



KEEPING THE INTERNET
OPEN • INNOVATIVE • FREE

www.cdt.org

1634 I Street, NW
Suite 1100
Washington, DC 20006

P +1-202-637-9800

F +1-202-637-0968

E info@cdt.org

THE IMPORTANCE OF INTERNET NEUTRALITY TO PROTECTING HUMAN RIGHTS ONLINE

October 1, 2013

I. Introduction

The history of the Internet has shown that it has tremendous capacity to advance human rights, in particular freedom of expression and related rights. Over 2 billion people around the world connect every day to access and share information and participate in wide-ranging aspects of social, economic, and political life. For individuals, connecting to the Internet provides access to an ever-expanding array of information resources and online services. At the same time, it offers opportunities for people to reach new audiences at very low cost compared to other forms of mass media. To an unprecedented degree, the Internet transcends national borders and reduces barriers to the free flow of information, enabling free expression, democratic participation, and the enjoyment of other rights.

At least, it can. Merely having Internet access is not sufficient to guarantee the full flowering of free expression and the other rights it enables, including the rights to freedom of assembly and association, the right to education, and the right to participate in cultural life. The Internet's power to transform communications and promote free expression and a pluralistic information environment flows from certain characteristics that have defined the Internet since its inception. These characteristics are not immutable, however, and are increasingly subject to pressure. To maximize the Internet's potential to advance human rights, the Internet must remain free from centralized controls, open to the fullest range of content and services, and truly global. Establishing rules to preserve net neutrality – or more precisely, Internet neutrality – is one way to prevent the imposition, by those in a position to control access, of structural inequalities that would distort this environment.¹

Much writing and advocacy related to the Internet and free expression is concerned with state censorship and other curtailment of rights by governments. This is a critically important aspect of online free-expression advocacy, made ever more so by the ongoing revelation, as of this writing, of widespread surveillance of Internet traffic. But governments' duty to protect human rights extends beyond non-interference, particularly in the realm of communications

¹ CDT uses the term "Internet neutrality" to make it clear that neutrality principles should apply only to Internet access, not to non-Internet services offered over broadband infrastructure. We do not argue that neutrality obligations should apply to over-the-top services offered via the Internet.

and free expression.² And as the telecom sector is increasingly liberalized, private Internet access providers are in a position to control their customers' access to Internet content, often for purely commercial reasons. Discriminatory treatment of Internet traffic by access providers threatens Internet users' ability to seek, receive, and impart information of their own choosing, and the ability of entrepreneurs around the world to launch new communications tools and services that in turn can advance human rights. Fully protecting user choice and free expression and other rights online therefore requires that governments take steps to prevent access providers from taking actions that may interfere with users' enjoyment of those rights.

CDT's previous work has examined the need for rules to protect neutrality as the Internet evolves.³ This paper seeks to frame the issue more directly in terms of Internet neutrality's role in fostering a range of human rights, including free expression, access to knowledge, and democratic participation. We also offer a set of principles to guide the enactment of rules to protect Internet neutrality.

II. Designed for Free Expression

In terms of its technical transmission architecture, the Internet has historically been indifferent to the content transmitted across it. Two fundamental design principles underlie this architecture: layering and the end-to-end principle. Layering creates a logical separation between network functions (such as the addressing and routing of information) and endpoint functions (such as the processing and presentation of content by servers, PCs, and smartphones). The end-to-end principle requires that networks take on only network responsibilities, leaving all other functionality to the endpoints.⁴ By analogy to the postal system, endpoints are like people writing and reading letters, while the primary function of ISPs' routers and switches is to read addresses and move information to its destination like the postal service. The result is a general-purpose network that accepts an ever-expanding array of content and applications – ranging from Skype to 'cloud' storage to personal websites. Within the Internet, networks receive and forward communications, without having to make an assessment of what the traffic is (e.g., whether it is an e-mail, a website, or a voice-over-IP call).

This approach permits the greatest level of flexibility for new uses of the Internet, making the Internet an unprecedented platform for free expression and innovation in communications. End users post any content and can invent wholly new applications and services without any changes to the underlying network. It enables any two Internet users – individuals, companies, websites, etc. – to communicate with each other without any need to get permission or make prior arrangements (other than purchasing basic access to the Internet) with their network providers or any other entity in between the two end points.⁵ “The Internet is a general purpose

² See *infra* note 25 and accompanying text.

