

April 21, 2010

OP-ED CONTRIBUTORS

How to Regulate the Internet Tap

By JOHN W. MAYO, MARIUS SCHWARTZ, BRUCE OWEN, ROBERT SHAPIRO, LAWRENCE J. WHITE and GLENN WOROCH

“TRANSPARENCY is non-negotiable,” declared Europe’s new commissioner for digital issues, Neelie Kroes, [in a speech last week laying out her thoughts on net neutrality](#). “In a complex system like the Internet, it must be crystal-clear what the practices of operators controlling the network mean for all users.”

Ms. Kroes’s comments reflect the decision made by the European Union in November [to avoid any of the more extreme regulations](#) that could stifle the innovation that has been the hallmark of the Internet. Instead, the union chose a more measured approach that emphasizes transparency.

This at odds with the Federal Communications Commission, which is currently considering versions of net neutrality regulation that would severely restrict firms’ business models and pricing flexibility. Before the commission embraces regulation, it should take another look at the European model and focus on a policy built on transparency.

Under the new European rules, providers are required to inform customers of any limitations that they impose on access, or on the use of services and applications, including bandwidth caps.

Similarly, providers have to notify customers of any standards that they use to measure or shape traffic patterns in response to network congestion, and supply information on how those standards may affect service quality.

The directive also requires carriers to notify users of security breaches, like hacker attacks and identity theft, that could jeopardize their privacy. All these regulations typically inflict only relatively low costs on providers and allow consumers to make more informed decisions.

The European directive does grant individual nations the authority to establish minimum quality-of-service requirements, but — and this is important — does not require it. Indeed, the union has explicitly acknowledged the efficiency-enhancing properties of price and quality discrimination, while at the same time condemning limits that hinder competition.

As such, each European country will be left to deal with the merits and costs of regulation on a case-by-case basis. However, if any country goes too far in imposing more intrusive regulations, the European Commission retains the authority to intervene to maintain a common regulatory framework and a consistent internal market within the union.

Perhaps the most noteworthy thing about the European regulations is what they do not do. They do not prescribe business or pricing models for European telecommunications companies. This represents a vote

of deserved confidence regarding the effectiveness of Europe's current competition policy as well as the evolution of pricing, competition and investment in the industry. Europe already has all the tools needed to address lapses in competition if they occur.

As American policymakers decide what should be done about net neutrality, they would do well to consider the precedents set by Europe's new framework. The goal should be to develop — through a deliberative process involving regulators, the public and affected companies — industry-wide disclosure requirements that provide consumers with easy-to-interpret information on company-based limitations on access, use of services or applications.

When it comes to the Internet and net neutrality, ensuring transparency promises to enhance the evolution of this dynamic market. Imposing heavy-handed rules about how providers can operate will only hinder it.

John W. Mayo and Marius Schwartz are professors of economics at Georgetown. Bruce Owen is a professor of public policy at Stanford. Robert Shapiro is a senior policy fellow at the Georgetown Center for Business and Public Policy. Lawrence J. White is a professor of economics at New York University's Stern School of Business. Glenn Woroch is the executive director of the Center for Research on Telecommunications Policy at the University of California, Berkeley.

Copyright 2010 The New York Times Company

[Privacy Policy](#) | [Terms of Service](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)
