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THE CONCEPT OF NETWORK NEUTRALITY

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Abstract: *Technology is meant to give people a platform to express themselves. Therefore, network neutrality is a creation for platform where contents, applications, services are to move on the internet without any form of restrictions. It is worrisome to some that internet providers are beginning to give unfair advantage to some data streams thereby making it almost difficult for smaller content creators and to grow. Network neutrality is the principle that internet provider and the Government should treat internet traffic the same. It connotes putting policy and regulatory measures in place to ensure open access and fair treatment of all internet users. This paper discusses the concept of network neutrality according to Tim Wu. It also considers the advantages and disadvantages of network neutrality. It discusses network neutrality in the United States and also the provisions of the Draft code released by the Nigerian Communication Commission in 2017. Hence, a doctrinal methodology was adopted using primary and secondary sources*

Keywords: *Technology, Network Neutrality, Internet providers, Tim Wu, Draft Code*

Introduction

According to Wu& Yoo (2007), the internet has introduced a lot of possibilities that many years ago was unimaginable. This is as a result of advancement in technology and the free hand that many (Madhvapaty & Goyal, 2014). This is the principle of network neutrality which focuses on treating all internet contents the same way (Wu & Yoo, 2007) Madhvapaty & Goyal (2014) further stated that net neutrality encourages the concept of a free, open and equal internet service for everybody regardless of the type of device, application or platform used and content consumed. For a while now, network neutrality has been basis of debate concerning internet regulation. Supporters of network neutrality believe that all businesses, including internet service providers (ISPs), ought to handle consumers' data and the internet in a same manner (EDRi, 2024). They should not restrict access, slow down access speeds or block content for some users for their own benefits. Special arrangement is also not to be made by ISPs with any company in order for such company to benefit from improved network speeds or access ((Madhvapaty & Goyal, 2014)).

By way of limited regulations, a number of ISPs are beginning to introduce bandwidth limits (data cap) into their plans (EDRi, 2024). There are mainly two opinions regarding network neutrality. Those for it and those against it. Network neutrality has to do with whether the internet should be regulated or not, this paper discusses regulation of the internet and reasons for regulations. This paper thereafter focuses on the concept of net neutrality using Tim Wu's paper as background study. It also discusses its advantages and disadvantages as stated

by pro net neutrality and anti-net neutrality advocates. The paper also considers the positions of some nations regarding net neutrality with focus on the United States of America and Nigeria.

Internet Service Regulation

The Telecommunications Act (1996) was the first formal legislation to establish internet usage regulations. 'Censorship' is one aspect of internet governance that varies by nation. The primary goal of regulation is to keep individuals from viewing offensive or delicate content (Poetker, 2024). She also stated that, it prevents access to copyrighted information, monitors the large number of people who use the internet every day, and controls cybercrimes, among other things. The Government of each nation regulates its internet. For example, the United States has various agencies that regulate their internet- Federal Trade Commission (FTC), Federal Communications Commission (FCC) and National Highway Traffic Security Administration (NHTSA) etc.

Regulation ensures control of what a person say, comments he makes or post he uploads on the internet. When a person violates any of such regulations e.g., when a person makes derogatory comments about another or portrays an act of racism, such a person may be banned. Regulations to safeguard data may be enacted when it is created and uploaded online. Certain content kinds will be restricted and won't be posted online if they don't adhere to the necessary standards (Samples, 2019).

The content will be removed or the concerned person will receive a direct warning from the platform's system after it has accessed the content (Poetker, 2024). There are times also when access to certain websites may be blocked. For example, there are some applications that parents may use to hinder their children/wards from gaining access to certain internet contents. The government may also hinder its citizens from having access to certain information on the internet as well. The government may also regulate information that others outside of its jurisdiction can have access to regarding its country (Zheng, 2013). E.g., Iran, China and North Korea.

Wheeler (year) pointed out that in China, even though the internet is available everywhere, there are still some services that are restricted e.g., Google, Facebook, Twitter, Netflix, Instagram, YouTube, TikTok (even though it was developed by a Chinese company) as they are censored and blocked and individuals would need to install Virtual Private Network (VPN) to access them. He also made it known that whatsApp is also not allowed in China because Facebook the owner of WhatsApp refused to give the Chinese government access to control and censor messages on it. In North Korea, the internet service is not accessible except to few high-level officials, some academic institutions and foreigners and it is with special authorization. The national intranet known as Kwangmyong is what is accessible to the citizens (Bansal, 2021). The Nigerian government was not left out as well. At a time during the recent Endsars protest, the Nigeria Government also banned the use of twitter by its citizens (Akinwotu, 2022).

