



Establishment of Internet Industry Code of Practice in Support of Net Neutrality

Draft Code

November 2017

Table of Contents

1	Preliminary.....	3
1.1	Preamble	3
1.2	Objectives of the Code	3
1.3	Application and Scope of the Code.....	3
1.4	Terminology and Interpretations.....	4
2	Right of End-Users to Open Internet Access.....	5
3	Standards for Open Internet Access.....	5
3.1	Transparency.....	5
3.2	No discrimination	6
3.3	No blocking	6
3.4	No throttling.....	6
3.5	No paid-prioritisation.....	6
3.6	Acceptable Traffic Management Practices	6
4	Privacy and Data Protection Obligations.....	7
4.1	Compliance with Part VI of Schedule 1 of the Consumer Code of Practice Regulations 2007	7
4.2	Data Security	7
4.3	Data Breach Notifications.....	7
5	Child Online Protection.....	7
5.1	Incorporation of Child Online Protection Policies into Terms and Conditions of Service .	7
5.2	Blocking of Child Sexual Abuse Content.....	8
5.3	Reporting Mechanism for Child Sex Abuse Content	8
5.4	Parental Control Measures.....	8
5.5	Education of Parents, Guardians, and Minors	8
6	Safeguards against Unsolicited Internet Communications	9

6.1	Incorporation of Anti-Spam Policies into Terms and Conditions of Service.....	9
6.2	Spam Filters.....	9
7	Obligations Pertaining to Illegal Content	10
7.1	Model Template for Takedown Notices.....	10
7.2	Notice and Takedown.....	10
7.3	Collaboration with Law Enforcement on Illegal Content	11
8	Obligations of Internet Access Service Providers under existing legal instruments	11
9	Monitoring and Enforcement.....	11
9.1	The Commission	11
9.2	Consumer Web Portal.....	12
10	Code Review.....	12

1 Preliminary

1.1 Preamble

The Internet can provide enormous benefits to the Nigerian public as a source of information, education, research, commerce, communication, and entertainment, and as a key driver for innovation and technological advancement. However, the Internet also includes content that some users might find objectionable and would not want themselves, their children, or even society at large, exposed to.

An Open Internet is key for successfully driving innovation, but there are several factors to consider in the promotion of a truly open internet, such as online child protection, privacy and data protection, objectionable content, unsolicited communications, and traffic management practices that are considered necessary in order to maintain network efficiency.

To this end, the Nigerian Communications Commission, in accordance with its authority to regulate the communications sector in Nigeria as expressed in the Nigerian Communications Act 2003, set out to establish this Code of Practice in support of Net Neutrality, to clearly define the rights and obligations of Internet Access Service Providers with regard to the issues therein.

1.2 Objectives of the Code

The specific objectives of the Code are to:

- a) Protect the right of Internet users to an Open Internet;
- b) Provide clear guidelines to Internet Access Service Providers on the use of traffic management practices;
- c) Outline the obligations of Internet Access Service Providers in relation to the protection of consumers' personal data;
- d) Outline the obligations of Internet Access Service Providers in the handling of offensive and potentially harmful content, and the protection of minors online;
- e) Ensure adequate safeguards are put in place by Internet Access Service Providers against unsolicited internet communications;
- f) Establish best practices for Internet Governance in Nigeria, in line with emerging issues and global trends.

1.3 Application and Scope of the Code

This Code of Practice is applicable to:

- a) Internet Access Service Providers;
- b) The provision of Internet Access Services within Nigeria.

1.4 Terminology and Interpretations

The interpretations of terms used within the Code are as follows:

Communications Service	Any service that provides means for, or facilitates any communication, whether between persons and persons, things and things, or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms.
Content Filter	A tool that allows the user to control what can and what cannot be accessed online and/or on a network.
Customer/Consumer	As defined in the Nigerian Communications Act, 2003.
Customer Information	Any record pertaining to a customer in paper, electronic, or any other form, that the Internet Access Service Provider collects and stores.
Data Breach	An incident in which sensitive or confidential data is viewed, stolen or used by an unauthorized party.
Initiator	An individual that initiates a takedown notice for illegal online content.
Interested Party	A person who is aggrieved by a purported breach of the code, or whose right has been infringed by a purported breach of the code.
Internet Access Service	A publicly available electronic communications service, irrespective of the network technology or terminal equipment used, that provides access to data communications to or from Network Termination Points with IP addresses that are assigned through delegation from the Internet Assigned Numbers Authority.
Internet Access Service Provider	Any entity licensed by the Nigerian Communications Commission, engaged in the provision of an Internet Access Service, irrespective of the network technology or terminal equipment used, or the license held.
Legal Instrument	Any formally executed written document that expresses a legally enforceable act, process, or contractual duty, obligation, or right.
Licensee	As defined in the Nigerian Communications Act, 2003.
Minor	Any individual under 18 years of age.
Paid-prioritisation	The practice of granting preferential treatment to selected network data based on business agreements between IASPs and other entities.
Parental Control Measures	Tools designed to enable parents and guardians monitor and control their children's online activities and use of mobile phones and other smart devices.
Reasonable Network Management	Network practices designed to enhance or protect quality of experience for end-users while complying with net neutrality principles and guidelines.

