

Human Rights in the Digital Era Conference

Net Neutrality Policy in the UK & the Citizen's Interest in Neutral Networks



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Net Neutrality Debate

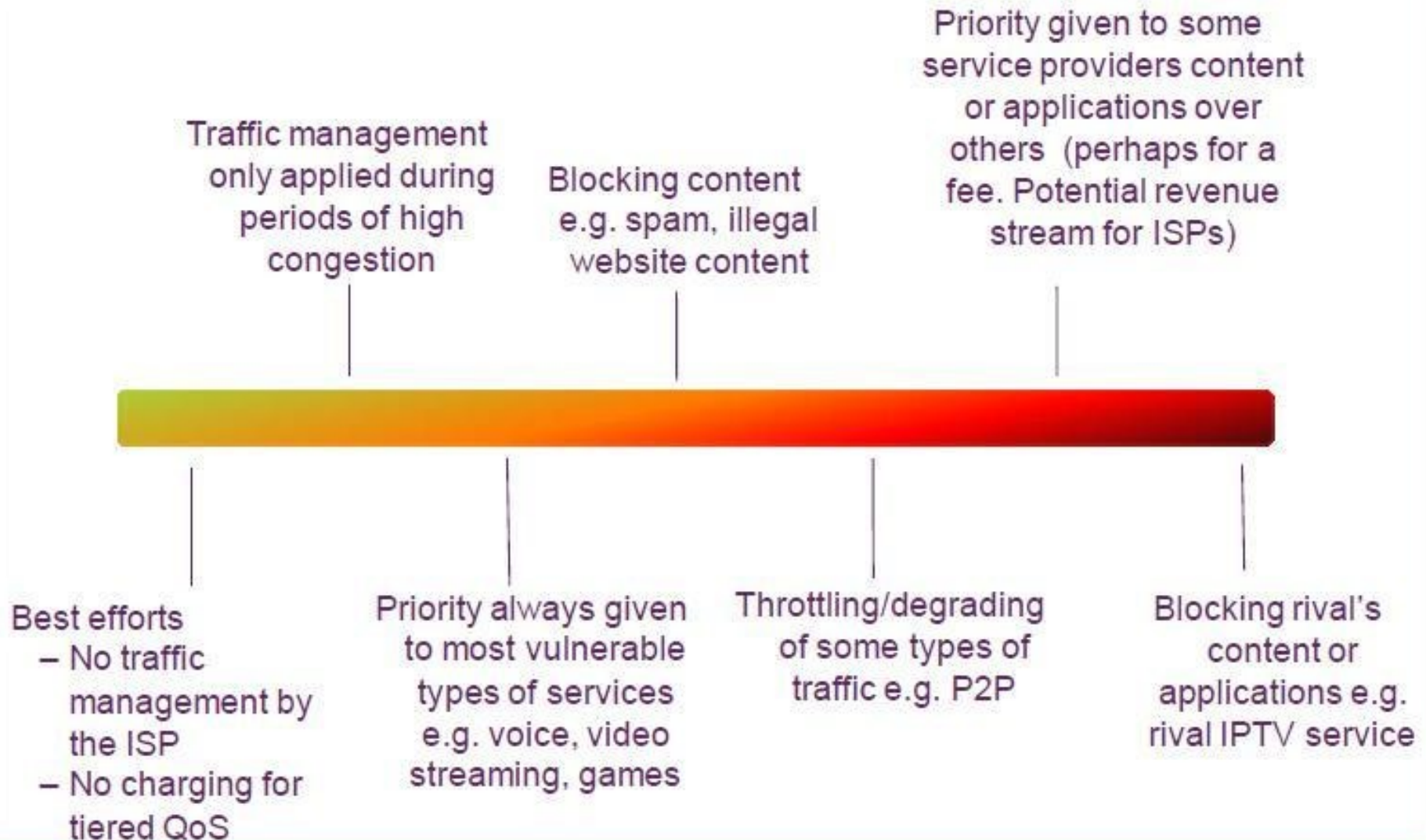
What's net neutrality and why has it emerged as an important policy issue?

- Network design principle - a 'maximally useful public information network aspires to treat all content, sites, and platforms equally' (Tim Wu)
- The internet has followed the principle of net neutrality *de facto* (best-efforts)
- Growth in traffic and high-bandwidth services have put pressure on the best-efforts approach, requiring increased traffic management
- Various forms of traffic management and different reasons for it — not just technical, also legal/regulatory and economic

Traffic management continuum



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Net neutrality debate

Arguments in favour of discrimination

- Give consumers 'what they want'
- By charging content, service, and applications providers, network operators can generate revenues to invest in networks

Arguments against discrimination

- Revenues may go to shareholders rather than be invested in networks (Economides 2010)
- Negative impact on innovation — increased market-entry costs for new providers, making it harder to compete with established providers (Wu 2006)
- Threatens to marginalize non-commercial, public uses of the internet

Net Neutrality Policy

How have policymakers and regulators responded?

