

Public consultation on draft BEREC Guidelines on implementation of net neutrality rules

Copenhagen 18 July 2016

Dear BEREC,

For the last 20 years Strand Consult has studied the global mobile telecom industry and have published hundreds of research notes and a big quantity reports about the telecom market. In part of that time we have looked at Net Neutrality.

I have undertaken (in my own time and at my own expense) to make this review of your proposed guidelines for implementing “net neutrality” in the EU

Here are 5 research notes we have published and a report (pdf file) we believe BEREC must take in to consideration in their consultation:

1. The EU process to create Open Internet guidelines lacks transparency, independence and credibility
2. Net neutrality: Feelings may be justified in the debate, but there is no excuse not to follow an evidence-based approach to regulation
3. If the goal of the Open Internet is to ensure users’ rights and a good network experience, why did the EU ignore 8 telecom regulators who wanted to expose bad smartphones?
4. The EU’s net neutrality rules and BEREC’s implementation guidelines are a threat to MVNOs that want differentiate themselves
5. Should you trust Sir Tim Berners-Lee on net neutrality?
6. Report: *“The moment of truth – a portrait of the fight for hard net neutrality regulation by Save The Internet and other internet activists”*

Strand Consult believe that BEREC’s net neutrality process needs transparency. And we believe that BEREC and EU must be aware that US-funded Internet activists have big impact on the EU process for Open Internet rules.

The key findings from our report are that Google-funded SavetheInternet.eu forwards each mail it receives to the general mailboxes of the 28 national regulatory authorities. In so doing, they can inflate the number they purport on their website to have generated in support of hard net neutrality.

In addition, about one-third of the responses come from Americans in the USA. When adjusting for this, it is likely that SavetheInternet.eu has generated only a few thousand responses, but none of them authentic. It is grotesque that telecom regulation is now the product of clicktivist email campaigns.

Our report also shows that Google has an outsized influence among the stakeholders, having a financial interest in 7 of 14 of the stakeholders which BEREC hosted in December 2015, including three of the four “consumer/civil society” groups. Moreover of its “expert” panel in February 2016, two of the four panelists come from Google-funded organizations. This is highly inappropriate, and it is difficult to see how BEREC maintains independence.

Our key contributions to this consultation are

1. There is a lack of evidence to support the heavy-handed guidelines BEREC proposes.
2. There is a lack of transparency in BEREC’s process on net neutrality
3. BEREC has over-interpreted the EU law to deliver hard net neutrality provisions that the EU Parliament unanimously rejected.
4. The guidelines themselves are absurd. For example “zero rating is neither allowed nor prohibited”.
5. As for Specialized services, no one can define it, and BEREC’s guidelines are probably violate competition law.
6. BEREC is abdicating its jurisdiction in telecom regulation to become de facto law makers.
7. BEREC ignores real world touch issues in favor of vague rules. For example, the quality of the phone is a more important driver of user experience of network quality than BEREC’s ideology, but it’s guidelines offer nothing concrete to improve user experience.
8. BEREC select stakeholders based on best arguments. This is another grotesque example of how BEREC prioritizes the needs of Google above Europeans, including children and the elderly.

Net neutrality feelings may be justified in the debate, but there is no excuse not to follow an evidence-based approach to regulation

Strand Consult has studied this issue in depth in various countries and has produced a report titled “Understanding Net Neutrality and Stakeholders’ Arguments”. This response to BEREC’s public consultation on guidelines on implementation of net neutrality rules provides some background on how the debate has evolved in the US and the Netherlands, two countries with net neutrality rules.

A detailed list of specific issues and comments follows below (pdf)

Best regards

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The EU process to create Open Internet guidelines lacks transparency, independence and credibility

The Body of European Regulators for Electronic Communications (BEREC) is collecting feedback on its proposed net neutrality [guidelines](#) through July 18. While BEREC may claim that it is taking public input, the truth is that the de facto guidelines were made long before the public consultation started. The consultation process is just a formality to make it look like BEREC listens to the people. Substantive change to the guidelines is unlikely, so the only way to undo BEREC's illegality is to bring attention to its secret processes.

The [rules](#) adopted by the European Parliament and subsequent agreement by the European Commission and Council represent an important compromise not to unduly hamper freedom and innovation. At the time of the Parliamentary vote in October last year, amendments crafted by Google-sponsored net neutrality advocate [Barbara van Schewick](#) were rejected. However those provisions made their way into the BEREC interpretation through a series of closed door meetings. This represents not only a violation of the EU law, but a circumvention of the democratic process.

At the [launch](#) of the guidelines on June 6, BEREC Chair Willem Eschweiler pronounced, "We are not making new rules." This is reminiscent of the Federal Communication Commission (FCC) Chair Tom Wheeler announcing his effort with the line, "We are not regulating the Internet". The truth is in the contradiction. The real story is the opposite of what is said.

Strand Consult participated in a stimulating [workshop](#) hosted by the Slovenian telecom regulator Akos. Strand Consult commends the Slovenian regulator for organizing the event, allowing the different perspectives to be presented, and making the proceedings public. It is a stark contrast to BEREC by which stakeholders are hand-picked to conform to pre-existing views, discussions held in secret, and proceedings are unavailable to the public.

Like Netherlands, Slovenia is the European country that took an extreme approach to net neutrality, legislating hard rules in 2012. However before the time of promulgation, a line item to ban pricing flexibility was removed. Hence zero rating is legal in Slovenia. However Akos has since selectively banned different practices, allowing the state-owned incumbent to zero rate the European Champions League and its proprietary service while prohibiting competitive operators from launching zero rated Slovenian content platforms and customer service applications. Unsurprisingly all of the telecom operators have sued the regulator for its patently arbitrary and capricious decisions. This small country is a microcosm of what to expect with net neutrality rules going forward: subjective regulatory decisions and subsequent litigation.

It was clear however that none of the supporters of net neutrality—whether the EU, BEREC, Akos, or activists—could present facts or evidence as to why proactive net neutrality rules are necessary. Thus the decision to support Open Internet rules is based on emotion.

10 reasons not to trust BEREC on net neutrality

Some 50 countries now have hard net neutrality rules. But the fact of the matter is that hard rules don't bring more clarity; they only lead to more dispute. The bottom line is that net neutrality rules undermine competition because they violate the Constitutional tenets of democratic society: the freedom of speech, enterprise, and contract. Moreover when operators are forbidden to manage their networks, they are in effect being deprived of their property, which amounts to government seizure. Here are 10 reasons why you should not trust the BEREC process. Journalists can fact check the following claims.

1. Lack of evidence for the need of rules and guidelines

The EU Open Internet law states that its purpose is to “Guarantee the internet as an engine of innovation”, but there is no proof that these rules create innovation. No regulator in any country has conducted any empirical assessment of whether the policy works to create innovation. In fact, a survey of the countries with hard net neutrality rules to date including Netherlands, Slovenia, and Latin America, shows that the level of third party innovation by local country providers declines once rules are imposed. The vast majority of the world's internet innovation comes either from countries with soft rules or no rules. In the case of the USA, most of the leading apps have been created long before the FCC's Open Internet Order.

BEREC's “evidence” for the need of rules amounts to two surveys. One is a [review](#) of the contract disclosures from European operators in 2011, noting that a minority of operators disclosed that they might restrict traffic under certain circumstances. However this is not the same as operators actually engaging in restrictions. BEREC never verified whether these restrictions ever occurred, how long they lasted, and if they did, whether there was any harm. Essentially BEREC's justification for the need of rules today is based upon an extrapolation of contract information from 5 years ago.

BEREC's second [survey](#) was conducted with users to see how they value net neutrality. The results showed that users, those who have even heard about the issue, had a more nuanced view of the topic. Above all, they stop caring about it when it means they have to pay more for Internet access. While these surveys are interesting, they do not constitute a fact-based foundation on which to build a sweeping ex ante regulatory regime.

A survey of the academic literature finds almost no empirical investigations, only theoretical. Of those, more than half of the articles say that net neutrality leads to ambiguous if negative results. The European Commission released a [study](#) concluding that digital innovation comes from the interplay of the ecosystem actors working together—networks, device makers, third party services and so on. And yet, the EU has adopted rules which prohibit a key part of the ecosystem from working with the others.

It may be the case net neutrality is now law in EU, but that does not mean that BEREC is justified to make extreme interpretations.

2. Lack of transparency

By the time a regulatory body issues its proposed guidelines, in practice, it has issued the final guidelines. The real work of making the BEREC guidelines went on behind closed doors following the European Parliament vote in October 2015. This is also corroborated by net neutrality analyst and proponent Chris Marsden who described the process as being conducted “[largely in secret](#)”.

It bears mention that Google-sponsored activists including Barbara van Schewick and Netflix and lobbied hard to have [amendments added to the EU rules which would deliver extreme versions of net neutrality](#), but these were [rejected](#) by the European Parliament. However the provisions advocated in the rejected amendments are now in the guidelines. This is largely the [work](#) of Frode Sørensen, a [self-proclaimed net neutrality activist](#), from Nkom the Norwegian telecom regulator who leads the BEREC process to create guidelines.

Following the Parliamentary vote, Frode distributed questions to hand-picked “stakeholders” designed to lend support for the rejected provisions which are now part of the guidelines and to participate in a closed door meeting on 15-16 December 2016. This can be evidenced by the response of European Digital Rights (eDRI) on 15 December where it [responds](#) to BEREC’s solicitation on the key provisions. eDRI, an organization sponsored in part by Google, purports to speak for end users and civil society. Its response to BEREC references van Schewick 6 times.

eDRI declares, “We think it is essential that BEREC hold an open consultation early in the process (underline by eDRI) to gather input from a broader range of stakeholders before drafting starts and before the final implementation guidelines are adopted. We therefore recommend BEREC hold the consultation in Spring 2016.” From eDRI’s perspective the call to have an “open consultation” for a “broader range of stakeholders” facilitates the participation of clicktivist campaigns by its partner SavetheInternet.eu, but the point is still well-taken. Even the pro-net neutrality participants Marsden and eDRI found the BEREC process to be secret, closed, and limited to only a few stakeholders.

Requests for information from BEREC about the 15-16 December meeting including the participants and agenda have been denied.

Ensuring the extreme version of net neutrality was further solidified in a secret [“expert” meeting](#) with Marsden and van Schewick in February in Rotterdam. The event was not open to the public nor the criteria for selecting the experts disclosed. BEREC’s websites notes the existence of a [special packet of information](#) made for the meeting, but the packet is not available on the website. Strand Consult has made multiple requests for the materials of the meeting, but BEREC has not responded.

In response to a question Strand Consult posed at the release of the guidelines on June 6, BEREC revealed that the “experts” were selected by Frode Sørensen and Henk Don of the ACM. The group comprises the collective “Friends of Frode” (FOF), those who are either professional net neutrality advocates funded in part by Google (van Schewick, Cooper); those who favor proactive regulatory intervention (Marsden); and a vendor to the European Parliament (Marcus). Henk Don said he was pleased with the “range of views” presented by the four FOF. But asking for intellectual diversity from the Dutch regulator with the most extreme net neutrality rules and the self-proclaimed activist regulator from Norway is like describing a rainbow as having colors that range from red to pink. Clearly the two authorities did not make a good faith effort to create a true discussion. The meeting was held to provide further input on how to deliver extreme net neutrality given the limitations of the EU law.

3. The discrepancies of the EU law versus the BEREC guidelines

There is no doubt that the EU Open Internet law is flawed, contradictory, and unfounded. For example it purports to “protect end-users” while enshrining provisions that effectively deny them competition. It claims to “guarantee the continued functioning of the internet ecosystem as an engine of innovation” while there is no evidence that such rules do anything of the sort. It recognizes the “freedom to conduct a business” and the freedom of operators and users to contract for services, but then abridges that freedom with a series of arcane and arbitrary distinctions of how broadband access can be offered. It also complicates the matter invoking the Charter of Fundamental Human Rights and then turning over enforcement to telecom authorities, regulators which are not adjudicators of human rights.

The EU rules do not make internet access cheaper, stimulate the ability offer new new services, or encourage the investment in network. But it does create potential revenue streams for lawyers, consultants, activists, and bureaucrats. As part of the Digital Agenda, it is legislation which utterly fails to achieve the stated goals of exiting the financial crisis and creating competition and jobs.

The EU net neutrality law says, “The objective of reasonable traffic management is to contribute to an efficient use of network resources and to an optimisation of overall transmission quality responding to the objectively different technical quality of service requirements of specific categories of traffic, and thus of the content, applications and services transmitted.” To a normal person this would mean that the operator is managing the network to deliver the need functionality of the application to the end user. However the BEREC guidelines twist this into a labyrinth of regulations which make reasonable traffic management near impossible.

There are many discrepancies between the EU law and the BEREC interpretation. Significantly, the very name of the law and the guidelines differ. The law is promulgated for the “laying down measures concerning open internet access” but the guidelines are called “Implementation by National Regulators of European Net Neutrality Rules.” These terms are not interchangeable in a legal sense nor do they have shared definitions. BEREC uses “net neutrality” opportunistically so that it can call upon a range of its own documents which do not cohere to the EU law. Moreover the terms “zero rating” nor “specialized services” never appear in the EU law, but they comprise a significant part of the 43 pages of the BEREC guidelines. BEREC has indeed made new rules.

The EU rules prescribe a small playing field for BEREC, but the regulatory group has decided to abdicate its role to enforce existing rules and instead to write new rules which expand its role and authority considerably.

4. The BEREC process is driven largely by a single person

If we accept that the three branches of the EU government have made a net neutrality law, the role of BEREC to enforce law is perfunctory. Every EU member state has a set of communications laws along with the EU laws. It begs the question as to why BEREC even needs to conduct consultation processes, as such processes have already been duly undertaken as part of the official EU rules. The truth is that BEREC is conducting its consultation as a means to give it legitimacy to remake the EU law. The only reason that this is happening is because one person, Frode Sørensen, is driving the process.

The BEREC process is chaired by Frode Sørensen and Ben Wallis from Ofcom in the United Kingdom. Given that the UK voted to leave the EU after 40 years, it is not clear what role the UK will play going forward. However it is notable that Ofcom did not support extreme versions of net neutrality in the UK, and it will not be surprising if it rejects the [EU's dysfunctional approach](#) to net neutrality along with other EU regulation which its citizens believe to undermine its sovereignty. A review of the various BEREC documents shows little involvement by the UK's Wallis, as his participation appears to be ceremonial.

In any case, Frode Sørensen came to prominence in Norway as a so-called consumer advocate in a country with a soft approach to net neutrality. Participation in the regulatory regime by operators was voluntary and freedom to manage networks and price competitively was allowed. Strand Consult can find no net neutrality violations on record in Norway, and the country enjoys a high rate of investment in networks.

But the Norwegian regulator has allowed Frode Sørensen to use its website as a bully pulpit, promoting an extreme version of net neutrality that was not the official Norwegian policy. For example, [Frode does not like zero rating](#), but it was never banned in Norway. Moreover Frode [believes](#) that the net neutrality legislation falls short of defining specialized services such that BEREC can regulate them. Now with his position in BEREC, Frode Sørensen has the opportunity to realize his vision of net neutrality, not the law the EU has promulgated.

The EU law attempts to confine the regulation. But where the legislation stops is where Frode Sørensen begins. He has had for years a vision to limit, if not prohibit, zero rating, specialized services, and price differentiation beyond speed and volume. He has worked meticulously to gather support for these measures, even though they contravene the will of the people as expressed by the EU law. But for die hard net neutrality activists, facts and the law do not matter. BEREC's job may be to enforce the law, but with Frode at the helm, it is rewriting the law and delivering the rules that it believes are appropriate.

5. Zero rating – neither allowed nor prohibited

Zero rating is nothing more than price flexibility. It is a business model enjoyed across every industry and even in the Internet itself. There would be no internet companies today if it were not for zero rating. Every Google search is zero rated by an advertisement. That is a third party subsidizes the cost so the end user does not have to pay. Alternatively the platform bears the cost. Around Europe today Tesla has installed free charging stations so that its customers enjoy zero-rated electricity.

One European Commission goal in the Digital Agenda is to increase the use of e-government services. This could be achieved by zero rating all government platforms so that users could access essential government services for free. This would be a way to stimulate adoption in many parts of Europe where indicators lag.

In one of the many absurdities of the BEREC guidelines, Chair Eschweiler pronounced that zero rating is neither allowed nor prohibited. Instead BEREC offers [six parameters](#) on which such offers will be examined, after operators have taken the risk to create them. In practice, this is de facto regulation. No serious company will take the risk. As such BEREC effectively regulates something

never mentioned in the EU rules and Frode succeeds to realize his vision of a neutral internet, regardless of rights and freedoms of users and providers to contract for what they want.

It bears mention that consumers almost never complain about zero rating, but Google-funded internet activists do. There's one very good reason why Google's activists will fight to the death against zero rating. [Up to 40 percent of data](#) on a mobile subscription is advertising. That's money that Google earns on its apps and related ad serving technologies. In every other media (radio, TV, print etc), advertising works to lower end user cost, but pur net neutrality effectively prohibits that advertisers subsidize end users access costs. Instead users pay for ads they haven't asked for and they don't want. It is so surprise that hundreds of millions of people have [downloaded ad blockers](#) for digital self-defense and to lower their data cost. Operators would love to lower users data costs with a better advertising model and protect their users from malvertising embedded in ads but that would eat into Google's revenue and create competition on the internet advertising market.

[As Google is running the show in the US and EU](#) and net neutrality is how it protects its market share, don't expect that regulators will allow operators to create a more dynamic, competitive market for online advertising.

6. Specialized services – no one knows what it is (and BEREC's guidelines are probably violate competition law)

Like much legislation, the EU law is an imperfect compromise. Many parliamentarians believe that they crafted the language which satisfies the Google-funded activists while placating operators with a soupcon of flexibility to make innovative offers and services. The premise of the law is reasonable: as long as basic, best-efforts internet access is provisioned, operators should be able to do what they want provided that they don't degrade the Internet. Even Tim Wu [wrote](#) that "operators should police what they own."

However the best effort Internet is not as good as an optimized private network for many applications. Consumers have a variety of tastes and preferences and will migrate to the places where they can get a customized experience. The thought of the potential of people being online but not using one of the mainline platforms is concerning, so activists and regulators want to ensure that competitors are walled off from opportunities to provide alternatives.

The EU law says nothing about specialized services, but not only does BEREC define it, it prescribes the very services that it will scrutinize. BEREC [says](#) that specific services VoLTE, IPTV, and real time health will be scrutinized if they are offered by operators as specialized services. This is blatant regulatory discrimination and contravenes the law's provision of technological neutrality. Moreover by barring operators from participating in new markets, it appears that BEREC's guidelines are violation EU competition law.

7. BEREC is abdicating its jurisdiction in telecom

The law and history of telecom regulation is largely about regulation to facilitate differential pricing for telephone service. Price differentiation has existed for decades in local calling versus long distance, in interstate versus intrastate communications, in business versus consumer services, and in low versus high-volume users. If net neutrality advocates support that the Internet should be a public utility like the telephone network, then it is ahistorical and illogical that differential pricing should not

be applied to the Internet, especially if the goal is to make it affordable for the maximum number of users. Thus BEREC's indirect attempt to curtail zero rating is the opposite of what telecom regulators are supposed to do.

Moreover it is unfortunate that the mobile industry and its customers are denied the pricing flexibility enjoyed by the energy and financial industries as Strand Consult has described in [this research note](#).

BEREC's net neutrality guidelines will make it more difficult to launch new innovative services and will [create a difficulty MVNOs and small and local content providers](#).

8. Quality of network vs. quality of phone

Much of the debate on net neutrality is about ensuring a good user experience, but both the EU and BEREC ignore the crucial factors which are most responsible for the quality of experience. It is a fact that at least 80 percent of the poor mobile experience is related to the user's device, not the network.

