

# DYNAMIC COALITION ON NETWORK NEUTRALITY

## Report of the Annual Meeting held at the IGF 2015

Over the past two years, the importance of the network neutrality debate has become a priority for both national and international policy makers. While some countries have explicitly banned discriminatory traffic management practices, such as blocking, throttling and paid prioritization, other countries are currently formulating net neutrality laws and regulations or considering whether and how to regulate Internet traffic management.

The 2015 meeting of the Dynamic Coalition on Network Neutrality (DCNN) fostered a reflection on the emerging challenges of the net neutrality debate and the concrete implementations of this important principle. Panelists explored issues such as the relevance of net neutrality for consumers, the compatibility of zero rating offerings with the net neutrality principle and the elaboration of sustainable approaches to foster non-discriminatory Internet traffic management. Importantly, panelist interventions were based on their contribution to the Net Neutrality Compendium, a book encompassing the three-year-long work of the DCNN that was presented and distributed during the event<sup>1</sup>.

The meeting was introduced and moderated by Luca Belli, from the Center for Technology & Society at Fundação Getúlio Vargas, Rio de Janeiro. The roundtable was opened by a keynote by Vint Cerf, from Google, stressing the American regulators' fear of monopoly abuse by large Internet Access Providers (IAPs) and the insufficiency of competition to deal with such concerns. Cerf stressed that it is common to argue that IAPs should not be in a position to selectively extract additional rents from the application and content providers. Such situation would indeed allow IAPs to control which application may be used or content providers may be reached and used satisfactorily by users, thus dictating user choice.

The first segment of the roundtable analyzed current tendencies in the net neutrality debate, such as zero rating offerings and its alternatives as well as the recent EU regulatory provisions concerning net neutrality.

Elise Lindeberg from the Norwegians Communications Authority provided an overview of the co-regulatory approach to Net Neutrality, adopted by Norway since 2009. According to Lindeberg, such an approach has kept the Norwegian market competitive and traffic management non-discriminatory while avoiding the need for further legislation. To this extent, the recent EU Telecom Single Market regulation – also applicable to European Economic Area members, such as Norway – has raised some concerns. One of the potential incompatibility between the EU regulation and the Norwegian approach may concern zero-rating practices on which net neutrality discussions are increasingly concentrating. The Norwegian approach aims at preserving the Internet as an open and non-discriminatory platform, stressing that zero-rating practices are based on the commercial incentive to choose specific applications, thus leading to favor specific traffic above other traffic. From a

---

<sup>1</sup> Belli Luca & Primavera De Fiippi (Eds.). (2015). *Net Neutrality Compendium: Human Rights, Free Competition and the Future of the Internet*. Springer. Part III of the Compendium, can be freely accessed at <http://www.fgv.br/net-neutrality-compendium>

Norwegian perspective, this is exactly the type of situation that net neutrality policies should aim to avoid and, for this reason, zero-rating is not allowed in Norway.

Subsequently, Chris Marsden, from Sussex University, explained that zero-rating is not something new, According to Marsden, since the 90s both fixed and mobile ISPs have tried – frequently failing – to discriminate amongst content providing preferential treatment to commercial partners. Marsden linked this general tendency with current zero-rating practices, stressing that such offerings are frequently used by dominant players to strengthen their dominant position. However, he argued that some form of zero-rating might be considered as ‘reasonable’ exceptions to net neutrality when based on two rules: treating zero rating as a short-term exception to net neutrality, and ensuring that any such short-term exception is not exclusive but rather available on Fair, Reasonable and Non-Discriminatory conditions.

Zero rating supporters frequently describe such practices as a potential solution to foster – partial – Internet access in rural and remote areas. However, other solutions may be envisaged with the aim of fostering Internet connectivity rather than providing access to a limited selection of applications. To this extent, Primavera de Filippi, from CERSA & Berkman Center, discussed community networks, stressing the decentralized and bottom-up nature of such networks, which are developed and run by Internet users themselves. She mentioned successful examples in Spain, New York, and Germany. Discussion on the regulatory barriers that may hinder such initiatives followed up, stressing how laws that target entirely different matters might collaterally hinder the deployment of community networks.

