



Open Letter to the European Commission on the need to preserve an open Internet.

Dear Vice-President Neelie Kroes, Vice-President Joaquín Almunia, Commissioner Cecilia Malmström and Commissioner Michel Barnier,

Bits of Freedom (www.bof.nl) is the Dutch digital rights organisation, focusing on privacy and communications freedom in the digital age.

European Digital Rights (www.edri.org) is an association of 29 digital civil rights organisations from 18 countries.

Hispalinux (<http://hispalinux.es>) is the biggest association of free-software users and free-software developers in Spanish language. Its 8000 members promote the use of free and open technologies.

La Quadrature du Net (www.laquadrature.net) is an advocacy group that promotes the rights and freedoms of citizens on the Internet.

Panoptikon Foundation (www.panoptikon.org) is the only Polish organisation dealing with fundamental rights in the context of surveillance society issues, in particular the protection of privacy and freedom of communications in digital environment.

The **New America Foundation's Open Technology Initiative** (<http://www.newamerica.net>) is a non-profit, public policy research institute supporting regulatory reforms that support open architectures, open networks and open source innovations.

We commend the European Commission for holding the recent “summit” meeting on network neutrality and the open Internet in Europe. While these debates generally focus only on network architecture and network management, their implications are more far-reaching. The Internet is a common resource created by the linking of tens of thousands of autonomous individual networks and connecting over a billion devices worldwide. The core asset of the Internet, to those who build it, use it, and build on top of it, is not created by any one network or operator, but depends on access to all endpoints being available on a neutral basis to all. If not carefully restrained, the traffic management practices of each individual network can influence, fragment, or foreclose the opportunities the Internet provides for innovation, democracy, and free expression.

In the report on the public consultation on *the open internet and net neutrality in Europe* published on November 9th, 2010 the European Commission stated that according to Internet service providers (ISPs) “there are currently **no problems with the openness of the internet and net neutrality in the EU (question 1)**.¹ We have attached a list of 18 previous and current examples of discriminatory network management practices in Europe. These cases directly impact consumers and the Commission’s goals. For example, the Commission has expressed concerns with the low rate of music downloads in the EU as compared to the US, citing “the lack of legal offers,”² while PlusNet, an ISP in the UK slows traffic from music download services such as iTunes.³ Discriminatory network management practices create barriers to entry for new ideas, competition and innovation.

The Commission has expressed concerns with digital market fragmentation, setting objectives to increase cross-border traffic, by addressing barriers such as copyright and licensing, as well as the Single Europe Payment System.⁴ However, discriminatory networks erect new barriers to cross-border digital markets. Carriers, such as BT, TalkTalk and O2 in the UK and Telefónica in Spain have announced the intent to prioritize traffic or charge websites and content producers to be accessible by their customers.⁵

¹ European Commission, *The open internet and net neutrality in Europe*, 9 November, 2010

² See European Commission *supra* note 22, at 5.

³ See Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services

⁴ See European Commission Communication *supra* note 22.

⁵ Barry Collins, *TalkTalk, BT: we'd put iPlayer in the slow lane*, PC Pro, 28 September, 2010, available at: <http://www.pcpro.co.uk/news/broadband/361501/talktalk-bt-wed-put-iplayer-in-the-slow-lane>. David Meyer, O2 wants web companies to carry cost of traffic, ZDNet UK, 4 November 2010. Pablo López, *Telefónica quiere eliminar la tarifa plana de Internet: "Que pague más quien más descargue,"* Periodista Digital, 31 August, 2010, available at: <http://www.periodistadigital.com/tecnologia/internet/2010/08/31/telefonica-quiera-eliminar-la-tarifa-plana-de-internet-que-pague-mas-quien-mas-descargue.shtml>. *Telefónica dice que el modelo de negocio del sector no es sostenible*, Periodista Digital, 30 August, 2010, available at: <http://www.periodistadigital.com/tecnologia/telefonia/2010/08/30/telefonica-dice-que-el-modelo-de-negocio-del-sector-no>



Additionally, consumers are regularly charged service fees in addition to the cost of mobile data services to use specific Internet services (such as email or voice over IP), although sometimes the option to use such services is simply not provided or explicitly forbidden. Differences in the “Internet” accessible to mobile versus fixed users creates two distinct Internets and facilitates the creation of a new digital divide, especially where wireless will be used to provide access in underserved rural regions.

Moreover, as evidenced by the numerous discriminatory practices carried out by network operators, competition has proven to be insufficient to protect the open Internet. Allowing discriminatory network practices subjects applications, services, and content to the changing and unpredictable interests of network operators, interfering with the open, innovative and competitive market of the Internet and creating serious risk of citizens being subjected to ever-more invasive control and monitoring technologies.

The Internet is a vital resource for economic growth, innovation, media and free expression, but much of this value depends on end users being, as the Commission has stated, “able to decide what content they want to send and receive, and which services, applications, hardware and software they want to use for such purposes.⁶ We urge the Commission to prevent ISPs from becoming gatekeepers of the Internet, determining which content, service, and applications users may access. The Commission must protect the Internet as a common, open resource available to all Europeans. Once this problem reaches a level that legislation is unavoidable, it will be already too late.