In 2014, 8 European telecom regulators petitioned the EU to investigate the role of smartphones in the user experience. The regulators of Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, and Sweden sent a formal letter to Daniel Calleja Crespo, Director General for Enterprise and Industry of the European Commission, requesting a labeling scheme for receiver performance in mobile phones [Strand Consult describes that here](#).

Unfortunately for consumers, the EU chose not to focus on the smartphone consumers buy but instead to focus on net neutrality. The EU would rather hammer against European telecom operators which invest in networks in the EU rather than ruffle the feather of foreign mobile phone manufacturers which export their phones to Europe.

Strand Consult's report [The experienced mobile coverage - what is bogus and what are the facts?](#) describes the challenges mobile phones create for consumers to realize a good network experience.

9. BEREC select stakeholders based on best arguments

It is clear from the BEREC guidelines that telecom regulators do not value the operators which invest, build, and run the networks which provide connectivity to Europe. The guidelines that BEREC has adopted conform to the provisions requested by groups such as [Save the Internet](#), [Access Now](#), and [EDRi](#). They have succeeded to become the only stakeholders that matter in the EU net neutrality debate. Eschweiler confirmed this by answering a question at the event on June 6 regarding which stakeholders were allowed to participate in drafting the guidelines. He said that BEREC selects those which "have the best arguments." Whether there is evidence for these arguments is evidently not a criterion. Moreover those stakeholders which have no voice, including children, the elderly, and the poor, are not included.

10. European Internet activists are sponsored by US Internet companies

Most journalists seemed to be uninterested to explore the funding of Internet activists by the American Internet companies that drive EU policy making. However Strand Consult has reviewed the disclosures and tax returns of the leading advocates.

For example SavetheInternet.com is a project developed by the American net neutrality lobby Free Press. Over the years this group has received over \$20 million to lobby on net neutrality. To create

the European version, SavetheInternet.eu, source code was appropriated from the American SavetheInternet.com. The European project has thus delivered more than 57,000 computer-generated emails to European regulators in favor of extreme net neutrality. One of leading partners in the project is Access, a global organization advocating for net neutrality. According to its website, it has they have received more than \$2.4 million from American internet companies, and \$1.2 million alone from Google.

BEREC has demonstrated that it only takes professional activists seriously. They have succeeded to make the “best arguments” and thus, the activist arguments become the de facto rules. Cleary operators have not taken advantage of the process. They have not shown leadership or effective communication. If they have invested in any public relations or campaigns, it clearly has not worked. The rules show that operators’ needs and concerns are not important to EU policymakers.

The conclusion is very simple.

If you have followed this debate and if you've spent some time to familiarize yourself, EU net neutrality regulation is essentially feel good/look good policy. The EU tried to create rules which would seem like a win for the consumer—free internet and free roaming—while in truth these do nothing to create economic growth.

Google-sponsored internet activists have been shrewd to focus on BEREC because they can exploit the regulatory authorities to make de facto rules, regardless of what the Parliament, the will of the people, decides.

Europe's telecoms operators which invest billions of euros in vital infrastructure have been ignored. And rather than focus on what actually creates 80 percent of the poor Internet experience—the mobile phone—policymakers focus on amorphous net neutrality rules.

BEREC’s conduct in the net neutrality process with its lack of evidence and transparency is undermining the credibility of telecom regulators. BEREC’s guidelines turn national regulators into arbiters of human rights and clicktivist-driven demands. This will become a problem for the EU and regulators going forward as they will likely be challenged in court for subjective judgements.

The net effect is that Europe has become the region where it is least attractive to invest in telecom networks - the challenges were visible at [The FT ETNO Summit in October 2015](#).

Net neutrality: Feelings may be justified in the de-bate, but there is no excuse not to follow an evidence-based approach to regulation

A complex debate

There is no doubt that the net neutrality debate is complicated. Each country considering net neutrality rules has its own definition—from notions that all traffic should move at the same speed across a network to rules that enshrine modular internet architecture to other definitions. In a number of countries, calls for net neutrality have been coupled with arguments for freedom of speech, freedom from censorship, and respect of privacy.

There is no doubt that these human rights are important, but whether these rights are being violated by operators' traffic management practices is another matter. Making any net neutrality rule should be based on sound, verifiable evidence of consumer harm. Strand Consult has studied this issue in depth in various countries and has produced a report titled *Understanding Net Neutrality and Stakeholders' Arguments*. This research note provides some background on how the debate has evolved in the US and the Netherlands, two countries with net neutrality rules.

What is good regulation

The 10th Anniversary Edition of the Telecom Regulations Handbook published in 2011 for the world community of telecom regulators, observes, "Regulation has potentially high costs. The regulatory process is inherently time consuming to administer and requires considerable expenditure of resources. In addition, regulation can have unintended consequences which may be detrimental to customers and the 'public interest'. No matter how capable and well intentioned regulators are, they will never be able to produce outcomes as efficient as a well-functioning market. . . Where regulation is necessary, regulatory forbearance is the key to good outcomes. . . In other words, the concept of regulatory forbearance rests on the goal of a gradual removal of ex ante regulation and an accompanying increase in the use of general ex poste competition regulation. "

Net Neutrality in the USA

The American telecom regulator is the Federal Communications Commission (FCC). Calling it "regulating the on ramp to the internet", then FCC Chairman Julius Genachowski presented the Open Internet Report and Order in December 2010. He suggested that "rules of the road" were needed to ensure that the principles that made the internet great would be preserved. Verizon has taken the the FCC to court, charging that the FCC does not have the authority to regulate the internet and that the ruling is a violation of the 1996 Telecommunications Act, the law which defines the powers of the FCC. The United States Court of Appeals for the District of Columbia hears cases with federal agencies and earlier ruled that the FCC overstepped its jurisdictional boundaries on net neutrality. Oral arguments take place on September 9, 2013.

Statements from former FCC Commissioner Robert McDowell may give Verizon some support. McDowell served from 2006 until earlier this year and was one of the two dissenters in the 3-2 vote

for the FCC's Open Internet Order. Shortly after the FCC vote, McDowell published a [33 page dissent](#) noting that there was no market failure that needed remedied, that the FCC does not have the legal authority to issue these rules, that the proposed rules are likely to cause irreparable harm, and that existing law and internet governance structures provide ample consumer protection in the event of market failure. He observed that there was no market assessment, evidence gathering, nor assessment of consumer harm. McDowell explains,

Furthermore, on the night of Friday, December 10, just two business days before the public would be prohibited by law from communicating further with us about this proceeding, the Commission dumped nearly 2,000 pages of documents into the record. As if that weren't enough, the FCC unloaded an additional 1,000 pages into the record less than 24 hours before the end of the public comment period. All of these extreme measures, defying the D.C. Circuit, Congress, and under mining the public comment process, have been deployed to deliver on a misguided campaign promise.

McDowell suggests that the FCC should justify net neutrality rules with bona fide cost-benefit and peer-reviewed market analysis.

Another who has observed the lack of empirical evidence for net neutrality is Clinton administration appointee and economist Ev Ehrlich in [his report](#) for a progressive broadband agenda. He notes of net neutrality,

But there is no pattern of suppressed content. In fact, the episodes in which advocates claim that connectivity providers have restricted content are so infrequent that they are all repeated every time the list is reproduced. To the contrary, the value proposition offered by broadband access providers is that they won't limit a customer's range on the Internet—who would buy access from a provider who limited access? This fundamental truth about the Internet's value proposition explains why there are so few examples of content suppression, and no prospect of it. Moreover, were it to occur, there would be a variety of other ways to address it, from the First Amendment to anti-trust law.

NetNeutrality in the Netherlands

Strand Consult's report Understanding Net Neutrality and Stakeholders' Arguments contains a detailed case study about net neutrality in the Netherlands based upon interviews with all the stakeholders in the debate as well as a before and after financial analysis of operators.

In the Netherlands supporters of net neutrality claimed that mobile operators charging higher fees for VoIP services was a form of censorship and that the use of deep packet inspection (DPI) was an invasion of privacy. Notwithstanding that DPI fulfills a similar function to standard web analytics and behavioral targeting tools that are used by many web applications and services to monetize user behavior, it is curious that net neutrality supporters did not use existing censorship and privacy laws to prosecute mobile operators.

At the time of the rule making (the debate itself only took two months and included no evidence-gathering), Bart Schermer, assistant professor in internet law at the University of Leiden, wrote an editorial titled "[Net neutrality is not about human rights](#)". He noted that the Dutch rule only applies to operators, not to the government, so the government could filter or discriminate. Further, he noted

that the Dutch constitution and the European Charter of Fundamental Rights already protect human rights, so net-neutrality law is superfluous. He explains,

For the discussion in and beyond the Netherlands it is important to understand what Dutch net neutrality is really about: it is about regulating the telecoms market and the behaviour of internet service providers, not about the protection of human rights. Mixing human rights in the net neutrality debate not only clouds our judgment on the best way to regulate the telecommunications market, it might also provide a false sense of security when it comes to the ability of governments to control the internet.

There is no doubt that privacy, freedom of expression and human rights are important today as ever. But urgency is no excuse to avoid an evidenced-based approach to policy making. Indeed if the human rights abuses are so rampant as net neutrality supporters claim, then evidence gathering should be relatively easy and prosecution by using the relevant and existing laws and institutions should prove them right.

The multistakeholder process - time consuming but fair

One outcome of the FCC ruling was the creation of the Open Internet Advisory Committee, which includes some 30 representatives of all the stakeholders in the net neutrality debate. All of the meetings are recorded, open to the public, and held in different locations to provide geographical reach for Americans. The videos and proceedings are [published on the FCC's website](#) along with a means for public comment. The four working groups dedicated to investigating issues in mobile broadband, economic impact, transparency and specialized services have revealed a number of deficiencies in ruling. Most important, the Committee's reports highlight that issues of internet traffic management are complex and involve any many actors. Indeed it is not just operators that deliver voice, video and data.

There will be many emotional calls for and against net neutrality in the media in the coming days and weeks, but we hope that the court will keep remain impartial and judge the case on its merits.

If the goal of the Open Internet is to ensure users' rights and a good network experience, why did the EU ignore 8 telecom regulators who wanted to expose bad smartphones?

Strand Consult has for many years focused on providing consumers with good mobile network experiences. In May 2013 we released the research note [Telecom regulators in 8 countries launch war against smartphones, say consumers require transparency](#) describing in how telecom regulators in 8 countries asked for EU support to expose bad smartphones.

Unfortunately, the EU closed its ears to the telecoms regulators from Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, and Sweden. [Instead it gave overwhelming attention to Google's and other US-funded net neutrality activists](#).

There is much academic evidence that shows that the vast majority of poor mobile experience results not from the network, but from the phone. But this is not a sexy thing for the EU to regulate, as people love their phones and phone makers run circles around regulators. Besides, it's just easier to blame bad experiences on mobile operators, even if there is no evidence for it. Regulation by the EU is not about righting a wrong, facilitating market entry, or creating competition. It's about creating a story that EU is doing something for the consumer. As such, roaming and net neutrality rules were announced in time for summer vacation, but neither of these measures create jobs or stimulate growth, the point of the Digital Single Market exercise.

Strand Consult's report [Understanding Net Neutrality and Stakeholders' Arguments](#) documents how Open Internet and net neutrality rules are made without evidence of wrongdoing or proof of promised innovation.

In the report [The experienced mobile coverage - what is bogus and what are the facts?](#) Strand Consult examines the many factors that create perceived mobile coverage. The conclusions are very simple: network neutrality regulation will not give consumers a better network experience. A better experience can only be achieved through increased investment in infrastructure and better phones, two things which the EU Open Internet rules do not promote.

Let's look at the facts when it comes to perceived mobile coverage

For a long time Strand Consult has published reports and research notes describing the role of the smartphone in decreasing quality of mobile coverage. Most people blame their poor mobile experience on mobile operators and their networks, not the makers of smartphones. However the data is mounting that smartphones are the leading culprit of poor mobile coverage, and telecom regulators are taking action, even if the EU ignores them. [Read our research note about this topic](#).

Led by the telecom regulator in Denmark, eight nations came together on a common approach to

the EU to demand that the challenges faced by consumers with their smartphones be addressed. Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden sent a formal letter in 2013 to Daniel Calleja Crespo, Director General for Enterprise and Industry of the European Commission, requesting a labeling scheme for receiver performance in mobile phones. [Read the call for EU labelling scheme.](#)

Having created a national framework for the deployment of mobile masts, recognizing the role of the smartphone in network experience, and incorporating the antenna studies of Gert Frølund Pedersen at Aalborg University, there is no doubt that Denmark is on the forefront of ensuring quality mobile coverage. Strand Consult is pleased that the debate it created as a result of its report "[How mobile operators can reduce cost for mobile masts and improve regulation](#)" has helped political leaders to understand that mobile coverage requires the cooperation of many stakeholders and that poor mobile coverage is not because operators are unwilling to build mobile networks. [Read our research note about this topic.](#)

To improve network experience, an EU labeling scheme would have profound implications, enabling consumers and the media to focus on the quality of modern smartphones. This action would encourage phone manufacturers to realize the challenges that their phones create on the network and encourage consumers to choose their smartphones more carefully.

There is no doubt that the modern smartphone is a more complex piece of computer machinery than most people appreciate. [Strand Consult's research note about the Samsung Galaxy S3](#) highlights some of the challenges that smartphones present to mobile operators and consumers. [Read about the 10 things that will give you mobile coverage.](#)

Mobile operators face many challenges as the number of users, smartphones and traffic explode on their networks. Therefore when trying to build and run mobile networks, operators must provide a common framework for the dialogue they need to have with stakeholders including political leaders, regulators, municipalities, site owners, the media, and the public.

The EU's net neutrality rules and BEREC's implementation guidelines are a threat to MVNOs that want differentiate themselves

When the Body of European Regulators for Electronic Communications (BEREC) presented its [guidelines](#) for national regulatory authorities to implement the EU's Open Internet [rules](#). While the EU may have agreed on rules, in practice, it is BEREC's interpretation that decides what is allowed. BEREC has an expansive interpretation of net neutrality (a term never used in the EU rules), has introduced services to regulate that are not found in the official EU rules, and seeks to scrutinize ways that operators can earn revenue in future.

This is particularly bad news for mobile network virtual operators or MNVOs, which don't own their networks, but need the ability to differentiate themselves to different market segments. This note describes the efforts of a number of important niche MVNOs. We describe a variety of MNVOs service specific communities, including military veterans, low-income inner city communities, and the lesbian, bisexual, gay and transgender (LBGT) community. However this analysis applies to a variety of niche, ethnic, religious, and other communities which wish to use creative business models and unique content. The analysis show that their growth will be imparied if BEREC's implementation guidelines don't change. Essentially the regulations and their interpretation will cement the market positions of Google and Apple, those companies which own and operate the apps stores which are the heart of the mobile content industry.

Net neutrality advocates claim that rules are needed to stop operators from blocking for, content. Strand Consult knows of no operator that would willingly do that—however a government would. In fact as this research note shows, operators would be interested to promote gay content, particularly to those segments which desire it. The LBGT is [almost a \\$1 trillion market](#) in the US alone. In 1988 the Wall Street Journal called it a dream market because of its size and buying power, brand loyalty, influence, and economic resiliency. Reports [suggest](#) that upwards of 70% of this community would be willing to pay a premium for products and service that support LBGT life. Indeed Gay Mobile was launched in Denmark, the first country in the world to recognize same-sex unions.

Strand Consult has published a series of research notes and reports on net neutrality, including the report [Understanding Net Neutrality and Stakeholders' Arguments](#). In addition to its expertise on net neutrality/Open Internet, Strand Consult has for many years been published the most information about the MVNO market. The new rules which make de facto bans on zero rating by subjecting operators to a multi-part pre-approval strategy will fall especially hard on MNVOs, those firms that like to take advantage of marketing strategies such as zero rating and sponsored data to distinguish themselves.

As comments of BEREC Chair Wilhelm Eschweiler [revealed](#) in the proceeding, BEREC selects its stakeholders based on the “best arguments”, not the best evidence. Net neutrality activism in the EU, largely funded by American Internet companies and [foundations](#), has developed compelling, emotional arguments. It employs [academics from Harvard and Stanford](#), one of which [BEREC invited](#)

to develop its guidelines to implement net neutrality. Network operators, on the other hand, have not invested time or resources to develop compelling policy arguments. Moreover, MVNOs, started by a range of entrepreneurs, lack a trade association to advocate for its interests. Operators assume, foolishly, that BEREC will take a rational, evidence-based approach. The reality is that consumers increasingly enjoy mobile connectivity and ever falling prices, which leads to the conclusion of less regulation. But BEREC will not take the reality into account. Nor will BEREC consider the overwhelming academic conclusions that net neutrality has ambiguous, if not negative, effects for the Internet ecosystem.

BEREC's primary concern is to look good to internet activists. Seeing the mob fiasco which overwhelmed the FCC in 2014 during its Open Internet consultation, BEREC capitulated to the net neutrality lobby from the start, giving groups [Save the Internet](#), [Access Now](#), and [EDRi](#) the interpretations and provisions they want in the guidelines. These groups will be sure to keep the pressure on BEREC over the next month to ensure that BEREC does not adopt a more reasonable approach. Google should send a big thank you to BEREC for the protections it wins for its market share and future revenue, which more than compensates for the antitrust fine that Margrethe Vestager and DG Comp could muster against the global giant. Some \$200 million has been spent by American foundations in net neutrality advocacy over the years, effectively protecting their portfolios heavy on Google stock. Google alone has spent at least USD 1.6 million on the three leading EU net neutrality advocacies in the last 5 years, as their donor lists mention.

Case: Gay Mobile - a concept which could succeed in many parts of the world but faces regulatory barriers

In 2005 Strand Consult described how the successful Danish MVNO CBB together with entrepreneurs from the LGBT community [launched Gay Mobile](#) - a concept that would likely do well should in countries such as the US and Brazil with large and active LGBT communities.

Such community-based MVNOs are willing to zero rate content which may be important, for example websites for LGBT non-profit organizations and information on LGBT rights. In addition many businesses would like to sponsor LGBT internet access in exchange for the opportunity to market their goods and services. Moreover gay consumers could have a mobile subscription in which they earn points for visiting particular websites, points which could be redeemed to reduce the cost of mobile service; to consume goods and services offered by LGBT-friendly vendors; or to donate to LGBT non-profit organizations, similar to [Visa's Equality Card](#).

Strand Consult fully supports these important developments for consumers to find content and access that reflect their particular preferences, but sees many regulatory and discriminatory barriers will inhibit the growth of this diversification in the market, perversely because of restrictive "open internet" rules. These net neutrality rules will likely prohibit operators from packaging mobile services for the LGBT community, for example providing specialized content, goods and services.

Strand Consult is concerned not just about the negative impacts that could befall the LGBT community, but any number of communities. This example applies to Ay Yildiz in Belgium (Base) and E-Plus in Germany, operators that have specific strategies for Turkish-speaking users. Regulations adopted by the EU over the years have commoditized telecommunications, forcing users to select service based on parameters for speed, volume, and price—which ironically serve to entrench the power of the incumbents, those with the largest networks and the ability to compete on prices. But this is detrimental to MVNOs and sub-brands which increasingly need to differentiate themselves

through marketing strategies, as overall prices have fallen so low. This also marginalizes community and entrepreneurial efforts to promote specific content and services to affinity groups, obliging them to use the mainstream platforms such as Google Search and Google Play, which are also dominated by giant content providers, relegating users to find their interest on the far end of a long tail.

[Defense Mobile](#) is an MVNO focused on the millions of veterans in the USA and gives 10% of its profits to programs for veterans' families. It also addresses a problem that some two-thirds of veterans fail to take advantage of state and federal government benefit programs for which they are entitled (health, education etc) because they don't have a way to find out about them and because a comprehensive list can't be found in Google. Defense Mobile operates a proprietary app, Milisource, that helps subscribers search through almost 1000 programs and operates a call center staffed entirely by veterans. Defense Mobile is an MVNO which could add additional value to its subscribers through free and sponsored data on important topics for veterans, but like many MVNOs, cannot afford the regulatory costs of case by case adjudication for every beneficial program it wants to offer. So its subscribers are denied improvements.

