars of different licenses governing the arrangement of Internet Service in India. The principle behind the policy framework was to limit any form of discrimination, limitation or interference in the treatment of content, including rehearses like

¹⁰ Venancio D'Costa and Astha Ojha, India: Net Neutrality in India: Regulating Evolving Technology, mondaq, (14 August 2020) [<https://www.mondaq.com/india/telecoms-mobile--cable-communications/976168/net-neutrality-in-india-regulating-evolving-technology>]

¹¹ Telecom Regulatory Authority of India, <https://www.trai.gov.in/> (last visited April 26, 2023)

blocking, degrading, slowing down or granting preferential speeds or treatment to any content.¹² Considering strengthening India's Net neutrality norms, Telecom operator Airtel was forced to pull out an arrangement to charge extra for internet calls, and shut down a platform called Airtel Zero, which allowed customers to get to a couple of versatile applications for free. A few operators call this "toll-free data", however it's famously known as "zero rating". Others, including Facebook and Google were likewise forced to abandon their zero-rating platforms and arrangements. The most noticeable setback was Facebook's Free Basics service, which offered Indians free admittance to a set number of sites. On 01.05.2018, Spot carried out the draft National Digital Communications Policy, 2018 ("Draft Policy"). Following a series of public counsels on the draft policy, the Association Cabinet endorsed the final National Digital Communications Policy, 2018 ("Policy"), on 26.09.2018. This Policy, which is to a great extent considered an initiative pointed toward providing 'broadband to all', will supplant the National Telecom Policy, 2012. The said policy means to:

- a) Lay out major areas of strength for a, and hearty data insurance system;
- b) Introduce suitable divulgence and straightforwardness necessities to guarantee consistence with net neutrality principles;
- c) Address security issues of digital communications and foster security standards for hardware and gadgets;
- d) Formulate a policy on encryption and data retention;
- e) Foster a complete arrangement for network readiness, calamity reaction help, restoration and reproduction.

The said policy centers around creating a guide for emerging technologies, for example, 5G, Artificial Intelligence, Robotics and so on by simplifying licensing and regulatory frameworks and ensuring proper security frameworks. It tries to eliminate regulatory challenges and set out alluring investment open doors in new technology fragments and animate the deployment of new technologies in India. Be that as it may, hitherto there is no regulation set up qua Net Neutrality in India with the exception of the aforesaid Regulations and Policy. India actually needs to sit tight for an official intervention in this field, till then these Regulations and Policies would give more than adequate guidelines to ensuring net neutrality in India.¹³

¹² Harshita Shah, Net neutrality and its applicability in India, I pleaders, [April 26, 2023 6:15 PM] [<https://blog.ipleaders.in/net-neutrality-applicability-india/>]

¹³ Department of Telecommunications, Government of India, [<https://dot.gov.in/net-neutrality>] (Last Visited April 26, 2023)

(C) Net Neutrality and Intellectual Property Rights

While Net Neutrality is about the engineering of innovation, intellectual property rules like patent law, trademark, and copyright are about the innovations themselves.

"Information drives our nation's economic output. In that capacity, intellectual property freedoms become perpetually basic when an organization's most esteemed resources progressively are intangible.

We track down intellectual property in new plans, creative brands, imaginative cycles, and high-level calculations. As administrative organizations like the U.S. Patent and Trademark Office try to make information driven policies and programs to promote innovation.

Net neutrality is internationally perceived as a network rule of equivalent treatment of information parcels getting across the IP networks. Portraying open and non-discriminatory admittance to the internet has been utilized.

The more extensive dissemination of information and creative works contribute to and increment social welfare. Intellectual property freedoms empower the right holder to forestall the dissemination of creative work. Because of which apparently intellectual property freedoms and social welfare are at junction with one another. Aside from this, the opportunity of articulation found in equitable nations is a significant component of public approach. Chaining of which influences the freedoms of residents. This shackling is brought about by inflexible intellectual property privileges. To conquer this trouble net neutrality advocates for an impartial actor who intermediates correspondence between each set of actors, this nonpartisan intermediating actor can get and yet again communicate information began by every actor to each and every actor without sifting or change, and for minimal price. Such a correspondence framework will emphatically promote creative works.¹⁴ The debate on concepts of Net Neutrality has immense significance and this should be done by striking a balance between the core principles of net neutrality with changing intellectual property rights.

(D) Statements of Problems

- **H 1: Repealing of net neutrality will have a major impact on consumers all over world.**

Numerous consumer advocates contend that assuming net neutrality rules get scrapped, broadband providers will start selling the internet in packs. Under this framework, for a top

¹⁴ Ashish, TECHNOLOGICAL AND NET NEUTRALITY – RECALIBRATING INTELLECTUAL PROPERTY IN THE AGE OF INFORMATION, Know Law, (April 26, 2023, 9:23 Pm) [<https://knowlaw.in/index.php/2022/01/15/technological-and-net-neutrality-recalibrating-intellectual-property/>]

premium bundle will be sold at a cost. The brand-name internet organizations like Google, Facebook, Amazon and Netflix, can serenely pay the higher lease. It won't influence their business; however, it might pleat their benefits. Staying away from greater costs is one explanation the significant internet organizations have been bosses of net neutrality.

In any case, more exorbitant costs might be restrictive for new businesses and new voices in the media and amusement universes.

Consumers could likewise experience the ill effects of pay-to-play deals. A fast track could be involved by large internet and media organizations, while every other person would be left on the sluggish path.

- **H 2: Scrapping of the net neutrality rules in the US sets a dangerous precedent for other countries like India.**

Last year, Telecom Regulatory Authority of India (TRAI) backed net neutrality and barred operators from allowing differential pricing for data in India. It said that no specialist co-op will offer or charge discriminatory tariffs for data services on the basis of content or go into any arrangement, agreement or contract with any individual that has the impact of discriminatory tariffs for data. Anyway, it is feared that the scrapping of the net neutrality rules in the US sets a dangerous precedent for other nations like India where encouraged regulators could seek after similar courses. As a way forward in India, a legitimate mechanism should be instituted.

IV. CONCLUSION

Net neutrality is characteristic for the possibility of freedom of speech and expression. Subsequently, any discriminatory treatment to any content must be stayed away from whatsoever expenses. Nonetheless, the worries of TSPs shouldn't go unheard.

Net neutrality is significant in light of the fact that it empowers access and straightforwardness of internet content, permits admittance to all internet administrations and applications, and guarantees that all information on the Internet is dealt with similarly by Internet specialist co-ops and governments, paying little heed to content, stage, client, application, or gadget.

Government is committed to the fundamental principles and concepts of Net Neutrality for example keep the Internet open and accessible to all without discrimination. Internet Access Administrations, therefore, should be represented by a rule that limits any type of discrimination, limitation or impedance in the treatment of content, including rehearses like obstructing, corrupting, dialing back or conceding special velocities or treatment to any content.

In fact, India actually doesn't have a regulation that underwrites Net Neutrality overall. Until

the Parliament passes one, the most recent request is the nearest India has to a favorable to Neutrality stand. Till a regulation is set up the discussion seethes on.
