

## Is the EU Moving Towards Net Neutrality Legislation?

Speaking to MEPs in Brussels, European Commission VP Neelie Kroes recently promised “to fight with her last breath” for a common telecoms market, including an open internet and specifically mentioned net neutrality. The EU has in the past come out in favour of an open and neutral internet, but with few visible consequences. Following a 2009 declaration from the Commission and a consultation on the issue, in 2011 the European Parliament adopted **a resolution** in which it declared that the “lack of net neutrality hurts both businesses, consumers and society as whole” and called for a common approach to net neutrality across the Union. Nevertheless, of the EU Member States only the Netherlands and the Republic of Slovenia have net neutrality enshrined in legislation. Might the Commission go as far as putting it into a Directive and making it European law? The Commissioner seems to be making a strong case on several fronts and is receiving some support.

### Arguments based on economics and rights

In a **speech to the European Parliament on 30 May** Kroes focused on the single market and the need to break down barriers and increase competition for economic growth. She argued that ISPs are currently degrading services such as Skype and WhatsApp “simply to avoid the competition”. These arguments are important because, as has been discussed **previously on this blog**, it is in the governance of the Common Market that the EU may be more likely to find competence to establish rules related to net neutrality.



In **her speech** at the ‘Guaranteeing Competition and the Open Internet in Europe’ event on 4 June, which was organised by the Alliance of Liberals and Democrats, the organisation **AccessNow** and the European People’s Party Parliamentary Group, Kroes focused on citizens’ right arguments and the importance of the open internet as a place of exploration and democracy. She called for the EU to ensure innovation, transparency, choice and competition to benefit consumers, and an end to commercial tactics like blocking or degrading competing services such as those offering VoIP.

At this same event, net neutrality expert **Chris Marsden**, who will speak on the subject of internet regulation later this week at **ORGCon2013**, **argued** that it is not enough to act only against blocking through negative regulation. He **pointed out** the risks of allowing “managed services” controlled by private interests and that attention should be paid to equality of access and quality of service.

### Potential industry support?

Rules ensuring net neutrality in the US have faced challenges from some in the industry since the FCC adopted an **order to that effect** back in 2010. The FCC rules are designed around four core principles: transparency, no blocking, no unreasonable discrimination, and reasonable network management. They prohibit fixed line ISPs from blocking lawful content and from engaging in unreasonable discrimination in the transmitting of lawful network traffic. The FCC’s competence in this area is currently **being challenged** by US telecoms giant Verizon in court, but the issue of competence would probably not pose a similar barrier for the European Commission in the context of the single telecoms market.

The stalled progress in the US suggests that some powerful commercial interests are likely to oppose similar rules being set out in EU law, but there are also some commercial players supporting net neutrality within the EU. Following Kroes' most recent speech, a group of twenty CEO's **signed a letter** to the Commissioner in support of net neutrality. These came from companies offering web-based services such as Viber and Storify rather than ISPs or network operators. Nevertheless, the **official position of ETNO**, the European Telecommunications Network Operators Association, also ostensibly supports net neutrality and the open internet.

### **This might be the moment**

Commissioner Kroes told MEPs, "I want you be able to say that you saved their [constituents'] right to access the open internet, by guaranteeing net neutrality". Anything less than a Directive is not likely to inspire legislative change guaranteeing net neutrality in the remaining 25 Member States, so could we see an EU Directive that enshrines net neutrality and the open internet into EU law before the end of this Commission? If the Commissioner is prepared to fight with her last breath, with civil society activists speaking out and web-based service companies getting engaged, the momentum might just be there.

*Note: This article gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics.*

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