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Research Abstract: Consumers, Disclosure, and Internet Governance

Many countries, such as the United States, do not directly regulate internet access, interconnection, and quality of service, largely leaving to the market consumer protection and internet governance. This policy decision assumes *inter alia* that adequate information exists to enable a well-functioning market so that consumers, or even a subgroup of informed technophiles, can detect unreasonable traffic discrimination.

Yet, information about internet connection, peering and transit agreements, and the workings of the myriad state and non-state actors (national telecommunications firms, RIRs, the IETF) that control internet traffic is simply not publically available. Unlike telephony, in which routes and carriers were largely fixed, identifiable, and relatively few, internet traffic travels, at least *ex ante*, through unknown numbers of carriers on largely unspecified routes. Internet connection quality is a probabilistic function not meaningfully captured by a handful of metrics as with traditional telephony. Finally, markets face a collective action hurdle to providing useful information about internet access quality because the “quality” of a consumer’s internet experience depends not merely on his or her relationship with the ISP, but with the ISP’s interconnection relationship to other networks. No one ISP has the ability or incentive to provide information about other networks so as to provide a more complete picture of internet quality.

To the degree consumers and markets can play any governing role to ensure service quality and punish any network’s or access provider’s unreasonable traffic discrimination, consumers must have adequate information about actual traffic protocols. Given this information’s scarcity, mandated disclosure of such information is likely necessary.

But how is mandated disclosure possible in the supra-national, multi-polar governance structure of the internet and, just as puzzling, what should any proposed internet disclosure include? As for the first question, my research examines and develops the new set of norms and standards working over a multitude of state and non-state actors that might lead to greater disclosure. My thesis is that that these norms could develop like technical standards, taking advantage of network effects to encourage widespread adoption.

As for the second issue, my research argues for requiring public disclosure of (i) each network’s QoS policy, with reference to some industry standard like the widely used DiffServ architecture and (ii) all peering and transit agreements as well as (iii) the implementation of these interconnection agreements by mandating network’s registration in the Internet Routing Register (IRR) or equivalent public registration. My research examines the legal challenges in implementing these disclosure requirements in both international and national contexts.