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The Netherlands Dances the Two-Step With Its New Telecom Law : Net-Neutrality and Online Advertisers Learn the Steps

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MPs on Wednesday voted in favor of new legislation guaranteeing internet access for all and setting limits to the use of tracking text files known as cookies, and it would essentially guarantee “net neutrality” by preventing the telecommunication companies from charging customers more for using Skype and similar Internet phone services. The Netherlands is the first EU country to make a stand for net neutrality.

Background

The European Commission unveiled proposals to foster a neutral and competitive Internet last month which set out possible infringements of net neutrality but preferred to bide its time before coming up with concrete measures to prevent network operators and Internet providers from shaping monopolies. Net neutrality is the principle that data packets on the Internet should be moved impartially, without regard to content, destination or source. Net neutrality is sometimes referred to as the “First Amendment of the Internet.” As more European media consumption – such as radio, TV, telephony and video conferencing – migrates to the web, regulators are concerned about operators’ attempts to block or slow down services, which compete with their own or don’t yield much profit, effectively creating fast lanes and slow lanes for different services.

High-speed Internet carriers have been seeking legislative support for a two-tiered Internet service model. In a two-tiered model, carriers would be able to charge owners of Web sites a premium fee for priority placement and faster speed across their pipes. Those opposing the carriers argue that the Internet was designed to work in a traffic-neutral way and has become what it is, to some extent, because of that neutrality.

The EU proposals admitted that problems had been detected, such as blocking of Internet telephony and anticompetitive traffic management, but also claims these have so far been dealt with by a national regulator or negative media coverage. Member States are still in the process of transposing the Telecoms Framework and if these provisions fall short on delivering a neutral net, then the EU Commission may be in a position to legislate.

The Netherlands Vote

Although individual Member States are still allowed to legislate on net neutrality, as stated above, the EU

Commission is looking into trying to harmonise it, or at the very least, to legislate on this matter. Nevertheless, this past month, the Netherlands took a bold stand when MPs approved a bill that will make the country the first in Europe to enshrine net neutrality in law. National law must comply with EU law, notably in cases where EU law harmonises legislation in a particular area. Where EU law does not impose harmonised requirements, Member States remain free to legislate as they please as long as they do not violate the fundamental principles of EU law laid down in the Treaty. The Commission would only challenge Dutch law if, after studying it carefully, it considered that it was not in compliance with EU law.

If the bill is approved by the Dutch senate, as is expected to occur, it will mean telecoms operators cannot, including Dutch telecommunications company KPN as well as the Dutch arms of Vodafone and T-Mobile from blocking or charging customers an extra fee if they want to use VoIP services such as Skype. Operators will not be able to levy different pricing tiers according to the types of services their customers use, and the neutrality of the internet as a medium will be ensured. Additionally, this new law would force websites to get explicit consumer consent before they place small text files known as cookies on a computer. The new law was opposed by the online-advertising industry, which fears the legislation will pave the way for similar moves across Europe. An increasing number of ad campaigns are dependent on cookies, which store data on users and their viewing habits, and the business model could be crippled. It is said that fifty percent of campaigns in euro volumes might be shut down.

Another law voted through by the Dutch parliamentarians on Wednesday would stop operators from employing deep-packet inspection (DPI) techniques, while a third forbids the disconnection of internet users for any reason other than fraud or failure to pay their bills.

The telecommunications industry immediately warned that the law may put operators off from making investments in high-speed net infrastructure, for fear of not recouping their money. A spokesman from Vodafone said the law will “lead to a large increase in prices for mobile internet for a large group of consumers”, while KPN — the operator that spurred the country’s lawmakers into action by explicitly saying it would start charging customers if they wanted to use services like Skype over KPN’s network — said it regretted “that parliament didn’t take more time for this legislation”.

On the other side, digital activists reacted very positively with the news. The French digital rights group La Quadrature du Net responded to the news of the law’s approval by saying it was “excellent news and an example for all of Europe”, while Dutch equivalent, Bits of Freedom, opined that it was “a crucial foundation for Internet freedom”.

Net Neutrality’s Future In Europe

By the end of the year, the Commission plans to produce a report based on Berec’s – a regulatory group – findings, to follow on from its initial net neutrality report. It will look at areas such as VoIP, barriers to changing operator, and failure to provide transparency and sufficient quality of service. Commissioner Neelie Kroes sternly stated, “If I am not satisfied that consumers can counteract such practices by switching providers, I will not hesitate to introduce more stringent measures. That could be in the form of more prescriptive guidance, or even legislation if it is needed.”

It will be interesting to see what happens concerning the national legislation and the EU when it is know that certain providers in Member States are throttling peer-to-peer (P2P) file-sharing or video streaming or are blocking or charging extra for the provision of VoIP services in Austria, Germany, Italy, the Netherlands, Portugal and Romania.

It should be noted that the Dutch law is the first such in the EU and second globally. Chile has also written net neutrality into its telecommunications law that came into effect in May of this year.

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