The second part of the meeting explored several facets of net neutrality policy-making. René Arnolds, from WIK-Consult, explained how net neutrality is a hard concept for consumers to grasp. Arnolds highlighted that consumers are poorly informed about the net neutrality debate, but they become very concerned about the effects of discriminatory traffic management when such practices are explained to them. These considerations were shared by other panelists and participants, who stressed the need for educating and informing consumers, to allow them to express their own opinion during public consultations. Also, it was stressed that consultations may fail to grasp consumers’ needs and preferences. Consensus emerged as regards the need to properly inform consumers about what net neutrality is and what it can mean to their welfare.

Konstantinos Stylianou, from Leeds University, stressed the benefits of the experimentation of new business models, while arguing that strict net neutrality rules may impede such experimentation. A solution to this problem may be offered by flexible framework clauses, like those used in antitrust, which may be capable of filtering out harmful practices while allowing non-harmful ones. To this extent, further integration of antitrust-like analysis and principles into telecommunications regulation may offer regulatory tools that can accommodate the arguments of net neutrality proponents and opponents.

Nathalia Foditsch, from the American University, led the discussion towards the concept of legal interoperability and its application to net neutrality regulatory frameworks. Interoperable regulatory standards may allow for a better transnational interaction between different legal systems, thus reducing transaction costs while fostering compatible rules. To this extent, legally interoperable net neutrality rules may be particularly beneficial.

## CONCLUSIONS AND FUTURE STEPS

Luca Belli provided an overview of the main achievements of the DCNN over the past three years, as regards both academic production and policy suggestions. First, it was stressed that one of the main DCNN outcomes – the Model Framework on Net Neutrality<sup>2</sup>, which contains precise indications on how to protect net neutrality – has already inspired several policy-making processes. The Council of Europe took inspiration from the Model Framework to develop a draft Recommendation on Network Neutrality, while the European Parliament utilized various fragment of the Model Framework to amend the recently adopted Telecom Single Market regulation. Second, Luca Belli described the open consultation facilitated by the DCNN, which led to the participatory elaboration of a Policy Statement on Network Neutrality (included in the appended Input Document on Network Neutrality).

The goal of the consultation<sup>3</sup> that led to the elaboration of the Policy Statement was to offer to all interested individuals and stakeholders the possibility to participate in the elaboration of a document that could be validated by the entire IGF Community, as requested by the IGF 2014 Final Chair Summary<sup>4</sup>. To this end, the DCNN replicated the “Last Call process” utilised by the Internet Engineering Task Force in order to allow all interested individuals and stakeholders to provide comments on Internet Drafts.

The Policy Statement on Network Neutrality was discussed with the participants, receiving generally positive feedback. Furthermore, IGF participants were allowed to express their feedback on the Policy Statement, using “Idea Rating Sheets”<sup>5</sup> during the Main Session on Dynamic Coalitions’ Outcomes.

## Input Document on Network Neutrality

This Input Document has been developed through an open and multistakeholder process facilitated by the [IGF Dynamic Coalition on Network Neutrality](#) (DCNN). The process has been initiated with a Request for Comments aimed at the development of one or more Policy Statement(s) on Net Neutrality. The process has been promoted by members of the DCNN and the [Global Net Neutrality Coalition](#) (GNN), and aimed at the definition of an agreed position on net neutrality, based on the [Model Framework on Network Neutrality](#) developed by the DCNN.

The DCNN Model Framework (MF) was presented at the 8th IGF in Bali and included in a Report on “[Protecting Human Rights through Network Neutrality](#)” delivered to the Council of Europe Steering Committee on Media and Information Society to be used as a working

---

<sup>2</sup> <http://www.networkneutrality.info/sources.html>

<sup>3</sup> The draft commented on, during the last phase of the consultation is available at <http://review.intgovforum.org/igf-2015/dynamic-coalitions/input-document-on-network-neutrality/dynamic-coalition-on-network-neutrality-dcnn/>

Previous drafts can be found at <http://www.networkneutrality.info/events.html>

<sup>4</sup> IGF Chair. (2014). Connecting Continents for Enhanced Multistakeholder Internet Governance. IGF 2014 Chair’s Summary. Istanbul, Turkey, p. 10. <http://www.intgovforum.org/cms/documents/igf-meeting/igf-2014-istanbul/308-igf-2014-chairs-summary-final/file>

<sup>5</sup> The DCNN Idea Rating Sheets can be found at <http://www.intgovforum.org/cms/surveys>

document for the elaboration of a Draft Recommendation on Net Neutrality. To date, DCNN members have conveyed the MF to several Parliamentary assemblies (EU Parliament, Argentinian Senate and South Korean Parliament) whilst the GNN has decided to utilise the MF as “Model Rules”. Although it has already played an inspirational role, the MF has never been officially validated by the IGF community at-large, as pointed out by the [Final Chair's Summary of the IGF 2014](#), according to which “[t]he ninth IGF concluded with looking at the role of the IGF in taking the network neutrality discussion forward. [...] The Dynamic Coalition on Network Neutrality will continue the discussions leading up to the 2015 meeting, but the view was also held that there was a need to develop a process that allowed the entire IGF community to weigh in and validate the findings of the Dynamic Coalition.”

