

# Concerns and suggestions for alternative language with regard to the Government of India's draft proposal for the ITRs

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## HIGHLIGHTS

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Please find below our main concerns and proposals for alternative language where suitable, as per our discussion in the multistakeholder meeting convened by the Hon'ble Minister Mr. Kapil Sibal on 27 November 2012.

### 1. On the definition of telecommunication

We respectfully continue to maintain that there is no need to include ICTs or the word 'processing' in the definition of telecommunication in the ITRs, for the following reasons which we believe also take into account the Indian government's concerns in this area:

- The ITRs already have in their scope certain aspects of the Internet (as the Internet must necessarily run via a telecommunications network) and as such there is no need for a specific definition of ICT to be introduced. This approach would also be consistent with India's treatment of these issues under domestic law, which does not include separate definitions of ICT and telecommunications (see for e.g. the Information Technology Act, 2000, the Telecom Regulatory Authority of India Act and the Telegraph Act).
- There is no need to refer to processing in so far as transmission/emission/reception of signals etc. is concerned as any technical processing for the purposes of the same is quite clearly included in the definition by necessary implication.

We would also like to note that the term 'telecommunication' is defined in the Convention/Constitution of the ITU and any attempt to redefine the term in the ITRs must see an equivalent modification in the Convention/Constitution. Such an amendment is not possible at the WCIT.

Notwithstanding the above, in view of the GoI's proposal, we have suggested certain modifications to the existing proposal that aim to deal with the circular nature of the current proposed definition (which utilizes the word 'telecommunication' to define telecommunications).

**ADD IND/21/4**

<p><b>14A</b> 2.1A <i>Telecommunication/ICT</i>: Any transmission, emission or reception, <del>including processing</del>, of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical or other electromagnetic systems, <u>including processing of a purely technical nature that is necessary for the purpose of transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature.</u>, <del>having a bearing on Telecommunication Technologies and Services.</del></p>
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## 2. In order to ensure that Internet users' rights are not negatively affected by efforts to ensure security of the network:

We recognize that concerns regarding cyber security, spam, fraud etc are real and that some of these concerns require to be addressed at the global level. However, we believe that the ITRs are the appropriate place to address only some, not all, of those.

As the ITRs have traditionally addressed technical issues regarding telecommunications networks and interoperability, we believe that their scope should continue to be restricted to these aspects and should not be expanded to include regulation of additional aspects or layers of the Internet. If this would be done, the negative impact on the openness of the Internet and the exercise of human rights online has the potential to be dramatic, for the following reasons:

- The ITU does neither have the experience or the expertise, nor a track record, when it comes to considering implications of policy for human rights such as privacy or freedom of expression.
- The ITU also lacks a quality that has become a hallmark of Internet governance over the years: that of multistakeholderism - and has shown little inclination to move into that direction.

The lack of expertise in balancing other concerns with human rights and the inability of people who do have this expertise to participate in ITU processes due to the ITU's closed nature in combination make for a strong case not to expand the scope of the ITRs beyond what they traditionally address.

We therefore call on the Indian government to make a distinction between security issues that are within the traditional scope of the ITRs and security issues that are not. For the latter, we respectfully request that the Indian Government explores alternative foras; already many parallel processes are in place, a wide range of which the government is involved in as well. We also request that the Government of India includes in its proposal explicit guarantees of respect for users' rights.

In view of the above, we suggest the following amendments:

### MOD

IND/21/1

1. While the sovereign right of each Member State to regulate its telecommunications is fully recognized, the provisions of the present International Telecommunication Regulations (hereinafter "Regulations") complement the Constitution and Convention of the International Telecommunication Union, with a view to attaining the purposes of the International Telecommunication Union in promoting the development of telecommunication services as a tool of empowerment and their most efficient operation, without in any way restricting the exercise of civil liberties guaranteed to citizens of all Member States under international law, while harmonizing the development of facilities for world-wide telecommunications.

### ADD IND/21/2

**3A** c) These Regulations recognize that Member States should endeavour to take the necessary measures, without detriment to the civil liberties of citizens, to prevent interruptions of services, including through the adoption of international best practices, and ensure that no harm is caused by their operating agencies to the operating agencies of other Member States that is

sufficient to impair the effective functioning of the operating agencies of other countries which are operating in accordance with the provisions of these Regulations.

ADD IND/21/31

**41D** 5A1. Member-States shall have the right to take appropriate necessary technical measures to protect and Secure the ICT-telecommunication Network infrastructure ~~and data contained in or flowing through the Network~~ and also to prevent the misuse of ICT-telecommunication network infrastructure and services within their state, while fully respecting the human rights of their citizens.

5A2. The Member States should endeavour to take appropriate measures, individually or in cooperation with other Member states, to ensure Security of the ICT Network and safety (inter alia from unauthorised access) of information, including user information, contained in or flowing through the ICT network within their jurisdiction, while fully respecting the human rights of their citizens.

5A3. Member-States should endeavour to oversee, while fully respecting the human rights of their citizens that Recognised Operating Agencies in their territory do not engage in activities which impinge on the security and integrity of ICT-telecommunication- networks such as ~~denial of service attack, unsolicited electronic communication (spam)~~, unsolicited access to network elements and devices etc., to enable effective functioning of telecommunication services ICTs in secure and trustworthy conditions.

5A4. Member States should endeavour to cooperate to harmonize national laws, ~~jurisdictions,~~ and practices in the areas of network security and functionality relevant areas, on the basis of best practices.

In line with our earlier comments, we would further recommend the following changes to the proposed definitions:

- We request the Government of India to **remove** the definition of spam from its proposal (delete ADD Ind/21/6).
- We request the Government of India to **amend** its definition of network fraud as follows:  
“**27F** 2.16 *Network fraud*: (fraud on international telecommunication networks): The causing of harm to recognised operating agencies or to the public by means of, the wrongful obtaining of gain in the provision of international telecommunication services through abuse of trust or deception, including through inappropriate use of numbering resources” (amend ADD Ind/21/9).

We also recommend that the Government of India **delete** the following provision from its proposal:

ADD IND/21/35

**54F** 6.11 The ITU Standardization Sector shall be responsible for disseminating the regulatory frameworks in place in administrations having an impact on matters related to fraud.

### **3. In order to ensure that other provisions do not have unintended negative consequences for the free and open Internet and the exercise of human rights on the Internet**

We appreciate that the Government of India in its latest draft proposal has withdrawn the provision regarding IP Interconnection. We respectfully request you to therefore delete the definition of IP interconnection from the draft proposal as well (delete ADD Ind/21/15).

We further suggest that the Internet will be explicitly excluded from a range of provisions, including those regarding

- “originating identification” (ADD Ind/21/11),
- “end to end quality of service” (ADD Ind/21/16),
- “international calling party number delivery” (ADD Ind/21/18),
- the “prevention and control of fraud in international telecommunications” (ADD Ind/21/34)
- the use of “international naming, numbering, addressing and identification resources” (ADD Ind/21/17).

In the latter case we would like to point out that this function currently falls in the purview of ICANN where the Internet is concerned. It is not desirable that this arrangement is disturbed, even as we recognise that ICANN itself as an organisation is also in need of improvement.