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**HUMAN RIGHTS OF THE MODERN AGE: ACCESS TO THE INTERNET  
AND NET NEUTRALITY**

**Forum: Human Rights Council**

# INTRODUCTION

With the rapid technological advancement as well as the constantly rising number of Internet users (exceeding 3.7 billion in 2017; almost 40% of the world's population), net neutrality and Internet accessibility has been, and rather doubtlessly still is, regarded as a contentious issue. This status of contentiousness has been further magnified and brought into the forefront of public awareness as a result of the recent political unravelling in the United States, revolving around the Federal Communications Commission's (FCC) repeal of net neutrality rules.

The growing dependence on the Internet poses numerous risks, particularly in terms of the rapid commercialisation and unfair practices of the big Internet players. However, it also offers unprecedented possibilities of participating in, among others, social and political activities that are not restricted by national borders, which is mentioned in the following passage from The Universal Declaration of Human Rights (1948): *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*

Hence the way the world has evolved accentuates the importance of examining and defining the link between network neutrality and the Universal Declaration of Human Rights. Should access to the Internet be considered a basic human right? If so, is it the member states' responsibility to ensure its widespread accessibility? Or should states and Internet providers be in charge of regulating Internet content by blocking certain websites and providing preferential treatment in the form of tiered services?

## DEFINITION OF KEY TERMS

### **Net neutrality**

The idea that Internet Service Providers (ISPs) should treat all data that travels over their network equally, without improper discrimination in favour of particular apps, sites and services. According to the definition provided by the Cambridge Dictionary, net neutrality is *'the principle that companies that provide services on the internet should make all information equally available to users, and not make any particular service, website, etc. cheaper or faster to use than any other.'*

### **Throttling**

The process of regulating the rate at which certain apps, websites, services, etc. load.

## **Internet Service Provider (ISP)**

A company that provides customers with Internet access and connections. In essence, an ISP acts as an intermediary between its client's computer system and the Internet.

## **Federal Communications Commission (FCC)**

An independent U.S. government agency (overseen by Congress) responsible for the implementation and enforcement of America's communication laws and regulations.

## **GENERAL OVERVIEW**

The idea of net neutrality was first coined and popularised in 2003 by Tim Wu, a professor at Colombia Law School. In his *Network Neutrality, Broadband Discrimination* paper, he described the concept that Internet service providers should treat all data on the Internet equally, and refrain from blocking, throttling, or succumbing to fees for favoured treatment.

In essence, this act was a response to the impending corporate control over the growing Internet that Wu had been alarmed by. Subsequently, the FCC (with Michael Powell as a Chairman) passed a policy statement known as the 'Four Internet Freedoms' (2005), calling for the preservation of the Freedom to Access Content, Freedom to Use Applications, Freedom to Attach Personal Devices and Freedom to Obtain Service Plan Information.

In 2007, however, Comcast had been caught throttling traffic. When the FCC ordered Comcast to stop, Comcast appealed the decision and won the appeal in 2010. In the attempt to win the next lawsuit, the FCC (under the leadership of two different Chairmen) aimed at the creation of an authority necessary for the enforcement of net neutrality rules against broadband providers. In 2016 the D.C. Court of Appeals upheld the 2015 rules "in full" against a petition from major broadband providers. These rules were, however, repealed on June 11<sup>th</sup>, 2018.

Other countries are facing similar dilemmas about how to deal with today's digital realities, and are slowly contributing to a patchwork of laws that differ from country to country. In terms of global scope, the UN has recognised that Internet access is essential for the realisation of Sustainable Development Goals.

## **The opposite sides of the spectrum**

The controversial divide, stemming from the differing and often clashing ideological standpoints, may be simplified and divided, for the purpose of general overview, into two groups; against net neutrality regulations and in favour of net neutrality regulations.