Reasons for Regulation

There are some contents that are not good for human consumption on the internet. This includes contents that could endanger a person's life and many others that are committed to

illicit activities such as child porn, sex or drug trafficking (Adeoye, 2020, pg. 1-6) etc. Another problem faced when the internet is not regulated is the circulation of false news. False communication, false adverts and misinformation is guided against when there is regulation (Segura-Serano, 2006). This is one of the reasons why some countries censor posts that are uploaded online especially on Facebook. Identity theft is also a major problem that internet users battle with (Adeoye, 2020, pg. 1-6) on the internet.

The Concept of Network Neutrality as propounded by Tim Wu

The concept of network neutrality was introduced in 2002 by a Columbia University law professor Tim Wu in his paper "A Proposal for Network Neutrality" (2002) In that paper and a subsequent paper titled, "Network Neutrality, Broadband Discrimination" (2003), he clarified that the rise in popularity of Wi-Fi in homes had given rise to a challenging new regulatory challenge. He believed that in order for cable and DSL providers to effectively manage their networks and maximise user productivity, they should not be allowed to discriminate against specific internet applications or users in order to further their own financial interests. That would amount to "market distortion" which would become deleterious to public interests, it will restrict innovation and also cause harm to companies prevented from participation.

Wu's stand for network neutrality is that it is a system that promotes innovation and healthy competition amongst application developers and this is one reason why the network should be made neutral to maintain a valuable and quality competition. He is of the belief that network neutrality would yield to a satisfactory "internet communication policy. According to Wu, open access is a remedy to network neutrality as open access is a set standard that would restrict "broadband operators from bundling broadband service with internet access from in-house ISPs".

Other proponents of network neutrality include Jerome Saltzer, Larry Lessig, and Mark Lemley, who have convincingly demonstrated a link between maintaining network neutrality and controlling open access. In their argument, cable operators if allowed to bundle ISPs with cable services would lead to the possibility of bringing down network neutrality by shutting out competition amongst internet application developers (Wu, 2002). He however state that critics such as Phil Weiser and Jim Speta do not support the argument. Wu (2003) clarified, though, that the idea of network neutrality is more complicated than some had thought. According to him, network neutrality is highly selective and contingent upon the selection of subjects one wishes to be impartial on. In contrast to open access, which is a structural solution, the primary goal of his research was to find a method of addressing the idea of network neutrality via the notion of broadband bias.

For instance, according to Finley (2017) there was a period in the United States of America when AT&T forbade customers from utilising Wi-Fi routers and Comcast, an ISP, prohibited home internet users from accessing virtual private networks (VPNs). Wu became concerned about this and proposed anti-discrimination laws to control internet services because he believed that broadband providers might stifle innovation in the long term by impeding the development of new technologies (Finley, 2017). He is not saying that internet service should not be regulated. Rather, regulation in this regard means giving access to free flow of contents passing through their cables and cell towers. ISPs won't be able to restrict, thwart, or

deny access to particular websites or services thanks to network neutrality. They won't have the ability to designate a "fast lane" whereby content preferred by the ISP loads more quickly than other content. It has paved way of accessibility for new websites and internet applications (Lee, 2015) and also allows an individual to be in charge of what he sees and does online. i.e., your internet provider does not control, cannot regulate what you can access on the internet.

