



India Chennai

Comments on draft India e-commerce Policy

The Commerce Ministry's draft e-commerce policy paper raises valid observations concerning some of the imbalances, such as, on the excessive advantages gained by the "first movers" in the private sector, which implies advantages gained by the first -mover States on the Internet, on some of the prevailing gaps in the space and also on concerns about the abusive practices by a few e-commerce platforms and vendors. Most of these concerns are best addressed globally, in a manner attuned to the emerging processes of Internet Governance, rather than by parallel, superfluous and disconnected national/regional legislation.

The Ministry appears to be responding to the GDPR by drafting an India-centric regulatory framework, not only on data issues, but on broader e-commerce concerns. Both the GDPR (despite its timely attention to the privacy crisis, its various merits and its relative fairness), for its European scope and Eurocentric references, and India's national e-commerce policy, for its India-centric undertone, are unhelpful. Regional regulations, responded to by competing Regional and National regulations, one following another in succession, each in its own way seeking to protect the respective National and Regional interests, disturb the harmony of the space that is meant to be borderless and global.

There appears to be signs of a war between legislatures, which is seen reflected in the policy process across continents. In response to America First, Europe says Europe First, then India says India first and, one after another pass National Laws; rather than level the playing field, these governmental processes widen the gulf, makes the playing field into a field of rough, disconnected terrain.

This draft policy has NOT turned out to be "contemporaneous with challenges", but follows some of the misdirections occurring across continents in matters of Internet Governance. Rather than follow this trend of national and extra-territorial legislative forays, India should instead OPPOSE Europe and oppose United States on certain specific gaps in their legislative attention to Internet issues; SUPPORT some of their good steps while seeking to make those good

clauses global in scope and globally balanced. Augment the scope of solutions by arguing to include aspects such as Copyright excesses, business transparency and consumer interests. India is among the first of the nations to propose solutions such as 3.8, 3.15, 3.16 and Sections (E) Authentic Ratings and Reviews (F) Consumer Oriented Customer Service with a view to ensure fairness in e-commerce. If proposals such as these form part of Global Internet Policy, it would be of immense value to the whole world.

The path towards prosperity is beyond borders. Reinforcing the trade borders obstructs the path unintended. Despite unchecked abuses by a few e-commerce companies and ecommerce platforms, what India requires to do is move away from the remnants of a historical mindset on anything foreign, trust the Internet, and, participate with total trust in the global Internet processes, and also in other relevant global processes towards freer flow of goods and services and knowledge. On the free and open Internet with minimal restraints, more of e-commerce would be fair to India, if not likely to be of at least marginally more than proportionate advantage to Indian businesses and individual service providers.

The draft, as published, isn't forward looking, but seeks to turn progress backwards:

A Textile Technologist spoke of a time, not long ago, when a Textile Mill in India required a licence that was so rigid in terms of production capacity licenced to the unit that there were processes specified even to replace worn out machinery; the new machinery should not increase the licenced capacity, and the process of replacement required the physical presence of a Representative from the Textile Ministry to supervise the scraping of the worn out machinery: a worn-out weaving machine had to be broken into pieces with blows to the machine's frame in a prescribed manner to ensure that the broken frame was conclusively rendered useless. This was the era where Government sought to regulate everything by its licensing policy across sectors. It was not legal for an automobile company with a license to manufacture a rigid volume (in thousands) of three wheel automobiles to add a fourth wheel.

That kept India decades behind the more developed nations in terms of technological and overall progress. In the 80s, there were some changes and in the early 90s the Government of India began economic reforms which caused considerable progress; India wasn't behind at all in the age of Computers and mobile telephones, and (despite having reservations due to a still persistent uneasiness of the unknown) India has done well on the Internet.

The Ministry's draft policy mirrors the negative spirit of the India's Textiles Licencing Policy of the first five or six five year plans of India. The draft clauses of this e-commerce policy are not unlike the terms of the rigid licensing requirements- regulatory freeze on the manufacturing capacity of (big) mills, stipulations on cotton storage, import restrictions, export restrictions, hank yarn obligations and several other clueless centralized regulations that stymied overall economic progress for 50 years.