³ See, e.g., CDT, *Preserving the Essential Internet*, 2006, <https://www.cdt.org/paper/preserving-essential-internet>.

⁴ See J.H. Saltzer, D.P. Reed and D.D. Clark, *End-to-End Arguments in System Design*, ACM Transactions in Computer Systems 2, 4 November 1984, pp 277-288, <http://web.mit.edu/Saltzer/www/publications/endtoend/endtoend.pdf>; see also Brief of Internet Engineers, *FCC v. Verizon* (US Court of Appeals for the DC Circuit, 11-1355), <http://www.fcc.gov/document/internet-engineers-amicus-brief-no-11-1355-dc-cir> (a legal brief explaining the technical functionality of the Internet presented to the court considering a legal challenge to the US Federal Communications Commission's rules to establish Internet neutrality).

⁵ See Barbara van Schewick, *Internet Architecture and Innovation*, MIT Press, 2010, 72–75, 286–289 (discussing “end-to-end,” “application-blind” network architecture).

technology that creates value not through its own existence, but by enabling users to do what they want. The Internet thus creates maximum value when users remain free to choose the applications they most highly value.”⁶

This design has resulted in specific characteristics that support the Internet’s power to promote free expression, access to knowledge, and democratic participation through ever-expanding means and opportunities for communication.⁷ These defining attributes of the Internet include:

- **Global:** Absent interference, the Internet provides immediate access to information from around the world. For a user, it is as easy to send information to, or receive information from, a user on another continent as it is to communicate with a user in the building next door.
- **User-Controlled:** The Internet allows users to exercise far more choice than even cable/satellite television or short wave radio. As the Internet exists now, a user can skip from site to site in ways that are not dictated by either the content providers or the access provider. User-controlled filtering tools can help users prevent unwanted content from reaching their computers.⁸
- **Decentralized:** The Internet is based on open technical standards and was designed to be decentralized. At the edges of the network, innovators can create a very wide range of applications and offer them without seeking approval or coordination of the entities operating the core of the network. This has meant that, compared to other forms of mass media, the Internet lacks the kind of gatekeepers that exist in legacy print or broadcasting media and offers low barriers to access.
- **Open & Competitive:** The Internet is relatively unconstrained by scarce resources (as compared to, for example, radio and television broadcast channels) and can accommodate an essentially unlimited number of endpoints and speakers. Relative to mass media, there is much greater parity between large and small speakers online. Differences in resources notwithstanding, any individual can post content and make it accessible to the same global audience as that of large media companies.

While these characteristics have historically represented the status quo, access providers are increasingly technologically capable and economically motivated to act in ways that would alter these characteristics to the detriment of individuals’ enjoyment of human rights. Internet neutrality is primarily concerned with preserving these characteristics, especially openness.

CDT defines Internet neutrality as the principle that providers of Internet access should not discriminate in their carriage of Internet traffic on the basis of its source, destination, content, or associated application.⁹ Internet neutrality requirements are a key tool for addressing the risk

⁶ Engineers’ brief, *supra* note 4.

⁷ See Center for Democracy & Technology, *Regardless of Frontiers: The International Right to Freedom of Expression in the Digital Age*, April 2011, http://www.cdt.org/files/pdfs/CDT-Regardless_of_Frontiers_v0.5.pdf.

⁸ See John B. Morris, Jr. & Cynthia M. Wong, “Revisiting User Control: The Emergence and Success of a First Amendment Theory for the Internet Age,” *U. of N. Carolina First Amendment Law Review*, vol. 8, Fall 2009, http://www.cdt.org/files/pdfs/morris_wong_user_control.pdf.

⁹ Appropriate exceptions should be made for reasonable network management. CDT has written extensively on the practicalities of implementing Internet neutrality rules. See generally <https://www.cdt.org/issue/internet-neutrality>.

that access providers will distort competition and reduce opportunities for free expression online (for example by slowing the traffic from services that compete with their own offerings). They are critical for ensuring that the Internet continues to promote openness, innovation, and human rights as the role the Internet plays in world economies, governance, and public discourse grows ever larger.