By provision of law, in applicable countries internet service providers are to treat all the internet traffics and contents that they have on their network equally. The internet provider is not to block nor discriminate between the internet traffic on its network except for security, legal or emergency reasons (Wu, 2003). There are no strong network neutrality protections in place, then it becomes difficult to prevent ISPs from blocking or throttling lawful internet traffic or setting up contractual arrangements which makes them prioritize some traffic above others (Net Neutrality, 2011). For example in America, lack of net neutrality gives entities who can afford to pay more certain control over what information every American can access which in a way put other traffics in 'slow lanes.'(Shapero, 2024)

Nevertheless, Tim Wu urged librarians to maintain the fight to bring back net neutrality, which was put to a stop by the F.C.C. in December of 2017 under the Trump's administration. In his word, he stated that 'If we do one thing over the next few years,' he said, 'it must be to restore net neutrality. It must be to restore our informational freedoms' (Albanese, 2018). He went further to state it is the desire of cable companies and other large companies to have control over information on the internet, 'to prioritize and discriminate against other contents especially content that threatens their models' To him, net neutrality had been in existence before the Trump's administration and before its adoption by FCC under the Obama administration. The internet at the time was popular, non-partisan and flourishing. He further stated that during that period, blogs was birthed, people were able to share their video on YouTube, Wikipedia came into existence, and the social media platform grew. Even though some of these apps were not perfect at the time, it was the beautiful handiwork of some individuals. Skype offered free phone calls and Netflix became a challenge and threat to television stations and cinemas. In his criticism of Trump repealing network neutrality, he stated that just like Russia and China who also do not respect network neutrality, they are oppressive regimes with purpose of preventing free flow of information and for that they stand against net neutrality.

Net neutrality is a controversial concept that has had its highs and lows. The regulation of ISPs bets on what the ISPs deal with. If it has to do with Information services, the Federal Trade Commission (FTC) will regulate by virtue of Title I of the Communications Act (1934). If it has to do with utility, the Federal Communications Commission (FCC) will regulate by the authority of Title II of the Communications Act (1934). Network neutrality advocates many of which include the public, human rights and non-governmental organizations, advocates of consumer rights, a number of software and technology developers and other well established internet companies are of the position that the internet should be free, accessible and unbiased as this is important for a free flow of ideas and knowledge, ethical business activities, healthy competition and growing innovation (Madhvapaty & Goyal, 2014) That being said, internet service providers have a business strategy that enables them to charge a higher price for applications that have prime positioning and faster performance. As a result, they can legitimately establish internet "fast lanes" that provide VIP treatment to certain businesses so

they can advertise their services to the advantage of their clients, earning the ISPs more revenue (Jitsuzumi, 2010). ISPs also engage in zero-rating which is a practice that enables them provide internet access without monetary cost. This practice has been criticized as a practice that hinder free access and makes room for contents to be censored which contradicts network neutrality (Jitsuzumi, 2010). While advocates are of the opinion that it allows consumers the opportunity to access more data and online services i.e., access to more traffic.

The United State and Network Neutrality

Pre-Network Neutrality Era

According to Wu (2003), net neutrality in the United States has been an ongoing battle for a while. Way before the term network neutrality was introduced, the Federal Communications Commission (FCC) has made efforts to promote open networks. To stop them from undermining competition in the rapidly expanding computer networking industry, the FCC regulated phone companies in the 1970s and 1980s. The development of dial-up internet service was aided by one of the regulations, which guaranteed customers' ability to use modems on their phone lines (Finley, 2017) the re-enactment of the telecoms statute by Congress in 1996, the FCC under the Bill Clinton Administration required incumbent phone companies to grant access to rivals seeking to offer DSL service—broadband internet access via phone networks. The FCC wanted to encourage a market that was competitive for high-speed internet access (Mccabe, 2016). The Bush administration stopped that strategy in 2005 with an order from the Supreme Court, which prompted proponents of an open internet to begin advocating for network neutrality laws (Finley, 2017).

Post Network Neutrality Era

In a policy statement released in 2005, President Bush's administration through Federal Communications Commission (FCC) took a first pass at anti-discrimination rules for the internet (Hart, 2011). It forbade internet service providers from obstructing access to legitimate content or making it difficult for users to connect their preferred devices to their internet connections. In 2008, the FCC issued an order to Comcast stating that it would no longer slow down connections made using BitTorrent, a peer-to-peer file-sharing programme that has legal purposes in addition to being exploited for digital infringement. Comcast filed a lawsuit against the FCC, claiming that it had overreached itself (Bansal, 2021). A federal court determined that the FCC had not proven that it was authorised to implement the 2005 policy statement. Following multiple tries, the Obama administration's net neutrality order was finally passed in 2015. In order to control internet access, the FCC established network neutrality regulations. It operated under Title II of the Telecommunications Act (1996), regulating the internet as a common carrier, the same classification as telephone service. Internet service providers were not allowed by FCC regulations to prioritise, ban, slow down, or charge customers more to access particular websites (Hanna, 2018). Despite the Republicans in Congress opposing this step because they believed it would result in overly restrictive internet regulations. Broadband internet service is now considered a "telecommunications service," a legal classification that indicates it would be governed similarly to public utilities, according to the 2015 network neutrality guidelines that the FCC approved. While network neutrality is not explicitly protected, this only offers a new, more