Sincerely,

**Bits of Freedom
European Digital Rights
Hispalinux
La Quadrature du Net
Panoptikon Foundation
New America Foundation’s Open Technology Initiative**

Enclosures

⁶ es-sostenible.shtml .

⁶ See 2009/136/EC, recital 28.



European Internet Enclosures: Discriminatory Network Practices in Europe

Without Community wide regulations preserving the Open Internet, many Internet service providers (ISPs) already significantly discriminate against the traffic on their networks, to the detriment of competition and free speech. From blocking competitive services to rationing bandwidth and extra-judicial web-blocking measures, these examples of traffic management limit freedom of expression to users, restrict the user's ability to access any legal application, service or content, and create competition worries.

Restrictions on Fixed Networks

Some examples of previous discriminatory practices by ISPs are included below. More networks have announced the intention to implement discriminatory network management practices in the future.

- Plusnet in the UK uses deep packet inspection (DPI)ⁱ to categorize traffic, and in 2009 users discovered that Plusnet was slowing a legal music service on a connection advertised as up-to 20 mbps to 50 kbps.
- Customers of BT in the UK found that access to the website the Pirate Bay was blocked in 2009.ⁱⁱ
- In 2009, Dutch provider UPC restricted peer-to-peer traffic.ⁱⁱⁱ
- Networks that have announced the intention to discriminate against traffic include: BT, TalkTalk and O2 in the UK,^{iv v} as well as Telefonica in Spain.^{vi vii}

Current Restrictions on Fixed Networks			
Country	ISP	Traffic Discrimination	Other Restrictions
France	Free	Limitations on peer-to-peer, video, and IP telephony traffic	
Italy	Telecom Italia	Limits the bandwidth of peer-to-peer protocols	
UK	BT		Blocked Access to the Pirate Bay website
	Virgin Media	Shapes traffic including peer-to-peer	
	O2	Deprioritizes video and peer-to-peer protocols	
	PlusNet	Inspects traffic with DPI, prioritizes into 6 categories	Peer-to-peer, newsgroups, and SMS blocked as well.
Spain	Telefonica	*Intends to prioritize traffic in future	

Restrictions on Mobile Networks

In 2007, T-Mobile in the UK announced they would block calls to numbers used by Truphone VoIP customers.^{viii} Although the courts eventually intervened in this case, many mobile carriers place additional restrictions on data services offered by third parties to their customers. Many mobile data plans do not provide real internet access and include restrictions that block access to certain technologies, charge extra fees for the use of certain services and block the use of and/or charge additional fees for certain Internet telephony/VoIP services.

Current Restrictions on Mobile Networks			
Country	Carrier	VoIP Restrictions	Other Restrictions
France	SFR	Blocked on iPad	Peer-to-peer, newsgroups, and SMS blocked as well.
	Orange	15 € per month	
	Bouygues	Blocked	Peer-to-peer, tethering
Germany	Vodafone	10 € per month in addition to data plan	VoIP is blocked on iPad, peer-to-peer protocols are restricted
	T-Mobile	9,95 € per month in addition to data plan	
	E-Plus	Blocked	Tethering is prohibited
Italy	Vodafone	GBP 25 per month in addition to data plan	Peer-to-peer slowed to 64 kbps
UK	O2	Blocked	Continuous streaming of any audio / video content, enable P2P or file sharing
Spain	Vodafone		Prioritization of calls based on service rate
Sweden	Telia Sonera	Blocked on all except the most expensive data plan	File sharing is also blocked on most offers
	Telenor	Blocked on all except the most expensive data plan	

ⁱ Similar to a post employee opening a packet to inspect the contents, Deep Packet Inspection is when an ISP pries into a data being transmitted to determine the application type and content.

ⁱⁱ Barry Collins, *BT Blocks off Pirate Bay*, PC Pro, 21 April 2009, available at: <http://www.pcpro.co.uk/news/251609/bt-blocks-off-pirate-bay>.

ⁱⁱⁱ <http://www.opta.nl/nl/download/publicatie/?id=3052>

^{iv} Barry Collins, *TalkTalk, BT: we'd put iPlayer in the slow lane*, PC Pro, 28 September, 2010, available at: <http://www.pcpro.co.uk/news/broadband/361501/talktalk-bt-wed-put-iplayer-in-the-slow-lane>.

^v David Meyer, O2 wants web companies to carry cost of traffic, ZDNet UK, 4 November 2010

^{vi} Pablo López, *Telefónica quiere eliminar la tarifa plana de Internet: "Que pague más quien más descargue,"* Periodista Digital, 31 August, 2010, available at: <http://www.periodistadigital.com/tecnologia/internet/2010/08/31/telefonica-quiere-eliminar-la-tarifa-plana-de-internet-que-pague-mas-quien-mas-descargue.shtml>.

^{vii} *Telefónica dice que el modelo de negocio del sector no es sostenible*, Periodista Digital, 30 August, 2010, available at: <http://www.periodistadigital.com/tecnologia/telefonia/2010/08/30/telefonica-dice-que-el-modelo-de-negocio-del-sector-no-es-sostenible.shtml>.

^{viii} Bill Ray, T-Mobile forced to connect Truphone numbers, The Register, 17 July 2007, accessed 5 November 2010