

## **To be continued**

**The rules of the road on the internet will always be a work in progress**

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A TERSE 900-word letter sent by AT&T to America's attorney-general a century ago changed the course of the telecoms industry. In exchange for not being broken up, the monopoly agreed to treat all phone calls equally. What became known as the "Kingsbury Commitment" entrenched the notion that existing transport rules would apply to so-called "long lines".

That helped build the world's best telephone systems. But life is trickier now. Policymakers are wrestling with how that "common-carriage" approach should apply to the internet. In Europe ministers on January 27th discussed rules proposed by Latvia, which currently holds the European Union's rotating presidency. America's Federal Communications Commission (FCC) is expected to start discussing plans on February 5th (and vote on them on February 26th).

The arguments revolve around "network neutrality", a term coined ten years ago by Tim Wu of Columbia Law School. It underlies the extraordinary success of the internet: the businesses that operate the network—by transmitting data, or providing access to it—may not discriminate between different packets of data. So innovators do not need to ask for permission, or to pay extra, to make new projects work.

Neutrality has long been baked into the internet through its protocols, the rules which govern how data move around the network, paying no attention to its content. But big changes are afoot. New technologies now allow network operators to identify what kind of traffic they transmit. Many would like spam and criminal traffic to be scrutinised, slowed or stopped. For their part telecoms firms, who own most of the cables and switches, wish to sell premium access—fast lanes, in effect—to bandwidth-hungry services, such as video.

Activists for internet freedom and other causes are up in arms. Without strict network-neutrality rules, they warn, toll booths and other checkpoints will mushroom, robbing the network of what has made it great. Investment would flow to the profitable fast lanes; humbler folk would travel virtual dirt roads. Operators that offer internet services of their own could throttle or even block rivals. Abandoning network neutrality, European Digital Rights and other net-advocacy groups wrote in an open letter to EU officials, means abandoning a core human right: "the freedom to impart and receive information without interference".

Industry insiders, network engineers and some economists say this is scaremongering. Network operators, they say, have no interest in fragmenting the internet; they just want to manage their assets well—for example by channelling traffic to avoid congestion. That improves service for everyone. Moreover, why should capacity-hogging services such as Netflix, whose video-streaming comprises one-third of peak-time traffic in America, get a free ride? “The internet doesn’t need to be saved,” argues Peter Van Doren of the Cato Institute, a libertarian think-tank.

Yet governments are moving towards codifying some sort of network neutrality, according to Sam Paltridge of the OECD, a club mostly of rich countries. Chile, the Netherlands and Slovenia have already passed strict network-neutrality laws; several others, including Norway, have opted for softer rules or are planning to do so.

Big network operators are sometimes to blame for this. The Dutch move came after KPN, the former national telecoms company, threatened to levy a fee on services such as internet calls and instant messaging, and block users who wouldn’t pay. One of Norway’s largest internet-service providers, Nextgentel, curbed traffic from NRK, a public broadcaster, in a row about paying for additional capacity.

The strictness of neutrality rules varies. Chile forbids any kind of traffic prioritisation. Others allow plenty of exceptions. In Slovenia, for instance, network operators can block spam and manage traffic to avoid congestion or for security reasons. Norway stands out because it chose what it calls “co-regulation” instead of a new law: the regulator issues guidelines, and stakeholders meet to discuss any changes.

That approach may work in a cosy Nordic country, but not in America and the EU with their armies of adversarial lawyers and politicians. Several attempts by the FCC to satisfy the rival camps have fallen foul of the courts or public opinion. Barack Obama tried again in November, asking the commission to classify broadband access as a common carrier so it can regulate it as such. The FCC is expected to heed the president’s call while exempting the internet from old telephone-era rules such as price controls. Kevin Werbach, a former FCC lawyer who now teaches at the Wharton business school, says it will be interesting to see how the agency will treat wireless internet access and what it thinks of such deals as Netflix paying Comcast for a “fast lane” for its videos.

The outlook in Europe is even murkier. EU governments must agree on common regulation, but each has its own agenda. Big member states, such as Italy, tend to defend the interests of their big telecoms firms, which argue that only profitability will allow them to upgrade their networks. The partners in Germany’s ruling grand coalition have promised each other to push some form of network neutrality. Britain, for its part, wants self-regulation (which, critics say, has not been a big success at home). So the Latvian proposal gives plenty of wiggle room. Paid-for fast lanes, for instance, are allowed “provided that sufficient network capacity is available so that the availability and general quality of internet access services are not impaired in a material manner”. “Prove that,” sniffs Chris Marsden of the University of Sussex.

### **Nullifying zero-rating**

When (and if) the FCC has voted and the EU has struck a deal, the saga will continue. Republicans in Congress pay lip-service to network neutrality, but they balk at enforcement.

Network operators will sue in any case. They mind less about neutrality than about escaping regulation as a utility. The European Parliament is unlikely to approve whatever emerges from the Latvian draft without major changes.

The next network-neutrality battle has already begun—over “zero-rating”, a practice by which mobile operators allow customers access to certain services, such as Facebook or Wikipedia, without charging them for the data usage. Fans argue that this is a great way to give poor consumers access to these offerings. Critics counter that it allows mobile operators to pick winners and makes it more difficult for others to compete; for that reason, the Slovenian and the Dutch regulators recently banned certain forms of zero-rating. Like free trade, it seems, network neutrality will always be a work in progress.