III. The Internet and Human Rights

The Internet reflects and has substantially advanced two central, forward-looking concepts of international free expression standards: borderlessness and choice. The Universal Declaration of Human Rights states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas *through any media and regardless of frontiers.*”¹⁰ Similarly, Article 19.2 of the International Covenant on Civil and Political Rights states, “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, *regardless of frontiers*, either orally, in writing or in print, in the form of art, or *through any other media of his choice.*”

As a decentralized global network, the Internet offers individuals unprecedented power to seek and impart information across borders. It offers not only unprecedented global reach for individual speakers, but also unprecedented capacity for diverse information sources ranging from professional media sites to social networking sites, educational resources such as MIT Open Courseware,¹¹ and video platforms for audiences to choose from.

Accordingly, there is growing international consensus that the right to freedom of expression must be fully protected on the Internet. In 2011, UN Special Rapporteur for Freedom of Opinion and Expression Frank LaRue issued a landmark report on online free expression, calling the Internet “one of the most important vehicles by which individuals exercise their right to freedom of opinion and expression.”¹² LaRue and the special rapporteurs on freedom of expression to regional human-rights bodies for Africa, the Americas, and Europe also jointly issued a set of principles for online free expression, including that “Freedom of expression applies to the Internet, as it does to all means of communication. Restrictions on freedom of expression on the Internet are only acceptable if they comply with established international standards.”¹³ The Human Rights Committee’s ICCPR General Comment 34 specifies that protected means of expression “include all forms of audio-visual as well as electronic and internet-based modes of

¹⁰ Article 19 (emphasis added).

¹¹ <http://ocw.mit.edu>.

¹² UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, May 2011, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/17/27&Lang=E>.

¹³ Frank LaRue, Dunja Mijatoviæ (Organization for Security and Co-operation in Europe), Catalina Botero Marino (Organization of American States), and Faith Pansy Tlakula (African Commission on Human and Peoples’ Rights), Special Rapporteurs’ Joint Declaration on Freedom of Expression and the Internet, June 2011, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=848&IID=1>.

expression.”¹⁴ And in 2012 the Human Rights Council issued a resolution that the “same rights that people have offline must also be protected online, in particular freedom of expression.”¹⁵

Moreover, free expression is an enabling right, the exercise of which feeds directly into the exercise of other social, cultural, economic and political rights, “such as the right to education[,] . . . the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, . . . [and] the rights to freedom of association and assembly.”¹⁶ And experience has shown how the Internet can empower not just individual free expression and access to information, but also political discourse, participation in culture, and economic development.¹⁷ This magnifies the Internet’s unique power to advance a range of human rights and underscores the importance of preserving that power through meaningful Internet neutrality rules.

IV. Internet Neutrality’s Role in Fostering Human Rights

In human-rights terms, preserving Internet neutrality means preserving the power of individuals to make choices about how they use the Internet – what information to seek, receive, and impart, from which sources, and through which services. This in turn advances the other cultural and civil and political rights listed in the previous section.¹⁸

Violations of the neutrality principle that amount to blocking certain information resources or restricting what information Internet users can impart over their connection would have serious implications for the right to free expression. For example, blocking access to a particular lawful blog because its content is disfavored by the access provider would raise obvious concerns. Indeed, the blocking of Internet content by states has long been a leading concern of Internet-free expression advocates and was a major focus of the UN Special Rapporteur’s report.¹⁹

In the Internet neutrality context, however, outright blocking often poses a much less realistic threat than the risk that access providers will seek to discriminate among different types or providers of Internet content. Discrimination among content can refer to either prioritizing or slowing down certain content for delivery over an access provider’s network. When the net neutrality debate first flared in the US in the mid 2000s, broadband company executives made statements not about blocking per se, but about their desire either to obtain payment from the services their subscribers used or to enter into special arrangements with certain content

¹⁴ UN Human Rights Committee, General Comment 34, ¶ 12.

¹⁵ Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, A/HRC/RES/20/8, 17 June 2012, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/20/8.

¹⁶ UN Special Rapporteur’s Report, *supra* note 12.

¹⁷ See CDT, *Regardless of Frontiers*, *supra* note 7; see also McKinsey, *Online and upcoming: The Internet’s impact on aspiring countries*, January 2012, http://www.mckinsey.com/client_service/high_tech/latest_thinking/impact_of_the_internet_on_aspiring_countries.

