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# THE PRINCIPLE OF THE INTERNET NEUTRALITY AS A FREEDOM OF EXPRESSION AND THE RIGHT OF BEING INFORMED

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# THE PRINCIPLE OF THE INTERNET NEUTRALITY AS A FREEDOM OF EXPRESSION AND THE RIGHT OF BEING INFORMED

**Angela MÎȚĂ - BACIU**[1]

## Abstract:

*Net Neutrality (also known as Network Neutrality or Internet neutrality) is all about creating a neutral internet. The term supports the view that Internet traffic should be treated equally.*

*The term – Net Neutrality -- has not been popular till early 2000s when advocates of net neutrality and associated rules have raised concerns about the ability of broadband providers to use their last mile infrastructure to block Internet applications and content (e.g., websites, services, protocols), even blocking out competitors.*

*The right to Internet access is closely linked to the right of freedom of speech which can be seen to encompass freedom of expression too. Two key facets of the Internet are highlighted: the content of the Internet and the infrastructure of the Internet.*

*The infrastructure is necessary in order to deliver the service to the masses but requires extensive positive action. The content loaded onto the Internet however is seen as something that should be available to all, with few or no restrictions; limits on content have been viewed as the key breach of human rights, namely the right to freedom of speech that include the right to receive information.*

## Keywords:

*Internet neutrality, freedom of expression, right to be informed.*

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The internet has become a necessity for the majority of people in the developed countries. Either they connect from computer or mobile device; the people are spending more and more time online and intend to make the internet a new environment for social interaction, education, activities organizer, increase and relaxation. Even more, because of its importance in the day to day life, the internet arrived to even be part of the human rights in certain countries like Estonia, France, Finland, Greece and Spain.

**The convention for the protection of Human Rights and the Fundamental Freedom[2]**

Entitled the freedom of expression, Article 10 from the European Convention of Human Rights guarantees the freedom of speech and information: *Every person has the right to freedom of expression. This right includes the freedom of opinion and the freedom to receive and communicate information or ideas without the public authorities' involvement and without any frontiers.*

**The right to Internet Access**

Because of its importance in the day to day life, the Internet arrived to be an important subject from the human right perspective. The right to internet access is closing related to the freedom of speech, which extensively amalgamates the freedom of opinion and the freedom to receive or communicate information or ideas without the public authorities' involvement and without any frontiers.

Two key elements of the Internet are highlighted: the content and the infrastructure. The infrastructure is needed to supply the service to the masses and requires a positive action.

The rich content of the Internet is considered like something that needs to be available to everybody, with little or no restrictions. The access restrictions to Internet content was seen as a violation of freedom of expression which involves also the access to information.

Although considered by many an environment where freedom of expression is protected and guaranteed, in reality, the lack of legal norms makes the internet to be a model of harmony and peace, based more on

[2] Convenţia Europeană a Drepturilor Omului adoptată la Roma la 4 noiembrie 1950, amendată de Protocoalele nr. 11 şi 14, publicată pe site-ul Consiliului Europei la adresa *http://www.echr.coe.int/*



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the Internet providers good will than the protection of national or international organisations.

However, the vulnerability of the legal system mixed with the companies' to seek for commercial methods led to the need for discussion of creating norms that protect the Internet and its users from the potential obuse of some Internet suppliers.

This led some associations representing the Internet Users' interests to request assurances from governments that the Internet remains open for its users, the traffic cannot be discriminated against regardless of the services they will run, regardless of physical devices to be used. In other words, the associations requested that the Internet should not be restricted by the governments or by Internet providers and be guaranteed its neutrality by legislative rules.

**Concept / Definition**

The terminology of neutrality of the Internet (or generally the neutrality of the networks) is defined as being a principle that rules the computer networks.

Even if sometimes this principle is the subject of intense debate, its unanimously considered that it is characterised by the guaranteed of equality of any content, site or platform.

