

TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE
CONSUMER DIALOGUE DES CONSOMMATEURS

DOC No. INFOSOC 36-08

DATE ISSUED: MARCH 2008

Resolution on Net Neutrality

Access to the Internet remains an increasingly important resource to individuals, as both consumers and citizens. As consumers, individuals gain access to digital content such as music, films, e-books, games, and any number of goods and services through e-commerce. As citizens, individuals gain the ability to both access and create conduits for discourse, debate, and creativity. The wealth of information available, and the variety of applications that consumers can use to communicate, allow for an unprecedented freedom of expression and information.

To access these resources, consumers rely upon Internet service providers (ISPs), which provide end-users access to the Internet. Because many ISPs are vertically integrated with owners of basic communications infrastructure, they have the technical ability to act as gatekeepers, blocking or degrading consumers' access to certain content and applications, or limiting the types of equipment that can be attached to the network. Such behavior can severely limit the usefulness of the Internet and frustrate consumers' aims.

Harms of Discrimination

Such limitations on access are not merely theoretical. In the United States, Madison River Communications, a telecommunications company and ISP, blocked customers from using voice over IP (VoIP) services, which would compete with its own telephony services. Comcast, a major ISP which also provides television programming through its cable television service, sent false data along its network to prevent its customers from using a wide range of popular protocols and applications, including a P2P application widely used for online distribution of legal movies, television programs, and open source software. A Canadian ISP, Telus, prevented its users from reaching the website of a labor union that represented the company's striking employees. Around the world, additional examples abound of ISPs blocking content either to disadvantage competition or limit access to dissenting political views.

Such incidents demonstrate the skewed incentives that result when a network access provider also has a stake in the content and applications accessed by its customers. When the provider can selectively control access, it may select against speech or services that it perceives as harmful to its self-interests. This may include content,

applications, or devices that compete with the provider's own interests; or content that the provider disfavors, such as criticism of the provider itself.

These harms are exacerbated when a lack of competition prevents users from migrating away from discriminatory providers, as well as when consumers lack the ability and information necessary to discover any discriminatory practices.

The Goal of Net Neutrality

In order to ensure that ISPs and communications networks do not unfairly limit the applications and information available to consumers, TACD calls for policies that will promote net neutrality. As defined here, net neutrality is a state in which users have the freedom to access the content, services, applications, and devices of their choice.

In a neutral Internet, consumers:

- have the right to attach devices of their choice;
- have the right to access or provide content, services, and applications of their choice;
- have the right for their access to be free from discrimination according to source, destination, content, or type of application.

Simultaneously, in a neutral Internet, ISPs and communications networks:

- do not unfairly block content, applications or devices;
- do not deliberately degrade access for content, applications, or devices;
- do not prioritize data according to its source or destination;
- do not discriminate against particular providers of content, applications, services, or devices.

Reaching Net Neutrality

National regulators should ensure that ISPs comply with the above mentioned principles by regularly reviewing the practices of ISPs, establishing procedures to receive and act upon any complaints about blocking or degrading access to content or application, and conducting independent testing for blocking, degradation, or other discriminatory action.

Inquiries and proposals in both the United States and Europe touch upon net neutrality, yet governments on both sides of the Atlantic remain some distance away from taking concrete or thorough action.

In the United States, the Federal Communications Commission began an inquiry in 2007 to investigate the contours of broadband discrimination. The FCC has also requested comments on two petitions requesting net neutrality action: one requesting that Comcast's targeted degradation of certain programs does not constitute legitimate network management; and another requesting that the FCC establish rules to prevent such blocking. The FCC should act upon these petitions to establish a strong set of network neutrality rules.

The proposed amendments to the European Universal Service Directive include provisions containing minimum quality of service requirements in Article 22. However, Article 22 does not appear to directly address the potential for network providers to deliberately degrade quality of service for discriminatory or anticompetitive reasons. These provisions should specify that national authorities should adopt measures ensuring that providers deliver service that is non-discriminatory, as well as meeting minimum quality of service requirements.

Network Management

Network providers have noted that they currently engage in a variety of discriminatory behaviors that are necessary to maintain quality of services and prevent abuse of the network. Such behaviors should not be prevented in the name of network neutrality, so long as they are not used to disadvantage particular users or particular providers of applications, services, or devices.

Legitimate network management may take the form of blocking content harmful to the network, such as viruses and denial of service attacks. Legitimate blocking would also include measures required to comply with local law, or a customer's wishes (e.g. spam blocking). Nor should enforcement of net neutrality prevent a network from prioritizing particular *types* of applications—applications requiring higher quality of service, such as video or voice services, can without controversy be prioritized over applications with low quality of service requirements, such as text. Enforcing net neutrality, however, would prevent a provider from prioritizing one VoIP service's packets over another's in order to benefit one party.

However, legitimate network management is limited to the purposes of maintaining the technical quality of the network, preventing abuse, compliance with legal requirements, and acting in accordance with affected customers' wishes. In order to ensure that any network management is legitimate, providers should disclose network management practices to users and regulators, who should assess these practices against net neutrality principles.

The proposed amendments to the European Universal Service Directive includes some measures that require disclosure, specifically in Article 20(5) and Article 22. However, merely disclosing network management practices is insufficient if those practices restrict users' ability to access lawful content and services. Disclosure alone will not suffice to protect consumers who may face limited options for providers, or where a number of providers decide to discriminate. While consumers and regulators should be informed of any network management that may affect them, such management must be free from unfair blocking, degradation, or discrimination.

Therefore, TACD adopts the following resolutions:

1. TACD calls upon the US and EU governments to recognize, promote, and encourage the above-defined principles of net neutrality.
2. TACD calls upon regulators to assess the level of competition in broadband Internet access, and take steps to ensure that consumers have continued access to a neutral network.

3. TACD urges regulators to prevent ISPs and network providers from engaging in unfair discrimination against content, services, applications, or devices.

4. TACD calls upon telecommunications and competition regulators in the US and EU to require that ISPs provide fair and accurate information regarding Internet service plans, including average estimated speeds and any existing caps on bandwidth. ISPs and network providers should also detail their compliance with net neutrality principles and regulations; where any content, services, applications, or devices have been blocked or degraded on their networks, ISPs and network providers must be able to justify to the regulators how these actions fall within the scope of legitimate network management.

5. TACD urges ISPs to provide consumers with more information about limitations on Internet service plans, as well as any network management occurring on their networks and how that management affects access to particular content, services, applications, or devices. Such management should be limited to legitimate purposes.

6. TACD calls upon regulators and lawmakers to ensure that consumers have recourse to an effective complaint and enforcement mechanism if providers fail to provide service plan information or discriminate unfairly against content, services, applications, or devices.

7. TACD calls upon regulators to periodically assess the extent to which ISPs and network providers discriminate against content, services, applications, or devices on their network; whether such discrimination falls outside the scope of legitimate network management; and take action against unfair discrimination.