¹⁸ See, e.g., Human Right Council, Report of the Special Rapporteur on the rights of peaceful assemble and association, Maina Kiai, May 2012, ¶ 32, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf. (“The Special Rapporteur notes the increased use of the Internet, in particular social media, and other information and communication technology, as basic tools which enable individuals to organize peaceful assemblies.”)

¹⁹ See *supra* note 12, ¶ 31 (“States’ use of blocking or filtering technologies is frequently in violation of their obligation to guarantee the right to freedom of expression.” In addition, the report concludes that “while States are the duty-bearers for human rights, private actors and business enterprises also have a responsibility to respect human rights”).

providers to guarantee faster delivery speeds. This desire – to be paid by content providers for carrying their traffic – has continued to manifest in disputes over the terms by which large content networks (such as Google/YouTube) and large access providers (such as France Telecom–Orange) interconnect and exchange traffic.²⁰ And there appears to be a growing trend toward “sponsored data” arrangements, particularly in the mobile market, under which content providers make deals with access providers to exempt their content and services from data usage caps.²¹

Discriminatory treatment of traffic has a more subtle but nonetheless meaningful impact on users’ rights. First, the means of identifying traffic to carry out discriminatory treatment may impact the privacy of users’ communications. In addition, choosing freely from among the myriad content, applications, and services available on the open Internet is an important part of the exercise of the right to free expression online. If access providers speed up or slow down access to certain sites, that choice risks becoming the illusion of choice, with users unwittingly steered toward particular content or services they might not have otherwise chosen.

Moreover, the Internet is not simply another mass medium for the one-way dissemination of content and information; it is also a platform for the development of new communications tools. Much like the way the free expression right is an enabler of other rights, the Internet is an enabler of varied, diverse media and services that in turn advance the enjoyment of free expression and other rights. Internet neutrality helps preserve a competitive market for such online content and services, fostering a diverse array of information sources and communication tools that enables the enjoyment of human rights by users of those tools. New competitors benefit tremendously from the open Internet’s low barriers to entry. Once a company pays for its own Internet connection, it instantly gets access to the whole global network – a virtually infinite addressable market. Small providers of content, applications, and services can compete directly for end users on a technologically neutral playing field, regardless of identity of the users’ ISPs.

By contrast, if the Internet were to move in a direction where each ISP may determine whether and how fast its subscribers can access particular content and services, providers of online content and services would face a very different environment. Every new service would have to worry about how its traffic would be treated by various ISPs across the globe in order to be assured reaching the largest potential audience. And inevitably, some application providers would seek to gain competitive advantage by striking deals with ISPs for favorable treatment. As deals with ISPs became commonplace, anyone who did not strike such deals might face significant competitive disadvantages. Or in cases where paid priority was viewed as a

²⁰ See Ewan Spence, “Why Orange’s Dominance in Africa Forced Google To Pay For Traffic Over The Mobile Network”, *Forbes*, 20 January 2013, <http://www.forbes.com/sites/ewanspence/2013/01/20/why-oranges-dominance-in-africa-forced-google-to-pay-for-traffic-over-their-mobile-network/>. Providers of Internet access have been roundly criticized for regulatory proposals to favor payment from content and application providers for the delivery of their traffic to Internet users. See Body of European Regulators for Electronic Communications, BEREC’s comments on the ETNO proposal for ITU/WCIT or similar initiatives along these lines, November 2012, http://berec.europa.eu/eng/document_register/subject_matter/berec/others/1076-berecs-comments-on-the-etno-proposal-for-ituwcit-or-similar-initiatives-along-these-lines; Center for Democracy & Technology, *ETNO Proposal Threatens Access to Open, Global Internet*, June 2012, <https://www.cdt.org/report/etno-proposal-threatens-access-open-global-internet>.

