

# **Revisiting Net Neutrality – A Comparative Legal Analysis of Potential Regulatory Solutions in the European Union and the United States**

*Research project*

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Abstract:

The advent of Information and Communication Technologies has triggered a new and fierce debate on how democratic societies may best safeguard and preserve the free and indiscriminate flow of information to citizens in the 21<sup>st</sup> century. The Internet as a communicative and informative tool permeates every layer of society. At the same time, the Internet has become a global public forum for economic growth and innovation. The Internet's enormous economic and societal significance raises the stakes with regard to the question of how, if at all, it should best be regulated. In this context, the Net Neutrality principle can be considered the single most pressing regulatory issue to be addressed in the near and midterm future in both the United States and the European Union.

Proponents of Net Neutrality are pushing for regulatory or legislative solutions to maintain the free and indiscriminate nature of web traffic. Opponents most notably argue for a market-based approach that would ultimately yield better results for consumers and Internet service providers alike. Neither of the two sides objects to the fundamental proposition that the Internet's architecture ought to be conceptualized upon the principles of economic opportunity, freedom of information, and free speech. However, both sides essentially suggest that only their solution would achieve this goal.

This project will identify and evaluate the different kinds of regulatory solutions that have been put forward or are currently in place in the European Union and the United States. The European Union's tentative regulatory framework—which basically allocates regulatory leverage at both the national and the Union level—will serve as a comparative vantage point for analyzing regulatory approaches by the U.S. Federal Communications Commission and legislative initiatives in the U.S. Congress.

A recurring focus in the Net Neutrality debate usually lies in either devising a comprehensive regulatory framework or abandoning the option of regulatory intervention altogether. Therefore, the project will also analyze the feasibility of a more incremental regulatory involvement by which an Internet service provider's prioritization of web traffic could be monitored pursuant to a certain set of "threshold requirements", such as compliance with data privacy standards (in the context of "deep packet inspections"), requirements as to when data packages are to be prioritized, or proof that any prioritization would apply to a specific category of data (e.g. e-mail) rather than any specific content. The project will further examine whether calibrating antitrust and competition laws in both the United States and the European Union could serve as an additional instrument to prevent vertically integrated providers from leveraging the tool of prioritization to the detriment of other content providers.

Dissecting and evaluating existing regulatory advances and proposals by means of comparative legal analysis will help foster a better understanding of how the principle of Net Neutrality can be reconciled with the increasing volume of data traffic the Internet has to cope with, the economic interests of Internet service providers, and the continuing need for high-quality services. Through this analysis, the project seeks to strike a reasonable and lasting balance between regulatory and market-based means for allowing the Internet to remain a free and open marketplace of ideas and economic, political, and social interaction.