At home, the draft national e-commerce policy seeks to turn the clock way backwards; On the world stage, while the world moves towards trust based, Permissionless global technologies such as cryptocurrencies and blockchain, the Commerce Ministry's proposals seek to introduce a licensing regime for e-commerce. This nationalistic overture would invariably threaten to de-globalize the Internet, while hurting India in the process.

Comments on Specific Sections / Clauses of the draft Policy

Comments on Executive Summary:

“Conditions are required to be adhered to by business entities which have access to sensitive data of Indian users stored abroad.”.

Separation of Indian data from that of global data is a legally complex process. What is Indian data? Data collected in India or data on Indian nationals? What happens when data collected in India is that of other nationals? Or, what happens when data collected is that of an Indian national and another at the same time? Or that of multiple jurisdictional issues? Would the process of regulating data result in data usage fairness rather than merely shift any unfairness from ‘foreign’ commercial entities to Indian commercial entities and from ‘foreign’ governments to Indian Government? Transfer control from beyond borders to within borders? Or transfer ownership from business to government? Would this overture lead to a balance or merely replace one form of unfairness with a different form of unfairness? There are many, many questions on the complex issue of data ownership. Some of the examples cited on Community ownership of data provide a good start, but it is not helpful to propose multiple national and regional directives, each seeking to contain data within their respective geographies.

On the Internet space, it would be fair if the India specific draft clause is aspirationally amended to propose ‘Conditions are required to be adhered to by business entities and Governments, who cause data to be collected, and/or have access to data, sensitive or monetizable, of All users from anywhere, stored anywhere in the world’.

The Commerce Ministry says in the first part of the same sentence that it wants to crack down on data, and in the next part recognizes that data is valuable and useful. How would this seeming contradiction of really no absolutes to be reconciled? Perhaps inventively conceive global Data Exchanges without the fallacies, conflicts and omissions of an Exchange Commission?

Comments on Section (B) Other strategies relating to e-commerce marketplaces:

“All ecommerce sites/apps available for download in India must have a registered business entity in India as the importer on record or as the entity through which all sales in India are transacted”

Would the Ministry of Commerce, by the same spirit, expect and make it easy for Indian e-commerce entrepreneurs, big and small, to be resourceful, willing and free to open offices in 200 countries, comply with 200 different regulatory frameworks, operate 200 geographical data centers, one in each country to store and process the respective geographical data, and also open 200 bank accounts to process revenues locally (and keep the money within the respective geographies) as might be required to follow local e-commerce regulatory requirements in 200 countries as other nations and regions might follow the Indian example?

Comments on Section C Anti-counterfeiting and D Anti Piracy measures:

There is a long list of clauses 3.9 to 3.20 (a, b, c, d) on counterfeiting and piracy almost as if this were the only problem on e-commerce space. This excessive emphasis on the counterfeiting issue indicates a possibility that the Trademark and Copyright lobbies were probably given a disproportionately long, attentive hearing so much so that the text in these sections read like a TradeMark and Copyright wishlist. (happens elsewhere in the world)

Comments on (E)Authentic Ratings and Reviews

This section proposes clauses that are exemplary: 3.21 on transparency and non-discrimination of ratings and reviews and 3.22 that requires Marketplaces to devise mechanisms to prevent fraudulent reviews and ratings by the sellers and their affiliates: These clauses could be proposed globally and involve stakeholders in the multistakeholder Internet Governance process for ease of achievement by a combination of good practices, community initiatives and an occasional touch of Government attention.

Comments on (F)Consumer Oriented Customer Service

Another proposal of possibly immense value to the whole world.

Comments on Section IV Regulatory Issues:

The draft states “Businesses find that once scale beyond a certain point is reached, it makes entry into that area by a ‘second comer’ next to impossible.”