Some BEREC supporters claim that zero rating might be allowed if all of the content in the same class or category is zero rated or if all operators do the same practice. But this removes the competitive differentiator for MNVOs if they are the only player in a market offering the service. Strand Consult expects that this will be a difficult determination, and will force BEREC into dangerous judgement calls. Consider the LGBT case. Its community members are not monolithic and individuals have a range of tastes, for example in adult content.

Strand Consult predicts that BEREC's [six part approval criteria](#) for zero rating will be a nightmare for national telecom regulators. A glimpse of the future can be seen in Slovenia today, a country's whose net neutrality rules expressly allow price discrimination. The Slovenia regulator AKOS [pronounced](#) zero rating okay for the state-owned incumbent to offer its subscribers free viewing to the Champions League and to its proprietary cloud service. But AKOS simultaneously prohibited smaller independent operators from offering free Slovenian content, apps, and services—none of which were a competitive threat by market size or data traffic. The Slovenian operators are promoting the EU's Digital Agenda goals to promote European content and digital development, but they have been punished by their regulator. All of the country's network operators are suing the telecom regulator in response to the blatantly biased ruling.

Litigation in the US on the issue has been continued for some years. Metro PCS was the first operator to offer 4G in 2010. This operator feared losing low-income customers as it migrated to premium 4G plans, so it [offered](#) inner-city African American communities unlimited talk, text, and free YouTube for \$40/month, \$20 cheaper than its premium plan. Elitist net neutrality organization Free Press demanded that the FCC stop the offer. MetroPCS defended its offer in court, but with restrictive net neutrality rules that threatened its ability to offer flexible pricing and hence its financial viability, the company agreed to be acquired by T-Mobile. The US has one less network operator today, not to mention the lost welfare to the low-income communities which could have enjoyed such a plan. The issue is still being litigated, and will likely go to the Supreme Court where judges will recognize that sponsored data and zero rating are protected under the First Amendment, Freedom of Speech.

How BEREC, Google and net neutrality activists will punish those which dare to offer niche content and alternative means to access the internet

It would seem that members of the LBGT and other communities which will be denied opportunities for specialized mobile services should speak out against BEREC's heavy-handed approach. However we expect that if they dare, they will face the backlash of a global network of highly sophisticated activists which threaten and intimidate anyone who dares to question the net neutrality orthodoxy. In India for example, they [conducted app store vandalism](#), purposely downgrading the ratings of apps as a means to punish those companies which dared to create alternatives to the status quo. India's elites, including the leaders of its net neutrality movement, didn't want the poor to be empowered with free WhatsApp, perhaps the world's most popular app. So they would rather that the poor be denied internet access all together than have a free version of Facebook, which incidentally creates competition for Google in the online advertising market. It is important to point out that Indian activists have no complaints about Google advertisements shown to the poor, only Facebook's.

It is unfortunate that the mobile industry and its customers are denied the [pricing flexibility enjoyed by the energy](#) and financial industries. Strand Consult has described in a number of reports how credit card companies have partnered with affinity, philanthropic, and political organizations to create shared revenue and social benefit. Gay Mobile, Defense Mobile, Ay Yildiz, and other MNVOs and mobile operators would like to offer their customers more diversified mobile services—different content, different prices, affiliate point programs, and rewards--but the one-size fits all approach adopted by BEREC and the FCC makes this increasingly difficult.

Should you trust Sir Tim Berners-Lee on net neutrality?

Strand Consult eagerly awaits action from the Juncker team, particularly Andrus Ansip, VP for the Digital Single Market. In our earlier [research note](#), we observed that Ansip in his confirmation speech reiterated the goals first described by Neelie Kroes, but were ultimately not delivered. Kroes lost political capital on net neutrality, and Ansip does not want to make the same mistake. He has come out with in support for the notion even though it contradicts his libertarian roots.

Politicians engage in feel-good, look-good populist rhetoric about net neutrality where emotions substitute for facts, but it's a slippery slope. As has been revealed on numerous occasions, most recently this week in the US with the FCC rejecting two Congressional bills that would enshrine net neutrality in favor of regulating the industry under the monopoly era framework of Title II, net neutrality is probably a Trojan horse for continued regulation of the telecom industry with the ultimate goal to turn private networks into public utilities.

Recently Ansip launched a blog in which he states his hope that many guest writers will compose articles. His first guest is Sir Tim Berners-Lee who [writes](#) that net neutrality is critical for Europe's future. We understand why Ansip wants to align with Sir Tim Berners-Lee; not only did he invent the World Wide Web, he is European. Given that so many Europeans defect to the US to take advantage of its innovation ecosystem, the number of superstar innovators based in the EU is limited.

However we believe that Sir Berners-Lee's motivation to support net neutrality is not entirely virtuous. As in detailed in an article by Watchdog.org, Berners-Lee is a both a board member and beneficiary of the Ford Foundation which has poured \$46 million into net neutrality activism around the globe in recent years. Apparently it's a small price to pay for the world's 2nd largest foundation [to protect its tech-heavy investment portfolio](#) with large holdings of stock in companies such as Google, Amazon, and Microsoft, companies which stand to gain from net neutrality regulations. These are also the companies EU authorities are targeting for tax evasion and monopolistic practices. We predict that the EU attempting to pursue parallel tracks of simultaneously rewarding and punishing these companies is bound to collide.

In any case, Sir Berners-Lee has made an extraordinary achievement, and we should celebrate him for it. But it doesn't mean that he should manipulate the facts or portray net neutrality as holy religion. Human rights, innovation, and progress are very important, but they have little to do with net neutrality, which is just a clever way to privilege one set of companies over another.

Openness on the web is not under threat. Europeans consume more data than ever on increasingly faster broadband speeds. The fact of the matter is that the Tim Berners-Lee's World Wide Web which was the killer app on the Internet is now being supplanted by mobile applications and streaming video. Companies that designed their offerings for an Internet dominated by the web, fear losing out as users switch to different platforms.

The academic literature on net neutrality, some 7000 articles, is largely theoretical. The authors of the most cited articles disagree about whether rules are even needed. Though there are articles based on game theory models that favor net neutrality, their authors largely agree about the ambiguity of the results. These models have not been tested with real data, and they have difficulty to reflect the complex reality of today's internet ecosystem.

EU authorities should be commended for taking the necessary steps to investigate the need for net neutrality, but their official reports do not provide support for more rulemaking. EU competition authorities found [no evidence of violations](#) on content or interconnection networks. The Body of European Regulators for Electronic Communications (BEREC) [noted](#) in its latest report, "For the time being, the situation appears to be mostly satisfactory and problems are relatively rare." The EU Parliament's own [report](#) concludes that "Preventative measures for threats that may or may not appear risk doing more harm than good."

We can observe that net neutrality is already delivering unintended consequences in the Netherlands. The law was supposed to unleash a flowering of Dutch content, but instead it creates the "Netflix effect"; Dutch networks are now clogged by a single American player. When Netflix launched in the country, its traffic ballooned from zero to [20 percent of all downstream network capacity](#) almost overnight with just a few subscribers. Imagine what happens when Netflix reaches its goal to grow subscribership to one-third of all households. Literally the entire network will be taken up by its video streams.

By hijacking the language of net neutrality, Netflix hopes to win price controls on interconnection (and fiats to require operators to place its servers in their facilities) to solidify its market position against other video upstarts. Netflix has lobbied the FCC hard and got its wish: the definition of broadband was changed to suit its desire and interconnection is now part of net neutrality, something that was never regulated before. Indeed net neutrality originally defined was only about last mile access, but Tim Wu's brilliant concept is an empty vessel that lends itself to unlimited rebranding for the *crise du jour*.

Europeans engage with many kinds of online firms, access networks, search engines, social networks, app stores, websites and so on. All have the ability to behave in discriminatory ways. A true neutrality regime would demand non-discrimination rules on all digital technologies with the same protections for consumers across the board. To make antidiscrimination rules against just one type of firm is discrimination in itself.

Net neutrality activists like to claim that the Internet is better and different than other technologies and is therefore subject to special protections, even if it means equating free speech and human rights to their favored technology.

The fact remains that two-thirds of the world's population is not online today. For these people, primarily in the poorest parts of Africa, Latin America, and Asia, freedom of speech is still about basic access to radio, TV, and print. But analog technologies are not cool for most net neutrality advocates, so they ignore these media where the greater part of the world's free speech violations occur. Few of these activists said anything about the recent atrocity against the Charlie Hebdo magazine in Paris.

What net neutrality advocates do instead is lobby against zero rating, a business model that helps truly impoverished people access the Internet with their mobile phone. Programs like Facebook's Internet.org allow grandmothers in India to message with their grandchildren in the UK. Banning the ability to communicate with loved ones is cruel.

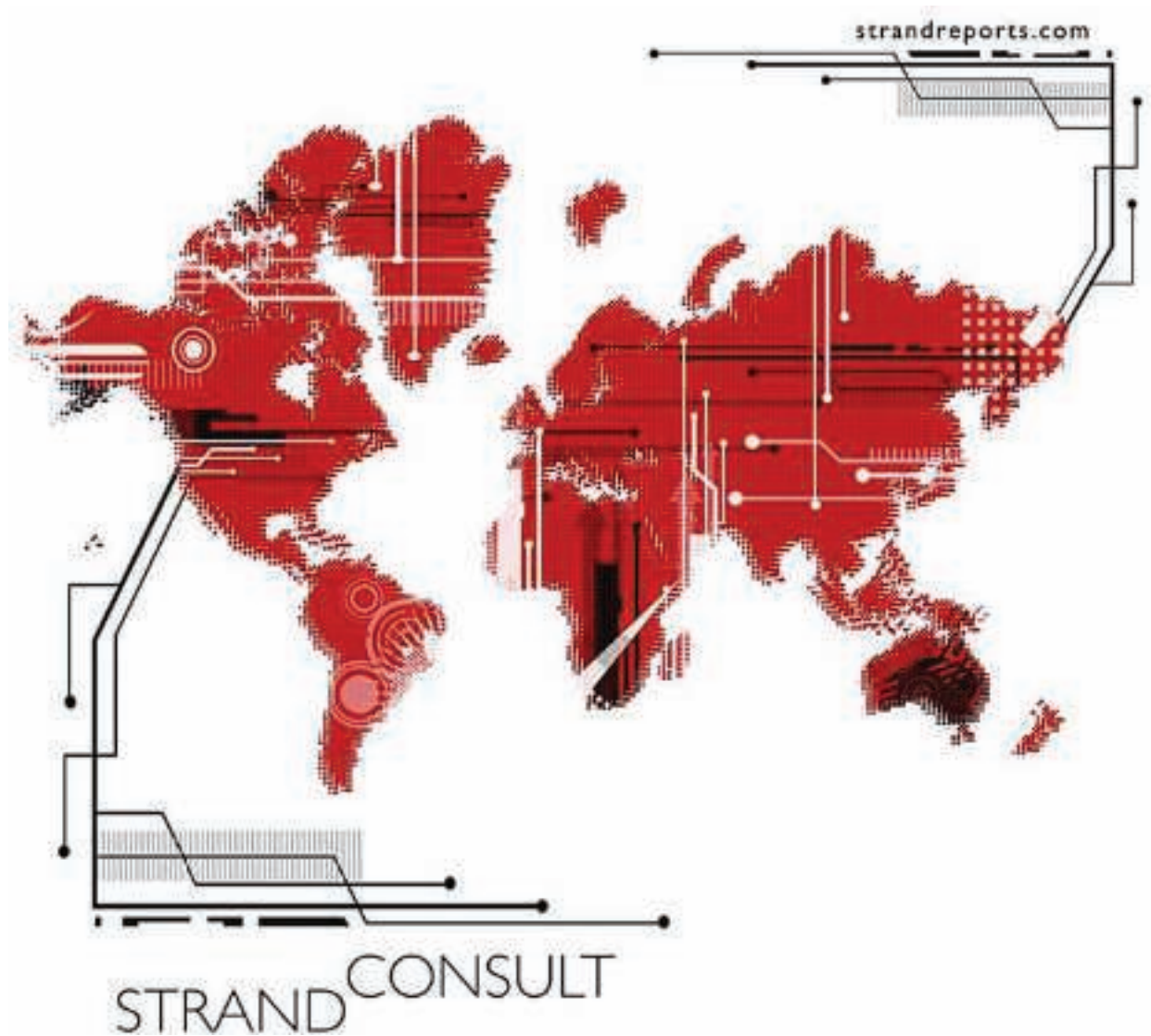
Europeans already have strong Internet protections under existing telecom laws, and telecom regulators already have the power to enforce and punish discriminatory activities. In lieu of making redundant laws, the Nordic countries maintain a multi-stakeholder dialogue on net neutrality. This has kept violations away for more than five years. On top of that, the process involves a variety of stakeholders, building community in a collaborative way.

Is net neutrality critical for Europe's future? There is no empirical evidence linking net neutrality to economic growth. The far greater issue is the digital skills gap. [Almost 40 percent](#) of Europeans don't have the skills they need to participate in the digital economy, and there are one million vacancies on the continent as a result.

It's understandable to desire protections in the digital society, but a packet is not a person. Efforts should be focused to empower people, not micromanage networks. The most effective way to ensure human rights is to ensure quality education and employment opportunities for all Europeans. The jobs of the future require the skills to innovate differentiated services in the Internet of Things and on smart networks like 5G, not the dumb networks desired by net neutrality.

As an engineer Sir Berners-Lee should appreciate the need and freedom to innovate dynamic systems such as the Internet. Net neutrality is conservative argument to keep things the same. With more than a decade of recession, most Europeans want things to improve.

Strand Consult has spent significant time and resources to to understand the net neutrality debate in various countries.



The Moment of Truth

– A Portrait of the Fight
For Hard Net Neutrality Regulation
by Save the Internet and Other Internet Activists

- WORKSHOPS
- STRATEGIC REPORTS
 - ANALYSES
 - WHITE PAPERS
 - RESEARCH NOTES

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Introduction

This report *The Moment of Truth: A Portrait of the Fight for Hard Net Neutrality Regulation by Save the Internet and Other Internet Activists* is an attempt to provide transparency about Internet activists and their funders which seek strong hard net neutrality rules in the USA, European Union, India, Latin America, and other places around the world.

Net neutrality is a concept coined by law professor Tim Wu in a 2003 article¹, in which he proposed that the Internet should be a “neutral platform” for innovation. Wu called for users’ rights to access the content and services of their choice with the devices of their choice. Importantly, Wu noted that telecom operators should “police what they own” – that is to say as long as telecom operators provided unrestricted access to the Internet, they could manage their proprietary networks in a prudent way. Wu offers rules about network management that would be applied only “if necessary”.

It is important to note that at the time of Wu’s writing, prevailing Internet speeds were 3-6 Mbps. Mobile broadband had yet to emerge, and people were connecting to the Internet with desktop computers in highly developed countries on copper or cable connections. The iPhone would not be introduced for another four years. Wu’s article never mentioned did rating or specialized services.

Barely a decade after Wu’s article, Internet connectivity is available through a variety of networks, increasingly at speeds of 100 Mbps or more. As the Organization for Economic Cooperation and Development reports for the member countries,² mobile broadband penetration was 85.4% in June 2015, up from 76% in June 2014. In fixed-line broadband subscriptions reached 365 million in June 2015, up from 351 million in June 2014. Smartphones are nearly ubiquitous in highly developed countries. Internet adoption is near saturation in many developed countries; more than two-thirds of the population is online,³ and 3.2 billion people are online.

As Cisco reports, mobile networks carried fewer than 10 gigabytes per month in 2000 and less than 1 petabyte per month in 2005,⁴ but the amount of data consumed globally per capita has increased in real terms from 2.1 exabytes per month in 2014 to 3.7 exabytes per month in 2015. In the history of technological innovation, only the mobile phone has grown faster than the Internet,⁵ which is the foundation for nearly every person on the face of the earth to be connected to the internet. It would seem that the growth of Internet connectivity is a success.

However, amidst this strong and sustained growth, net neutrality activists currently claim that telecom operators are blocking and slowing the very connections they provide; that they are intentionally harming their customers and third-party services providers; and that telecom operators will purposely destroy the same environment supported by their networks, in which for they have invested hundreds of billions. Without “hard net neutrality” rules, activists claim, the Internet will fade away. Someone has to “save the Internet”!

¹ Tim Wu, “Network Neutrality, Broadband Discrimination,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, June 5, 2003), <http://papers.ssrn.com/abstract=388863>.

² <http://www.oecd.org/sti/broadband/oecdbroadbandportal.htm>

³ <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>

⁴ <http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.html>

⁵ <http://www.nytimes.com/imagepages/2008/02/10/opinion/10op.graphic.ready.html>

Executive Summary

Why the sudden shift from soft to hard net neutrality regulation

This report explains why the success of soft net neutrality regimes over many years in a number of countries have been jettisoned in favor of hard rules. This shift to mobile platforms, upsetting the power balance away from web-based leaders, and the need for activists to certify their success to their funders, has driven hard rulemaking.

Activism as an Industry

While the American civil rights moment in the 1960s may be considered as an authentic expression of emancipation in the face of oppression, Internet activism is highly professionalized with globally coordinated actors from the “grass-roots” and “grass-tops.” Activists, such as the co-founder of the Occupy movement, offer their services for hire and students can earn undergraduate and graduate degree programs in the field.

Digital Prostitution: The value proposition activists offer their funders

Digital prostitution is nothing more than guerrilla marketing applied to public policy. It is way to enable users to become the voice of the corporate policy, giving requests for regulatory favors more “credibility.” By leveraging activist groups, companies such as Google, Netflix, Microsoft, and Mozilla can amplify their message and get additional voices at the negotiating table. Multi-billion dollar foundations such as Ford and Open Society align their financial portfolios with their philanthropy, and net neutrality is an effective means to protect the value of their Internet stocks.

The tools and techniques of transnational activism

Transnational activism is a set of practices designed to create political change and institute new norms. Through the incorporation of digital tools and strategies, activists have increased their reach and effectiveness.

The franchise model of Save the Internet and other internet activists

A franchise is the authorization to license a product, concept or service under a brand name. Just as McDonalds has enabled billions to be served with signature golden arches and burger and fries menu, Save the Internet and Mozilla offers a “white label” offer activist entrepreneurs a net neutrality teach-ins and tool kits to kick start their own efforts.

How to capture regulators with automated emails and petitions

SavetheInternet.eu claims to have delivered 94,000 mails to EU regulators as part of the BEREC consultation. This actual number of mails is likely only 4000-5000, as each mail is sent 28 national regulators. A significant number of mails come from non-European net neutrality supporters outside the EU, about 30 percent from the US.

Why telecom operators are losing the net neutrality battle

Telecom operators advocate in the old-fashioned way, in their own name. They lack leadership and coordination as an industry, and as a result have failed to develop meaningful strategies and communications to secure their political interests. Their trade associations have not developed compelling thought leadership. They fail to use other actors and stakeholders to advocate for their interests, and they don't appear to employ the advanced datamining and digital marketing techniques used by Internet activists.

Why the sudden shift from soft to hard net neutrality regulation

Net neutrality rules can be organized into “soft” and “hard” measures. Soft measures are voluntary agreements by telecom operators to uphold the claimed user rights through instruments such as self-regulation, codes of conduct, principles, and so on. Soft measures can involve oversight by telecom regulators, as well as multi-stakeholder dialogues. Historically, the countries with the most history and success with net neutrality, as measured by the level of Internet innovation and lack of violation or litigation, have used soft measures. These countries include the Nordics, Japan, South Korea, Switzerland, and the United Kingdom. Incidentally these countries are frequently praised by Internet activists for high-quality broadband. Moreover, soft measures most closely align with Tim Wu’s idea of user rights, as stated in his 2003 article on net neutrality. Wu never discussed zero rating or the mobile Internet.

