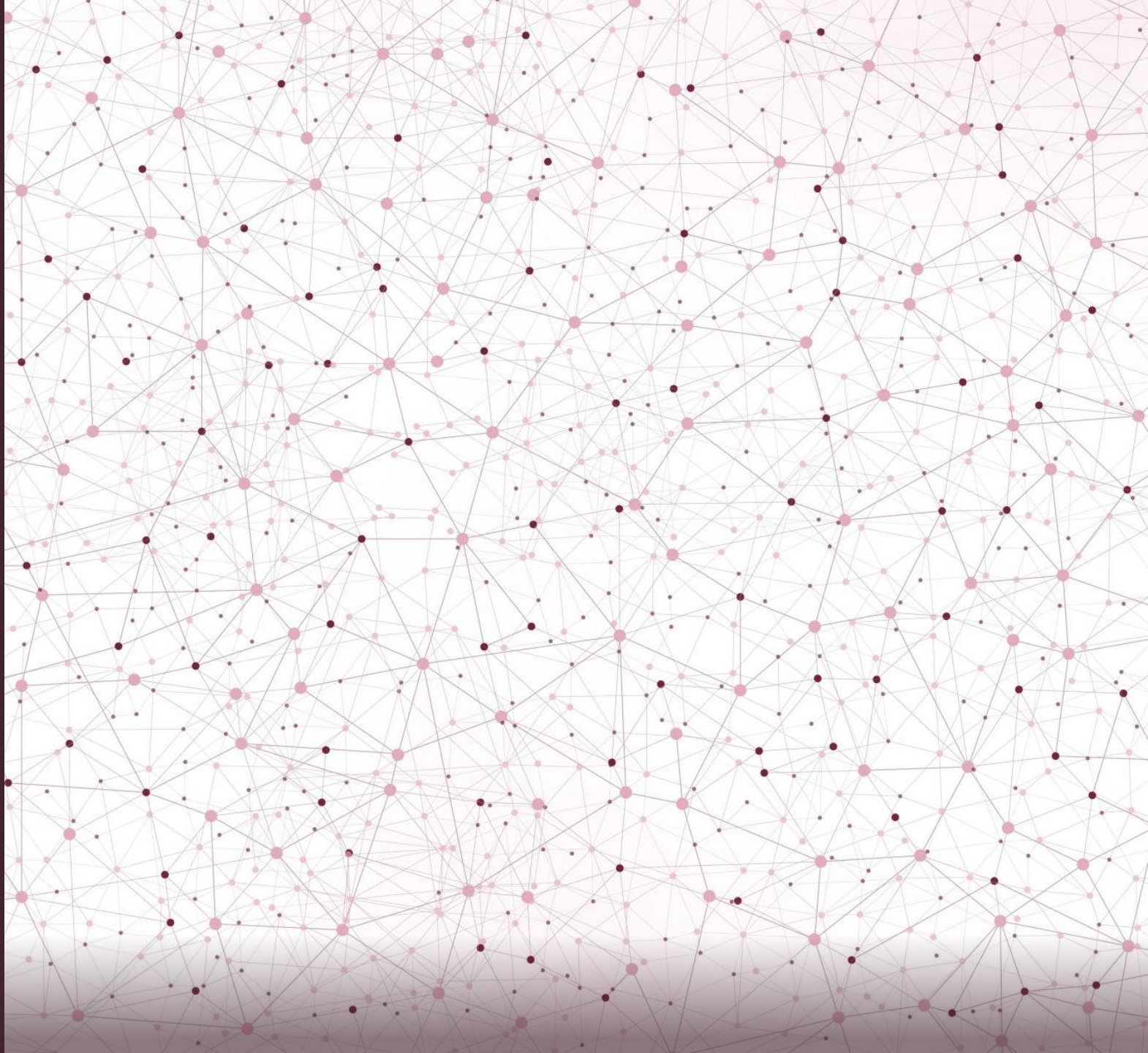


Net neutrality exceptionality: A look into the Pacific Alliance countries during the COVID-19 pandemic

Javiera Cáceres
Felipe Muñoz
Ignacio Sánchez

REDLAS 2022



Contents

- Literature review: framework and debate on net neutrality, international standards.
- How the Pacific Alliance has addressed and incorporated net neutrality principle.
- Implementation of the net neutrality principle in the context of COVID-19.



Net neutrality

- Principle of non-discrimination:
 - Equal treatment of contents and data packages circulating on the network.
 - Avoidance of arbitrary measures adopted by an ISP.
 - Open networks for the free flow of information, which should not be discriminated according to origin, use or application.



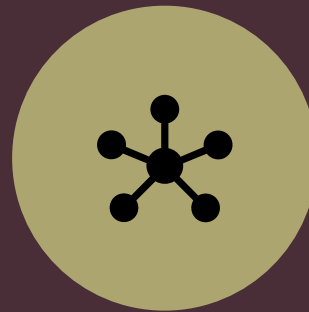
Net neutrality: four freedoms



CONNECT DEVICES



RUN APPLICATIONS



RECEIVE THE DESIRED
CONTENT PACKAGES



OBTAIN RELEVANT
INFORMATION ABOUT THE
CONTRACTED SERVICE PLAN.

Current freedoms based on the tackling of four original problems



APPLICATION BLOCKING



ISP MONOPOLIES



PRIORITIZATION OF CERTAIN
SERVICES, PROVIDERS,
APPLICATIONS OR CONTENT,
BASED ON AGREEMENTS AND
CONTRACTS



LACK OF TRANSPARENCY

Net neutrality

- Element of the **free and open** Internet architecture.
- Importance of shared regulatory principles:
 - Enabling a better digital space for the exercise and guarantee of rights.
 - Better environment for the development of free competition.
 - Interoperability of information flows and legal institutions.
 - Use of digital products and cross-border provision of services under common rules.