Elsewhere the draft says “A handful of companies today dominate the digital economy. They are successfully exploiting the significant first mover’s advantage in the data-driven ecosystem”

If the concern is that “Barriers to entry are especially difficult for start-ups and small businesses to breach” the proposed policy is propelled in the reverse direction of inventively establishing barriers where none exist visibly (unseen barriers are to be addressed). The first-movers’ primary advantage is in Permissionless Innovation and other [Core Internet Values](#). Excessive regulatory requirements would have the unintended consequences of altering the Core Values and removing the advantage of the Permissionless nature of the Internet space to the detriment

of potential entrepreneurs from India and elsewhere resulting in barriers to invent and introduce alternate products and services that would surpass the goodness and growth of the products and services of the first movers, perhaps even without hurting the first movers in the process.

“size begets size: ... an e-commerce platform, social media network or search engine” Why would the Government of India be overwrought with the size of Amazon or Alibaba, facebook or Google? These first-movers have grown by introducing the first generation of the Internet applications such as a first generation e-commerce portal, a social network of certain features and a search engine that happens to be dominant today. So long as the Internet ecosystem prevails unaltered, the next facebook (in terms of size, not implying a similar product or service) could emerge from India, the next Google could emerge from Africa and the next Amazon from Europe and would succeed even without tricky practices of anti-competitive consequences that the Commerce Ministry is rightly concerned about. The observation that “entry into that area by a ‘second comer’ next to impossible.” is an unfounded concern. There are generations of innovations to come, newer and more disruptive technologies to emerge. Permissionless, new entrepreneurs would progress as swiftly, possibly at an even more faster pace.

Comment on Strategies: A. Interdisciplinary nature of e-commerce:

Two distinct comments on this:

- 1. Section A is replete with regulatory terminology: “Statutes”, “Laws”, “Act”, “Rules”, “amendments”, “category”, “inter-state”, “regulation’..... Nope. That is not how the Internet works.*
- 2. Rather than constitute a “Standing Group of Secretaries on ecommerce (SGoS)“, Hon’ Minister for Commerce together with the Hon’ Minister for IT, could recommend to the Prime Minister and to the Cabinet to create a Ministry for Internet which could draw relevant experts from the Ministries of Commerce, IT, Law and Consumer Affairs, recruit stakeholders from User and Business groups, include youth from across various backgrounds by an unprecedented Government process, all of which, not only to address the challenges of the interdisciplinary nature of e-commerce, but more broadly to address the intricacies of Internet Governance. Internet isn’t a sector such as Telecom or Aviation, the Internet isn’t merely Commerce or Broadcasting, it is an atmosphere or eco-system that is a global pavilion beyond categorization and ought to be considered above categorization. The peculiarities of this space requires a vivid understanding of the unseen goodness and unknown potential of the immense and far reaching benefits it could benevolently bring to the world we live in.*

Comment on Section B: Data Lens

It is a very good idea “to reserve its right to seek disclosure of source code and algorithms”:

more widely and far more effectively done by championing from a High Level for Open Standards and Interoperability through global Internet Governance processes.

Comment Summary

Internet is a completely different space that it requires an altogether new approach, still largely undefined and yet to be vividly conceived, for its Governance.

India should be initiating a process to find and establish a certain form of order by a hitherto unknown and yet undefined process rather than propose laws, processes, rules, statutes, regulations and directives, that happen to be India-centric and out of tune just as other National and Regional Laws respectively are. These laws are incongruous in varying degrees - all geographic laws are, only the degree of incongruity varies. Incongruous because the space is NOT regional, not national. What this space requires is [rtam](#) and harmony. There is no existing process that would do what it takes to define and program this into Internet Governance, but India could ask to look beyond known global processes. The Internet space is beyond geographies and conceals within a celestial potential to find solutions to the Development paradoxes that have defied solution so far. The Internet requires a completely different, elevated thinking, way ahead of and above all known processes.

India has often been cited for finding an inherent “order from chaos”. The complex issues that are superficially chaotic on the Internet, has an underlying order that needs to be identified, defined and strengthened.

What could India do to help?

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Comments may please be deemed as individual comments and not as views formally considered by or reflect that of the Internet Society India Chennai.