



## Protecting Net Neutrality in the Telecoms Package

### WHAT IS NET NEUTRALITY?

Net neutrality has been an indispensable catalyst of competition, innovation, and fundamental freedoms in the digital environment. **A neutral Internet ensures that users face no conditions limiting access to applications and services.** Likewise, it rules out any discrimination against the source, destination or actual content of the data transmitted over the network. In the words of Tim Berners-Lee, the inventor of the World Wide Web, it is “**the freedom of connection, with any application, to any party**”.

Net neutrality thus guarantees that the flow of information that runs through the communication architecture is **neither blocked nor degraded** by telecommunications operators, so that end-users can freely and efficiently make use of the network.

Deviating from Net neutrality is however acceptable when **reasonable network management measures are used to temporarily address security threats or network congestion and capacity constraints due to any kind of unexpected and unusual event.** If the problem persists, the only sustainable solution, for the benefit of all, is to invest in more bandwidth. As a matter of fact, **the model of development of the Internet has always been based on addressing capacity constraints by investing on bandwidth.** This investment model allows for new resources added by the operators to be used for the benefit of all users, thus enabling the growth of the network and its usages.

### WHY IS NET NEUTRALITY AT RISK IN THE TELECOMS PACKAGE?

Wording pushed by Telecoms operators like AT&T and Ofcom during the second reading of the Telecoms package (Articles 20.1.b, 2<sup>nd</sup> paragraph, and 21.3.b of the Universal Service Directive<sup>1</sup>) allows for “**conditions limiting access to and/or use of services and applications**”.

These articles provide that anti-Net neutrality practices could be adopted by Telecoms operators as long as they are clearly notified to Internet subscribers. This would allow operators to develop **harmful business-models based on discriminating, filtering or prioritizing information** flowing through the network they operate. Affiliated content, services and applications providers could benefit from “fast lanes” on the Internet, available at a high price, when the rest of the Internet traffic would be slowed down in an artificial scarcity of bandwidth.

### WHY IS IT CRITICAL TO PROTECT NET NEUTRALITY?

**Net neutrality is the essence of the Internet.** The Internet was conceived and developed as a decentralized and therefore neutral communication infrastructure. At the heart of the development of this technology is the idea that **society as a whole benefits from the free circulation of knowledge.** Relying on public protocols, applications are developed to run across the network and content is created and distributed on the Internet without the approval or consent of centralized Internet operators. Such openness has made the Internet the formidable tool that we know today.

**Net neutrality benefits citizens.** Net neutrality means that **every citizen, regardless of his or her financial capacities or social status, can equally participate in the production and distribution of information and knowledge.** As such, as citizens use participatory and collaborative tools such as blogs, social networks, wikis and chats as many new ways of participating in the public debate, Net neutrality fosters choice, diversity and participation in the new media ecosystem that is flourishing on the Internet.

<sup>1</sup> See:

[www.laquadrature.net/wiki/Telecoms\\_Package\\_Diff\\_Commission\\_Initial\\_Proposal\\_Parliament\\_Second\\_Reading/fr#Article\\_20](http://www.laquadrature.net/wiki/Telecoms_Package_Diff_Commission_Initial_Proposal_Parliament_Second_Reading/fr#Article_20)

The French Constitutional Council asserted in its decision against the HADOPI law implementing “three strikes” policy against file-sharing<sup>2</sup>. Finding that the law disrespected the 1789 “*Declaration of the Rights of Man and of the Citizen*”, the Council stressed that **free access to the Internet has become essential for the proper exercise of the freedom of expression and communication**. By doing so, the constitutional judges implicitly recognized that **an open Internet provides us with the opportunity to deepen people’s freedom and autonomy, and therefore improves democratic processes**. If Net neutrality was abandoned or even weakened in Europe, the control of this new media ecosystem would be handed out to private actors.

**Net neutrality boosts innovation.** Studies<sup>3</sup> show that net neutrality facilitates innovation and competition, as economic actors take advantage of the communication network to launch new services. The concept of “**innovation without a permit**”, where every small actor can innovate and compete with the incumbent giants is the root of the development of Internet as we know it today. “Two guys in a garage” built myriads of microscopic projects and startups that turned out to be “the next big thing”. Google, Wikipedia, Skype, eBay, Bittorrent, Twitter and so many other essential parts of the Internet took advantage of an open network and became widely used all over the world a few months after being created.

If a service provider breaks the neutrality of the network, it can easily favor its own services over its competitors'. Powerful actors in the telecoms industries have an obvious interest in imposing their control over information and communication networks. They try to do so by, for instance, banning innovative VOIP applications from mobile telecommunications services<sup>4</sup>. **Anti-Net neutrality practices are fundamentally anti-competitive and harm consumers as well as economic growth**. They discourage innovation and result in rent-seeking behaviors for established players. They put barriers to entry that do not allow the emergence of the “next Skype” or “next Google”.

## WHY SHOULD EUROPE MANDATE NET NEUTRALITY?

**Enforcing Net neutrality in the Internal Market.** As the United States now mandates Net neutrality to all Internet Service Providers (including on 3G wireless networks)<sup>5</sup>, Europe risks lagging behind. In a recent assessment of the i2010 EU program the European Commission bemoans that “*Europe is at risk of losing its competitive edge when it comes to new, innovative developments*”<sup>6</sup>. It also notes that **Europe is trailing behind the United States in the development of innovative services and applications**.

Yet, if the anti-Net Neutrality provisions currently contained in the Telecoms package were passed, the situation could dangerously aggravate, and European businesses would be at a disadvantage with US counterparts. To protect the value of the Internet for enhanced citizenship as well as more competitive and innovative markets, **the EU must avoid regulatory fragmentation** and guarantee Net neutrality in the whole Internal market.

**Mandating Net neutrality in Europe through the Telecoms Package.** As the conciliation committee negotiates the final text of the Telecoms package directives, European lawmakers must **get rid of the anti-Net neutrality phrasing of Article 20 and 21 of the Universal Service Directive** and clearly **make Net neutrality a fundamental regulatory principle in the European telecommunications market in the Framework Directive**.

<sup>2</sup> Decision rendered on June 10th, 2009: [www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2009-580DC-2009\\_580dc.pdf](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2009-580DC-2009_580dc.pdf)

<sup>3</sup> A thorough overview of the way new networked technologies transform markets is offered in *The Wealth of Networks*, by Yochai Benkler: [http://cyber.law.harvard.edu/wealth\\_of\\_networks/Download\\_PDFs\\_of\\_the\\_book](http://cyber.law.harvard.edu/wealth_of_networks/Download_PDFs_of_the_book)

<sup>4</sup> Such strategy is being pursued by telecom operators like Orange and O2 in Europe or AT&T in the United States. These companies have unilaterally decided to disable the use of the Skype iPhone application over their 3G networks: <http://www.intomobile.com/2009/04/06/skype-for-iphone-banned-by-carriers-in-us-europe.html>

<sup>5</sup> See: <http://online.wsj.com/article/SB125329467451823485.html>

<sup>6</sup> See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0390:EN:NOT>