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Net Neutrality

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Each country has approached the issue of net neutrality differently. This page provides a snapshot of the approaches taken in a number of jurisdictions.

Internet Service Providers ("**ISPs**") provide consumers with access to the internet. Net neutrality is the principle that all internet data should be treated equally, and that ISPs should not discriminate against or prioritize transmission of certain digital traffic, to ensure that access to the internet remains open and fair. Where they exist, net neutrality regulations generally require ISPs to treat all lawful content and internet communications equally: ISPs cannot filter, prioritize or censor content, and must allow access to content and applications regardless of the source. Net neutrality regimes may also require ISPs to disclose certain information about their network management practices, performance and commercial terms and conditions, to ensure transparency.

In their strictest form, net neutrality regulations would restrict ISPs from:

- entering into agreements with content providers to favor their content over other internet content (e.g. by offering consumers faster broadband speeds or unmetered access when accessing that content);
- reducing access speeds, or preventing all access, to particular websites or content; or
- throttling broadband speeds to websites and content provided by competitors of the ISP.

Debates about net neutrality have been quite contentious, globally. Proponents of net neutrality regimes argue that without regulation, open access to the internet will be undermined, because ISPs could influence consumer behavior by pushing consumers towards certain services or content. Content providers unable or unwilling to pay for favorable treatment (e.g. start-ups and small businesses) could also be disadvantaged. However, as data consumption continues to increase dramatically year-on-year, there are questions as to whether there should be some form of differential or congestion pricing to help shift and spread demand for bandwidth away from peak periods on capacity-constrained networks.

Australia

Australia does not have any net neutrality legislation, nor has it garnered the same attention as in other comparable jurisdictions (e.g. the United States).

There are several reasons why net neutrality may not have been such a significant issue in Australia:

- **Competitive dynamics in the broadband market**: the Australian market is highly competitive; many households are connected to the National Broadband Network, through which a large number of competing retailers offer retail broadband services. The number of options available to consumers means it is harder for any one Internet Service Provider ("**ISP**") to restrict, prioritize or filter content without adverse commercial consequences; and
- **Protection of competition law**: the Competition and Consumer Act 2010 (Cth) prohibits ISPs from engaging in anti-competitive behavior that substantially lessens competition in any market.

Nepal

In 2018, the Nepal Telecommunications Authority ("**NTA**") announced that it was considering introducing a net neutrality policy and was developing a regulatory framework. In particular, the regulations were intended to regulate speed and pricing discrimination in internet services provided by Internet Service Providers ("**ISPs**") and telecommunications companies. This announcement followed reports that ISPs were prioritizing particular services or websites or engaging in discriminatory pricing.

However, there has since been no public update by the NTA on the status of the net neutrality regulation.

Spain

Spain does not have any national regulation on net neutrality. However, as a member state of the European Union, Spain is subject to its legislation.

The main regulation on net neutrality in the EU is Regulation (EU) 2015/2120 which is applicable to all its member states. This regulation is considered a major achievement for the Digital Single Market in the EU since it creates the individual and enforceable right for end-users to access and distribute internet content and services of their choice and it sets out the principle of non-discriminatory traffic management.

In consequence, blocking, throttling and discrimination of internet traffic by Internet Service Providers ("ISPs") is not allowed in the EU, and National Regulatory Authorities are empowered and obligated to assess traffic management, commercial practices and agreements and to effectively enforce the regulation.

In relation to the enforcement of the regulation, the Body of European Regulators for Electronic Communications ("BEREC") in August 2016 in cooperation with the European Commission adopted a set of guidelines for the implementation of the obligations of National Regulatory Authorities in order to contribute to safeguard of the application of this regulation.

Further Reading and Resources

European Union

- On 30 April 2019 European Commission published a report on the implementation of the open Internet access provisions of the aforementioned Regulation (EU) 2015/2120, comparing the current situation with the one before such Regulation entered into force on 30 April 2016.
- The annual country reports on open Internet from the National Regulatory Authorities of the member states of the EU.

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- **Telecommunications Licensing (by Country)**

- **Telecommunications Universal Access / Universal Service**
- **Telecommunications Interconnection and Price Regulation**
- **Telecommunications Competition Policy**
- **Case Studies on PPP arrangements for Telecommunications**

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- Country Profiles
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