Spam	Unsolicited and unwanted electronic messages typically sent to multiple recipients at once.
Spam Filter	Any software or tool used for detecting spam in order to prevent them from reaching the user's inbox.
The Act	The Nigerian Communications Act 2003.
The Service	Internet Access Service.
Throttling	Network practice where data upload and download rates for specific services are intentionally restricted.
URL	A Uniform Resource Locator, otherwise known as a web address.
Usage Control Tool	Any software or tool that controls the usage of a terminal device, such as a tablet or mobile phone, by enforcing pre-set restrictions such as placing time limits on usage, or prohibiting certain types of usage.
Usage Monitoring Tool	Any software or tool that can track or monitor the usage of a device it is installed on, including the user's activity and location.

2 Right of End-Users to Open Internet Access

The Code upholds the end-user's right to an Open Internet. Hence:

- a) Internet users have the right to access and distribute information and content, use and provide applications and services, and use appropriate terminal equipment of their choice.
- b) No lawful content, applications or services shall be blocked or made unavailable to users of Internet services.
- c) Where traffic management practices are required in order for the efficient operation of the network, an Internet Access Service Provider shall be completely transparent about what practices are in place and how the end-users' services are affected.

3 Standards for Open Internet Access

3.1 Transparency

- a) An Internet Access Service Provider shall publicly disclose full and accurate information regarding the performance, technical and commercial terms of its Internet Access Services in a manner that is sufficient for consumers and third-party content providers to make informed choices regarding their use of such services.
- b) Any network management practices employed by an Internet Access Service Provider for the purposes of network optimization shall be fully disclosed, including:
 - I. The specific reason(s) why the network management practices are required;
 - II. The specific goal(s) of the practices implemented;

- III. The manner in and the extent to which those practices may affect the Internet Access Services.

3.2 No discrimination

An Internet Access Service Provider shall treat all traffic equally, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.

3.3 No blocking

An Internet Access Service Provider shall not block any lawful content, applications, services, or non-harmful devices, with the exception of reasonable network management.

3.4 No throttling

An Internet Access Service Provider shall not impair or degrade lawful internet traffic on the basis of internet content, application, or service, or use of a non-harmful device, with the exception of reasonable network management.

3.5 No paid-prioritisation

An Internet Access Service Provider shall not engage in paid prioritization under any circumstances.

3.6 Acceptable Traffic Management Practices

- a) Circumstances that may warrant the use of reasonable network management practices by an Internet Access Service Provider are as follows:
 - I. In order to preserve the integrity and security of the network, of services provided via that network, and of the terminal equipment of internet users;
 - II. In order to prevent impending network congestion and mitigate the effects of exceptional or temporary network congestion, provided that equivalent categories of traffic are treated equally;
 - III. In order to comply with a legal instrument, court order or regulatory obligation.
- b) Reasonable network management practices in this context shall demonstrate the following characteristics:
 - I. There shall be a legitimate and demonstrable technical need for the practice;
 - II. The practice shall have a specific and stated technical goal;
 - III. The effect of the practice shall be proportional to the need it intends to address, and considered a reasonable effect by the majority of end-users;

- IV. There shall be full disclosure with regard to the practice, in a manner that is sufficient for end-users to form an informed opinion on whether, when, and how the practice will affect their service.
- V. The practice shall be based on techniques approved by the Commission.

4 Privacy and Data Protection Obligations

4.1 Compliance with Part VI of Schedule 1 of the Consumer Code of Practice Regulations 2007

An Internet Access Service Provider shall comply with the provisions of Part VI of Schedule 1 of the Consumer Code of Practice Regulations 2007 on Protection of Consumer Information, in addition to the provisions stated hereunder.

4.2 Data Security

- a) An Internet Access Service Provider shall take reasonable measures to protect customer information from unauthorized use, disclosure, or access.
- b) The security measures taken by an Internet Access Service Provider to implement the requirement set forth in this section shall appropriately take into account each of the following factors;
 - I. The sensitivity of the data collected; and
 - II. Technical feasibility.