Hard rules are promulgated either through legislation or regulation. These measures are binding. They include prohibitions on traffic management, ban certain kinds of partnerships between telecom operators and content providers, and levy potentially harsh punishments. The countries with hard rules include those in Latin America, Netherlands, and Slovenia. In February 2015 the Federal Communications Commission voted 3-2 by impose hard rules along Democratic party lines. Immediately nine lawsuits were filed against the American telecom regulator. The rules were upheld 2-1 in appellate court in June 2016, but litigation may well continue to the Supreme Court.

In the EU, hard rules came into effect in April 2016⁶, with guidelines⁷ being developed by the Body of European Regulators for Electronic Communications (BEREC). Litigation is ongoing in Slovenia as operators are challenging what they identify as regulators’ arbitrary and capricious bans against partnerships as a violation of the country’s constitutional right of freedom of enterprise.

Today there are some 50 countries with hard net neutrality rules, and as this report will explain, largely as a result of the success of transnational internet activists. With the emergence of mobile platforms competing with the web as the killer app of the Internet, there has opened the possibility for a power shift away from the paradigm of web-browsing on desktop computer with fixed line Internet access to mobile devices on mobile networks. It bears mention that the mobile Internet has the potential to include the developing world whereas the web is largely a developed world phenomenon.

Internet activists propose bans on telecom operators offering zero rating, the ability the par telecom operators, particularly small and entrant operators, have to lower the price of broadband access and compete with established internet companies, not to mention offering subscribers an alternative to the Google-mediated web. Internet activists also propose bans on specialized services, which is nothing more that prohibitions for operators to develop innovative services on their networks, something that Wu expressly supported. By funding Internet activists to wage campaigns, Internet giants such as Google and Netflix can hide behind the seeming “freedom fighters” who offer another mouthpiece for

⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R2120&from=EN>

⁷ http://berec.europa.eu/eng/document_register/subject_matter/berec/public_consultations/6075-draft-berec-guidelines-on-implementation-by-national-regulators-european-net-neutrality-rules

their views. They can take a more diplomatic tone in their official communication to regulators while avoiding the blatant hypocrisy of regulating their rival.

The process of aiding the adoption of hard rules has become a flashpoint for Internet activists. This report describes the various techniques and digital tools used by hard rules proponents (hereafter, "Internet activists") to influence policymaking. While most processes used to galvanize constituencies for political action are well-established, there is a marked change with Internet activism due to its scale and sophistication. For instance, while it is expected that elected officials will be the focus of Internet activism, it is unprecedented that telecom regulators are now directly targeted. This represents a direct assault on the notion that a telecom regulator should be independent and at arms' length from the political process.

Birthered in United States, various forms of Internet activism are now exercised under the umbrella phrase of "Save the Internet". Similar campaigns have spread and blossomed throughout the world. The various organizations and coalitions associated with these movements are now numerous and often well-funded, and they are increasingly becoming transnational in nature.

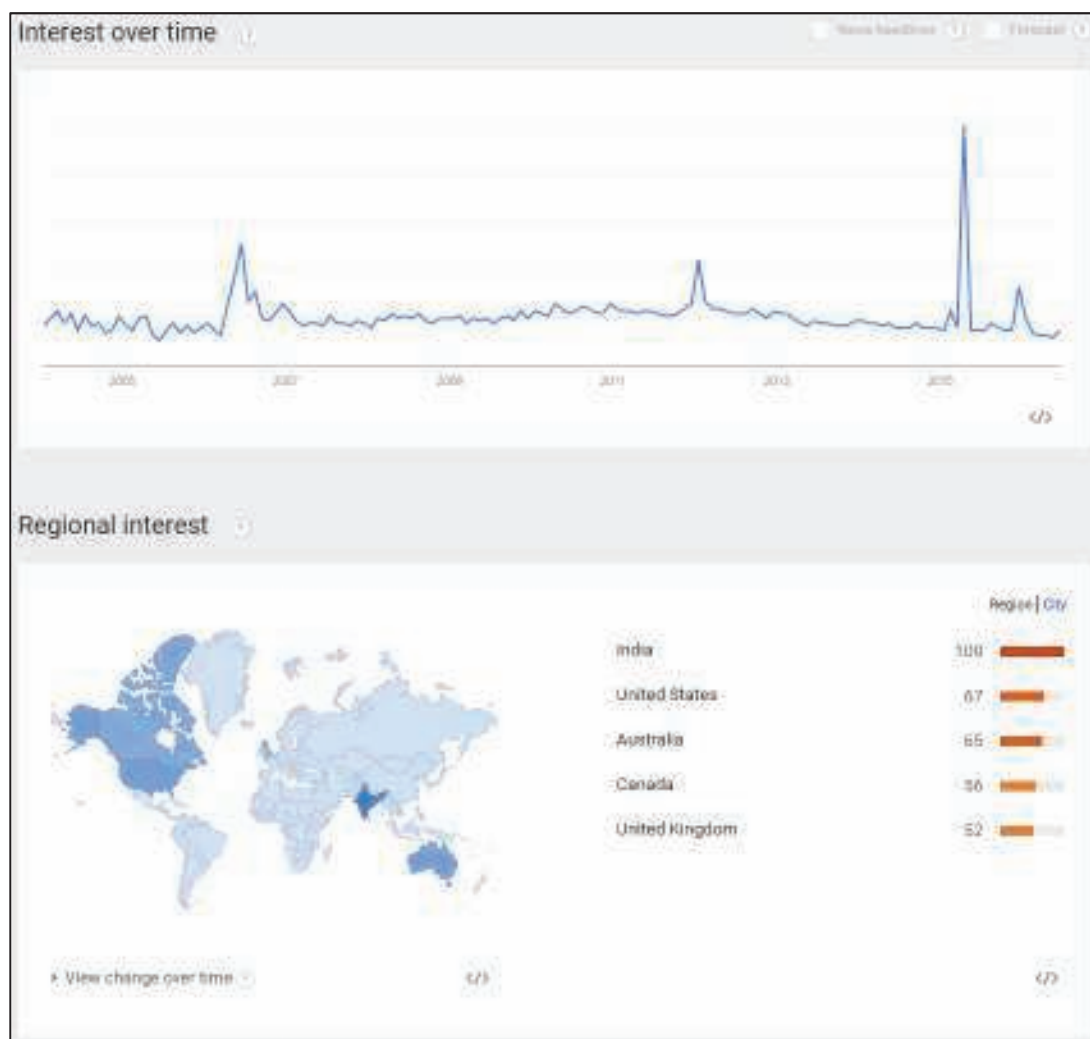


Figure 1: Google search trends for "Save The Internet"⁸

One may suspect that Australia and Canada are prime countries for the existence of such campaigns, as there is much interest in the search term (as seen in the graphic above). However, the three most prominent and active "Save The Internet" campaigns appear to be targeting Internet policy in the United States, European Union, and India⁹.

While all three campaigns have embraced the slogan "Save the Internet", each one is specifically targeting and influencing government regulations in their particular regions. However, many of the groups organized behind these campaigns are increasingly engaging in transnational activism – that is, attempting to influence telecommunications regulation in regions other than their own.

⁸ Google Trends, (June 7, 2016): <https://www.google.com/trends/explore#q=Save%20the%20Internet>

⁹ One must consider Australia and Canada as highly prospective countries for the expansion of such campaigns.

Activism as an Industry

There is no doubt that activism is an expression of the freedom of speech and enterprise. Activism has an interesting history, from its emergence as a policy to support “armed neutrality” during World War I; to its being incorporated into the various movements for women’s, workers’, and oppressed people’s rights and to anti-war, pacifist, and anti-corporate efforts; and today, to a century from its codification to a strategy co-opted by corporations as a means to conduct public relations and fully professionalized occupation. Strand Consult offers this report as a critique of corporate-funded activists which attempt to align themselves as the voice of the people, unscrupulously likening their self-interested efforts as the moral equivalent of civil rights movements. Moreover Strand Consult wants to bring transparency to the forces which desire to disrupt the democratic process and rule of law, particularly corporate-funded Internet activists which circumvent legal process and procedures to affect their preferred political outcomes. The hijacking of the political process is particularly on display as activists target telecom regulators, which profess to be at independent and at arm’s length from political processes and expert in their knowledge to the preferred treatment of economic and regulatory issues.

With regard to net neutrality, the hijacking was on display in the US when FCC Chairman Wheeler announced that based upon the command of “4 million Americans”¹⁰ that the FCC would implement Open Internet rules. A fact check reveals that not only were at least a quarter of the responses against Internet regulation,¹¹ but hundreds of thousands of responses came from non-Americans outside of the US, in addition to a significant part of the comments being unintelligible and unrelated to the proceeding.¹² President Obama echoed the 4 million number on the White House website,¹³ and created his own YouTube video instructing the FCC to make the toughest rules possible, a highly unusual intervention reported to have been conducted as a secret and parallel FCC.¹⁴ As the White House website demonstrates, Obama Administration made net neutrality as campaign pledge in 2007, a critical move to get the support of the NetRoots Nation¹⁵ and later a strategy that aligned with the business interests of Google¹⁶ and Netflix,¹⁷

As described in this report about Save the Internet in India, Internet activists proclaimed their victory which amounted to making the Telecom Regulatory Authority ban price differentiation.¹⁸ If any institution is in a position to regulate differential pricing, it is the telecom regulator. The very history of telecommunications regulation is about enabling differential pricing for telephone service. Price differentiation has existed for decades in local calling versus long distance, in interstate versus intrastate communications, in business versus consumer services, and in low versus high-volume users. If net neutrality advocates support that the Internet should be a public utility like the telephone network, then it is ahistorical and illogical that differential pricing should not be applied to the Internet, especially if the goal is to make it affordable for the maximum number of users.

¹⁰ <https://www.fcc.gov/article/fcc-15-24a2>

¹¹ <http://www.insidesources.com/fact-check-fcc-influenced-4-million-americans/>

¹² http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2587849

¹³ <https://www.whitehouse.gov/net-neutrality>

¹⁴ <http://www.wsj.com/articles/how-white-house-thwarted-fcc-chief-on-internet-rules-1423097522>

¹⁵ <http://niemanreports.org/articles/the-netroots-bloggers-and-the-2008-presidential-campaign/>

¹⁶ <http://googletransparencyproject.org/>

¹⁷ <http://www.insidesources.com/envy-frank-underwood/>

¹⁸ http://www.trai.gov.in/WriteReadData/WhatsNew/Documents/Regulation_Data_Service.pdf

In any case, the decision appears to contravene India's Telecom Tariff Order (TTO),¹⁹ the source of authority which TRAI uses to justify its action. The TTO notes the need to stimulate competition (specifically to support entrant telecom providers and reduce the power of incumbents), the requirement of the "social objective" of encouraging low users of telecom to get connected and use the system more intensively; and the provision

For enhanced flexibility for pricing and giving alternative tariff packages to customers. India was considered one of the great regulatory success stories. Because of the reforms to unleashing market forces, mobile subscriptions increased 500-fold and prices dropped more than 95 percent.²⁰ This story is a textbook example of the value of good telecom regulatory policy. However the Telecom Regulatory Authority of India appears to abandoned its rational approach with its recent ban of differential pricing.

But Google is not above employing net neutrality dogma against its own brethren. Consider the Google supported activists led the charge against Facebook in India,²¹ saying that the poor should not have free Facebook. But just to be clear, those objecting to Facebook commercialization of the Internet appear not to have any problem with Google and its Android platform which is effectively the only operating system in India delivering the lion's share of content and earning greater part of ad revenue. Google's ad revenue in the country exceeds \$1 billion annually and accounts for 70 spent of all digital spend in the country, an effective "monopoly."²² It's not unreasonable that Google should have one competition on online advertising rather than none.

Brief history of the word "activist"

An activist refers to one who engages vigorously and directly for political change. While any person may write letters or participate in political processes to bring focus to particular issues and policies, the difference with activist is the form of "direct" action such as boycotts, rallies, marches, strikes, sit-ins and so on. Activists have incorporated Internet to amplify their mobilization and communication efforts. This includes the used of digital tools (email, social media, electronic petitions, video, podcasts, online fundraising etc) to achieve political goals.

The historical derivation of the word activist has an interesting relevance for today's net neutrality debate.

The term activist was first used in Sweden during World War I to refer to a political faction, sympathetic to Germany with royal, cultural, and ethnic ties from the prior century, that wanted to align with the Central Powers (Germany/Prussia, Austria-Hungary, and the Ottoman Empire), culminating in the policy of "neutrality".²³ Interestingly the "activists" challenged the groups advocating for social democracy, pacifism, and women's rights.

While "neutrality" as a concept may have the connotation as an unassailable position today, the reality is more complicated. While the dictionary term "neutrality" means not taking sides, impartial, or unbiased, neutrality in the political context has come under revision, as historians and scholars

¹⁹ http://www.trai.gov.in/content/Regulation/0_2_REGULATIONS.aspx

²⁰ Colin Blackman and Lara Srivastava, *10th Anniversary Telecommunications Regulation Handbook*, vol. March 2011 (infoDev | The World Bank | The International Telecommunication Union, n.d.), <http://www.infodev.org/articles/10th-anniversary-telecommunications-regulation-handbook>.

²¹ <https://nointernetforpoorpeople.com/>

²² http://articles.economictimes.indiatimes.com/2015-12-14/news/69033735_1_google-india-rajan-anandan-user-base

²³ <http://encyclopedia.1914-1918-online.net/article/sweden>

challenge the notion the “armed neutrality paradox”²⁴ of Sweden and Switzerland during the 20th century wars. “Essentially transfers of military technology to Sweden and Switzerland, which were needed to make their neutrality credible, effectively undermined the very credibility that they were supposed to ensure,” note historians Nilsson and Wyss.²⁵

Activism in 2016

An activist is one who advocates vigorously for or against a political cause. The stereotypical view of volunteers picketing over the weekend for a particular issue has given way to the professionalization of the field, with full-time employment and master’s degrees in their respective fields. Activism has been further professionalized with the integration of online marketing technology. As companies use digital tools and tactics to gather leads and sales online, activists use the same or similar technologies to win political victories and advance legislation.

To be sure, *cyberactivism* is much more than traditional activism simply taking place online. The Internet, being a resource that has only recently (in historical terms) been leveraged by the general public, has increasingly enabled various advocacy groups to significantly extend their reach. A 2011 study²⁶ found that “advocacy groups are using the Internet to accomplish organizational goals, and have been doing so for more than ten years”. As the rise of cyberactivism continues, its ultimate capabilities to effect change in society must be carefully gauged and, perhaps more importantly, its efficacy must be studied to determine whether it is a true representation of an informed and activist citizenry.

Of particular interest is cyberactivism’s role in national telecommunications policymaking within a variety of countries and regions. Quite interestingly, advocacy groups are using the Internet to affect policy governing; in essence, the same network that is the target of their message is also being used to promulgate it. For better or worse, it’s as if posts to the classified ads section of a newspaper were pushing newspaper policy.

Further, it is possible that particular activities are undertaken expressly to degrade the value of various Internet entity assets, such as app store or website vandalism, when activists downgrade the ratings of a mobile app to pressure its publisher into a particular action. In such light, it is fascinating to note the commercialization of activism and the worldwide implications of global campaigns.

Cyberactivism is an important trend in the digitization of political movements, because it enables people to conveniently participate on single issues. It makes participation simple, easy, and frequently anonymous. Internet activists may be simply asked to read some bullet points, fill out an online form, and click send. Such methods can be effective to gather supporters at low cost, overwhelm policymakers with messages, and create the appearance of a mass campaign.

This apparent ease has earned the critique of “slacktivism”²⁷, devaluing traditional activism in which people put their reputation and sometimes their life on the line; for example, protesters in the U.S. civil rights movement endured physical violence, imprisonment, etc. Internet activism is a relatively risk-

²⁴ <http://jch.sagepub.com/content/early/2015/03/23/0022009414564804.abstract>

²⁵ Ibid

²⁶ “Advocacy 2.0: An Analysis of How Advocacy Groups in the United States Perceive and Use Social Media as Tools for Facilitating Civic Engagement and Collective Action” names (November 8, 2011) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1956352

²⁷ <https://en.wikipedia.org/wiki/Slacktivism>

free proposition for the participant, and people can safely and anonymously engage across a range of issues. It can even produce an oversized body of citizen expression, which is not representative of the very real needs of the populace. A prime example of this was when the U.S. government was petitioned in 2012 to build a real Death Star from the Star Wars movie.²⁸ The petition received wide attention and enough signatures to qualify for a government response.

While online activism may have been started by decentralized hacker culture, today it is part and parcel of working with corporations. Activism is now a professional service occupation, complete with college degree programs²⁹ dedicated to the singular topic. Activists are literally available for hire to plan and execute desired movements for corporate interests.³⁰

A leading provider of such services is Micah White (co-founder of the Occupy movement), who runs Boutique Activist Consultancy³¹ to provide “discreet service to political mavericks, emergent movements, and creative activists” and is the author of *End of Protest*.³² The goals of his professional service include maintaining the authenticity of the appearance of activism while incorporating digital tools and management practices to professionalize and scale the practices around the world. His consulting firm offers a robust set of services such as the following:

- Protest Innovation
- Activism & Movement Strategy Workshops
- Campaign Direction
- Movement Storyline
- Research & Insights
- Novel Protest Methods
- Full-Service Social Movement Creation

White, while implementing such measures, warns of overuse of digital tactics. He notes:

Is protest broken? Disruptive tactics have failed to halt the rise of Donald Trump in the upcoming U.S. presidential election. Movements ranging from Black Lives Matter to environmentalism are leaving activists frustrated. Meanwhile, recent years have witnessed the largest protests in human history. Yet these mass mobilizations no longer change society. Now activism is at a crossroads: innovation or irrelevance.

Innovation, while filled with positive connotations, in this case could also usher in a dark cloud of anti-social behavior. If activists feel that they are no longer creating the change they wish to see in the world, they may resort to bolder, riskier, and more desperate measures. Hopefully such a theoretical situation does not become reality.

Realistically, irrelevance is the more likely outcome. Movements around topics such as network neutrality may simply devolve to the level of just another piece of user-interactive infotainment served up on the Internet. As White further states:

28 <https://petitions.whitehouse.gov/petition/secure-resources-and-funding-and-begin-construction-death-star-2016> and see more generally http://www.nytimes.com/2016/03/22/world/europe/boaty-mcboatface-what-you-get-when-you-let-the-internet-decide.html?_r=0

29 <http://www.geog.leeds.ac.uk/study/masters/courses/ma-in-activism-and-social-change/>

30 https://www.google.com/?gws_rd=ssl#q=activist+consultancies

31 <http://activist.boutique/>

32 <http://endofprotest.com/>

Over time, the Internet becomes harmful because things start to look better online than in real life. This happened with Occupy. The protest looked better on Facebook than it did in the streets. This is negative because people start to prefer the online experience to the real world.

Just how successful can online protests be to effect change when they are not so much “alive in the streets” as they are alive in living rooms? After the digital protest has become passé, will tomorrow’s users simply roll their eyes and scroll by, as the tired digital marketing gimmicks now employed by cyberactivists wear down with time? White directly compares current activism efforts to marketing strategy:³³

The trouble is that this model of activism uncritically embraces the ideology of marketing. It accepts that the tactics of advertising and market research used to sell toilet paper can also build social movements. This manifests itself in an inordinate faith in the power of metrics to quantify success. Thus, everything digital activists do is meticulously monitored and analyzed. The obsession with tracking clicks turns digital activism into clicktivism.