Net neutrality and trade

Net neutrality, a possible element of Internet regulation that may have an impact on the development of trade.

Trade in services and in digital goods.

We need services and digital goods exports to be **treated fairly** in terms of data packages → extension of the **WTO principle** in the light of new circumstances.



Net neutrality and WTO trade in services

Decision Concerning the 1997 Basic Telecommunications Negotiations

- Grant interconnection to service suppliers of other WTO member states on non-discriminatory terms
- Conceptual bases of net neutrality, taking an extensive and teleological interpretative method of the WTO Law

WTO Work Programme on Electronic Commerce, 1998

- Provisional moratorium on the imposition of custom duties on electronic transmissions
- Crystallization of the practice by binding trade agreements.

Annex on Telecommunications of the General Agreement on Trade in Services (GATS)

- Compliance with technical standards (ITU)
- Global network compatibility and interoperability.
- Efficient operation of national and global telecommunication services.

International standards: International Telecommunications Union

Since 2000 ITU Telecommunication Development Sector has convened the Global Symposium for Regulators (GSR)
→ the first multilateral event aimed at telecommunication regulators and related policy-makers.

Evolution of the discussion at GSR

2004-2011: Technological neutrality, efficient cross-border service provision, spectrum and traffic management, free competition, open access in the digital economy.

2012 specific session on NN: element of global Internet governance, market competitiveness, transparency, quality of service, discriminatory practices, network management measures.

2019: reaffirms 2012 positions and links to bridging the digital divide and 5G implementation.

Standards in international trade: CPTPP, USMCA, DEPA

- The agreements do not contain any express reference to net neutrality. They do, however, refer to a number of issues related to the Internet and non-discrimination, the latter element being the essence of NN.
- They prohibit discrimination against digital products, mandating no less favorable treatment to like digital products of another Party → Extension of the rule to the NN, as the data packets through which a digital product is transmitted should receive no less favorable treatment.
- Finally, the agreements regulate the Principles on Access to and Use of the Internet:
 - Access and use services and applications of the consumer's choice available on the Internet, subject to reasonable network management;
 - Connect end-user devices of the consumer's choice to the Internet; and
 - Access information about ISP network management practices.



DEPA: notable mentions

“The global value of the Internet and its open architecture as an enabler of the digital economy and a driver of global innovation”

- Precedent in distinguishing the Internet's open and free identity as a decentralized global public good.

“The role of standards, particularly open standards, in facilitating interoperability between digital systems.”

- Adoption of standards as to avoid fragmentation in the different jurisdictions (legal interoperability).
- Interoperability of digital systems (technical).

Net neutrality in the Pacific Alliance Member States

Chile

- Law No. 18.168 (1982) General Telecommunications Law
- Decree No. 368 (2011) of the Ministry of Transportation and Telecommunications

Colombia

- Law 1450 (2011), whereby the National Development Plan is approved
- Resolution 3502 (2011), which establishes the regulatory conditions related to neutrality on the Internet

Perú

- Law 29.904 (2012) on the Promotion of Broadband and Construction of the National Fiber Optic Backbone Network
- Supreme Decree 014-2013-MTC (2013)
- Resolution of the Board of Directors N° 165-2016-CD/OSIPTEL (2016), Network Neutrality Regulation

México

- Federal Law on Telecommunications and Broadcasting (2014)
- Guidelines of the Federal Institute of Telecommunications (2021) for traffic management and network administration

General content of the Pacific Alliance regulations



Prohibition of blocking, restriction, hindrance or discrimination



Traffic management and network administration



Voluntary blocking by users



Transparency



Reference to international technical standards



Privacy of users and network security



Complaint mechanisms in case of non-compliance



List of practices infringing NN

Net neutrality in the Pacific Alliance

- Initiatives within the Pacific Alliance that leverage the use of new technologies and the Internet to increase trade rates and export processes.
- Regional Digital Market → Various presidential and ministerial instruments state that cooperation on NN is a necessary action to achieve the goal of creating an enabling environment to promote the exchange of digital goods and services.
- Reform of the Commercial Protocol → inclusion of NN in the Telecommunications Chapter

Net neutrality and COVID-19 Factor

- OAS-IACHR Recommendations adherence to net neutrality to ensure universal access to a free, open and inclusive internet.
- Net neutrality was highly debated in the context of the Covid-19 pandemic:
 - In discussion due to the high and soaring demand.
 - Prioritize video streaming or telework, telemedicine and tele-education services?
 - High activity of stakeholders to express a position (ISPs, associations, guilds and civil society).
 - Government interest in regulating or relaxing net neutrality.



Net neutrality and COVID-19 Factor

- **At the regulatory level, has there been any impact?**
 - **Colombia** incorporates a new paragraph to the article on net neutrality (National Development Plan Law), requesting the regulatory entity to define the circumstances in which ISPs may **prioritize access to content or applications related to health services**, government and public sector websites, the development of work activities, education and the exercise of fundamental rights, only during the occurrence of pandemics declared by the World Health Organization.
 - **México:** Bill for the management of Internet traffic (2020).





1

Evaluate the effective impact of new regulations and perception of draft legislation.



2

Interviews with key stakeholders in order to understand their perception of the current net neutrality regulations at the Covid-19 event.



3

Determine whether new regulations are necessary, or whether traffic management measures already in place in the Pacific Alliance's net neutrality laws would suffice.

Next steps

¡Muchas gracias!

Javiera Cáceres
Felipe Muñoz
Ignacio Sánchez

REDLAS 2022