²¹ Data usage caps are numerical limits on the amount of data a subscriber to an Internet access provider may use per month. See e.g., Bruce Houghton, “Spotify Adds Germany’s Deutsche Telekom To Growing List Of Mobile Deals,” *Hypebot*, October 1, 2012, <http://www.hypebot.com/hypebot/2012/10/spotify-adds-germanys-deutsche-telekom-to-growing-list-of-mobile-deals.html>.

necessity, content providers may choose to withhold their content from the customers of some access providers rather than pay. Whether through the onset of higher economic barriers to entry (such as a small startup in South America not having the leverage to pay to compete in foreign markets) or through refusals to serve certain markets deemed not worth the cost, the end result would be far fewer information sources and communications tools for Internet users.

Thus, the economic benefits of Internet neutrality – a neutral Internet that fosters competition among Internet-based services and economic development – also enhance the human rights benefits. By expanding the universe of information sources and services, this open, competitive environment supports user choice, free expression, access to knowledge and information, and public discourse and activism. The loss of a neutral platform for online services would undermine the ability of Internet users to fully exercise their fundamental rights online.

V. States' Role and Guiding Principles for Neutrality Rules

The Special Rapporteurs' Joint Statement on Freedom of Expression and the Internet, recognizing the Internet's power and the risk that interference with its use poses to free expression, included the following clear and specific call for the protection of Internet neutrality: "There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application."²² Enacting laws or regulations to protect Internet neutrality is one step states can take to heed this call and meet their obligation to protect the right to freedom of expression and opinion as well as other rights empowered by the Internet.

For state-owned access providers or providers with relatively direct ties to government, disproportionate or egregious interference with citizens' use of the Internet may well rise to direct violations of users' rights under the ICCPR if they do not meet the standard for permissible limitations.²³ But where Internet access services are privately run, even if competitively offered, discriminatory actions by these providers can also restrict rights. Indeed, the UN Special Rapporteur's report noted that "the private sector has gained unprecedented influence over individuals' right to freedom of expression."²⁴ And in such contexts where actions by private entities can restrict rights, the Human Rights Committee has advised that "the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of

²² See *supra* note 13, ¶ 5.

²³ General Comment 34, *supra* note 14, ¶ 7 ("The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. . . . Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities.") The UN Special Rapporteur's report, *supra* note 12, summarizes how, to be permissible under international human rights law, any such restrictions on free expression imposed by states must be (i) transparently described in law, and (ii) the least restrictive means of achieving a (iii) legitimate purpose as listed in Article 19.3 of the ICCPR.

²⁴ UN Special Rapporteur's Report, *supra* note 12, ¶ 44.

Covenant rights in so far as they are amenable to application between private persons or entities.”²⁵

Below, we offer five principles to guide the substantive development of Internet neutrality protections that can help states meet their duty to protect free expression and other human rights online.

There should be a clear expectation that Internet access services must be provided in a neutral manner, without discrimination based on the content, applications, or services subscribers choose to access. The core principle of Internet neutrality is that ISPs must not discriminate among lawful traffic based on its content, source, destination, ownership, application, or service. There is an emerging consensus among states and regions that have taken up Internet neutrality to prefer application-agnostic, i.e. nondiscriminatory, network management.²⁶ Reasonable, narrow exceptions should be permitted, but non-discrimination – including banning both prioritization and de-prioritization of traffic – must be established as the baseline expectation.

The scope of the neutrality obligation should be clearly defined and should account for the crucial distinction between Internet access services and specialized services. CDT prefers the term “Internet neutrality” because the goal is to preserve the openness of the Internet – as opposed to other, non-Internet services that also may be offered using broadband networks, such as stand-alone voice- or television-over-IP services. The neutrality and openness of the Internet platform can be adequately protected without foreclosing the use those networks for a wide range of non-Internet services on terms and conditions of network operators’ own choosing. But the line between Internet access and other services not subject to a neutrality obligation must be clear; specialized services must be truly specialized in the sense of serving a specific and limited purpose. A service that provides a general-purpose ability to send and receive data communications across the entire Internet should not be eligible for treatment as a specialized service.

²⁵ UN Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, Adopted 29 March 2004 (2187th meeting), ¶ 8, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CCPR/C/21/Rev.1/Add.13&Lang=E>; See also Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, March 21, 2011, (The Framework rests in part on states’ obligation as to third parties, as well as the “corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others.”)