Clicktivists utilise sophisticated email marketing software that brags³⁴ of its “extensive tracking” including “opens, clicks, actions, sign-ups, unsubscribes, bounces, and referrals, in total and by source”. And clicktivists equate political power with raising these “open-rate” and “click-rate” percentages, which are so dismally low that they are kept secret. The exclusive emphasis on metrics results in a race to the bottom of political engagement.

Gone is faith in the power of ideas, or the poetry of deeds, to enact social change. Instead, subject lines are A/B tested and messages vetted for widest appeal. Most tragically of all, to inflate participation rates, these organisations increasingly ask less and less of their members. The end result is the degradation of activism into a series of petition drives that capitalise on current events. Political engagement becomes a matter of clicking a few links. In promoting the illusion that surfing the web can change the world, clicktivism is to activism as McDonald’s is to a slow-cooked meal. It may look like food, but the life-giving nutrients are long gone.

Digital activists hide behind gloried stories of viral campaigns and inflated figures of how many millions signed their petition in 24 hours. Masters of branding, their beautiful websites paint a dazzling self-portrait. But, it is largely a marketing deception. While these organisations are staffed by well-meaning individuals who sincerely believe they are doing good, a bit of self-criticism is sorely needed from their leaders.

The truth is that as the novelty of online activism wears off, millions of formerly socially engaged individuals who trusted digital organisations are coming away believing in the impotence of all forms of activism. They will offer phone-based, alternate reality, and augmented reality alternatives.

Another criticism is that Internet activism, while purporting to be the voice of the people, can ultimately marginalize certain groups. People without digital access or skills (frequently minority populations and the elderly) can’t and don’t participate. Leaders of the current U.S. and EU digital activist campaigns, to a large extent, are white and educated³⁵ and in developed countries. Cyber activists also tend to come from the educated upper classes.

³³ <http://www.theguardian.com/commentisfree/2010/aug/12/clicktivism-ruining-leftist-activism>

³⁴ <http://www.actionkit.com/>

³⁵ Maria Löblich, “Dissent and Political Participation: The Many Faces of Communication Policy Advocacy and Activism,” *Communication, Culture & Critique*, June 1, 2015, n/a-n/a, doi:10.1111/cccr.12113.

Digital Prostitution: The value proposition activists offer their funders

There is no doubt the the movements for suffrage and equality entailed direct action to change social norms and legislation. This report demonstrates how Internet activists are shrewd, if not unscrupulous, to position themselves as the inheritors of the civil rights movements. But there is a difference of Internet activists fighting so that Google and Netflix win price controls versus the journalist or persecuted gay man who can literally be imprisoned or executed by repressive government for expressing contrary views.

Internet activism is an expression of free speech and enterprise, even if funded by corporations and foundations. However it can disrupt the democratic system and rule of law, particularly when applied to supposed independent telecom regulators. If activism is targeted at regulators, it violates the principles of political independence. Telecom regulators are not elected, and are not supposed to favor certain constituencies or interest groups. The more proper role for activism is to target elected officials, but because Parliaments can be slower in their decision making, activists have learned to focus on sector specific regulators where they can succeed to have an impact.

Digital prostitution is nothing more than guerrilla marketing applied to public policy. It is way to enable users to become the voice of the corporate policy, giving requests for regulatory favors more “credibility.” By leveraging activist groups, companies such as Google, Netflix, Microsoft, and Mozilla can amplify their message and get additional voices at the negotiating table. Multi-billion dollar foundations such as Ford and Open Society align their financial portfolios with their philanthropy, and net neutrality is an effective means to protect the value of their Internet stocks. Activists enjoy the ability to align with certain slogans, not to mention the rewards, both financial (in some cases) and psychic, for example the ability for individuals to achieve “microcelebrity”³⁶ status through their activism.

The rise of Internet activism can also be explained by the school of public choice economics which has criticized the received wisdom that regulators work in the “public interest” to promote the “common good.”³⁷ Rather people are motivated by self-interest subject to incentives and constraints. They challenge the view that there are meaningful groups such as “the community” or “the people” who make decisions. Rather they focus on “collective action” of special interests , which tend to be small homogeneous groups which are more effective to supply pressure and support to policymakers than are large groups with diffuse interests. Smaller groups have a greater stage in particularized policy decisions, can organize more cost-effectively, and can more effectively eliminate the free rider problem when benefits are distributed to parties which do not contribute.

In the past, companies fought openly, clamoring about commercial conditions, patents, anti-competitive practices and so on. Now companies can outsource this dirty work to activists and digital prostitutes rather than compete directly. This is a strategy expertly deployed by Google and Netflix.

³⁶http://www.academia.edu/3775110/Micro-celebrity_and_the_Branded_Self
<https://www.theguardian.com/lifeandstyle/2015/jul/10/celebrity-activism-africa-live-aid>
³⁷ <http://www.econlib.org/library/Enc/PublicChoice.html>

and

Watchdog.org describes³⁸ that the Ford Foundation uses net neutrality advocacy as a way to protect its portfolio which is heavily invested in Google and other Silicon Valley stocks. This world's second largest foundation earned \$1.65 billion in 2007 on investments in YouTube and received nearly 220,000, valued at more \$100 million. Holdings also include \$3 million shares of Google company stock; \$5 million of stock in Microsoft, \$5 million in Oracle, and \$2 million invested in more than 480 companies to net more than \$402 million in 2012 based on stock investments alone.³⁹

Perhaps the single largest supporter of net neutrality is Hungarian billionaire currency trader George Soros, known as the "Man Who Broke the Bank of England" who made USD \$1 billion with a short sale of USD \$10 billion British pounds during the Black Wednesday in 1992⁴⁰ and one of the world's richest people with a personal net worth of \$23 billion. One of his signatures has been to parlay the concept of "open" to a variety of ventures, such as open government, open internet, and open borders, most recently criticized as being partially related to the recent refugee crisis in Europe.⁴¹

Like Ford, Soros' Open Society also appears to use net neutrality as strategy to protect its financial portfolio. A copy of the recent 13F form of the Open Society Foundation notes significant holdings of stock in Alibaba, Alphabet, Amazon, Broadcom, EBay (\$94 million) PayPal (\$106 million), and Level3 Communications (\$173 million). The foundation also holds stocks of Time Warner Cable and Charter Cable. It is significant to note that the FCC denied Comcast the ability buy TimeWarner but Charter Cable, by agreeing to significant "Open Internet" concessions such as not to add data caps or usage-based pricing to subscriptions,⁴² was approved to acquire the company for \$66 billion, a sum \$21 billion greater than suggested by Comcast. The net neutrality advocacy and Soros grand recipient Free Press campaigned⁴³ vigorously against the attempted Comcast-TimeWarner merger, but the deal was evidently enabled by former Free Press counsel Marvin Ammori who explained how his new employment at Charter would make the pending merger an acceptable network provider for the Open Internet.⁴⁴

There is no doubt that telecom industry lobbying on a variety of issues is significant. Open Secrets reports some \$90 million spent in 2015 in the US by some 87 firms (this includes pro-net neutrality groups such as Level3 Communications and INCOMPAS with almost \$2 million).⁴⁵ However this amount has been declining in recent years, and net neutrality comprises a fraction of the total. In fact total telecom industry lobbying pales in comparison to the spend of just two foundations, Ford and Open Society, which have spent almost \$200 million on net neutrality in recent years.⁴⁶ The support of tech companies such as Google, Netflix, and so on is additional.

American telecom firms likely spend significantly with regard to litigation against net neutrality, for example there were 9 lawsuits in the most recent charge against the FCC. A figure for the litigation costs could not be compiled in time for this report.

³⁸ <http://watchdog.org/187392/ford-foundation/>

³⁹ http://www.fordfoundation.org/pdfs/about/2012_tax_return.pdf

⁴⁰ <http://www.investopedia.com/ask/answers/08/george-soros-bank-of-england.asp>

⁴¹ <http://www.zerohedge.com/news/2016-07-08/how-george-soros-singlehandedly-created-european-refugee-crisis-and-why>

⁴² <https://www.fcc.gov/document/commission-approves-charter-twc-and-bright-house-merger>

⁴³ <http://www.freepress.net/resource/105883/join-fight-stop-comcast-time-warner-cable-merger>

⁴⁴ <http://www.wired.com/2015/06/heres-charter-will-commit-open-internet/>

⁴⁵ <https://www.opensecrets.org/lobby/indusclient.php?id=B09&year=2015>

⁴⁶ <http://www.mrc.org/articles/soros-ford-foundations-lavish-196-million-push-internet-regulations>

The tools and techniques of transnational activism

The network neutrality movement is driven as a project of *transnational activism*. Sidney Tarrow is a leading Emeritus professor of political science and sociology who offers a compelling framework⁴⁷ to understand transnational activism in a book by the same name. It is a framework that may be used to understand the movements fueling the growth of net neutrality rulemaking around the world. The movement can be seen in the larger context as being comprised of individuals, corporations, and non-governmental organizations that are focused on restructuring politics while transforming national norms and practices on a global scale.⁴⁸ Following are the terms that Tarrow describes in his book

- Transnational Activism
- Internalization
- Diffusion
- Scale Shift
- Externalization
- Transnational Coalition Forming

Internalization

As Tarrow describes, *internalization* is the response to foreign or international pressure within domestic politics. It can result in a contentious triangle structure of the people, their governments, and international institutions. The model was developed by studying activists' objections to national austerity programs required by international loan organizations such as the IMF and World Bank. The elements include pressure applied by the international organization made on the country; implementation of the policy by the national government; protest by an activist group; and the response from the national government, whether it be repression, concession, or brokerage between the international organization and the nation's people.

Diffusion

The transfer of claims of contention from one place to another is *diffusion*. Claims that net neutrality violations were occurring in the United States were copied by other countries. Tarrow describes how diffusion works in transnational activism:

With the expansion and greater availability of electronic communication, shifting the scale of contention has become both easier and more rapid. The Internet can also become a tool of collective action, for activists and others who use their skills and artistic talents to disrupt the communication processes of their opponents. Because many social movements lack consistent, hierarchal organizing structures, it is only a short step to regarding the Internet itself as a form of organization. The group website, with very little need for formal organization behind it, can be used as a node for organizing protest campaigns.

⁴⁷<http://www.cambridge.org/co/academic/subjects/politics-international-relations/comparative-politics/new-transnational-activism>

⁴⁸ <http://www.amazon.com/Restructuring-World-Politics-Transnational-Contention/dp/0816639078>

However, it is ironic that the network neutrality movement, whose goal is to regulate telecom companies, has been emboldened by the very fact that the networks are providing the increasing openness that activists say is under threat.

Scale Shift

Scale shift is a change in the number and level of coordinated contentious actions to a different focal point, involving a new range of actors, different objects, and broadened claims. Tarrow provides a model of scale shift beginning with local action followed by coordination, the joint planning of collective action and the creation of instances for cross-spatial collaboration. This is done through brokerage (the practical mechanism of bridge-building between organizations) and theorization (the abstraction of core ideas taken from one reality and then applied to another).

This then leads to *claim-shift* and *target-shift*, as claims and targets move from one level or party to another. There is also an *identify-shift*, in which the boundary between political actors shift and their relations adjust. It can also be observed that activists become micro-celebrities of sorts, gaining renown in their local as well as global networks.

It can be observed how a variety of Internet activist groups coordinate to send a mass of automated messages to public consultations (especially telecom consultations) for or against a particular policy, creating the appearance of a mass movement when in fact it could be between 2 and 3 key agents organizing a response. As an example, a content analysis study⁴⁹ of comments submitted to the FCC's Media Ownership Online Docket # 02-121 revealed the following:

The analysis confirmed that almost all of the items (96.5 percent) labeled "Comment" that were randomly sampled were form letters or modifications of form letters. Due to the fact that the variables to be assessed were designed before the study was completed, not every form letter or version of a form letter could be represented in the exact statement analysis. A further and more careful review revealed that at least 9 form letters were made available by specific organizations for individuals to use for submission to the FCC.

The findings of Study Three revealed that major coordinated campaigns employing the use of form letters dominated the FCC's online comment submission process. The initial analysis of where the comments were submitted from and when they were submitted, with the findings revealing that submissions came from all fifty states, for numerous days at a time, hinted at the idea that perhaps a considerable number of Americans were really engaged in the FCC's process. While the findings of the content analysis do not suggest that the public that participated was apathetic by any means, the fact that the overwhelming majority of submissions came via form letter (or were modifications of a form letter) points to what perhaps could be termed a "partial" form of engagement. This is not to denigrate the public's involvement; indeed the decision as to the value of these comments rests with the FCC. That being said, one would assume that the value of the coordinated campaign would likely be in the sheer number of individuals that clicked to submit the form letters, and not in the words that were communicated, suggesting what could be termed perhaps this "partial" engagement.

⁴⁹ <https://etda.libraries.psu.edu/catalog/11468>

Externalization

The vertical projection of domestic claims of contention onto international or foreign actors is *externalization*. Such behavior was observed in 2014 during the outpouring of comments by parties outside the U.S. (such as the European Digital Rights organization, or EDRI⁵⁰) that were submitted to the U.S. Federal Communications Commission Open Internet proposal. This international influence trend further continued with the EU BEREC's proposed rules. An open letter⁵¹ was crafted and sent to BEREC concerning their forthcoming European Union telecommunications regulations. The correspondence demanded particular action on network neutrality issues and included signatures from 17 non-EU-based network neutrality groups located in Africa, Asia, North America, South America, and Central America, in addition to five organizations such as AccessNow that deem themselves to be "international".

Transnational Coalition Forming

Non-hierarchical coordination of networks among actors in different countries with similar claims is *transnational coalition forming*. Tarrow observes, "Coalitions are collaborative, means-oriented arrangements that permit distinct organizational entities to pool resources in order to effect change", adding that coalitions use framing, trust, credible commitments, management of difference, and selective incentives to ensure endurance.

This model includes *brokerage* between originators and adopters, *mobilization* by activists, and *certification* by authoritative actors. Net neutrality is a global movement organized under a number of sophisticated coalitions, including Save the Internet and the Dynamic Coalition on Net Neutrality. In this way, knowledge, ideology, strategy, and tactics can be imparted from one group to another. For example, Free Press and the Mozilla Foundation in the United States *broker* a set of trainings and white label campaigns, which other organizations can *mobilize* in their respective countries. *Certification* is provided by the formalization of rules by regulatory and legal authorities. The goal of these coalitions is to create harmonized net neutrality laws worldwide, which would ban blocking, throttling, paid-prioritization, zero-rating, and sponsored-data.

Examples of such transnational coalitions are "Save the Internet" in the EU⁵², and, on a larger scale, the coalition members listed on the website of the Global Net Neutrality Coalition.⁵³ Global campaigns are self-reinforcing through "the boomerang effect,"⁵⁴ the circumvention of "domestic indifference or pressure by transferring debate to the international level."

⁵⁰ <https://ecfsapi.fcc.gov/file/7521479150.pdf>

⁵¹ https://www.laquadrature.net/files/NN_letter_BEREC_20160502.pdf

⁵² <https://savetheinternet.eu/en/>

⁵³ <https://www.thisisnetneutrality.org/>

⁵⁴ https://www.amazon.com/Activists-Beyond-Borders-Advocacy-International/dp/0801484561/_Keck and Sikkink 1998: 12; Della Porta and Tarrow 2004).

The franchise model of Save the Internet and other Internet Activists

A franchise is the authorization to license a product, concept or service under a brand name. Just as McDonalds has enabled billions to be served with signature golden arches and burger and fries menu, Save the Internet, Mozilla, and others offer “white label” campaigns to activist entrepreneurs. They offer net neutrality tools in a box so to speak, with code banks, teach-ins, and tool kits, local activists can kick start their own efforts. There is no need to re-invent the wheel and build an “authentic” campaign from the ground up if one can simply leverage proven messaging and techniques. The following section describes the brokers of the campaigns.

Activist causes could not be achieved without a significant investment in digital tools and technologies. This includes a database of users and associated marketing and communications technologies to engage the user bases. Activists organizations and political parties have been honing these tools over the last decade with regard to net neutrality. A 2006 article⁵⁵ describes net neutrality as “the brainchild of the likes of Google and Amazon.com, which want to offer consumers things like high-speed movie downloads, but don’t want to pay the network operators a fee to ensure what in the industry is called “quality of service”— i.e. , ensuring the consumer gets what he pays for quickly and reliably.” The article describes the founding of a “Data Warehouse” by Hillary Clinton political adviser Harold Ickes, a fundraising list service and data mining operation. The \$11.5 million investment was supported primarily by Soros, Google and Amazon. Former Democratic National Committee Director of Engineering Nick Gaw explains in a video⁵⁶ how the data warehousing function runs on Amazon Web Services to enable Democratic party members to be elected at local and national level and to mine the information of its voters. Gaw⁵⁷ is now the Senior Technology Advisor for Avaaz.org⁵⁸, an online platform to conduct online activist campaigns including European campaigns against Brexit, Donald Trump, and Monsanto’s Glyphosate. The website notes some 44 million members. Avaaz was founded by Brett Solomon,⁵⁹ now Executive Director of Access, a net neutrality advocacy.

The authors could not uncover whether telecom operators employ such datamining techniques with regard to the net neutrality issue. In any case, the telecom industry appears to be outmatched by net neutrality activists both in funding, digital sophistication, and cooperation with political parties and other causes.

Save the Internet Campaign in the United States

Origins of the U.S. Campaign

The original campaign began in the United States, coordinated by Free Press⁶⁰, a U.S. non-profit organization. Soros provide seed money to Free Press with a \$200,000 grant in 2004 and \$400,000 in 2005 through his Open Society Institute, with the mission to “assure greater fairness in political, legal,

⁵⁵ http://spectator.org/47224_selling-internet-rope/

⁵⁶ <https://aws.amazon.com/solutions/case-studies/democratic-national-committee/>

⁵⁷ <https://www.linkedin.com/in/nick-gaw-9ba9b4a>

⁵⁸ <https://avaaz.org/en/>

⁵⁹ <https://www.weforum.org/people/brett-solomon/>

⁶⁰ <http://web.archive.org/web/20060423161657/http://www.savetheinternet.com/%3Dfaq>

and economic systems."⁶¹ Co-founder Robert McChesney observed, "“At the moment, the battle over network neutrality is not to completely eliminate the telephone and cable companies. We are not at that point yet. But the ultimate goal is to get rid of the media capitalists in the phone and cable companies and to divest them from control...Any serious effort to reform the media system would have to necessarily be part of a revolutionary program to overthrow the capitalist system itself.”⁶²

While records show the website domain savetheinternet.com registration as far back as 1999⁶³, Internet archives of the actual website site start at April 23, 2006⁶⁴. The website detailing the coalition was officially launched by Free Press the following day, on April 24, 2006.⁶⁵ "Free Press has become a juggernaut in the District of Communications. By utilizing digital tools early and often, the Free Press team has built a machine that can deliver results," note Christopher Parandian, a former industry lobbyist.⁶⁶



Figure 2: Original Heading and Navigation Bar of savetheinternet.com⁶⁷

The earliest campaign singularly addresses the issue of network neutrality⁶⁸, and it outlines the aims of the coalition as follows:

*The SavetheInternet.com Coalition was formed to prevent Internet gatekeepers from blocking or discriminating against new economic, political, and social ideas. We are mobilizing millions of Americans to urge Congress to preserve the free and open Internet.*⁶⁹

⁶¹ Veigle, Ann. "New Lobbying Tactics Up Ante in Net Neutrality Fight" COMM DAILY. Dec 10, 2009.

⁶² <http://mediafreedom.org/yep-they-said-it/>

⁶³ <http://www.enom.com/whois/default.aspx>

⁶⁴ http://web.archive.org/web/*/savetheinternet.com

⁶⁵ <http://web.archive.org/web/20060423013452/http://www.savetheinternet.com/=coalition>

⁶⁶ Supra footnote 51

⁶⁷ <http://web.archive.org/web/20060423161758/http://www.savetheinternet.com/>

⁶⁸ <http://web.archive.org/web/20060423161758/http://www.savetheinternet.com/>

⁶⁹ <http://web.archive.org/web/20060423161718/http://www.savetheinternet.com/blog/>

The original coalition consisted of 44 members:

The [Save the Internet](#) coalition consists of dozens of groups from across the political spectrum that have learned that we cannot let the high stakes fight for the Internet's network neutrality. No corporate or political party is funding our efforts.

