

Public Consultation on the Open Internet and Net Neutrality in Europe

About the Free Knowledge Institute

The Free Knowledge Institute (FKI)¹ is a non-profit organisation that fosters the free exchange of knowledge in all areas of society. Inspired by the Free Software movement, the FKI promotes freedom of use, modification, copying and distribution of knowledge in four different but highly related fields: education, technology, culture and science. The FKI is based in Amsterdam while working internationally with several partners and through several networks.

Introduction

Net neutrality has been an indispensable catalyst of competition, innovation, and fundamental freedoms in the digital environment. A neutral Internet ensures that users face no conditions limiting access to applications and services. Likewise, it rules out any discrimination against the source, destination or actual content of the information transmitted over the network.

Thanks to this principle, our society collectively built the Internet as we know it today. Except in some authoritarian regimes, everyone around the globe has access to the same Internet, and even the smallest entrepreneurs are on equal footing with the leading global enterprises. Moreover, Net neutrality stimulates the virtuous circle of a development model based on the growth of a common communication network that enables new uses and tools, as opposed to one relying on investments in filtering and controlling. Only under such conditions is Internet continuously improving our societies, enhancing freedom — including the freedom of expression and communication — and allowing for more efficient and creative markets.

¹ <http://freeknowledge.eu>

However, Net neutrality is now under the threat of telecom operators and content industries that see business opportunities in discriminating, filtering or prioritizing information flowing through the network. All around Europe, these kind of discriminatory practices, detrimental to both consumers and innovation, are emerging. No court or regulator seems to have adequate tools to counter these behaviours and preserve the general interest.

Question 1: Is there currently a problem of net neutrality and the openness of the internet in Europe? If so, illustrate with concrete examples. Where are the bottlenecks, if any? Is the problem such that it cannot be solved by the existing degree of competition in fixed and mobile access markets?

Many cases have been reported throughout Europe in recent years of ISPs acting against the principle of net neutrality, such as blocking or limiting the bandwidth for certain services, both in fixed and mobile networks. A few examples are listed here:

- In Germany, T-Mobile charges its users an extra 10 euro monthly fee for the right to use Skype in their mobile devices. Similarly, Vodafone Germany charges 5 extra euro/month for the right to use this service.
- In UK, ISP PlusNet applies a strict throttling policy for some services and applications, namely streaming services, file sharing networks, etc. Spotify, a streaming media service, is listed as a peer-to-peer service in 2009, greatly slowing the speed.
- French ISPs Orange and Free block SMTP port (25), allegedly to "block spammers". Most French mobile operators, including Orange and Free, restrict access to P2P networks, VoIP, newsgroups, email and WiFi tethering (using the mobile device as a "repeater" to create a WiFi network that allows the user to share the mobile Internet connexion with other devices).
- In Italy, Telecom Italia limits the bandwidth for some services, such as P2P file sharing.

Towards a Free Culture

Question 15: Besides the traffic management issues discussed above, are there any other concerns affecting freedom of expression, media pluralism and cultural diversity on the internet? If so, what further measures would be needed to safeguard those values?

The Free Knowledge Institute was one of many active participants that gathered from all over the world in Barcelona for the Free Culture Forum. Its first edition was celebrated from October 30th till November 1st 2009. In this summary we draw upon the main topics discussed during the Forum and the main output that what was collectively produced: a Charter for Innovation, Creativity and Access to Knowledge. A Free Knowledge version can be found at the FKI wiki². Find below the ten points for change, or prerequisites for a free knowledge society. Net-neutrality and the open and free internet is one of the foundational elements for such free society, nevertheless we find it important to see this in the wider perspective of the challenges of our time.

Challenges

Humanity is facing unprecedented challenges in terms of sustainability, on a planetary scale. Global economic, social and environmental issues are affecting each and every one of us in real terms. These issues are interrelated and inherently complex requiring attention at international and local levels and harmonising diverse perspectives across cultures and divides for innovative sustainable solutions.

Paradigm shift

At the same time, we are in the midst of a revolution in the way that society's collective knowledge and cultures advance and co-evolve. The Internet, on account of its foundation on open standards, enabling interoperability and higher level innovation, has become a platform for this process. Irrespective of location or persuasion, individuals are collaborating and participating in cultural production and decision making. Ideas and knowledge are flowing freely in ways and on scales never before possible. Such social production has already resulted in software for all to use and adapt, knowledge resources covering all subject areas, and rapid innovation in network environments and practices. Innovative forms of social, economic and political organisation are emerging. This revolution is comparable to that brought about by the printing press.

Today's institutions, industries, structures and conventions will not survive into the future unless they adapt to these realities. Those that embrace change and seize the new opportunities will thrive.

2 http://freeknowledge.eu/wiki/index.php/Free_Culture_Forum_Charter

Free Culture

A free culture (as in “freedom”, not as “for free”) is free of restrictions on collaboration on knowledge and cultural production. Knowledge and cultural resources are used liberally, and customarily shared, adapted and co-produced. Such freedom encourages diversity, interaction across divides, and enables knowledge to flow freely in society, facilitating cultural development. New opportunities arise, accommodating multiple perspectives, cooperation and innovation towards global sustainability.

Ten points for change

The participants of the Forum have articulated a common vision for an inclusive, sustainable and innovative knowledge society. Although the complete version can be found online (see references below), the basic preconditions for such society to emerge are identified as follows:

1. internet: net neutrality, open and universal access

Internet access is essential for learning and freedom of expression, communication and participation in the knowledge society. An Internet connection that enables sending and receiving content, using services and running applications, connecting hardware and using software is crucial. It is free of any form of discrimination. Citizens have a right to correct, delete, or prevent the transfer of their personal information. Filtering of Internet content is a threat to fundamental rights. Net neutrality is guaranteed. Within the network there are no restrictions on content, equipment or on the modes of communication allowed - while not degrading other traffic.

