

## **Workshop 1: End-users access to and choice in services (the open Internet and citizens' rights)**

### Focus of the Workshop

This workshop aims to explore the role of ISPs and governments with regards to Internet users' access to and choice of services; rights and freedoms of users as citizens and as consumers; what competition principles to underpin access to and use of content and services? The proposal to develop a (European) Internet users rights charter.

### Background

The advent of the Internet has unleashed an unprecedented, global wave of innovation and diffusion of information and knowledge over the past twenty years. It has transformed many industries and business model and, how they are traded, contributing directly to increases in economic productivity and growth, and altering fundamentally how content and information are consumed, while giving citizens novel ways of informing and expressing themselves, creating and communicating.

As the Transatlantic Consumer Dialogue put it, *“Access to the Internet remains an increasingly important resource to individuals, as both consumers and citizens. As consumers, individuals gain access to digital content such as music, films, ebooks, games, and any number of goods and services through ecommerce. As citizens, individuals gain the ability to both access and create conduits for discourse, debate, and creativity. The wealth of information available, and the variety of applications that consumers can use to communicate, allow for an unprecedented freedom of expression and information.”*<sup>1</sup>

The global public Internet grew exponentially especially thanks to the open, non-hierarchical nature and the principle of “end-to-end connectivity”, which underpinned a wave of ‘innovation without permission’ whereby anyone could publish something on the Internet, without having to ask anyone’s permission beforehand. The “open Internet” (unrestricted end-user access to Internet content, services and applications) remains therefore key to fostering innovation, enabling communication and expression, and contributing to socio-economic progress, especially in the context of the global financial crisis where consumer demand can and has to be reignited by new products and services.

However, as the medium matures, as Internet consumption continues to increase and become integral to people’s lives, and as networks evolve to a ‘next generation’, a number of questions and challenges have emerged.

To access Internet resources, individual and organizations rely upon Internet service providers (ISPs), which provide end-users’ access to the Internet. Increasingly, and especially in the Next Generation Networks (NGN) environment, ISPs have the technical ability - and often a need as well - to manage traffic flow and thus the Internet access with high precision. This technical ability would normally be used in order to improve consumers’ Internet experience in cases of acute congestion of Internet traffic. However, the same technology also allows ISPs to act as gatekeepers, by blocking or degrading consumers' access to certain content and applications, or limiting the types of equipment that can be attached to the network. Such behaviour can severely limit the usefulness of the Internet and frustrate consumers' aims.

In this perspective there are clear threats to the diffusion of knowledge, culture, and freedom of expression and communication. On the business side specifically, there is also a real threat to the ability of innovators to come up with new online business models, services and applications as they run the risk of consumers not being able to access those anymore.

Such limitations on access are not merely theoretical. In the United States, a telecommunications company and ISP blocked customers from using voice over IP (VoIP) services, which would compete with its own telephony services. A major ISP which also provides television programming through its cable television service sent false data along its network to prevent its customers from using a wide range of popular protocols and applications, including a famous P2P application. A Canadian ISP prevented its users from

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<sup>1</sup> Trans-Atlantic Consumer Dialogue’s introduction to its Resolution on Net Neutrality of March 2008 ([http://tacd.org/index2.php?option=com\\_docman&task=doc\\_view&gid=42&Itemid](http://tacd.org/index2.php?option=com_docman&task=doc_view&gid=42&Itemid) )

reaching the website of a trade union that represented the company's striking employees. Around the world, additional examples abound of ISPs blocking content either to disadvantage competition or limit access to dissenting political views. In Europe, a number of mobile network operators routinely forbid users from accessing VoIP, peer-to-peer and video streaming applications.

Such incidents demonstrate the skewed incentives that result when a network access provider also has a stake in the content and applications accessed by its customers. When the provider can selectively control access, it may select against speech or services that it perceives as harmful to its self interests. This may include content, applications, or devices that compete with the provider's own interests; or content that the provider disfavors, such as criticism of the provider itself. These harms are exacerbated when a lack of competition prevents users from migrating away from discriminatory providers, as well as when consumers lack the ability and information necessary to discover any discriminatory practices.<sup>2</sup>

However, a parallel challenge raised by ISPs / network operators is how they can cope with the massive rise in Internet consumption by building improved networks, and the challenge of raising the funding to invest accordingly. Some have argued that ISPs should keep the ability to 'differentiate their offerings' and prioritise traffic by choosing what sort of content, services and applications to give access to, so that they are better able to obtain return on their investment.

The debate over what Internet access citizens should be entitled to has also been brought to the fore by parallel discussions around new legislations proposed to combat online piracy by interfering over users' Internet access – ruled as contrary to fundamental freedoms by the French Constitutional Court for example - as well as over the quality and reliability of information and media available on the Internet. The recent European "Telecom Package" regulatory proposal was objected to by many for including "conditions limiting access to and/or use of services and applications", which seems not to be ensuring "unrestricted access to content, services and applications".

Access to and choice in services is, however, not solely an issue in the context of access providers. In the current online environment we witness a growing number of dominant information society services and applications which users rely on in order to fully benefit from and participate in nowadays communication's processes on the Internet. Particularly in the context of search engines, e-mail providers, instant messaging services, social networks, web-based encyclopedias and blogging or micro blogging services, new factual monopolies or oligopolies have developed. This raises questions on rights and responsibilities of the service providers towards users, particularly in the absence of working market forces, and also challenges regulatory policies in the Member States.

#### Key questions for the panel

Taking into consideration both Internet broadband policy and the need to foster innovation, fair competition and the respect of fundamental human rights including freedom of expression and communication and freedom of choice, the EuroDIG panel will examine the following aspects:

- **For businesses:** need for profit and the returns on their investments as incentives to further invest; and the ability for online companies to prosper without the fear of discrimination against their content, services and applications
- **For users:** need for transparency of services, and freedom of choice and use
- **For regulators:** how would abusive behaviours by ISPs be remedied by current policies? Is competition law sufficient to protect the open Internet and indirectly ensure the respect of people's fundamental right to access the information of their choice, and express themselves freely, on the Internet? Is more regulation necessary? What is the appropriate balance between self-regulation (a model which has shown its flaws considering some of the abusive practices carried out routinely by some ISPs) and overregulation (the model often favoured when there is a problem) – should regulators devise guiding principles with certain binding aspects, such as the Norwegian guidelines on Network Neutrality, adhered to by the country's entire stakeholder community.

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<sup>2</sup> All examples and analysis as quoted in the TACD 2008 Resolution on Net Neutrality, except for Skype which only made the headlines mainly in 2009.

Towards a “universal service obligation” for dominant Internet services in the absence of working market forces? Transparency as regards the accessibility of services.

- **For countries in transition:** dealing with dominant operators; the importance of access to information and Internet applications and services for socio-economic development; building policy and regulatory capacity, especially concerning user / consumer rights....
- **For all concerned:** how to ensure treating Internet as a global public good while still leaving comfort to its economic owners - “the business”? Could a good way forward to ensure benefits for the whole Internet value chain, while respecting fundamental freedoms, be to develop a (European) Internet users’ rights charter? if so, should such a Charter be a mere list of principles or rather be pursued towards becoming binding? Should an IGF-style dynamic coalition and/or a formal process of the Council of Europe develop ‘best practice’ principles to be adhered to by all stakeholders?

Planned outcome of the session

Through a designated Rapporteur, this workshop will feed conclusions and recommendations into Plenary 1.