robust legal basis for regulations governing it. The FCC also did not enforce certain public-utility regulations, such as price regulations (Hanna, 2018). Additionally, the FCC created strict guidelines for network neutrality. These regulations made it illegal for service providers to obstruct applications or content that is legitimately available online or to favour some content over others. Both wireless internet access via smartphones and residential Wi-Fi services were covered by these.

In retrospect, it appears that the FCC's enacted regulations go beyond the basic guidelines governing network neutrality. Network neutrality remains unlawful notwithstanding reclassification, which also creates additional legal obligations (Hanna, 2018). Requiring Wi-Fi providers to act in a fair and reasonable manner is among the most significant. For service providers, it would be unclear what constitutes just and reasonable in this context since it would have to be decided case-by-case. Netflix, for instance, had to sever private agreements with ISPs in 2014. To make sure Netflix videos run without hiccups on Comcast and Verizon networks, it paid them a small sum of money. Netflix made these agreements because its users were having trouble with poor speeds and it would be losing out to competitors if it didn't speed up its content. Customers of Netflix saw an over 70% increase in their average connection speed following the agreement (Ramachandran, 2014).

In 2017, network neutrality was reversed by President Trump's administration with the FCC officially implementing the removal in 2018 (Kenton, 2023). In the same 2018, California passed a network neutrality law and was immediately sued by the Trump Administration Justice Department. However, in 2021, the Biden administration Justice Department withdrew the lawsuit against California, and now support has been shown by the FCC Acting Chairperson Jessica Rosenworcel in reinstating network neutrality laws. As of March 2021, the network neutrality laws have been adopted by "seven states (California, Colorado, Maine, New Jersey, Oregon, Vermont, and Washington), and several other states such as Connecticut, Kentucky, Missouri, New York, and South Carolina have introduced some form of net neutrality legislation during their 2021 legislative session. The FCC's new rules would change the positions of the service providers as common-carrier and also restricts any form of blocking or throttling of content. In place of those restrictions, the new rules will require that ISPs disclose information about their network-management practices (Ohlhausen, Vol. 67, Pg. 205-237). The responsibility to protect consumers from net neutrality violations rests on the Federal Trade Commission (FTC) which is an enforcement agency. Complete blocking of a competitor may become an antitrust violation, but creating fast lanes for companies that pay extra for special treatment might not be (Zheng, 2013). A company who feels a broadband provider is behaving unreasonably in the interconnection market will lodge its complaints before the FCC, which will intervene if the company's actions are not 'just and reasonable'.

Some Net Neutrality Cases

Some ISPs such as Cox and Comcast, banned some customers from using virtual private networks (VPNs) and asked users to upgrade to professional or business accounts if they wanted access. The practice was not for long but it promoted net neutrality (Gadsden, 2022).

The FCC in 2005 fined Madison River, an ISP in North Carolina, ordering it to stop blocking phone calls over the internet (McCullagh, 2005).
In 2008, the FCC ordered Comcast to stop slowing down BitTorrent connections on its network.

Comcast denied doing so but said it has the right to set connection speeds as it sees fit. A federal court later sided with Comcast, saying the FCC had not proved it could legally enforce its policy (Gross, 2010).