4.3 Data Breach Notifications

- a) *Customer Notification*: An Internet Access Service Provider shall notify affected customers of any breach relating to the customer's information without unreasonable delay.
- b) *Notification of the Commission*: An Internet Access Service Provider shall notify the Commission of any breach no later than seven calendar days after the Internet Access Service Provider reasonably determines that a breach has occurred.

5 Child Online Protection

5.1 Incorporation of Child Online Protection Policies into Terms and Conditions of Service

- a) An Internet Access Service Provider shall include in its Terms and Conditions of Service, a clear set of rules that:
 - I. Define what is acceptable and what is not in terms of content, language, behaviour and intent, while using the Service.
 - II. Prohibit the uploading, transmitting, sharing, or distribution of any content that violates the laws of Nigeria or the rights of any party.
 - III. Specifically prohibit the use of the Service for uploading, transmitting, sharing, or distributing child sexual abuse material.

- b) The Terms and Conditions shall also specify what the consequences are for each level of violation, such as warnings, suspension of the end-user's account, disconnection, and/or filing a report with the appropriate authorities.
- c) The Internet Access Service Provider shall abide by the conditions set out in its Terms and Conditions, and apply the consequences as and when due.

5.2 Blocking of Child Sexual Abuse Content

- a) An Internet Access Service Provider shall have measures in place for the immediate removal or blocking of child sexual abuse content, once notified.
- b) Notification may come from law enforcement, regulatory bodies, or interested parties in the general public.

5.3 Reporting Mechanism for Child Sex Abuse Content

An Internet Access Service Provider shall provide a mechanism by which their end-users may report illegal content, including child sexual abuse content, and misuse of the Service.

5.4 Parental Control Measures

- a) Optional parental control measures (PCMs), such as content filters, usage monitoring tools, and usage control tools, shall be offered either directly to customers or via the provision of information in a reasonably prominent position on the Internet Access Service Provider's website regarding third party websites that provide a means for end-users to have access to or acquire parental control tools.
- b) Where an Internet Access Service Provider provides PCMs directly to customers, the Internet Access Service Provider shall take reasonable steps to ensure that the customer is advised, at the point of sale, methods by which the PCMs can be regularly updated, and further, where information can be obtained regarding the continuing availability of the PCMs. Reasonable steps may include the provision of the information or a link to the information on/from the webpage from which the PCMs are offered to customers.
- c) When offering PCMs to customers pursuant to Paragraph 5.4 (a), Internet Access Service Providers shall not offer the PCMs in a way that would involve a contravention of any provision of the Competition Practice Regulations 2007.
- d) Internet Access Service Providers shall take reasonable steps to ensure that customers who elect to use PCMs fully understand how to use them to manage their children's access to Internet content and Internet resources.

5.5 Education of Parents, Guardians, and Minors

- a) *Parents and Guardians:* Internet Access Service Providers shall take reasonable steps to ensure that adult customers are provided with information that will help them understand the risks that minors may be vulnerable to online and how to mitigate those risks. The information provided may include:

- I. The general types of content available online that may not be age-appropriate for minors;
 - II. Other risks that minors may be exposed to online, such as sexual predators and grooming, and what signs to watch out for;
 - III. The types of risky online behaviour that should be discouraged in minors;
 - IV. How to report inappropriate or illegal content and misuse of the Service;
 - V. The Parental Control Measures available and how to use them.
- b) *Minors*: Internet Access Service Providers shall take reasonable steps to provide minors using their services with information on online safety. The information provided may include instructions such as:
- I. Warnings never to give out personal information, such as their physical location and other details, to strangers online;
 - II. Warnings never to meet in person with online acquaintances without parental consent and/or the presence of a parent or guardian;
 - III. Advice on risky online behaviours to avoid, such as obliging requests from online acquaintances for questionable pictures or videos of themselves;
 - IV. Instructions to inform a parent, guardian, or trusted adult of any online interaction that makes them feel uncomfortable in any way.

6 Safeguards against Unsolicited Internet Communications

6.1 Incorporation of Anti-Spam Policies into Terms and Conditions of Service

- a) An Internet Access Service Provider shall include in its Terms and Conditions of Service, rules prohibiting the use of the Service to spam other users of the Internet.
- b) The Terms and Conditions shall also specify what the consequences are for each level of violation, such as warnings, suspension and/or disconnection of the end-user's account.
- c) The Internet Access Service Provider shall abide by the conditions set out in its Terms and Conditions, and apply the consequences as and when due.