Precisely, the Internet network is built in a certain way as any point of connection (node), even if it is newly introduced, i twill have the same rights as any other node from the network, without the possibility of being discriminated in any way.

Ideally, the Internet should function exactly as a public service of delivery. The delivery person needs to transport the package to the destination, no matter if the delivery person likes or dislikes the content of the package, no matter if the receiver is a company that the delivery persons' shows sympathy or not, no matter where there is no discrimination regarding the expediter from the point of view of the priority of the delivery time or the priority for other clients of the same service.

In the simplest way possible, the Internet neutrality is in fact a principle which suggests that all of the traffic of IT data needs to be treated in an equal way.



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**Issue**

The Internet neutrality was not always in the publics' attention. The principle started to win greater ground in the moment when the users' rights started to shrink and in the moment when the Internet suppliers started to look for new models to increase profitability.

In this way, the public opinion strongly criticized the Internet providers who started to block certain information streams which were intensely utilizing resources. In this way, they started to make it impossible for the usage of certain applications which allowed a share of specific data or permission for the transfer of particular multimedia files.

This decision was supported by the copywriting organizations because many of these applications were transferring protected files.

Also, some of the Internet suppliers, especially the ones supplying mobile phone services, started to block some applications like VOIP (Voice Over Internet Protocol). Although the official explanation given by the operators was that these protocols are using important resources in the network, in reality, these were blocked because the VOIP suppliers had lower tarriffs than the telephony services furnished by the Internet supplier. However, the Internet suppliers can intervene in certain ways, as it is permitted for the Internet suppliers to apply restrictions for the clients regarding the bandwidth availability.

Another factor that contributed to the necessity of the introduction of the Internet neutrality was the desire of winning clients for the Internet suppliers.

The Internet suppliers considered that the large sites which produce a high traffic ratio have to pay a certain amount to cover the costs in regards to the development of the network to handle the greater bandwidth requirements. In other words, the Internet suppliers are demanding that these sites have to share their profits, claiming that the Internet suppliers are the ones who are maintaining this communication environment.

From the side of the web services providers, it existed an attempt to breach the traffic equality because of their desire to have certain advantages against the competition.

This way some companies who own important sites asked the Internet suppliers to prioritize traffic towards them in exchange for money. These users would observe that some sites would load up faster and this would make them be regarded to a higher degree than slow



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loading sites (to the detriment of these sites). Some of the suppliers went even further by blocking certain sites, breaching the competition law.

Internet neutrality tries to establish a balance in the computer bandwidth/networking environment, between the Internet suppliers (or government) and the users. In other words they tried to prevent the breaching of:

- freedom of expression (if the Internet provider prioritise or blocks certain sites or the services, it becomes a censor for the Internet users)
- innovations and competitions (promoting of certain sites by blocking the competition)
- the consumers' right of choice

Even if some countries realise the importance of legalising Internet neutrality, there still exist a lack of reaction at the European level.

**International Regulations**

In 2005, the USA government agency in charge of communication, Federal Communication Commission (FCC) established a series of principles meaning to assure the encouragement of the expanding bandwidth requirements, maintain, the open promotion and interconnectivity of the public Internet:[3]

- the users have the right to access any content they wish, as long as the content is legal
- the users have the right to use run any application or legal services
- the users have the right to connect any legal communication device which does not affect the network availability
- the users have the right to competition between the network providers, service / application providers and content providers

In December 2010, the FCC added a new series of measures regarding the transparency and clarified concerning the kinds of blocks that are permitted for the fixed networks and mobile industry.[4]

The Norwegian Authority of the regulations for Post and Telecommunications (NPT) together with the Internet suppliers and the

[3] http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf
[4] http://ec.europa.eu/information_society/policy/ecomm/doc/library/communications_reports/netneutrality/comm- 19042011.pdf



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important organisations from the telecommunications industry elaborated in 2009 a guide of principles which guarantees the Internet neutrality:[5]

1. The users have the right to an Internet connection with a predefined capacity and quality. This involves:

a) the Internet capacity and quality needs to be clearly specified

b) if the physical connection is shared with other services then it needs to be clarified how the capacity between the Internet and the other services are going to be shared

2. The users have the right to an Internet connection which permits the access to the services and applications desired. This involves:

a) users can transmit and receive any content they are wishing for

b) users can run any services or applications

c) users can connect any devices and can use any program that does not damage the network

3. The users have the right to an Internet connection which does not allow discrimination between applications, services, content, expediter or receiver.