From 2007–2009, Apple at a time on the request of AT&T blocked iPhone users from making Skype calls but for pressure from the FCC, they had to stop it. The Google Voice app also had a similar encounter with AT&T when it came on the scene in 2009 (Hansell, 2009).
In 2010, Windstream Communications, a DSL provider for over 1 million customers back then, hijacked the search engine by using the Google toolbar within Firefox. Users who thought they were on a search engine of their choice got redirected to Windstream's search engine and results (Karr, 2021). Other cases include MetroPCS in 2011 made public its plan to hinder users from streaming videos over 4G network from other sources except YouTube. Also, AT&T, Sprint and Verizon blocked Google Wallet, a mobile-payment system that competed with a similar service called Isis, which all three companies had a stake in developing (Feiner, 2021). In 2012, the FCC discovered that Verizon Wireless violated net neutrality by blocking people from using tethering applications on their phones. Between the year 2013 and early 2014, users experienced slower speeds they connect to some websites and applications such as Netflix. Others were unable to get access to video-conference sites and voice calls over the internet became almost impossible. The main reason was because their ISPs failed to provide sufficient capacity for traffic to make it to their networks (Marsden). The "intentional policies by some of the nation's largest communications companies, which led to significant, months-long degradation of a consumer product for millions of people" was discovered by an Open Technology Institute who investigated the matter (Karr, 2021). It was an intentional act by ISPs, and other major players to limit the capacity at interconnection points, thereby throttling the delivery of internet service to various American businesses and residential customers across the country.

Arguments against Network Neutrality

The inability to charge for data usage is one of the drawbacks of net neutrality. Requiring networks to handle all traffic equally has drawn criticism since it may deter network owners from coming up with useful innovations (Madhyastha, 2017). For instance, certain apps are more vulnerable to data delivery delays, such as online gaming and voice calls. Companies paying a charge to guarantee that their latency-sensitive applications receive priority might potentially benefit internet users (Peha et al, 2007). However, stringent network neutrality regulations may prevent ISPs from testing this type of service. Regulations may deter investment in network infrastructure, which is another prevalent worry. New fibre optic networks, which can reach speeds of up to 1 gigabit per second—roughly 50 times faster than normal networks today—have been installed in various parts of the nation by corporations like Google and Verizon. The construction of these networks is highly costly. These businesses' investments would be impacted if network neutrality regulations reduced network profitability. Opponents of network neutrality fear that implementing regulations will be excessively

challenging. The internet is dynamic and complicated. They worry that rules might become out of date practically immediately after they are created. Without truly protecting the open and free internet, that might result in lawyers having a lot of work to do (Shepherd, 2022). Another disadvantage for net neutrality is the unregulated aspect of the Internet. Because of freedom of speech and the internet's freedom of expression, almost anything can be posted on it. Many people have argued that this leads to offensive and thoughtless content that is easily accessible to anyone. Another argument for the lack of network neutrality laws is that internet service providers naturally have an interest to keep the internet running smoothly (Isberto, 2018). Ultimately, the increased availability of cutting-edge online services makes internet connection increasingly lucrative. Net neutrality regulations are unnecessary because the internet developed amazingly well in their absence ((Ohlhausen, Vol. 67, Pg. 205-237). Net neutrality reduces investment in internet services resulting in less access and higher costs for consumers.

Arguments in Support of Net Neutrality

Net neutrality is seen as generally successful despite the disparities in its evolution. Those who embrace it believe the idea is a cornerstone of a number of ideals, such as:

Freedom and access to information: Idea sharing and free speech are encouraged by net neutrality. Internet service providers won't be able to control or forbid what their users can view, access, or read online thanks to regulations protecting net neutrality. By outlawing content restriction by internet service providers, it promotes free speech on the internet. If rules protecting the free and open internet are not established, internet service providers (ISPs) such as Comcast would essentially control what content consumers could access, when they could access it, and how much more they would have to pay to access it. Information will no longer flow equally if the internet is not allowed to stay open and free. Similar to how cable channels are managed, repackaged, and premium bundles are set (Isberto, 2018).

Business freedom and consumer choice: ISPs can extort extra money from companies by threatening to limit access to particular websites and content. In the competitive customer service arena, those who cannot afford preferred service agreements are at a disadvantage. By preventing big, wealthy businesses from unfairly benefiting from paying ISPs extra for unfettered consumer access to their goods or services, net neutrality aims to level the playing field. By forbidding ISPs from charging higher rates, slowing down, or being in favour of certain internet content over others, net neutrality safeguards customers. Regarding customer choice, net neutrality is important. Customers as well as several small and large enterprises will be impacted if ISPs have the ability to determine which websites are viewed and at what times. Customers won't have an option other than to rely on their ISPs if the internet isn't free and open.

