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Colombia: Amicus Brief in Network Neutrality Case

The Centre for Law and Democracy (CLD) has submitted an amicus curiae (friend of the court) brief to the Constitutional Court of Colombia outlining freedom of expression concerns raised by an exception in Colombia’s net neutrality protections. The exception enables “zero rating” practices, which occur when Internet service providers provide access to certain services, content or applications without the access counting towards data caps on a user’s plan. While zero rating plans may seem like a free perk to customers, they can channel traffic towards dominant apps such as Facebook or Whatsapp and, over time, limit access to the full Internet.

Article 56(1) of Colombia’s Law 1450 of 2011 enables zero rating practices without setting clear conditions on their use. It accordingly does not align with Colombia’s responsibility to ensure access to the Internet in a manner that respects net neutrality.

“Zero rating practices are popular globally, but have not been subject to sufficient scrutiny in terms of their compatibility with human rights law” said Toby Mendel, CLD’s Executive Director. *“The Constitutional Court has the opportunity to set an important precedent by striking down a provision which enables zero rating plans without subjecting them to proper oversight.”*

CLD’s brief argues that zero rating practices, if allowed at all, must meet a number of conditions to ensure that they enhance rather than restrict access to the Internet. For example, States must place clear conditions on such plans rather than leaving their operation to the discretion of commercial companies.

Similarly, States must consider carefully whether zero rating plans serve to enhance universal Internet access, given current realities in their country. While some types of zero rating plans may have value in countries with very low Internet penetration rates, as Internet access rates increase, such plans may leave users in “walled gardens” instead of ensuring they have access to the full Internet.

CLD’s amicus curiae brief is available [here](#).

El informe de amicus curiae está disponible en español [aquí](#).

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