The Canadian Radio Television and Telecommunications Commission – (CRTC) created a legislation regarding the Internet neutrality through which it is required for the suppliers to offer transparecy and is permitting the use of techniques of managing the traffic as a last resort.[6]

Even in France, existed a legal project regarding the Internet neutrality. The project was rejected,[7] generating intense debates within the community. However, we need to mention the French Constitutional Court opinion that considers that: "taking into consideration the importance of the online services for a democratic participation and for the freedom of expression of ideas and opinions. The freedom of expression involves the freedom to access this kind of services "(the decision 2009-580 from 10th June 2009).[8] In this way, Chile is considered[9]

[5] http://www.npt.no/ikbViewer/Content/109604/Guidelines%20for%20network%20neutrality.pdf

[6] http://en.wikipedia.org/wiki/Network_neutrality_in_Canada

[7] http://www.laquadrature.net/en/french-parliament-to-consider-net-neutrality-law

[8] in limba engleza are forma "given the importance [of online services] for democratic participation and the expression of ideas and opinions, [freedom of expression] implies freedom to access such services" (decision 2009-580 of June 10th, 2009, par.12)

[9] http://www.leychile.cl/Navegar?idNorma=1016570&idParte=&idVersion=2010-08-26



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to be the first country to introduce in the legislation the principle of Internet neutrality.[10]

**The European Community Level Regulation**

The opening market of telecommunication, regarding the competition, had a catalysing effect in a sector which used to be reserved just for oligolopists. To complete this evolution, the European decisional authorities adopted a legislation to synchronise with the technological processes and the market demands.

This progress translated in legal plan through the generation of a new regulatory system regarding electronic communications. The principal objective is the consolidation of the competition facilitating the arrival of the new entrants on the market and the stimulation of the investments in this sector.

**The European Union started since 2007 consultations regarding the Internet neutrality.**

In a statement from the European Commission regarding the Internet neutrality[11] it is cited the survey realised by the Body of European Regulators for Electronic Communications (BEREC) in some of the member states of the European Union, which the breaching of this principle through:[12]

- limited bandwidth traffic regarding the peer to peer network and of the applications for multimedia files by some suppliers in France, Greece, Hungary, Lithuania, Poland and UK
- blocking or extra charges for supplying VOIP services in the mobile networks by certain electronic mobile communication operators from Austria, Germany, Italy, Holland, Portugal and Romania.

Even if some of the problems regarding the breaching of Internet neutrality are signalised, this survey was highly criticised by some non-governmental organisations because it was considered that through its

[10] http://en.wikipedia.org/wiki/Network_neutrality

[11] http://ec.europa.eu/information_society/policy/ecomm/doc/library/communications_reports/netneutrality/comm- 19042011.pdf

[12] http://www.apti.ro/raportul-Comisiei-Europene-privind-neutralitatea-Internetului



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arguments is supporting more likely solutions regarding the competition law and commerce law instead of electronic communication law.[13]

In this moment, the European Union adopted a series of directives (Directive 2009/136/CE, Directive 2009/240/CE) which established the users' rights regarding the networks and services of electronic communications.[14] In these directives it is required that the Internet suppliers to assure to provide a larger transparency regarding their services.

Even if the principal of Internet neutrality is partially regulated in the directives, the European Union promised to continually monitor the Internet suppliers and if necessary to take measures against for any breaches.[15]

Through the European Parliament and council regulation (CE) NR. 1211/2009 from 25th November 2009, the European Authority body of Regulation in the Electronic field (OAREC) was established, of which responsibilities were established through this regulation.