Greater innovation: Net neutrality would be undermined, and smaller businesses would find it more difficult to survive. New businesses and innovations may never be allowed to expand if ISPs choose their favourites. Net neutrality provides growth and expansion chances for new businesses. Many bloggers have also been able to share their content and so have large audiences, thanks to content marketing, which has helped numerous businesses fulfil the needs of their clients by customising their content to match specific needs. Allowing ISPs and big telecoms to have their way will make this impossible (Shepherd, 2022).

Prevention of erratic rise in charges. By ensuring network neutrality, ISPs will not be able to make erratic charges on certain services or higher speeds. With net neutrality laws, contents will be treated equally preventing discrimination and throttle against higher fees in order to grant "fast lanes". It will also prevent ISPs from charging consumers based on the services they use the most just because they know consumers will not want to lose the services (Samples, 2019).

Net Neutrality in Nigeria

Until recently when the Nigerian Communications Commission (the Commission) published the draft code for the Establishment of Internet Industry Code of Practice (The Code), there was no particular network neutrality law in existence. The Code does not only encourage and promote open internet but also seeks to address topical internet governance issues such as net neutrality and (discriminatory) traffic management practices by internet access service providers (IASPs) (Akapo, 2018).

The draft is not limited to internet access service providers but extends to the provision of internet access services within Nigeria. It also includes provisions for consumer rights with reference to a free and open internet. It guarantees the ability to use and share information and material freely, as well as to use and supply apps and services and the appropriate terminal equipment of their choosing (Draft Code, Para 2). It prohibits the blocking of legal contents, applications or services. An internet service provider is expected to be transparent about its practices and services available to end users (Draft Code, Para 3).

The Draft Code

The Nigeria Communication Commission (NCC) published the Draft Code in 2017, which includes the following clauses.

Application of the Code

Internet access services and IASPs in Nigeria will be covered by the Code. According to Section 1.4, an IASP is

> *Any entity licensed by the Nigerian Communications Commission, engaged in the provision of an Internet Access Service, irrespective of the network technology or terminal equipment used, or the license held,*
>
> While Internet Access Services is defined as
>
> *A publicly available electronic communications service, irrespective of the network technology or terminal equipment used, that provides access to data communications to or from Network Termination Points with IP addresses that are assigned through delegation from the Internet Assigned Numbers Authority*

Right of Consumers to Open Internet Access is provided for in Section 2 (Draft Code) and it lays out ways by which the right of the consumer is protected and it grants access to lawful content, applications or services without restriction from an IASP. IASPs are also to be transparent in their obligations to consumers.

Section 3 (Draft Code) laid down the standards for open internet access. The standards include:

Transparency

Section 3.1 (Draft Code) requires IASPs to be transparent about the features, functionality, and financial terms of their internet access services so that users can make educated decisions about how best to use them. This clause provides for disclosure to end users/consumers as well. In all service agreements with the IASP and on the IASP website, this disclosure ought to be made obvious. The minimal information that an IASP must reveal when performing any network management procedure is also specified by it.

No discrimination

According to Section 3.2 (Draft Code), the IASPs are required to handle all traffic identically, without hindrance, discrimination, or interference, regardless of the sender or recipient, content, application, or service, or terminal hardware involved. Equality is crucial regardless of where anything comes from or ends up. A consumer's right to unrestricted internet access, as stipulated in Draft Code Sections 2(a) and (c), would be violated by an IASP that practices discrimination.

No blocking

Except for the purpose of reasonable network management, Section 3.3 (Draft Code) forbids IASPs from blocking online content that is lawful. Network techniques intended to improve or safeguard end users' quality of experience while adhering to net-neutrality principles and standards are referred to as reasonable network management in section 1.4 (Draft Code). This shows that illegal information will be restricted on the internet, including pornographic articles and content that violates copyright or trademarks.

No throttling

With the exception of appropriate network management, Section 3.4 (Draft Code) forbids IASPs from deteriorating or obstructing legitimate internet traffic. Network methods where data upload and download rates for particular services are internationally controlled are referred to as throttling in section 1.4 (Draft Code).

