

Network neutrality and mass media diversity

Legal framework

(a) What laws or other policies are used to regulate network neutrality?

Articles 145 and 146 of the “Ley Federal de Telecomunicaciones y Radiodifusión” (by its acronyms in Spanish **LFTR**), within the fifth title, chapter VI called “De la neutralidad de las redes” they constitute the main regulation of net neutrality in Mexico.

Such articles provide that the concessionaries who provide the internet access must abide by the guidelines of general concern issued by the “Instituto Federal de Telecomunicaciones” (by its acronyms in Spanish **IFT**), which must be in accordance with the principles of:

- 1- Free choice.
- 2- Non-discrimination
- 3- Privacy
- 4- Transparency and information
- 5- Traffic control
- 6- Quality
- 7- Sustained development of infrastructure

(b) What is the legal status of the pertinent regulations?

The current regulations about net neutrality have the character of Federal Law.

(c) How the law defines network neutrality?

Article 145 of the “Ley Federal de Telecomunicaciones y Radiodifusión” does not define the concept of net neutrality, however, it establishes seven principles that the “Instituto Federal de Telecomunicaciones” must respect when issuing the guidelines of the protection of net neutrality.

The principle of free choice provides that users of Internet access services may access any content, application or service offered by the concessionaires or by those authorized to market, within the applicable legal framework, without limiting, degrading, restricting or discriminating access to them. In addition, it contemplates that the right of users to incorporate or use any kind of instruments, devices or devices that connect to their network, as long as they are homologated, cannot be limited.

The principle of non-discrimination provides that Internet access service providers shall refrain from obstructing, interfering, inspecting, filtering or discriminating content, applications or services;

The principle of privacy establishes that concessionaires and authorized persons must preserve the privacy of users and the security of the network.

The principle of transparency and information includes obligations to publish information related to the characteristics of the service offered, including traffic control policies and network administration authorized by the Institute, speed, quality, nature and service guarantee.

The principle of traffic control provides that Internet service providers may take the necessary measures or actions for traffic control and network administration in accordance with the policies authorized by the IFT, in order to guarantee the quality or speed of service contracted by the user, provided that this does not constitute a practice contrary to fair competition and free competition.

The principle of quality implies that Internet access providers must preserve the minimum quality levels established by the IFT. In addition, it is provided that the IFT should promote the sustained development of the infrastructure.

Finally, article 146 establishes that the concessionaires and authorized persons must provide the Internet access service respecting the capacity, speed and quality contracted by the user, regardless of the content, origin, destination, terminal or application, as well as the services that are provided through the Internet.

(d) If there are no laws regarding net neutrality, is there any proposed law?

There are no law proposals on net neutrality.

(e) Have laws been proposed concerning net neutrality in the past?

Beside the “Ley Federal de Telecomunicaciones y Radiodifusión”, in the past no laws regarding net neutrality had been proposed.

(f) Lawmakers are discussing network neutrality?

At this specific moment, there is no discussions regarding network neutrality on the legislative power.

Implementation

(a) How is net neutrality regulated?

Although LFTR, current since 2014, establishes an obligation for the IFT to issue guidelines for the protection of network neutrality, at the beginning of 2019 such guidelines have not been issued, so in effect the neutrality of the network It is not legally protected.

(b) What regulatory agencies or other authorities are responsible for enforcing network neutrality rules?

The “Instituto Federal de Telecomunicaciones” is the regulatory agency in charge of issuing the neutrality protection guidelines of the network, as well as guaranteeing its observance.

Develop in parallel, the “Procuraduría de Protección al Consumidor” ” (by its acronyms in Spanish PROFECO) has powers to observe the rights of users, which include, according to article 191, sections VI and VII of the LFTR, the right to free choice and no discrimination in access to Internet services and the right to be provided with telecommunications services in accordance with the quality parameters contracted or established by the IFT.

(c) What are the enforcement mechanisms? (Imposition of sanctions, voluntary agreements, etc.)

Given that the general guidelines for the protection of net neutrality have not been issued, there are currently no effective mechanisms to observe the network neutrality.

However, article 298 of the LFTR authorizes the IFT to impose a fine of up to 3% of the income of the Internet access provider for blocking, interfering, discriminating, obstructing or arbitrarily restricting the right of any user of the access internet service.

Likewise, article 128 and 128 “Bis de la Ley Federal de Protección del Consumidor”, in connection with article 297, authorizes PROFECO to impose sanctions such as fines of up to \$3,066,155.98 or even total or partial closure for up to 90 days. and a fine of up to \$4,584,196.01 in cases classified as “particularly serious”.

(d) If there are enforcement mechanisms, are they effective?

Given that the general guidelines for the protection of network neutrality have not been issued by the IFT, there are currently no effective mechanisms to observe the network neutrality.

(e) What enforcement mechanisms have been effective and which have been ineffective?

Given that the general guidelines for the protection of network neutrality have not been issued by the IFT, there are currently no effective mechanisms to observe the network neutrality.

(f) To which entities are the regulations on network neutrality applicable? What is the scope of the regulation on net neutrality? (broadband, mobile, etc.)

All the concessionaires authorized to provide the Internet access service must observe the regulation on neutrality, including the providers of broadband services or mobile internet.

(g) What exceptions exist on the application of the rules on network neutrality?

The legislation on network neutrality does not establish exceptions for the application of the standards on network neutrality. However, as part of the protection of the principle of network neutrality, Article 145 provides that Internet access service providers may take the necessary measures or actions for traffic control and network administration in accordance with authorized policies. by the IFT, in order to guarantee the quality or speed of service contracted by the user, provided that this does not constitute a practice contrary to fair and free competition.