This lack of validation is primarily due to the lack of an official process aimed at discussing dynamic coalitions' outcomes within the IGF community. The IGF 2015 will introduce for the first time a main session allowing dynamic coalitions to present their work to the broader community, thus contributing to the definition tangible IGF outputs, as recommended by the CSTD Working Group for IGF Improvement. The development of a Policy Statement on Network Neutrality is consistent with the Chair's Summary and aims at feeding the main session on dynamic coalitions' outcomes with a concrete proposal.

The Policy Statement on Network Neutrality has been elaborated [through several rounds of consultation](#), organised from the beginning of May to the end of September 2015. According to [DC NN Rules of Procedure](#), two drafters have been designated in order to “manage the elaboration of the position or statement and consolidate received comments with the aim of achieving a consensus document.”

The two designated drafters were:

- Luca Belli, DCNN Co-Chair and Researcher at the Center for Technology & Society at Fundação Getulio Vargas, Rio de Janeiro
- Michał Woźniak, Warsaw Hackerspace and Polish Linux Users Group

## Policy Statement on Network Neutrality

### Preamble

- a) The Internet should be open, secure and accessible to all people.
- b) Network Neutrality plays an instrumental role in preserving Internet openness; fostering the enjoyment of Internet users' human rights; promoting competition and equality of opportunity; safeguarding the generative peer-to-peer nature of the Internet; and spreading the benefits of the Internet to all people.
- c) Managing Internet traffic in a transparent and non-discriminatory manner compatible with the Network Neutrality Principle serves the interests of the public by preserving a level playing field with minimal barriers to entry and by providing equal opportunity for the invention and development of new applications, services and business models.
- d) Competition among broadband networks, technologies and all players of the Internet ecosystem is essential to ensure the openness of the Internet.
- e) All individuals and stakeholders should have the possibility to participate in the elaboration of any Network Neutrality regulatory instrument.

Network Neutrality regulatory instruments should, at a minimum, provide the following safeguards.

### **1. Network Neutrality Principle**

Network Neutrality is the principle according to which Internet traffic is treated without unreasonable discrimination, restriction or interference regardless of its sender, recipient, type or content.

### **2. Reasonable Traffic Management**

Internet service providers should act in accordance with the Network Neutrality Principle. Any deviation from this principle may be considered as reasonable traffic management as long as it is necessary and proportionate to:

- a) preserve network security and integrity;
- b) mitigate the effects of temporary and exceptional congestion, primarily by means of protocol-agnostic measures or, when these measures do not prove practicable, by means of protocol-specific measures;
- c) prioritise emergency services in the case of unforeseeable circumstances or force majeure.

### **3. Law Enforcement**

None of the foregoing should prevent Internet service providers from giving force to a court order or a legal provision in accordance with human rights norms and international law.

### **4. Transparent Traffic Management**

Internet service providers should publish meaningful and transparent information on characteristics and conditions of the Internet access services they offer, the connection speeds that are to be provided, and their traffic management practices, notably with regard to how Internet access services may be affected by simultaneous usage of other services provided by the Internet service provider.

### **5. Privacy**

All players in the Internet value chain, including governments, shall provide robust and meaningful privacy protections for individuals' data in accordance with human rights norms and international law. In particular, any techniques to inspect or analyse Internet traffic shall be in accordance with privacy and data protection obligations and subject to clear legal protections.

### **6. Implementation**

The competent national authorities should promote independent testing of Internet traffic management practices, ensure the availability of Internet access and evaluate the compatibility of Internet access policies with the Network Neutrality Principle as well as with the respect of human rights norms and international law. National authorities should publicly report their findings. Complaint procedures to address network neutrality violations should be available and violations should attract appropriate fines.

All individuals and stakeholders should have the possibility to contribute to the detection, reporting and correction of violations of the Network Neutrality Principle.