No preferential data prioritization

Preferential data prioritisation is prohibited by Section 3.5 (Draft Code) for IASPs. Section 1.4 of the Draft Code describes preferable data prioritisation as "*the practice of granting preferential treatment to selected network data within the same service category based on the data's origin, business agreements between IASPs and other entities, other commercial considerations, or any other consideration that do not qualify as reasonable network management*". This provision prohibits the IASP from accepting monetary consideration from a third-party or any affiliated body to manage its network in a manner that favours its content or services.

Zero-Rating

Zero-rating according to section 1.4 (Draft Code) is *"[w]hen an IASP applies the price of zero to the data traffic associated with a particular application or a class of applications (and the data does not count towards any data cap in place on the internet access service*". In compliance with the Competition Practice Regulations (2007), an IASP may provide zero-rated services under this provision, provided that the services further the goals of the Communications Act in Section 1 (c) and the universal access policy objectives found in the National Information and Communications Technology Policy (2012) and the Nigeria ICT Roadmap (2017–2020). The Commission's approval is required for this to happen.

Acceptable Traffic Management Practices

In Section 3.7 (Draft Code), the conditions under which appropriate network management procedures should be used are outlined. It is highlighted here that the no-blocking and no-throttling guidelines outlined in Draft Code Sections 3.3 and 3.4 are not applicable to appropriate network management. According to whether the foundation for its execution complies with the specifications given in Section 3.7 (Draft Code), this position would be deemed "reasonable." The Draft Code's net-neutrality provisions, however, are in accordance with worldwide standards for net-neutrality regulations that have been enacted in other legal systems, demonstrating the Commission's extensive work. However, because the Draft Code does not yet have legal weight behind it, it is not now relevant. As the Draft Code focuses on ensuring access to an open internet, it is the Commission's duty to guarantee that its requirements are followed after it enters into force. Because international standards must be met and technology is always evolving, the commission should not hesitate to alter the net-neutrality regulations as needed.

Despite the provisions of the draft code, some critics such as Ubochioma has stated that due to certain factors such as competition among ISPs, structural peculiarities, amongst others Nigeria is not set for the use of the Draft code. He stated that the US broadband market where ISPs sell speed differs from that of Nigeria as many Nigeria ISPs make use of the “user-pay model” which is a plan that allows subscribers to pay certain amount for the use of a specific plan (Akapo, 2018). That it is a baseless assertion to say that ISPs will be involved in throttling in Nigeria. This he said is impossible as ISPs in Nigeria make use of the “volumetric pricing system” where subscribers have access to the internet by payment for a fixed and allowed data usage of the ISP (Akapo, 2018). If consumers are discriminated against, there is a risk of losing such consumer to another ISP. There is also large competition in the Nigeria internet service market and no ISP would want to risk losing its end-user to another. Also, the service of an ISP can extend to all geographical areas of Nigeria as long as it has the financial capacity to invest adequate broadband base and this leads to competition amongst ISPs and it also prevents them from blocking, throttling or degrading content (Akapo, 2018).

Conclusions

There is no gainsaying that, the future of net neutrality is in the hands of leaders and politicians who are responsible for creating rules that would benefit the society as a whole**.** There are no specific general ways to regulate the internet, rather, what is mainly available is idea of what the network neutrality rules do for internet users. Regulating the internet and avoiding discrimination fosters fairness and equality. But then, in whatever way the internet will be regulated, it should not lead to exploitation of consumers.

The concept of net neutrality will remain a contemporary issue that needs to be addressed according to each jurisdiction and legal system. The Joe Biden administration is on the verge of fully resuscitating network neutrality in the US (Feiner, 2021). The UK since it is no more a part of the EU has started a new review of the UK network neutrality rules (Lindsay, 2013). China does not give room for network neutrality as the government controls and regulates access to open internet (Zheng, 2013). North Korea only grants access to the internet to very few officials and it has to be with permission. What the citizens have access to is controlled by the government as well. India, has enjoyed the net neutrality rules since 2018 (Bansal, 2021).

It is hopeful that someday, the draft code will become applicable in Nigeria as the draft code is a good development that has placed the Commission on the path of growing development in the international internet and telecommunications industry. In conclusion, the Commission when enacting the Code must ensure a balance of interests in order to bring about a free and accessible internet.

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