[Join the Coalition](#)

Coalition Members:

- [Professor Lawrence Lessig](#) - Stanford
- [Professor Timothy Wu](#) - Columbia
- [Eron Peres](#) - Coalition Coordinator
- [Sam Donald of America](#)
- [Cable Research](#) - a coalition of over 1000s
- [Professor Glenn Reynolds](#) - aka blogger Instapundit
- [Newseum.org](#) Chris Aron
- [Consumers Union](#)
- [American Library Association](#)
- [Consumer Federation of America](#)
- [Public Knowledge](#)
- [Common Cause](#)
- [U.S. PIRG](#)
- [Center for Digital Democracy](#)
- [Association of Research Libraries](#)
- [The Geneva Foundation](#) - small but very important
- [Fire Hoop](#)
- [Loyola University Chicago, Department of Communications Education](#)
- [Open Organizing Institute](#)
- [Governor College](#)
- [Communiti H/W/ALMG Mobilization Project](#)
- [Association for Community Networking](#)
- [Antaring Kids](#)
- [CCNY Center for Media and Democracy](#)
- [Alliance for Community Media](#)
- [Professor Susan Crawford](#)
- [Center for Creative Voices in Media](#)
- [Community Technology Centers](#)
- [Protesters.org](#)
- [Media Access Project](#)
- [Media Alliance](#)
- [The Awolot](#)
- [NYC Wireless](#)
- [Associative Media Foundation](#)
- [California Against State](#)
- [Chicago Media Action](#)
- [CIVIL](#)
- [National Video Resources](#)
- [Media Community Technology Coalition](#)
- [Ohio Community Connection Network](#)
- [Asia-Net, Inc.](#)
- [Kestrel](#)
- [Switchell Communications](#)

Figure 3: Original "Save The Internet" Coalition

Growth of the U.S. Campaign

Less than one month after the launch in 2006, an article appeared to exhibit a massive growth of the movement:

Last week some 750 groups organized under the banner “Save the Internet” delivered a million e-mail petitions to Capitol Hill urging lawmakers to preserve the current practice that all Internet traffic should get the same treatment.⁷⁰

Furthermore, a later coalition list in 2008 states:

The SavetheInternet.com Coalition is more than 1.5 million everyday people who have banded together with thousands of non-profit organizations, businesses, and bloggers to protect Internet freedom.⁷¹

The 2008 coalition (short) document only lists a coalition of 79 members; however the full list is much larger⁷². It also states that Free Press was still the Coalition Coordinator at that time.⁷³

⁷⁰ <http://www.sfgate.com/news/article/SPEED-BUMPS-ON-THE-INFORMATION-HIGHWAY-2516873.php>

⁷¹ http://www.savetheinternet.com/sites/default/files/resources/coalition_members.pdf

⁷² <http://web.archive.org/web/20080919041927/http://www.savetheinternet.com/=members>

⁷³ http://www.savetheinternet.com/sites/default/files/resources/coalition_members.pdf

The SavetheInternet.com Coalition is more than 1.5 million everyday people who have banded together with thousands of non-profit organizations, businesses and bloggers to protect internet freedom.

Free Press – Coalition Coordinator	CUWIN
Professor Lawrence Lessig – Stanford	Democracy in Action
Professor Timothy Wu – Columbia	Educause
Gun Owners of America	Feminist Majority
Craig Newmark – craigslist.org Founder	FreeNetworks.org
Professor Glenn Reynolds – aka Blogger Instapundit	Future of Music Coalition
MoveOn.org Civic Action	Game Overdrive
Consumers Union	Grand Rapids Institute for Information Democracy
American Library Association	Internet2
Parents Television Council	David Isenberg – Harvard Berkman Center
Consumer Federation of America	Independent Press Association
Office of Communication of the United Church of Christ, Inc.	Kansas City Anti-Violence Project
Public Knowledge	Media Access Project
Common Cause	Media Alliance
Christian Coalition of America	MediaChannel.org
Democracy for America	Sascha Meinrath – Community Internet Pioneer
Electronic Retailing Association	Music for America
American Civil Liberties Union	National Video Resources
National Association of State PIRGs (U.S. PIRG)	New Organizing Institute
SEIU	NYC Wireless
Rethinking Schools	Ohio Community Computing Network
Parent-2-Parent	OpenPrivacy
Center for Digital Democracy	Open Security Foundation
Afro-Netizen	Personal Democracy Forum
The Agonist	Prometheus Radio Project
Alliance for Community Media	P2Pnet
Amazing Kids	grand Rapids Hip Hop Coalition
AcomActive Media Foundation	Quicksilver Communications
Association of Research Libraries	Reclaim the Media
Association for Community Networking	Scott Kurtz – Cartoonist
Scott Bradner – Harvard Technology Security Officer	Teaching Matters
Brave New Films	The International Webcasting Association
Californians Against Waste	The Service Roundtable – Small Business Network
CCTV Center for Media and Democracy	David Weinberger – Harvard Berkman Center (Joho the Blog)
Center for Creative Voices in Media	Women's Institute for Freedom of the Press
Chicago Media Action	Working Assets
ColorofChange.org	
Community HIV/AIDS Mobilization Project	
Community Technology Centers	
Computer Professionals for Social Responsibility	
Consumer Action	
Consumer Project on Technology	
Professor Susan Crawford – Online legal expert	

View the Full List of Coalition Members at www.savetheinternet.com/=members

Figure 4: 2008 savetheinternet.com Coalition List

The U.S. Campaign Today

Today, savetheinternet.com states its goals are to “Secure Real Net Neutrality” and “Stop the Merger Mania”, the latter meaning an effort to prevent telecommunications company mergers.



Figure 5: Stated Goals of savetheinternet.com⁷⁴

No current coalition member list appears to be available, and the site is still being run by Free Press.



Figure 6: Statement at Bottom of savetheinternet.com⁷⁵

⁷⁴ <http://web.archive.org/web/20160308114530/http://www.savetheinternet.com/sti-home>

⁷⁵ <http://web.archive.org/web/20160308114530/http://www.savetheinternet.com/sti-home>

Funding of the U.S. “Save the Internet” Campaign:

The U.S. campaign is presumably financed solely by Free Press and/or the Free Press Action Fund organizations. The organizations primarily receive donations totaling in the millions from various funds, foundations, and trusts.

Net neutrality has been funded by prestigious and moneyed organizations such as the Ford Foundation, Open Society Foundations, the Knight Foundation, the Mozilla Foundation, the Media Democracy Fund, the MacArthur Foundation, the Voqal Fund, the Wallace Global Fund, and the Hewlett Foundation⁷⁶ for advocacy organizations and as lobbyists for net neutrality policies.⁷⁷ A number of these foundations have significant holdings of corporate stock and securities in a number of large American Internet companies that also lobby for net neutrality rules, including Google and Netflix.

Table 1: Free Press Top Donors (Some Remain Anonymous) 2013-2015⁷⁸

Brett Family Foundation	Peter B. Lewis Philanthropy
Carsey Family Foundation	Rockefeller Brothers Fund
Craigslist Charitable Fund	Rockefeller Family Fund
CS Fund / Warsh-Mott Legacy	Rockefeller Philanthropy Advisors
Democracy Fund (Omidyar Group)	San Francisco Foundation
Dudley Foundation	Schwab Charitable Fund
Evolve Foundation	Sixteen Thirty Fund
Fidelity Charitable Gift Fund	Solidago Foundation
Fidelity Charitable Trust (Bright Horizon Fund)	Steve and Paula Child Foundation
Ford Foundation	Sy Syms Foundation
Foundation to Promote Open Society	The Democracy Fund
Geraldine R. Dodge Foundation	The Kaphan Foundation
Holthues Trust	Tides Foundation
Hugh M. Hefner Foundation	Tomkins Family Foundations
Lederer Foundation	Vanguard Charitable Trust
New Venture Fund (Media Democracy Fund)	Voqal Funding Group
Overbrook Foundation	Wallace Global Fund
Park Foundation	William B. Wiener, Jr. Foundation
Paul Gallant Foundation	Woodcock Foundation
Pechet Foundation	Working Assets/CREDO Customer Donation Program

Table 2: Free Press Total Gifts, Grants, Contributions, and Membership Fees 2009-2015⁷⁹

2009	2010	2011	2012	2013	2014	2015	TOTAL
\$3,577,203	\$4,291,484	\$2,864,048	\$2,124,782	\$3,735,707	\$1,532,084	\$2,438,062	\$20,563,370

76 <http://watchdog.org/187392/ford-foundation/> , <http://thefederalist.com/2015/01/15/worlds-second-largest-private-foundation-denies-crony-philanthropy/http://www.washingtonexaminer.com/soros-ford-shovel-196-million-to-net-neutrality-groups-staff-to-white-house/article/2560702>

77 <http://apps.fcc.gov/ecfs/document/view?id=7521306031>

78 Free Press 2013 end of year review, 2014, 2015 annual reports <http://www.freepress.net/about>

79 Free Press IRS Form 990 from years 2013, 2014, 2015 <http://www.freepress.net/about>

Save the Internet Campaign in Europe

Origin

The next significant “Save the Internet” campaign appears to have evolved in Europe. Current registration records show savetheinternet.eu as established Dec 16, 2013⁸⁰, and the first Internet archive entry of the website is Dec 31, 2013.⁸¹



Figure 7: Original Heading of savetheinternet.eu Website⁸²

While the website registration record is not disclosed⁸³, judging from their 2013 annual report⁸⁴, EDRi (a self-described association of European rights organization⁸⁵) was the founder of the European campaign:

We launched a portal for our “Save The Internet” campaign, in cooperation with EDRi members Bits of Freedom, IFNF, Digitale Gesellschaft, and observer member La Quadrature du Net: <http://savetheinternet.eu>.

⁸⁰ <http://whois.eurid.eu/en/?domain=savetheinternet.eu>

⁸¹ <http://web.archive.org/web/20131231150533/http://savetheinternet.eu/>

⁸² <http://web.archive.org/web/20131231150533/http://savetheinternet.eu/>

⁸³ <http://www.epag.eu/en/whois>

⁸⁴ https://edri.org/wp-content/uploads/2014/04/EDRi_Annual_Report_2013.pdf

⁸⁵ <http://web.archive.org/web/20160304231109/https://edri.org/about/>

The European campaign was originally an association of five organizations.



Figure 8: The savetheinternet.eu attribution at bottom of website on Dec 31, 2013⁸⁶

The initial issue raised by the European campaign was to eradicate what was considered loopholes in proposed network neutrality law. At the time, the target legislation was a proposal for regulation of telecommunications in the EU as a single market⁸⁷. There were three specific issues:

- The undefined term “specialised services” as an exception to the proposed regulations.
- Interpretation of the freedom of users to choose discriminatory services.
- The lack of definition for the term “serious crime” or the measures to prevent it.

Growth of the European Campaign:

In their 2014 annual report⁸⁸, EDRI stated:

In 2014, we carried out several activities to raise awareness on this issue, published analysis of the proposed legislation, drafted crucial amendments and met with policy-makers across the political groups. We published an FAQ for citizens on the draft Regulation and promoted our “save the internet” portal: <http://savetheinternet.eu>. It contributed to over 20,000 faxes being sent to the European Parliament by concerned citizens. In the course of the year, we held several meetings on the “Telecoms single market” dossier with national permanent representations to the EU

When one reads the next item from EDRI’s 2014 annual report, it appears to be the evidence of transnational network neutrality activism:

⁸⁶ <http://web.archive.org/web/20131231150533/http://savetheinternet.eu/>

⁸⁷ http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=2734

⁸⁸ https://edri.org/wp-content/uploads/2013/09/EDRI_Annual_Report_2014.pdf

Net neutrality was also an issue on the other side of the Atlantic. Since these discussions have repercussions in Europe, we responded to a consultation launched by the U.S. Federal Communications Commission, and we spoke at a RightsCon panel on “net neutrality – how to identify discriminations and advance solutions” that took place in the U.S. in March 2014.

The report goes on further to state that in November 2014, “EDRi joined forces with other civil society organizations to relaunch the savetheinternet.eu.” The resulting savetheinternet.eu relaunch included a modification of the contested issues:⁸⁹

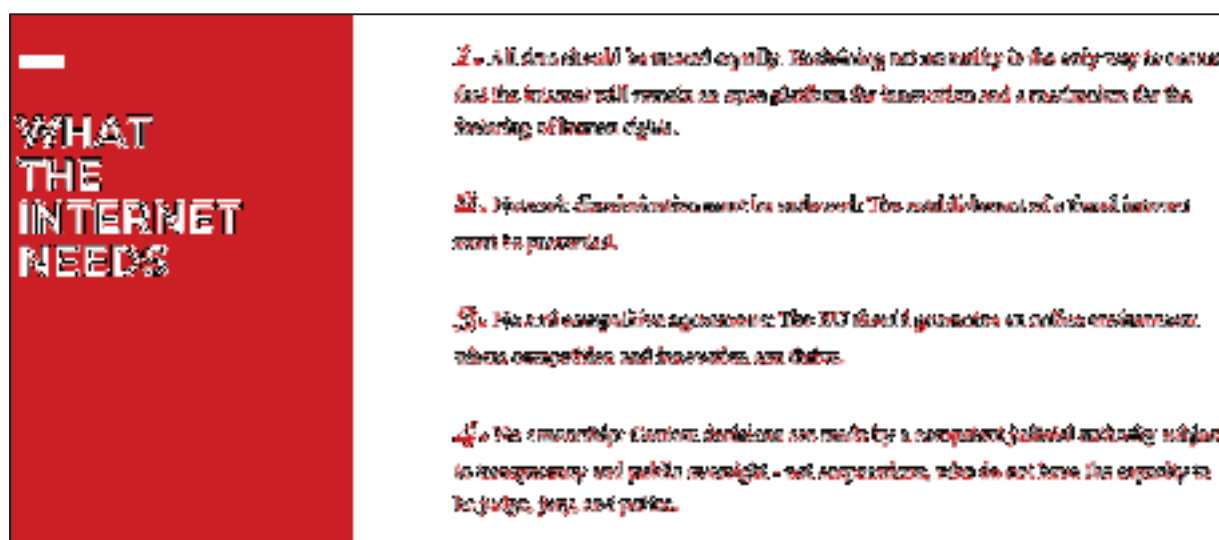


Figure 9: Re-launched savetheinternet.eu issues (December 2014)

Per the savetheinternet.eu website⁹⁰ in early 2016, the legislative outcomes desired by the European “Save the Internet” campaign were not reached. However, the website stated further that it had a remaining path to achieve their goals:

The BEREC guidelines have to be prepared between now and July 2016. These guidelines will be based on a consultation that is open for everyone. This is the step in which the fight for net neutrality that was key to successes in both the U.S. and in India.

The continued 2015 activities of the campaign and discussion of the legislative outcomes are also covered in EDRi’s 2015 annual report⁹¹.

The European Campaign Today

The current savetheinternet.eu website⁹² addresses the ongoing BEREC consultation period on proposed network neutrality regulations:

⁸⁹ <http://web.archive.org/web/20141207234846/https://savetheinternet.eu/>

⁹⁰ <http://web.archive.org/web/20160311065438/http://savetheinternet.eu/>

⁹¹ https://edri.org/files/Annual_Report_2015_Final.pdf

⁹² <https://www.savetheinternet.eu/en/>



Figure 10: savetheinternet.eu (June 2016)

The campaign centers on three main areas of concern in the proposed EU regulations and the proposed revisions are referenced in Free Press documents:

- Specialized Services
 - o The savetheinternet.eu campaign is pushing for all new specialized services to be judged to meet *all* five proposed safeguards before even being allowed to be offered to customers. Further, they state that “if a comparable service exists in the open internet, then a specialized service should not be granted.” In other words, the regulation constrains the ability of operators to use their networks; this expressly contradicts Wu.
- Traffic Management
 - o The campaign wants the hierarchy on traffic management contained within the proposed regulations to become part of the official rules, thus dictating congestion management practices.
- Zero Rating
 - o The campaign sees zero-rating as a clear violation of network neutrality, and they would like the practice to be banned.

The savetheinternet.eu website urges the use of their questionnaire tool to notify national regulators and BEREC to “protect net neutrality”.

The questionnaire tool is a combination of checkboxes and open questions, which then generates an email based on the user’s selections and input. The email will then be submitted by savetheinternet.eu to the EU Telecoms Regulators (BEREC) during the official consultation period.

The questionnaire addresses a variety of topics. It goes beyond the three main areas of concern outlined above, seeking input on such things as transparency, definitions of “commercial practices”, and use of deep-packet inspection.

The current organizational membership of the EU “Save the Internet” campaign has grown, and the website is now offered in various European languages.



Figure 11: Organizational membership of savetheinternet.eu (June 2016)⁹³

Funding of the European Campaign:

The European campaign is presumably financed by its founder, the EDRi organization. EDRi receives donations from many sources. Their corporate donors include Google, Mozilla, Twitter, Intel, and Yelp (among others).⁹⁴ The foundations that fund them include Adessium, Open Society Foundations, and Stichting Democratie en Media. Additionally, there are other non-corporate contributors such as the Chaos Computer Club and EPIC.

⁹³ <https://www.savetheinternet.eu/en/>

⁹⁴ EDRi Annual reports for years 2014, 2015 <https://edri.org/about/>

Table 3:EDRi Budget Sources 2014-2015

Source	2014	2015
Foundations	€ 260,667	€ 277,845
Foundations (Prior Yr. Overdue)	€ 104,433	€ 0
Corporate	€ 23,053	€ 40,306
Individuals	€ 9,807	€ 29,644
Member/Observership Fees	€ 24,761	€ 26,857
Non-Corporate	€ 0	€ 15,720
Projects	€ 0	€ 21,544
Other (Tax Rmbrsmnts., Rent)	€ 32,272	€ 15,357
TOTAL	€ 454,993	€ 427,273

Network neutrality is, without a doubt, a transnational activist effort. Funds pour in from corporations and foundations throughout the world to fund network neutrality organizations and to ultimately influence domestic telecommunications policies. Following is some background information on additional transnational activist groups.

