

TACD

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DES CONSOMMATEURS

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Resolution on network neutrality

Introduction

This resolution builds on the TACD network neutrality resolution of March 2008, which called for policies in the United States (US) and the European Union (EU) to promote network neutrality. The need for a robust net neutrality policy continues to be relevant today. Since the last TACD resolution, developments in the EU and US have necessitated an update to that resolution. In the US, the Federal Communications Commission (FCC) has initiated a rule-making proceeding to codify net neutrality principles in its rules.

In Europe an agreed text of the Telecoms package finally came through in November 2009, and is to be implemented by May 11, 2011. The package was subject to a process and discussion rarely seen within European legal processes, and net neutrality was one of the issues widely discussed.

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 network, consumers:

1. are entitled to an Internet connection of the speed and reliability advertised to them.
2. are entitled to an Internet connection that enables them to
 - send and receive content of their choice
 - use services and run applications of their choice
 - connect hardware and use software of their choice that do not harm the network.
3. are entitled to an Internet connection that is free from discrimination with regard to type of application, service, or content or based on sender or receiver address.¹
4. are entitled to competition among network, application, service, and content providers
5. are entitled to know what network management practices are deployed by their network providers

These principles may be subject to legal obligations and reasonable network management practices, which are practices that are necessary to ensure the proper functioning of the

¹ These principles are based on the "Guidelines for network neutrality", negotiated by the Norwegian Post- and telecommunications authority, and widely adopted by both industry and consumer authorities. The guidelines and their explanations can be found in full here:

<http://www.npt.no/ikbViewer/Content/109604/Guidelines%20for%20network%20neutrality.pdf>

network. Reasonable network management practices include measures that address legitimate congestion and traffic management issues, as well as quality of service measures chosen by a consumer that affect only that consumer's connection to the Internet.

Recommendations

TACD resolves that EU and US:

1. Governments and regulators must encourage and ensure the above defined principles of net neutrality.
2. Regulators should assess the level of competition in broadband Internet access, and take steps to enhance competition.
3. Lawmakers and regulators should prevent ISPs and network providers from engaging in unfair discrimination against content, services, applications, or devices.
4. Lawmakers and regulators should require that ISPs have an obligation to provide fair, complete, and accurate information on their policies and procedures on network management, and how they affect access to particular content, services, applications, or the ability to attach particular devices.
5. Lawmakers and regulators should ensure that consumers have recourse to an effective complaint and enforcement mechanism if providers fail to provide service plan information or discriminate against content, services, applications, or devices in a manner that contravenes principles of net neutrality.
6. Regulators should periodically assess whether ISPs and network providers discriminate against content, services, applications, or devices on their network; whether any such discrimination falls outside the scope of legitimate network management; and take action against discrimination that violates the principles of net neutrality.

Internet Service providers should:

1. Before any intervention in their network, ISPs have to prove that there is conclusive evidence of congestion or that this is an imperative necessity for the functioning of the network
2. Make net neutrality a benchmark of quality, and use it as a competition parameter
3. Report their specific network management practices in detail to regulators and the public;
4. Prove that any prioritization (in case 1. applies) of traffic enables a better quality of service regardless whether a consumer or business customer.

Background

Access to the Internet remains an increasingly important resource to individuals, as both consumers and citizens. Today, the Internet provides the main line of communication with any public or private entity, as well as social interaction.

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. At the same time, a growing number of official services are provided via the Internet.

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 all these resources, consumers rely upon Internet service providers (ISPs), which provide end users access to the Internet.

Importance of a neutral network

The above mentioned principles on net neutrality are a precondition for the healthy administration and further development of the Internet, allowing continued competition, innovation, economic growth, and enhanced access to knowledge and freedom of speech.

First, ISPs have incentives to promote their own products and services through degrading the experience of competing products and services. The integration of Internet service providers with providers of television, radio, and telephony gives integrated providers an incentive to privilege the transmission of content, services, and applications with which the providers are associated. This tendency prevents vibrant competition in the markets for online content, applications, and services. For instance, an Internet service provider that also supplies telephony might degrade or block the services of a Voice over Internet Protocol (VoIP) provider. Similarly, an Internet service provider that also provides both video distribution services has incentives to dynamically allocate greater bandwidth to its own services at the expense of potentially competing Internet applications. Also such allocation would allow ISPs to avoid investing in greater capacity in order to bring dedicated services to consumers. Therefore, lawmakers and regulators should not permit ISPs to allocate Internet bandwidth to other services.

Second, the continued growth of a neutral Internet will encourage innovation and economic growth. Services and applications can rely upon the current best-efforts architecture of the Internet only so long as providers do not unfairly discriminate against particular applications, services, protocols, or content. Such discrimination would force technological innovators to shape their new offerings to meet myriad, variable regimes, discouraging the development and deployment of new technologies and services.

Third, net neutrality is necessary to ensure the fundamental right of free speech. Internet service providers should not abuse their place within the network architecture to block or degrade communications they may disagree with. The Internet's unparalleled value as a tool for political and creative expression deserves the strongest protection against unwarranted barriers.

Reasonable Network Management

As noted above, reasonable network management must be permitted under net neutrality to allow the proper functioning of the network. For instance, control traffic that is used to alleviate network congestion in extraordinary cases of temporary network overload can legitimately be prioritized over other traffic in order to ensure the continued operation of the network. However, any claims by an Internet service provider that a practice does not violate net neutrality principles should be scrutinized carefully.

To be considered reasonable, network management must be non-discriminatory and respect the civil rights of users to free speech and privacy. Reasonable network management should therefore not include scrutinizing the quality, source, destination, or content of data traversing the Internet.

Reasonable network management should also be distinguished from efforts to comply with legal obligations such as orders from courts, governmental agencies, and law enforcement authorities, as well as efforts to curtail unlawful transfers of content. Measures taken under specific legal obligations will have specific policy rationales different from the technical

reasons motivating network management, and voluntary efforts against unlawful transfers of content should not serve as a pretext for discrimination or promote discriminatory effects.

In determining whether particular practices are reasonable, two determinations should be made. The first is whether the particular practice is designed to further a legitimate purpose to ensure the proper functioning of the network. The second is whether the practice is narrowly tailored to address that purpose. These principles should ensure that network management practices have both a legitimate purpose and a non-discriminatory effect upon network traffic.

Action taken by EU governments

Within the European Telecom legislation, adopted in late 2009, European legislators chose not to safeguard net neutrality in Europe as was proposed earlier on in the legal process. As of now, the telecoms package obliges ISPs to inform end users about any management that are implemented on the infrastructure. Further on, the Access Directive obliges the telecom providers to offer other providers of telecommunications services access to their networks at "fair, reasonable and non-discriminatory conditions". In a sound competitive market this part of the regulation could be an asset to a neutral Internet, but the regulation is too new to have shown any direct effect as of now.

Action taken by the US government

The Internet Freedom Preservation Act was introduced in 2009, in the U.S. House of Representatives. The bill seeks to preserve and promote net neutrality by codifying principles of net neutrality into law. The bill is under consideration by the House of Representatives.

The FCC has initiated a rulemaking proceeding to adopt rules regarding net neutrality. The proposed rules include many principles outlined above. While most of the FCC's proposed rules are subjected to an overly broad "reasonable network management" exception, the rulemaking process is still ongoing and we urge the FCC to narrow the scope of "reasonable network management" and limit it to strictly technical network administration considerations.