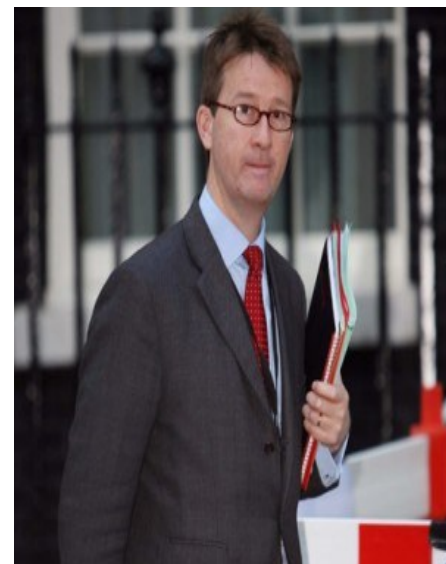
- Compared to the US, net neutrality viewed as less of a problem in the EU/UK because of greater competition among network operators (as a result of open-access regulation)
- Competition among network operators allows consumers to switch if they are unhappy with discrimination
- Discrimination is only a issue where network providers have substantial market power – this can be addressed through competition law
- Net neutrality legislation would prevent network operators from developing innovative new services and different offerings for consumers

Net neutrality policy

Net neutrality is sometimes cited by various parties in defence of Internet freedom, innovation and consumer choice.

ISPs might in future wish to offer guaranteed service levels to content providers in exchange for increased fees. In turn this could lead to differentiation of offers and promote investment in higher-speed access networks. Net neutrality regulation might prevent this sort of innovation.

The Government has yet to see a case for legislation in favour of net neutrality. In consequence, unless Ofcom find network operators or ISPs to have Significant Market Power and justify intervention on competition grounds, traffic management will not be prevented.



Stephen Carter, Minister for
Communications,
Technology & Broadcasting,
Digital Britain Interim Report,
2009

EU Telecoms Reform Package (amended in 2009)

Declaration in favour of 'preserving the open and neutral character of the internet'

1. Transparency (Article 21, Universal Service Directive)

- new powers for national regulatory authorities to enforce transparency around traffic management and discrimination

2. Minimum Quality of Service (Article 22, Universal Service Directive)

- national regulatory authorities given powers to set minimum quality of service requirements on network operators
- but the use of this power is at the discretion of NRAs and it is not clear how minimum quality of service will be interpreted

Ofcom Consultation on Traffic Management and 'Net Neutrality', 2010

- emphasis on competition, transparency, and the market
- '... discriminatory behaviour is only a potential issue where firms have substantial 'market power' and could discriminate in favour of their own services'
- '... we acknowledge wider political and public policy considerations around broadband access [...] However, questions of fundamental rights and industrial and public service policies [...] are matters for Government'

DCMS response to Implementing the Revised EU Electronic Communications Framework Consultation, 2011

- Ofcom will use competition tools and transparency, not impose minimum quality of service

Net neutrality policy

We have got to continue to encourage the market to innovate and experiment with different business models and ways of providing consumers with what they want.

This could include the evolution of a two-sided market where consumers and content providers could choose to pay for differing levels of quality of service.

The important thing is that ISPs and networks remain free to innovate. In doing so they may make mistakes and consumers should have the ability to make them pay for those mistakes.



Ed Vaizey, Communication,
Culture and the Creative
Industries Minister,
November 2010

Consumer & Citizen Interest

Will market competition and transparency give consumers what they want?

1. Competitive nature of the market might be overstated (concentration, vertical integration)
2. Transparency does not guarantee that consumers have the understanding, time, and inclination to switch network operators (Economides 2010; Frischmann 2010)
3. Preferences are not necessarily clear in advance – prior experience may be required to appreciate the value of different uses of internet and preferences may change and develop (Baker, 2002)
4. Individual consumer decisions do not necessarily reflect the social value of the internet (Frischmann & van Schewick 2007)

Citizen interest in neutral networks

- Basic goods or entitlements not distributed on the basis of people's willingness and ability to pay, but provided on an egalitarian basis
- One option would be to identify and prioritize particular public services and uses (e.g., apply 'must-carry' type obligations to public service media)
- Maintaining a neutral public internet is a blunter instrument, but allows the internet to continue supporting a diverse range of public goods for citizens (Frischmann 2010)

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