AccessNow

AccessNow is one of the founding coalition members behind the EU “Save the Internet” campaign and currently bills itself as an international organization.⁹⁵ As one can see in the map portion of the graphic below, AccessNow is located in a variety of countries:



Figure 12: About AccessNow⁹⁶

AccessNow is active in a few different areas, but its section on “Net Discrimination” is related to network neutrality:

⁹⁵ Interestingly, they also contribute rent to EDRi. See earlier EDRi annual report reference (2015)

⁹⁶ (June 7, 2016) <https://www.accessnow.org/about-us/>



Figure 13: accessnow.org section on "Net Discrimination"⁹⁷

AccessNow is funded by a wide variety of foundations and corporate interests, as follows:

Table 4: AccessNow Funding Sources 2012-2016 (June 7, 2016)⁹⁸

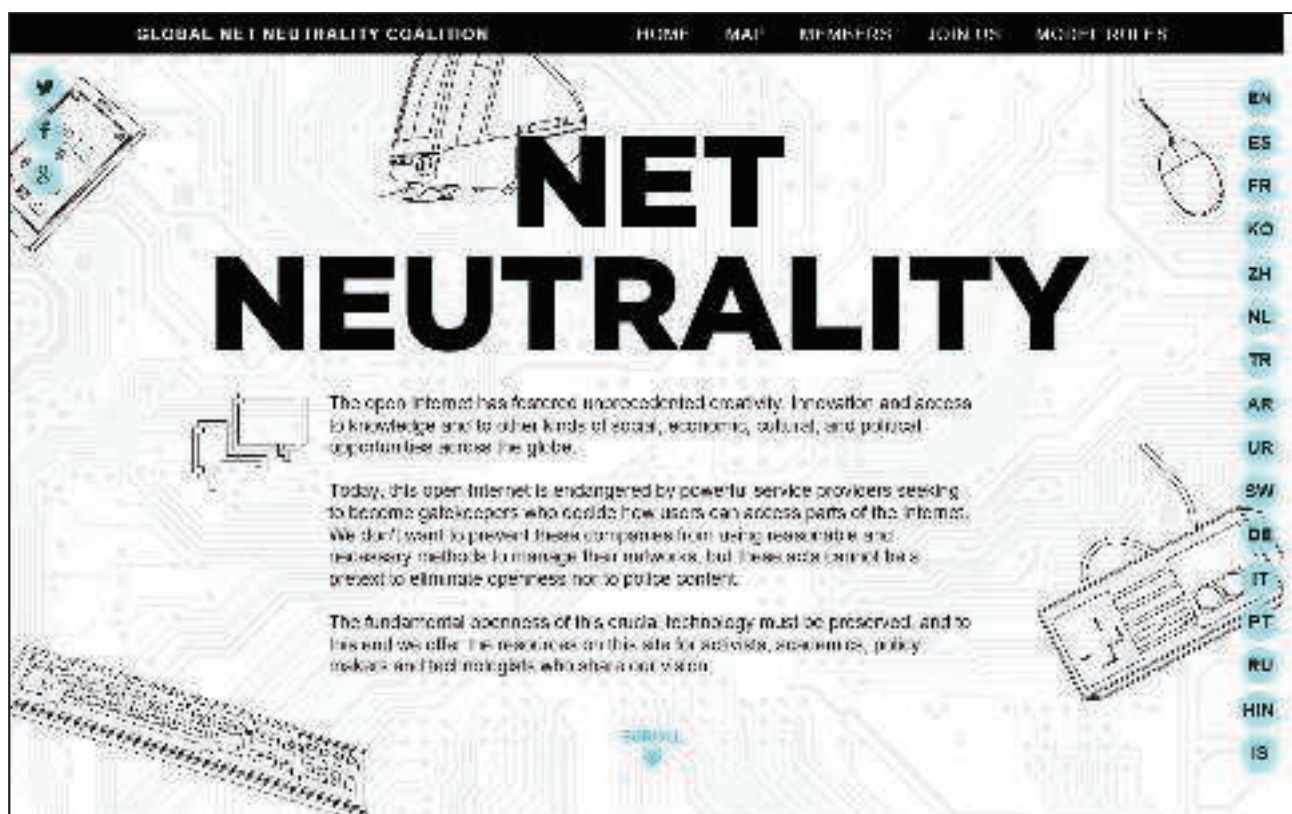
Funder	\$ (USD) 2012-2016 (June 7)
Sida	4,805,674
Google	1,200,000
The Sigrid Rausing Trust	987,615
Oak Foundation	460,000
Oxfam Novib	435,539
John Templeton Foundation	350,000
Mozilla	320,000
The 11th Hour Project	300,000
Ford Foundation	275,000
Voqal	221,250
Anonymous Donation	195,000
Facebook	175,000
Humanity United	160,000
Microsoft	150,000
Swedbank	118,556
IDRC	114,633
RightsCon.org	113,749
LinkedIn	102,500
Skype	95,000
Media Democracy Fund	60,000
Twitter	60,000
Internet Society	57,500
Dutch Ministry of Foreign Affairs	49,982
Anne Coombs	40,777
Hivos	40,000
Global Movement Donations	35,166
ICANN	35,000
Knight Foundation	35,000
Swedish Ministry of Foreign Affairs	35,000
London Media Trust	25,000
Mozilla Foundation	25,000
Yelp	25,000

⁹⁷ (June 7, 2016) <https://www.accessnow.org/issue/net-discrimination/>

⁹⁸ Derived from data on AccessNow website: <https://www.accessnow.org/financials/>

Funder	\$ (USD) 2012-2016 (June 7)
Yahoo!	20,000
New America Foundation (OpenITP)	16,245
Hamish Parker	15,870
New Venture Fund	15,000
AnchorFree	10,000
BSA	10,000
Dropbox	10,000
Ebay	10,000
New America Foundation (OTI)	10,000
New IT Foundation	10,000
Silicon Valley Community Fund	10,000
Web We Want	10,000
SecDev Foundation	9,982
Private Internet Access London Trust Media	5,000
The Minneapolis Foundation	5,000
Asia-Pacific Network Information Centre (APNIC)	3,943
Access Now Global Membership	3,000
All Out / Purpose Foundation	2,500

In addition to their EU “Save the Internet” efforts, AccessNow also maintains the domain⁹⁹ for the thisisnetneutrality.org website.



⁹⁹ (June 7, 2016) Whois search at: <http://pir.org/>

The thisisnetneutrality.org website is home to 74 “Global Net Neutrality Coalition” members:¹⁰⁰

Table 5: The 74 members of the Global Net Neutrality Coalition

AccessNow	Article19	EFF	Greenpeace	Web We Want
Witness	FreePress	OTI	Public Knowledge	CELE
Fundacion Via Libre	Derechos Digitales	Venezuela Inteligente	Bits of Freedom	Digitale Gesellschaft
Kictanet	DigitalRights Foundation	IT for Change	Korean Progressive Network Jinbonet	Network neutrality User Forum of Korea
Software Freedom Law Center	EDRi	Social Media Exchange	ACUI	Data Roads Foundation
Initiative Fur Netzfreiheit	La Quadrature Du Net	Just Net Coalition	CC-META	BNNRC
Internet Policy Observatory Pakistan	Internet & Digital Ecosystem Alliance	OpenMedia.ca	OpenMedia International	Acceso Libre
Paradigm Initiative Nigeria	Pen International	Digital Defenders Partnership	Movimento MEGA	Open Knowledge Foundation Germany
Baaroo	Alternatif Bilisim	The Heliopolis Institute	Index on Censorship	Freifunk
Cronaca Libera	Jordan Open Source Association	Society for Knowledge Commons	Free Software Movement of India	International Modern Media Institute
CyberArabs	Art 34bis	Unwanted Witness	Digital Rights Association, Morocco	Hivos
Demokrasya	Wlan Slovenija	Rudi International	Press Union of Liberia	Zimbabwe Human Rights NGO Forum
R3D	Greenhost	Filipino Freethinkers	TEDIC	Fundacion Karisma
Dakila	Hiperderecho	Media Matters for Democracy	EngageMedia	Kaya Labs
Share Foundation	CIPESA	I Freedom Uganda	Fight for the Future	

The transnational nature of the network neutrality movement is extremely clear. Net neutrality activists participate across the globe in regulatory hearings, and while such hearings are “public”, the use of digital petitions to create the appearance of large numbers of respondents can be misleading, especially when participants are not residents or citizens of the given country. For example La Quadrature, a French net neutrality activist organization highlighted their letter ¹⁰¹ to BEREC with signatories from network neutrality groups located in Africa, Asia, North America, South America, and Central America, along with International organizations such as AccessNow.

¹⁰⁰ (June 7, 2016) <https://www.thisisnetneutrality.org/>

¹⁰¹ https://www.laquadrature.net/files/NN_letter_BEREC_20160502.pdf

Past Similarities of the “Save the Internet” Campaigns in the United States & Europe

Interestingly, even while pursuing legislative efforts in separate regions, for some time there were curious similarities between the U.S. and EU campaigns. Of first notice was the website interfaces, which (at the time) contained identical words in similar layouts, and with a similar color scheme:



Figure 14: Navigation Bar of savetheinternet.com¹⁰²



Figure 15: Navigation Bar of savetheinternet.eu¹⁰³

Up to Spring 2016, the two sites had also defined the issue of network neutrality in similar terms. Although there were modest variations in content, language, and presentation, the arguments presented were nearly identical in nature¹⁰⁴.

Campaign Claim #1 – Network Operators Want to Limit Freedom of Speech

Per the U.S. campaign website network neutrality section, “What You Need to Know Now”¹⁰⁵:

Net Neutrality means an Internet that enables and protects free speech. It means that Internet service providers should provide us with open networks — and should

102 <http://web.archive.org/web/20160304051401/http://www.savetheinternet.com/sti-home>

103 <http://web.archive.org/web/20160311065438/http://savetheinternet.eu/>

104 Notable exception is invoking skin color as a net neutrality issue in the U.S.:

<http://web.archive.org/web/20160304065648/http://www.savetheinternet.com/net-neutrality-what-you-need-know-now>

105 <http://web.archive.org/web/20160304065648/http://www.savetheinternet.com/net-neutrality-what-you-need-know-now>

not block or discriminate against any applications or content that ride over those networks. Just as your phone company shouldn't decide who you can call and what you say on that call, your ISP shouldn't be concerned with the content you view or post online.

Per the EU campaign website, "Why is Net Neutrality Important?"¹⁰⁶:



Figure 16: EU Campaign, Freedom of Speech Issue

Campaign Claim #2 – Customers and Content Creators Will be Unfairly Discriminated Against and Forced to Pay More to Network Operators

Per the U.S. campaign website network neutrality section, "What You Need to Know Now":

Without Net Neutrality, cable and phone companies could carve the Internet into fast and slow lanes. An ISP could slow down its competitors' content or block political opinions it disagreed with. ISPs could charge extra fees to the few content companies that could afford to pay for preferential treatment — relegating everyone else to a slower tier of service.

Per the EU campaign website, "Why is Net Neutrality Important?":

¹⁰⁶ <http://web.archive.org/web/20160311065438/http://savetheinternet.eu/>

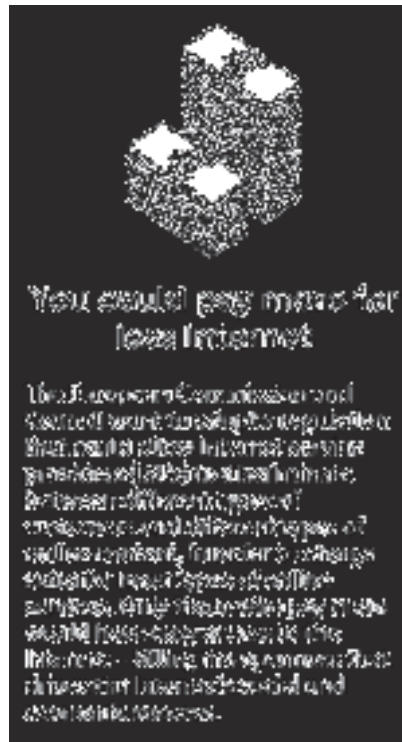


Figure 17: EU Campaign, Discrimination and Cost Issue

Campaign Claim #3 – Internet Innovation Will Suffer, and Is Threatened by Network Operators

Per the U.S. campaign website network neutrality section, “What You Need to Know Now”:

It's because of Net Neutrality that small businesses and entrepreneurs have been able to thrive on the Internet.

No company should be able to interfere with this open marketplace. ISPs are by definition the gatekeepers to the Internet, and without Net Neutrality, they would seize every possible opportunity to profit from that gatekeeper control.

Per the EU campaign website, “Why is Net Neutrality Important?”:



Figure 18: EU Campaign, Innovation Issue

In July 2016 the websites have been slightly updated. Free Press updated the American website with a timeline of the “victory” of net neutrality being held up in court, and expeditiously requesting a donation to keep the fight going should it come to Congress or the Supreme Court. The EU version focuses on the BEREC process and has a changed color scheme.

Save The Internet Campaign in India

The Indian campaign is the most current entrant, and on its face appears quite different.

Origin of The Indian Campaign:

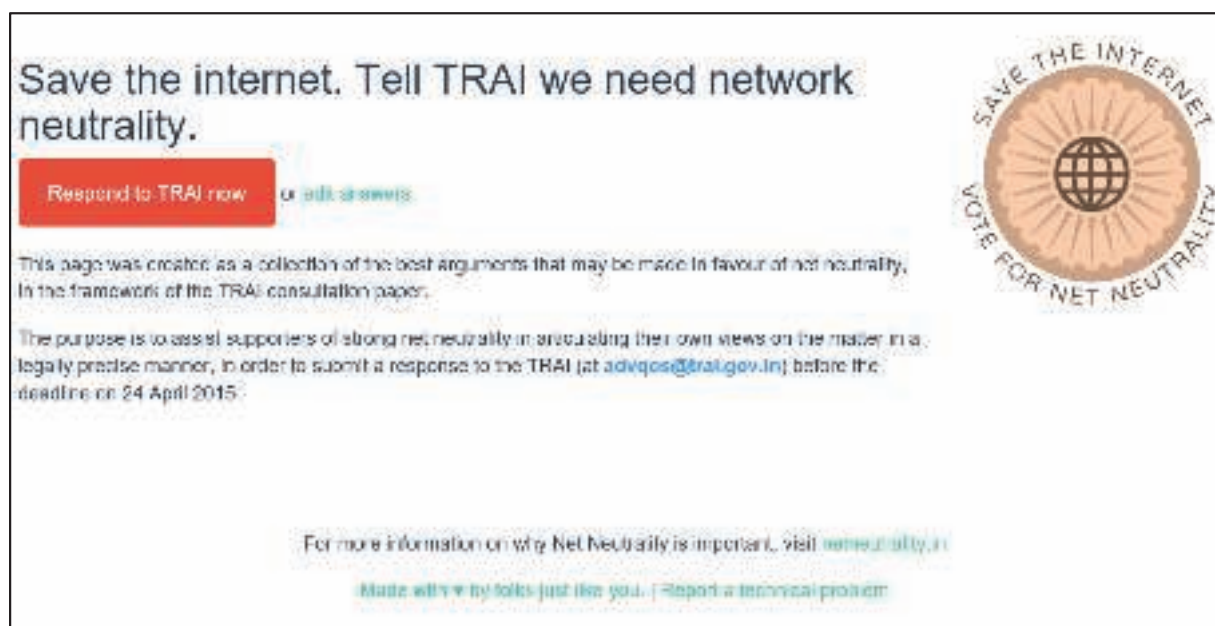
The official domain information¹⁰⁷ shows savetheinternet.in was registered in September of 2012. Interestingly, the domain registration is not in the name of any organization, but of a single individual, Pranesh Prakash. The first Internet archive record is recorded on April 13, 2015¹⁰⁸. The website is noticeably less graphic in nature, perhaps related to the level and/or costs of data service available in India.

The campaign’s initial issue was to collect arguments in favor of network neutrality, in response to a TRAI (Telecom Regulatory Authority of India) consultation paper on the regulatory framework for over-the-top Internet services¹⁰⁹. The campaign at that time had deferred actual explanation of network neutrality to another website, netneutrality.in:

¹⁰⁷ <https://registry.in/whois/savetheinternet.in>

¹⁰⁸ <http://web.archive.org/web/20150413054725/http://www.savetheinternet.in/>

¹⁰⁹ <http://www.trai.gov.in/WriteReaddata/ConsultationPaper/Document/OTT-CP-27032015.pdf>



The campaign gained overnight popularity, as reported by one article¹¹⁰:

In a span of 24 hours, over 27,000 emails have been sent to the Telecom Regulatory Authority of India (TRAI) through the website savetheinternet.in responding to the regulator's call for public consultation.

The issue appears to have exploded upon the plans of Airtel to introduce zero-rating¹¹¹ (the practice of network operators offering free data usage for particular services).

Growth of the Indian Campaign & the Indian Campaign Today:

Birthered only in April 2015, The Indian campaign is seemingly still in its growth stage. It appears to have no formal organization other than a Github project member list¹¹². At one point, the campaign was focused on a TRAI consultation paper regarding differential pricing¹¹³. The campaign also had adopted a specific definition of network neutrality in concise terms¹¹⁴:

Net neutrality requires that the Internet be maintained as an open platform, on which network providers treat all content, applications and services equally, without discrimination. This includes ensuring that network providers do not supply any competitive advantage to specific apps/services, either through pricing or Quality of Service.

The campaign, at that time, also specifically addressed the “Free Basics” zero-rated offering from Facebook¹¹⁵. The current savetheinternet.in website now appears to be aimed at a new TRAI pre-

¹¹⁰<http://timesofindia.indiatimes.com/tech/social/Fight-for-net-neutrality-unites-internet/articleshow/46896316.cms?>

¹¹¹ <http://techcrunch.com/2015/04/06/bharti-airtel-airtel-zero-india/>

¹¹² <https://github.com/netneutrality/savetheinternet.in/network/members>

¹¹³ http://www.trai.gov.in/WriteReadData/WhatsNew/Documents/Regulation_Data_Service.pdf

¹¹⁴ <http://web.archive.org/web/20160310104121/http://blog.savetheinternet.in/what-is-net-neutrality/>

¹¹⁵ <http://web.archive.org/web/20160310104127/http://blog.savetheinternet.in/free-basics/>

consultation paper on network neutrality, issued on May 30, 2016 and with a June 16, 2016 deadline for submissions. The savetheinternet.in website, in similarity with other campaigns, is offering an editable pre-formed consultation letter email submission tool.

Further, the campaign reported that it had moved¹¹⁶ towards the creation of an “Internet Freedom Foundation”, with the registration¹¹⁷ of a new website¹¹⁸ (internetfreedom.in) by an individual named Nikhil Pahwa, with no organization listed:



Figure 19: Tweet from @neutrality_in



Figure 20: Internet Freedom Foundation Website

Funding of the Indian Campaign

Information regarding funding of the Indian campaign is either non-existent or unavailable.

¹¹⁶ https://twitter.com/neutrality_in/status/703075813277609984

¹¹⁷ <https://registry.in/whois/internetfreedom.in>

¹¹⁸ <http://web.archive.org/web/20160218081607/http://www.internetfreedom.in/>

The "Save the Internet" phenomenon began in the U.S. and was created by FreePress. It is evident that the phrase has travelled well to other parts of the globe. While all three campaigns appear to have originated over particular domestic issues, the response is transnational. The Indian campaign appears to be still on a solitary path of growth and solidification. However, with the impending launch of the Internet Freedom Foundation website, an organizational status may have formed in the background, or may still be currently evolving. Judging from Google search term trends, Australia and Canada appear to be fertile ground for future expansion of similar campaigns.

As of this writing, the most active campaigns are in India and the EU. In India, the current pre-consultation on network neutrality has an extremely short deadline. In the EU, there is non-European influence being exerted upon the BEREC's current rulemaking process.

Public Knowledge

Like Free Press, Public Knowledge is a similar special interest group focusing on a narrow set of telecom issues. Google is a key funder, and its co-founder Gigi Sohn was a program officer for the Ford Foundation. In addition to their domestic efforts and offerings such as their "advocacy toolkit",¹¹⁹ Public Knowledge lobbies transnationally. They have an International team which is dedicated to influencing Internet policy across the globe, as they proudly profess on their website:

Public Knowledge is working in collaboration with organizations, advocates, and users from around the world, especially in Latin America and the Global South, to provide support and capacity building on local, regional, and global internet issues.

As the internet becomes more politicized and business and government interests attempt to increase their representation in negotiations and fora, it is crucial that the civil society movement be expanded to protect the public interest and internet rights both domestically and abroad.