²⁶ See, e.g. US Federal Communications Commission, *Report and Order in the matter of Preserving the Open Internet* (GN Docket No. 09-191), Adopted 21 December 2010, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-201A1.pdf; Canadian Radio-television and Telecommunications Commission, *Review of the Internet traffic management practices of Internet service providers* (CRTC 2009-657), 21 October 2009, <http://www.crtc.gc.ca/eng/archive/2009/2009-657.htm>; Chile, Ley núm. 20.453 Consagra el Principio de Neutralidad en la Red para los Consumidores y Usuarios de Internet, <http://www.leychile.cl/Navegar?idNorma=1016570> (in Spanish); Netherlands, Telecommunications Act, adopted May 2012, discussion available at Door Ot van Daalen, “Netherlands First Country in Europe with Net Neutrality,” *Bits of Freedom blog*, 8 May 2012, <https://www.bof.nl/2012/05/08/netherlands-first-country-in-europe-with-net-neutrality/> (partial unofficial English translation available at <https://www.bof.nl/2011/06/27/translations-of-key-dutch-internet-freedom-provisions/>); Slovenia, Zakona o elektronskih komunikacijah (ZEKom-1) (Electronic Communications Act), adopted 20 December 2012, <http://www.uradni-list.si/pdf/2012/Ur/u2012109.pdf#/u2012109-pdf> (English summary available at <http://radiobruelleslibera.wordpress.com/2013/01/03/slovenia-reinforces-net-neutrality-principles/>).

The neutrality obligation should apply equally to fixed and mobile Internet access services. In a converging world where mobile wireless connectivity is expected to make Internet access increasingly ubiquitous, failing to address mobile would leave a gaping hole in any policy meant to promote openness and nondiscrimination on the Internet. Mobile carriers may face some special technical challenges, relating to such factors as spectrum limitations and radio interference. Given these technical realities, what constitutes reasonable traffic management on a mobile data network may differ from the norm on fixed connections. But there is no reason to think that mobile ISPs need to discriminate among traffic based on content-related factors such as its source, ownership, application, or service. Core neutrality principles can and should apply to mobile Internet access services.

There should be clear guidelines for evaluating exceptions for reasonable network management practices. Rather than attempting to specify which particular technical practices are acceptable, Internet neutrality rules should establish clear but flexible criteria for assessing the reasonableness of network management techniques that deviate from the non-discrimination norm. As exceptions to the neutrality rule, reasonable network management activities should be consistent with international human rights standards regarding transparency, narrow tailoring, and proportionality. Wherever possible, traffic management practices should be content- and application-neutral. This is the most reliable way to ensure that traffic management is applied fairly and evenly, and that the ISP is not selecting which specific content or applications to favor or disfavor. The US Federal Communications Commission, the Body of European Regulators for Electronic Communications, and the French Autorité de Régulation des Communications électroniques et des Postes have all proposed criteria for assessing the reasonableness of network management practices.²⁷

The neutrality obligation should not apply to over-the-top services available on the Internet. Internet neutrality must focus on the goal of preserving the Internet as a neutral, non-discriminatory transmission medium. Thus, the obligation should apply to access providers only, and not to the limitless array of content, services, and application available over the Internet. Concerns over market power, competition, or the human rights impact and obligations of these services are best addressed separately.

* * *

As the role of the Internet in the social, economic, and political areas of everyone's life grows ever greater, states must act to ensure that the enjoyment of human rights is protected. CDT strongly believes that rules based on these principles will help preserve the Internet's unique power to promote free expression and other rights.

For more information, contact: Andrew McDiarmid, Senior Policy Analyst, andrew@cdt.org
Matthew Shears, Director, Project on Global Internet Policy and Human Rights, mshears@cdt.org

²⁷ FCC *Open Internet Order*, *ibid.*; ARCEP, Internet and network neutrality: Proposals and recommendations, September 2012, pp. 24–26, http://www.arcep.fr/uploads/tx_gspublication/net-neutralite-orientations-sept2010-eng.pdf; BEREC, *Summary of BEREC positions on net neutrality*, December 2012, p. 6, [http://berec.europa.eu/files/document_register_store/2012/12/BoR_\(12\)_146_Summary_of_BEREC_positions_on_net_neutrality2.pdf](http://berec.europa.eu/files/document_register_store/2012/12/BoR_(12)_146_Summary_of_BEREC_positions_on_net_neutrality2.pdf).