### **a) Against**

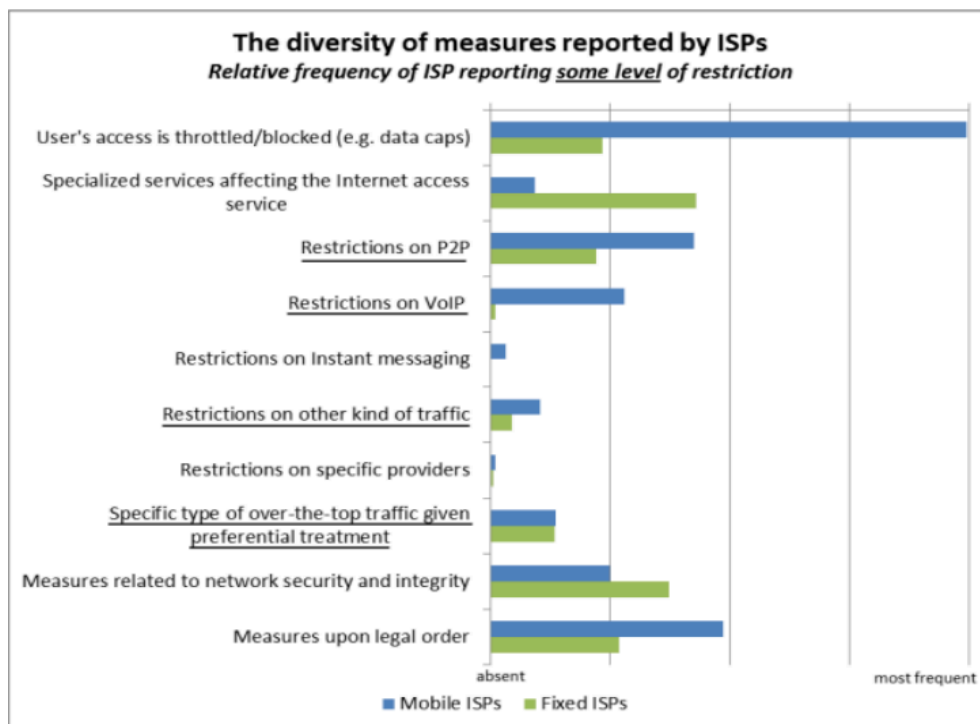
ISPs and technological companies are generally against the imposition of net neutrality regulations as they regard it as greatly limiting in terms of innovation and development of the Internet infrastructure. They often refer to and accentuate the importance of “the invisible hand of the market,” stating that market is capable of an effective self-regulation. They believe that regulations make things only worse by limiting the investment in high-speed networks and slowing broadband deployment.

### **b) In favour**

Numerous grassroots organisations as well as civil rights groups are, on the other hand, mostly in favour of net neutrality regulations, as they believe it encourages democratic participation as well as empowers free speech. They recognise the link between net neutrality and human rights and hence claim that lack thereof would seriously harm freedom of expression and essentially restrict basic human rights, such as the right to information. What’s more, they are of the opinion that neutral network represents an adequate environment for small companies with innovative ideas, as it allows them to emerge and possibly succeed, boosting competition.

## **Estimates, statistics**

- According to the research by the Body of European Regulators of Electronic Communications (BEREC), several types of restrictions are frequently implemented by European ISPs. See graph below:



- In 2012, approximately 10,000 people in 20 countries were asked about their attitudes towards the Internet. According to Global Internet Survey (internetsociety.ngo) carried out in compliance with the obtained answers:
  - 83% of respondents agreed that access to the Internet should be regarded as a basic human right,
  - 89% agreed that the Internet access allows freedom of expression on all subjects,
  - 86% agreed that freedom of expression should be guaranteed,
  - 60% of respondents agreed that the Internet access has contributed significantly to civil action and political awareness in their country

## MAJOR PARTIES AND THEIR VIEWS

### United States of America

In February of 2015, the Federal Communications Commission (FCC) released a set of ‘net neutrality’ regulations, known as the Open Internet Order, with the purpose of preventing broadband providers from deceiving consumers, degrading content, or discrediting the content they regard as unfavourable. In essence, the rules prohibited the following practices:

- **blocking** – internet service providers could not discriminate against any lawful content by blocking websites or apps
- **throttling** – service providers could not slow down the transmission of specific services or applications (as long as it was legal)
- **paid prioritisation** – service providers could not accept fees for favoured treatment and create an internet fast lane for companies and consumers who paid premiums, and a slow lane for those who didn’t

The implementation of the Open Internet Order resulted in a controversial divide in the United States (despite the dilemma itself has, of course, been persistent), stemming from the differing and clashing ways of classifying broadband Internet access for legal purposes.

- a) Should a broadband system be classified as a public utility under the Title II of the Communication Act?
- b) Should a broadband system be reliant on private companies to drive its evolution, with relatively light oversight from the Federal Trade Commission?

However, as of April 2017, the FCC started the process of weakening the 2015 ruling. With the newly appointed Chairman Ajit Pai at the helm, the FCC voted to rescind net neutrality rules (Open Internet Order) and introduced the Restoring Internet Freedom Order, which took effect on June 11, 2018. This act stems from the belief that keeping the Internet an open playing field is crucial for innovation as its ‘excessive’ regulation hinders ISP competition and provides consumers with less options when it comes to choosing an ISP. This move, of course, kicked off a backlash by states, Internet activists and other supporters of the original regulations.