2. standards: open standards

Open standards are a precondition for technical neutrality. They enable interoperability, stimulate innovation and competition, enable platform independent access to digital information, and facilitate availability of knowledge and learning now and in the future.

3. software: free software

Free software (also referred to as Open Source or Libre Software) enables transparency of information processing. Above all, use of free software is consistent with the free culture values that we wish to transfer to successive generations in the emerging free knowledge society.

4. spectrum: free spectrum

Citizens are entitled to access to a free, unlicensed band of the spectrum for digital communications, such as the analogue TV range and, in general, at least a 25% of any new range of the spectrum that is released in its current use.

5. knowledge: aim for free knowledge

Non-copyrightable Works: There should be no copyright on laws, government reports, political documents and speeches, regulatory compliance information, or databases.

Public domain works: The public domain, as we understand it, is the wealth of information that is free from the barriers to access or reuse usually associated with copyright protection, either because it is free from any copyright protection or because the right holders have decided to remove these barriers. Instead of ongoing privatisation and reduction of the Public Domain, it should be strengthened and expanded.

Freely Licensed works: Every legal system should facilitate and promote free and open licensing to the same extent as proprietary licensing. The results of developments funded with public money should always be published under a free license.

Orphaned works: There should be freedom to use a copyrighted work if the copyright owner cannot be located after a due diligence search.

Freely available works: There should be no restriction on the freedom to access, link to and index any work that is already freely online accessible to the public, even if it is not under a free or open license.

Proprietary works in general: Copyright term should not exceed the minimum Berne term. In the longer term, we support the reduction of existing copyright terms. Copyright terms that are too long do not benefit artists, authors, their audiences or readers, citizens, or society.

6. patents: avoid or make freely available Refrain from applying for patents on the results of publicly funded research. Patents held by public institutions shall be irrevocably released under royalty-free terms and free of any other restrictions.

7. privacy: inviolability of privacy and personal data

Citizens have the right to access internet resources anonymously, know in advance how their personal information is to be used, decide at any time to move, modify or remove their user data from any online service, protect their privacy and encrypt their communications and to choose not to receive unsolicited messages.

8. transparency

Transparency is a basic requirement for decisionmaking in the public sector and indeed for any collective, community oriented activity. In order to avoid the breach of any fundamental rights (e.g. invasion of privacy, freedom of expression, etc.) there is a need for transparency in enforcement. This must include information on the authorities in charge of the law's application and on the nature of the obligatory procedures. The government should ensure, through a transparent and public process, the existence of systems of evaluation of how the norms are applied.

9. economy: assure income for artists and contributors of the free knowledge society

There should be diverse sources of support for creative communities including commercial use, direct financial support by consumers and public investment.

In order to promote the fair remuneration of artists, the role of intermediaries should all be limited. The role of currently existing intermediaries should be reduced to critical functions such as collecting usage data and the just distribution of remunerations to authors.

Knowledge, education and innovation are democratised, and production is driven by autonomous initiative and solidarity. Communities self-organise and self-govern. Exchange occurs according to each person's abilities and offerings to service mutual needs. Earnings are distributed fairly according to the work carried out.

10. anti-trust: avoid monopolies and reduce dominant market forces

Encourage free competition and diversity by implementing strong anti-trust legislation against monopolies and market dominance. We strive for a level playing field where many more cultural entrepreneurs than nowadays can earn a decent income. Instead of a small number of bestsellers, a much larger number and variety of wellsellers can thrive when market dominance is limited.

Transparency is not enough to protect user's freedoms

Question 14: What should transparency for consumers consist of? Should the standards currently applied be further improved?

Nowadays many advocates of the market tend to believe in the "invisible hand" of the market (Adam Smith), which is believed to be most efficient and rational. In that line many tend to think that the provisions of the Telecoms Package – which establish transparency so that consumers can switch access providers if the latter is messing up with the Internet traffic – is in and of itself enough to protect Internet users. This is however not sufficient to guarantee the user's fundamental freedoms. First of all, competition between providers is far from being a reality in many areas of the EU. Second, nothing would prevent all providers to start discriminating their traffic. That's why we need a pro-active stance on Net neutrality, with the adoption of ad-hoc regulations to protect this principle.

The same principles for mobile and fixed networks

Question 6: Should the principles governing traffic management be the same for fixed and mobile networks?



Yes they should. First of all as mobile networks are getting a stronger and stronger part in the network traffic. Second, there is no reason to distinguish these networks, as they combined make up the global internet network. Discrimination can lead to a split in the internet and lead to a detriment of the users freedoms. Understandably there can be differences in traffic management due to congestion in mobile networks, but ultimately the same principles should apply.

At the same time regulators should build on the success of WIFI technologies and consider reforming the European spectrum policy to authorize new unlicensed uses of the spectrum.

A network of nodes designed for public interest

Question 10: Are the commercial arrangements that currently govern the provision of access to the internet adequate, in order to ensure that the internet remains open and that infrastructure investment is maintained? If not, how should they change?

Instead of dividing the net as a two-sided (or multi-sided) market, we see a network of nodes, where any person or organisation with a website or other activity forms a node. Rather than viewing creation and usage as a uni-directional flow, we see a complex network in which the same nodes are sometimes creators, sometimes consumers and where neutral communications are critical to link them. Our focus should thus be on enabling these end-users to create and exchange, more than on helping the service providers to build “platforms” to intermediate their interactions. When network operators don't see sufficient return on investment for their share in the network, we should encourage public or commons-based network operators to take over.

**Free Knowledge Institute
Amsterdam, September 30, 2010**