6.2 Spam Filters

- a) Optional spam filters shall be offered either directly to customers or via the provision of information in a reasonably prominent position on the Internet Access Service Provider's website regarding third party websites that provide a means for end-users to have access to or acquire spam filters.
- b) Where an Internet Access Service Provider provides client-side spam filters directly to customers, it shall take reasonable steps to ensure that the customer is advised at the point of sale, methods by which the spam filter can be regularly updated, and further, where information can be obtained regarding the continuing availability of the spam

filter. Reasonable steps may include the provision of the information or a link to the information on/from the webpage from which the spam filters are offered to customers.

- c) When offering spam filters to customers pursuant to Paragraph 6.2 (a), Internet Access Service Providers shall not offer the filter in a way that would involve a contravention of any provision of the Competition Practice Regulations 2007.

7 Obligations Pertaining to Illegal Content

7.1 Model Template for Takedown Notices

- a) An Internet Access Service Provider shall provide a mechanism by which their end-users may report illegal content, such as a takedown notice form on their website or user portal.
- b) An Internet Access Service Provider shall take reasonable steps to ensure that end-users have enough information to understand and use the form.
- c) Information made available to end-users concerning the reporting mechanism, as required in Paragraph 7.1 (b), shall include in clear terms what constitutes illegal content under the laws of Nigeria.
- d) The following information shall be required on the takedown notice form:
 - I. Initiator's contact details (name, telephone number, email address);
 - II. A short description of the allegedly infringing content;
 - III. The full URL for the allegedly infringing content;
 - IV. A pre-prepared statement that the Initiator shall agree to prior to submitting the form, confirming that they have studied the information provided by the Internet Access Service Provider as required by Paragraph 7.1 (c), and still legitimately believe the content in question to be illegal under the laws of Nigeria.

7.2 Notice and Takedown

- a) *Notice from Law Enforcement or Regulatory Body:* Upon receipt of a takedown notice for illegal online content from law enforcement or a regulatory body, an Internet Access Service Provider shall immediately take reasonable steps to block access to that content.
- b) *Notice from an Interested Party:* Upon receipt of a takedown notice for alleged illegal online content from an Interested Party, an Internet Access Service Provider shall take the following steps:
 - I. Ascertain the legality of the reported content under the laws of Nigeria;
 - II. Take reasonable steps to block access to the content if confirmed to be illegal, or take no action if not;

- III. Inform the Interested Party of the decision made and why it was made.

7.3 Collaboration with Law Enforcement on Illegal Content

- a) An Internet Access Service Provider shall endeavour to report any illegal content originating from within Nigeria to the appropriate authorities, once it is brought to the Internet Access Service Provider's attention.
- b) In the event of a criminal investigation into illegal online content, the affected Internet Access Service Provider shall reasonably support the relevant law enforcement agencies by gathering and providing applicable evidence.

8 Obligations of Internet Access Service Providers under existing legal instruments

In addition to, and in conjunction with compliance with the provisions of this Code, Internet Access Service Providers shall comply with the provisions within the Act, the conditions of their license, and all applicable Regulations and Guidelines.

9 Monitoring and Enforcement

9.1 The Commission

- a) The Commission shall closely monitor and ensure compliance with the Code.
- b) At the request of the Commission, entities subject to the application of the Code shall make available to the Commission information relevant to their obligations under the Code. In particular, Internet Access Service Providers may be required by the Commission to provide information concerning the management of their network capacity and traffic, as well as justifications for any traffic management measures applied. Those Internet Access Service Providers shall provide the requested information in accordance with the time-limits and the level of detail required by the Commission.
- c) Whenever the Commission determines that an entity subject to the provision of the Code is in breach or fails to observe the principles of the Code, the Commission shall notify the entity concerned specifying the areas of non-compliance or non-observance and the specific action(s) needed to remedy the non-compliance or non-observance. The entity shall indicate its subsequent level of compliance with the Code in a report submitted to the Commission within fourteen days.
- d) The monitoring and enforcement of the Code will be exercised in accordance with the Nigerian Communications (Enforcement Processes, etc.) Regulations 2005. With respect to any penalties for contravention of applicable provisions, the Commission will be guided by the considerations set out in Chapter IV ("Administrative Fines") of those regulations.

9.2 Consumer Web Portal

- a) The NCC Consumer Web Portal shall be updated to accept complaints from consumers about non-compliance with the Code from their Internet Access Service Provider.
- b) Complaints submitted to the portal shall be reasonably investigated by the Commission in accordance with its complaints adjudicatory processes.

10 Code Review

The Commission reserves the right, in accordance with its policy-making process, to periodically review and update this Code of Practice in order to stay abreast of advances in technology and the continually evolving Net Neutrality landscape.