## **European Union**

The EU's Open Internet Regulation is, in essence, the cornerstone of net neutrality in the European Union. While it enshrines the basic principles of net neutrality and restricts prioritisation, blocking, throttling and discrimination and hence provides consumers with the directly applicable right to access and distribute lawful content and services of their choice, it also allows for a 'reasonable' network management and 'specialised services.' The phrase 'reasonable network management' itself has incited debates over the accuracy of its definition and an adequate interpretation. Generally, it implies that in case of an ISP management, the broadband provider has used minimally invasive means of doing so. As for the specialised services, those should be provided only in addition (if there is sufficient network capacity) to any Internet access service and hence must not be the detriment of the availability of general quality of Internet access services for end-users.

On 30 August 2016, the Body of European Regulators for Electronic Communications (BEREC) created a framework setting the guidelines for the implementation of the obligations of National Regulatory Authorities (NRAs) in order to ensure the consistent abidance by the Regulation.

## **Russia**

Russia maintains tight control over its Internet traffic. The Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor) is a federal executive body responsible for the supervision and censorship in the field of media. Despite the Federal Antimonopoly Service approved a regulation that forbids ISPs from throttling or blocking websites and net neutrality is thus protected on a corporate level, the Russian government still has the power to censor or block content.

## **China**

While the rapid Internet development certainly broadened the access to news as well as facilitated an online mass communication platform, many forms of online expression are still being censored in China. With the aim of codifying the previously scattered Internet regulation policies and solidifying Cyberspace Administration's status as the leading Internet governing body, the People's Republic of China released the Cybersecurity Law Draft, which came into effect on June 1<sup>st</sup>, 2017. While its implementation certainly marked a leap forward in terms of safeguarding Internet systems and services against cyber-attacks, China's use of the Great Firewall in order to

deny domestic citizen's access to information deemed as forbidden by laws and regulations remains to be a part of its 'censorship regime.'

## **TIMELINE OF KEY EVENTS**

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- **January 12, 2003** – 'Net Neutrality' coined
- **September 23, 2005** – FCC issues Internet Policy Statement (Four Internet Freedoms)
- **January 2010** – BEREC commences its activities
- **March 12, 2015** – FCC issues the Open Internet Order
- **November 25, 2015** – European Parliament and the Council adopts the Regulation (EU) 2015/2120
- **August 30, 2016** – BEREC issues guidelines for the implementation of the obligations of NRAs
- **April 26, 2017** – New FCC Chairman Pai announces plan to roll back net neutrality
- **June 1, 2017** – China's Cybersecurity Law took effect

## **PREVIOUS ATTEMPTS TO SOLVE THE ISSUE**

With the rapid progress in terms of technological advancement as well as the gradually increasing dependence on the Internet, the issue of net neutrality has obtained the status of unprecedented relevance and emerged into the forefront of debates over its appropriate interpretation and resolution.

As for the action undertaken by the United Nations, the Human Rights Council passed a resolution calling for the "promotion, protection and enjoyment of human rights on the Internet" (2012). In addition, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' had been published, exploring challenges to the right of all individuals to access and seek information through Internet, whilst underlining the applicability of international human rights norms to the Internet as a communication medium.

The European Union has, apart from adopting the Open Internet Regulation and cooperating with BEREC in order to ensure that the NRAs are keeping up with their obligations and are thus capable of reaching consistent decisions, implemented the system of annual country reports. This



means that, according to Article 5 of the Regulation, NRAs are obliged to publish annual reports and share these with the Commission and BEREC.

The United States, on the other hand, repealed the 2015 Open Internet Order, replacing it with the Restoring Internet Freedom Order, which, according to the FCC, puts ‘strong consumer protections and common-sense rules’ promoting broadband deployment and investment in the place of the former regulations.

Considering that the issue of net neutrality is regarded as highly controversial, the approaches aiming at its resolution differ from country to country and hence it is imperative to examine each case individually.

## **QUESTIONS A RESOLUTION SHOULD ANSWER**

- Should Internet accessibility and net neutrality be regarded as a basic human right?
- How should the issue of net neutrality be classified? Is it an economic issue, liberty and freedom issue, or a racial and social justice issue?
- Should Internet providers be in charge of regulating Internet content? If so, should the term ‘reasonable network management’ be further specified?
- Is it the member states’ responsibility to ensure net neutrality and widespread Internet accessibility? If so, how would an unbiased Internet accessibility be granted to everyone?
- What legal consequences are to be faced by those, who refuse to abide by regulations and policies proposed in your resolution?
- How to ensure the enforcement of such policies/regulations?

## APPENDIX

Regulation (EU) 2015/2120 (official document) available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R2120&rid=2>

A/HRC/RES/20/8 – ‘The promotion, protection and enjoyment of human rights on the Internet’ (official document) available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/HRC/RES/20/8](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/20/8)

Internet Society - <https://www.internetsociety.org/globalinternetreport/>

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