

Wednesday 26 November, 2014

Dear Council members,

We, the undersigned organisations, urge you to adopt strong Net Neutrality rules, and to reject the most recent proposal made by the Italian presidency.

Without clear rules on Net Neutrality, the larger access providers become gatekeepers – with the power to allow access to their customers to those who can pay for the privilege and to exclude all others.

The Italian proposal of 14 November fails to deliver the promise of an open internet mainly because it lacks a clear definition of Net Neutrality and doesn't effectively outlaw all forms of online discrimination, such as price discrimination. Accepting any such proposal would amount to a rejection of Net Neutrality and have serious repercussions for innovation and freedom of communication in Europe and around the world.

Net Neutrality is the principle that all data shall be treated equally – both in the network and for billing purposes. Enshrining Net Neutrality in law is the only way to ensure that the Internet will remain open for innovation and a platform for the fostering of human rights.

### **Net Neutrality is good for the European economy**

In a digital single market, Net Neutrality stimulates European fair competition and innovation. There will be equal access to the Internet for small and medium enterprises and start-ups. This also stimulates consumer choice, without having access providers picking winners and losers in the market. Undermining Net Neutrality would lead to the creation of new barriers to the online marketplace at a time when the EU is seeking to dismantle them.

### **Net Neutrality safeguards human rights**

Net Neutrality is also important for human rights and society. Being able to express oneself freely should not be dependent on the whims of Internet access providers. This means news sources and content providers should be equally accessible to all and not dependent on being able to pay for fast access or being subject to additional data charges. Minimising incentives to interfere in online traffic also reduces risks of censorship and surveillance.

### **The current proposal lacks clear definitions**

The Presidency appears to be proposing the deletion of both the definition of Net Neutrality and specialised services. It only includes some language on the objective of Net Neutrality and does not address the specialised services loopholes. We *know* from experience that such weak text will be of no practical value in a telecommunications market.<sup>1</sup>

### **The current proposal allows for price discrimination**

Perhaps most concerning, the Council text on Article 23 is unclear on discrimination on the basis of pricing.

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<sup>1</sup> <http://www.ectaportal.com/en/PRESS/ECTA-Press-Releases/2008/Europeans-pay-over-10-Billion-a-year/-print/>

Underlying Net Neutrality is the principle that access providers should not have the right to decide who gets access to their customers and who does not. If certain services can be accessed without additional costs, while others are subject to additional charges, then the practical effect is the same as blocking or throttling the services that cannot pay for privileged access.

### **The current proposal allows for fast and slow lanes**

The incoherence of the “traffic management” exceptions is so complete that almost anything becomes possible.

For instance, article 23.2.f specifically allows access providers to interfere with traffic in order to ensure the provision of other services to the user. This would create the possibility of certain services being contractually put into a “fast lane”, with restrictions being placed on all other services being put into a slow lane. Article 23 contains a number of provisions which would empower telcos to undertake blocking and censorship measures which, according to the EU charter of Fundamental Rights, must be based on law.

### **We need real Net Neutrality**

We need clear EU rules that outlaw any type of network discrimination such as blocking, throttling, and price discrimination. This also includes so-called “zero-rated” services.

Political leadership is needed. Either we recognise the value of the open, democratic, innovative Internet and legislate to protect it, or we allow a few former monopolies to re-assert their monopoly rights, restricting competition, restricting innovation and restricting freedom of communication. The Italian draft claims to be the former, while clearly being the latter. Europe deserves better.

Sincerely,

Access

Alternative Informatics Association

Asociatia pentru Tehnologie si Internet (ApTI)

Bits of Freedom

Chaos Computer Club (CCC)

Digitale Gesellschaft

Digital Rights Ireland

Greenhost

Initiative für Netzfreiheit

Electronic Frontier Foundation Finland (EFFI)

European Digital Rights (EDRi)

IT-Politisk Forening (IT-Pol)

La Quadrature du Net

Net Users' Rights Protection Association (NURPA)

OpenForum Europe (OFE)

Vrijschrift