PK is also dedicated to helping educate domestic and international activists to notice the signs of and prevent policy laundering on issues that impact consumers, such as privacy and intellectual property.¹²⁰

PK targets Latin America with an online "Open Internet" course entirely in Spanish.¹²¹ PK notes "[*The first round of the course*](#), which concluded in June 2015, hosted 30 participants, from advocates, to judges, to journalists, from various countries in Latin America, with the top performers gaining professional development opportunities to further their advocacy careers."¹²²

One stated goal of Public Knowledge is to "train" the next generation of global Internet activists, to further the imposition of Public Knowledge's particular Internet vision.¹²³

¹¹⁹ <http://pkadvocacy.tumblr.com/>

¹²⁰ <https://www.publicknowledge.org/issues/international>

¹²¹ <https://www.publicknowledge.org/news-blog/blogs/pk-empowers-latin-american-digital-rights-activists-with-its-first-open-internet-course/>; <http://open-internet-p2pcourse.org/>; <https://www.publicknowledge.org/open-internet-course/>

¹²² <https://www.publicknowledge.org/news-blog/blogs/public-knowledge-calls-for-new-applicants-for-our-open-internet-course/>

¹²³ <https://www.publicknowledge.org/news-blog/blogs/training-the-next-generation-of-digital-rights-advocates>

Mozilla

There is no doubt that amidst the shifting winds of consumers' usage requirements of the Internet, for some existing entities have been caught off-guard. As network operators attempt to introduce diverse network capacity allocation solutions (in response to developing user needs) the Internet establishment felt threatened.

Consider the possible fate of Firefox, Mozilla's web browser. Already forced to compete with a multitude of mobile browsers¹²⁴ and networked applications, the potential of also competing within a context of advanced IP network options was likely too much to bear. Detailed understanding and the ability to implement application functionality to embrace these network enhancements is not a widely available skill-set. Entities such as Mozilla have likely either misunderstood the exact promise of such technologies, which can customize packet delivery to the satisfaction of end users, or found themselves unable to compete effectively in the real-time multimedia technology arena. Whereas Google made WebRTC (a real-time voice/video system for the web) available five years ago¹²⁵, Mozilla's records detail, WebRTC implementation in Firefox appears to have only begun at the end of 2014¹²⁶ and was not available until release 40¹²⁷ which was not deemed an official release until quite recently, August 2015.¹²⁸

Quite possibly, in an Internet context without the impending doom of network neutrality technology restrictions, countless startups with appropriate expertise and effort could have released products surpassing the capabilities of Firefox (and even the base WebRTC technology itself) years ago. By "investing" in network neutrality, Mozilla has bought time and the chance to live another day. The realities of users' network performance requirements are currently boiling over, precisely as Mozilla's real-time audio/video skills are being honed. It shall prove fascinating behavior if Mozilla's position on network neutrality now transitions to a more lenient position, in light of their growing ability to actually implement the functionality of diverse packet handling for a variety Internet media.

While Mozilla frequently presents itself as a non-profit, according to U.S. tax documents,¹²⁹ the Mozilla Foundation directly controls the Mozilla Corporation – a for-profit entity with substantial vested interest in government policy pertaining to the Internet. Mozilla engages in global advocacy in many forms, on a variety of Internet topics. For example, their "web fellows" program is an international endeavor. From the Mozilla advocacy website

We are an international program with host organizations around the world; fellows will be placed in Canada, Chile, Kenya, the European Union, and the United States. We assist fellows with visa applications for working and traveling during the fellowship.

Many of Mozilla's fellows¹³⁰ in 2015 were transplants from other network neutrality advocacy organizations such as Free Press, the Open Technology Institute, and Public Knowledge.

¹²⁴ <http://www.tomsguide.com/us/pictures-story/408-best-mobile-browser.html>

¹²⁵ <https://groups.google.com/forum/#!topic/discuss-webrtc/10GqzwfKJfQ>

¹²⁶ <https://mozilla.aha.io/published/b40393012432847d857ee68299a8a82f?page=2>,

¹²⁷ <https://wiki.mozilla.org/Media/WebRTC>

¹²⁸ <https://wiki.mozilla.org/RapidRelease/Calendar>.

¹²⁹ https://static.mozilla.com/moco/en-US/pdf/2014_Mozilla_Foundation_Fed_990_Public_Disclosure.pdf

¹³⁰ <https://wiki.mozilla.org/Netpolicy/advocacy/openwebfellows>

Further, Mozilla maintains a Github site¹³¹ for “Tools for Activism”, with various open and free software and services to assist in conducting digital activist campaigns. They also offer Mozilla clubs and “hives”, marketed as community resources¹³². However, most intriguing is their “educational” exploits such as the “Net Neutrality Teaching Kit”,¹³³ and Net Neutrality training modules¹³⁴.

The Net Neutrality Teaching Kit encourages users to implement a mix of repetition, discussion, and games to “teach” people about the issue of network neutrality. From their game “Catch a Network Signal”:

A traditional network follows a “hub and spoke” model, with one central network connection which all other nodes in the network connect to. A mesh network, on the other hand, connects all nodes to each other and allows them to communicate with each other directly by “hopping” from node to node. This activity will provide participants with a better understanding of network “hops” by getting them to act like nodes and pass a ball (or signal) to represent how a mesh network works.

Mozilla’s net neutrality training modules are largely focused on U.S. network neutrality regulations. From the website:

This module is all about teaching you about Net Neutrality: why it’s important, who is influencing public policy, and how YOU can make a difference. We want you to be able to teach others so that we can all protect the Web we want.

We are in a fight for the future of the Internet. By participating, you are part of #TeamInternet.

Lastly, Mozilla wants people to throw net-neutrality-themed “maker parties”:¹³⁵

A small Maker Party is a fun way to spend an hour exploring the Web as a platform for change. Gather your family, friends, or interested participants and explore Net Neutrality and take action to protect the open web.

Mozilla, a large global corporate entity, presents its network advocacy, particularly the topic of network neutrality, in a less-than-neutral manner.

¹³¹ <https://github.com/mozilla/toolsforactivism>

¹³² <https://learning.mozilla.org/community>

¹³³ <https://keyboardkat.makes.org/thimble/LTQzNjJwNzY2MA==/net-neutrality-teaching-kit>

¹³⁴ <https://training.webmakerprototypes.org/en/net-neutrality/concepts/>

¹³⁵ <https://laura.makes.org/thimble/LTIwMDkzMzEyMA==/host-a-maker-party-net-neutrality>

How to capture regulators with automated emails and petitions

As part of the Danish, Swedish and Norwegian freedom of information laws, Strand Consult has contacted European telecom regulators to ask for access to the mails generated by SavetheInternet.eu and subsequently analyzed several hundred mails. The Savetheinternet.eu website is presently formatted to stimulate comment in the BEREC consultation, with a set of preformed questions and answers. The platform offers seamless dynamic content for the petition in multiple European languages, a feature that costs some money to implement. Users have the option to submit the pre-formed answer or they can submit original answers. Users overwhelmingly chose to respond with the pre-formed answers.

The specific questions are:

- 1 Should the ISP be allowed to monitor your traffic, including its content (e.g. through deep packet inspection) for the purpose of traffic management?
- 2 How much should your ISP be able to interfere with your Internet connection - for example to throttling or prioritise certain types of online traffic (video, P2P, etc)?
- 3 What could be the positive and negative impacts of specialised services on future innovation and openness of the Internet?
- 4 Is there a demand for specialised services? Which services should be allowed this special treatment?
- 5 What information would you like to receive about your Internet connection, such as its speed, quality of service or how your traffic is managed?
- 6 Is there a demand for "commercial practices" such as zero-rating? Could these limit your rights as an end-user? Please provide examples.

The standard response is:

The diversity and innovative capacity of the Internet ecosystem is built upon the low cost of innovation and low barriers to market entry. These principles ensure that from day one, every enterprise, startup or non-commercial service – no matter how small or well-funded – has the potential to reach a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy is only ensured by an open, neutral and non-discriminatory Internet. When ISPs are allowed to interfere with the decisions of their customers by economic or technical discrimination, this essential freedom is lost. According to Recital 1 of the Regulation on net neutrality, the legislation has to be interpreted in light of these goals.

The Regulation allows specialized services only under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This cannot be the case with services that can also function on the open, best effort Internet. Furthermore, Recital 16 prevents specialised services from being used as circumvention of the general net neutrality traffic management rules. Any deviation from these safeguards to widen the applicability of the concept of

specialised services would inevitably result in increased market entry barriers and thus weaken the innovative potential of the Internet as a whole.

Transparency cannot, as proposed by the Commission in its initial draft of the Regulation and subsequently rejected, be considered an antidote to anti-competitive behaviour in itself. Transparency has limited scope in fixing problems, particularly in this context.

Economic discrimination (zero rating) interferes with my right under Article 3(1) to access and, in particular, to distribute information freely. When an ISP discriminates between providers of content, applications and services via an Internet access service by making them unequally accessible, this constitutes an arbitrary interference in the essence of my right. Furthermore, this practice restricts my rights under the Charter of Fundamental Rights (Articles 11, 15(2), and 16). Therefore, economic discrimination must not be allowed under the BEREC guidelines.

The Regulation has very clear rules on what constitutes reasonable traffic management. According to Article 3(3), all traffic management should be done in an application agnostic way, if possible. Class-based traffic management harms competition; it risks unintended damage to specific applications; it can discriminate against encrypted traffic; it creates uncertainty for content application and service providers; it stifles innovation; it can harm individual users, and can create regulatory overload. Therefore, applying class-based traffic management in situations where application agnostic traffic management would suffice is neither necessary, proportionate, transparent for the user, nor non-discriminatory.

Approximately 709 mails were sent to the following 28 regulators, each representing an EU nation. So each mail is counted 28 times with the particular coding employed by savetheinternet.eu at the time of this analysis.

1. nn@rtr.at (Austria)
2. info@bipt.be (Belgium)
3. info@crc.bg (Bulgaria)
4. KMU@hakom.hr (Croatia)
5. info@ocepr.org.cy (Cyprus)
6. podatelna@ctu.cz (Czech Republic)
7. erst@erst.dk (Denmark)
8. info@konkurentsiamet.ee (Estonia)
9. kirjaamo@ficora.fi (Finland)
10. Consommateurs@arcep.fr (France)
11. info@bnetza.de (Germany)
12. nctv@otenet.gr (Greece)
13. info@nmhh.hu (Hungary)
14. info@comreg.ie (Ireland)
15. info@agcom.it (Italy)
16. sprk@sprk.gov.lv (Latvia)
17. rrt@rrt.lt (Lithuania)
18. info@ilr.lu (Luxembourg)
19. info@mca.org.mt (Malta)
20. uke@uke.gov.pl (Poland)
21. info@anacom.pt (Portugal)
22. international@ancom.org.ro (Romania)
23. roman.vavro@teleoff.gov.sk (Slovakia)
24. info.box@akos-rs.si (Slovenia)
25. info@cnmc.es (Spain)
26. pts@pts.se (Sweden)
27. info@acm.nl (Holland)
28. contact@ofcom.org.uk (United Kingdom)

As such, 700 individual mails to 28 national regulatory authorities equals almost 20,000 mails. As of July 10, Savetheinternet.eu stated some 95,000 mails were delivered as part of the proceeding. Strand Consults estimates this to be probably about 4000-5000 originating mails. The number of actual participants is probably less. Additionally a significant number of respondents are non-Europeans living outside the EU. Of the mails Strand Consult analyzed at least 30 percent were from American senders. Following are examples of some of the respondents. The senders' emails have

been verified and their relevant Facebook profiles follow. Stephanie Shaw¹³⁶ is an American living in California, likely retired, former employee of Californian local government, and evident Bernie Sanders supporter.



Daniel Grantham,¹³⁷ is an American who lives in Hawaii, and his Facebook page features posts noting the EU Save the Internet effort, support for Black Lives Matter and Bernie Sanders, and advocacy against Monsanto.



Charlie Berger¹³⁸ is a retired software engineer living in Colorado. His Facebook page includes posts about policy violence, Donald Trump, and President Obama.



136 <https://www.facebook.com/stephanie.shaw.12576?fref=ts>

137 <https://www.facebook.com/daniel.grantham.758?fref=ts>

138 <https://www.facebook.com/profile.php?id=100008753852614&fref=ts>

If the SavetheInternet.eu campaign is adjusted further for approximate number of American respondents, Strand Consult estimates that the campaign has delivered about 3500 respondents from Europeans, far from the 95,000 figure purported on their website.

Whereas as classic, positive view of telecom regulation holds that its role is to address economic issues of facilitating market entry and eliminating externality. The regulator's job is to move the industry from a state of full monopoly to full competition. At the end of this process the regulator should either be dismantled, absorbed into another agency, or significantly reduce in its responsibilities. However telecom regulation is now a growth industry, proving the conclusion of Nobel economist George Stigler who observed in his seminal paper on regulatory capture, "Regulation is acquired by industry and is designed and operated primarily for its benefit."¹³⁹ Regulators today look for something new to regulate, and the Internet offers a much bigger opportunity for rent extraction than just telecom operators.

Internet activism has been appropriated by American Internet companies is effectively a form of corporate cronyism used to limit market entry by new players.¹⁴⁰ Regulators take up net neutrality rulemaking not because of violation, but because of self-preservation. Having succeeded to make competitive markets for mobile service, they need something new to regulate. "An agency that has been rendered obsolete by exogenous changes in the form of technological development or new marketplace developments will find that it must provide favors to discrete constituencies in order to preserve some measure of support for its continued existence,"¹⁴¹ noted Yale University scholars in "Reflections on Professional Responsibility in a Regulatory State" some 20 years ago. Hence regulators have found its new constituency, the global net neutrality lobby.

¹³⁹ George Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics* 2, no. 1 (1971): 3–21.

¹⁴⁰<http://www.theatlantic.com/politics/archive/2014/09/netflix-has-replaced-google-as-the-face-of-net-neutrality/456822/>

¹⁴¹ Jonathan Macey & Jeffrey Miller. Reflections on Professional Responsibility in a Regulatory State. Yale Law School Legal Scholarship Repository, 1995. http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2445&context=fss_papers

Why telecom operators are losing the net neutrality battle

There BEREC process to develop guidelines shows that telecom regulators have exited the space of telecom regulation. Truth be told, if national regulatory authorities were simply to follow the law, they would merely enforce, not interpret, legislation. That BEREC has turned 3 pages of EU legislation into 43 pages of guidelines in which it introduces terms and provisions that never appear in the legislation is a grotesque example of regulatory overreach. Telecom operators bear some responsibility for this state of affairs because they have supported and benefitted from regulation at certain times which has protected them from engaging in competition.

But the new breed of internet companies and the activists they fund are evidently more sophisticated than telecom operators or their trade association. They have succeeded in becoming the only stakeholders that matter in the EU net neutrality debate. BEREC Chair Wilhelm Eschweiler confirmed this by answering a question on which stakeholders were allowed to participate in drafting the guidelines; he said that BEREC selects those which “have the best arguments.”¹⁴² Whether there is evidence for these arguments is evidently not a criterion.

Moreover Internet companies are able to leverage more voices at the negotiating table by funding activists organizations which BEREC defines as “consumer” or “civil society.” Following is an example of the stakeholders which participated in BEREC Net Neutrality Stakeholder dialogues on 15-16 December 2015.¹⁴³

Associations of ISPs and Equipment manufacturers (5)	Content and application providers (CAPs) (5)	Consumer and End-User organisations and Civil Society (4)
Cable Europe Digital Europe* ECTA ETNO GSMA Europe	ACTE CCIA* C ² * EBU Allied for Startups*	Access* BEUC EDRi* ISOC*

The BEREC meeting featured 5 representatives for the telecom industry, 5 from the content industry, and 4 other organizations. The asterisk * denotes where Google is party to one of the stakeholders. Google has representation among every stakeholder group in the BEREC consultation. Digital Europe’s members¹⁴⁴ include Google, Microsoft, and Amazon. CCIA is an American computer industry lobbying organization known for key members¹⁴⁵ Google, Netflix, Amazon, and Microsoft. The C² Coalition is backed by Google and Microsoft.¹⁴⁶ Allied for Startups has a number of members, many of which receive soft money from Google, including Engine which hosts a Google Policy Fellow.¹⁴⁷ As for the so-called Consumer and End-User organisations and Civil Society organizations, Google is

¹⁴² <https://webcast.ec.europa.eu/berec-plenary-debriefing-160606>

¹⁴³ http://berec.europa.eu/eng/document_register/subject_matter/berec/press_releases/5588-statement-on-berec-work-to-produce-guidelines-for-the-implementation-of-net-neutrality-provisions-of-the-tsm-regulation

¹⁴⁴ <http://www.digitaleurope.org/aboutus/corporatemembers.aspx>

¹⁴⁵ <http://www.ccianet.org/about/members/>

¹⁴⁶¹⁴⁶ <http://c2coalition.eu/>

¹⁴⁷ <https://www.google.com/policyfellowship/hosts.html#toc-tab8>

involved in 3 out of 4 organizations, with EDRi and Access receiving grants. ISOC, while known as a moderate on telecom issues, does cooperate with Google in studying the Internet and received a grant for this work.¹⁴⁸

Outside of ISOC, all of the organizations in this category are funded to push regulation on telecom operators, and all three participate in SavetheInternet. The telecom industry has not succeeded to develop either the arguments or the coalitions to speak on its behalf. More broadly Google's political involvement in the EU can be in a variety of ways, including 80 recent "revolving door" moves between the company and European governments.¹⁴⁹

While the premise that a consumer organization advocates for "consumers" (a highly diverse group), BEUC, the European consumer organization (funded in part by government) supports the anti-trust action against Google. However BEUC has a similar ideological position on the guidelines¹⁵⁰ as the other advocacies and references the "evidence" of a 2011 survey by BEREC which only reviewed contract disclosures, not occurrence of actual abuse. However BEREC does not correct the misinterpretation that equates a survey of contract disclosures with actual occurrences. Instead it extrapolates the need for rules based upon a voluntary survey from 5 years ago. It would seem that a consumer organization would support lower priced offers and greater competition, but not in the case of net neutrality.

Because many potential stakeholders could claim an interest in industry rules, the multistakeholder process should be confined to the salient industry stakeholders—that is, those who are able to affect the industry, have a legitimate economic stakes, and are affected by the timeliness of decisions.¹⁵¹ This protects the process from being dominated by political agendas and advocates whose interests are not tied to demonstrable customer benefits.

There is an opportunity for telecom operators to compete on authenticity and turn the tables on governments to demonstrate the real threat to Internet freedom is not telecom operators, but governments.

¹⁴⁸ <https://www.internetsociety.org/news/googleorg-awards-grant-internet-society-advance-internet-exchange-points-emerging-markets>

¹⁴⁹ <http://googletransparencyproject.org/articles/googles-european-revolving-door>

¹⁵⁰ <http://www.beuc.eu/blog/the-eus-net-neutrality-rules-an-unfinished-business/>

¹⁵¹ Ronald K. Mitchell, Bradley R. Agle, and Donna J. Wood, "Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts," *Academy of Management Review* 22, no. 4 (October 1997): 853–86.

Conclusion

With well-funded, globally coordinated, digitally sophisticated campaigns, Save the Internet and related Internet activists have succeeded to deliver hard net neutrality regulations in some 50 countries. Internet activism is an industry; “digital prostitutes” who will lend their support to corporate-inspired causes are available for hire; and net neutrality activism has received hundreds of millions of dollars of support from corporate and foundation funders intent on protecting their financial portfolios and business models. US-based net neutrality activists franchise and broker their activism models and concepts to a variety of activist entrepreneurs around the world.

Telecom regulators such as FCC, BERC and TRAI are both supporters and victims of activist campaigns. They may tout the mails delivered as part of digital campaigns as support for rulemaking, but they also experience increasing lack of credibility, as the activism exposes their lack of political independence. In a battle that has waged for a decade, telecom operators have been outmatched by the net neutrality lobby in funding, coordination, leadership, and impact.

In a modern democracy, it is important to listen to people and have a debate. A serious debate should be based on facts and provide transparency. The debate about a free and open internet is important, but self-interested Internet companies such as Google and Netflix have poisoned the debate. They have used their combination of money, public relations spin, and outsourcing of the dirty work to digital prostitutes.

The net neutrality debate is not about a free and open internet; it is a game in which big companies fight their competitors. In the process, users and regulators are abused as tools. BERC has become the naïve victim, having been co-opted by Google-funded activists. The process could be cleaned up with an appropriate return to the facts and academic evidence.