OAREC is operating under the Directive 2002/21/CE, the Directive 2002/19/CE, the Directive 2002/20/CE, the Directive 2002/22/CE, the Directive 2002/58/CE, and also the regulations (CE) nr. 717/2007.(3). OAREC meets is objectives in an independent, impartial and transparent way. In the course of its activities, it is following the same objectives followed by the national regulations authorities (ANR), exactly as they are specified in Article 8 Directive 2002/21/CE.

The new created body is contributing in developing a better functionality of the internal market of the electronic communications networks and services and aspiring to assure a coherent application of the electronic communication regulations. It is using the available expertise from the ANR and is fulfilling the tasks in collaboration with these bodies and with the commission. OAREC promotes the cooperation between ANR areas and between the ANR and the commission.

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13 http://www.laquadrature.net/en/net-neutrality-the-european-commission-gives-up-on-users-and-innovators

14 http://en.wikipedia.org/wiki/Telecoms_Package

15 http://ec.europa.eu/information_society/policy/ecomm/doc/library/communications_reports/netneutrality/comm- 19042011.pdf



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**National regulation**

The freedom of expression is regulated in the Romanian Constitution[16] in art. 30 Freedoms of Expression and article art. 31 the right for information. This way it can be said without the fear of being wrong that the freedom of expression is an essential right when we communicate about a democratic society because it is creating the necessary conditions to exercise other human rights. To be able to express an opinion requires having the knowledge sources to collate certain criteria of information.

The right of freedom of expression is closely attached to the right to have access to information. In the same time, the human right to receive ideas and information obligates the person who transmits the data to make the transmission in good faith.

The freedom of expression belongs to each individual, following the lines of good faith. These freedoms incorporate the right to search and receive information. It is not just the individual and the public, but also the right to search for the media which has to receive the information and transmit the data to the public.

Several years ago, in Romania,[17] a telecommunication law was suggested to match the European directives within the national law[18] but at that moment these laws received a negative response from the Equality Commission[19] and were not incorporated into law.

At present, there are weak regulations in this field. Through OUG 111/2011 which implements the modifications from the telecom directives package, a series of obligations of transparency for ISP were imposed since 2012.

For example, in article 51 there is the following directive: *the contracts signed by the consumers to benefit from the access and connections services to the electronic communication public network or to the electronic communication services for the public will contain in a clear format intelligible and easy accessible the following minimum clauses regarding: information regarding any other conditions which restricts the access or the use of certain services and applications(…) d) information regarding the measurements and management procedures of the traffic to avoid the congestion of*

[16] publicata pe http://www.cdep.ro/
[17] http://webapp.senat.ro/pdf/11L378FG.
[18] http://webapp.senat.ro/pdf/11L378EM.
[19] http://webapp.senat.ro/pdf/11L378CA.



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*the segments of the network or the maximum usage, also regarding the impact of these procedures on the quality of the service.*

**The National Authority for Administration and Regulation in Communications - ANCOM**

The National Authority for Administration and Regulation in Communications - ANCOM[20] is the institution which protects the interests of the communication users from Romania through promoting the competition on the communications market. This administration of the limited resources encourages the efficient investments in the infrastructure and innovation.

ANCOM was created from the union of two institutions with experience and expertise in the administrative and regulatory field of this sector: the General Inspector for Communications and Information Technology (IGCTI) and the National Authority for Regulations in Communications and Information Technology (ANRCTI).

This state institution shows that in Romania exist some Internet suppliers that are breaching the principle of Internet neutrality.[21] This conclusion was preceded by a survey in 2010 realised by the National Authority for Administration and Regulation in Communications.

It was found that Vodafone was limiting the traffic of VOIP for all of the users of prepaid Internet Vodafone sim-cards.[22] Orange also practiced similar policies by charging different amounts dependent on which network the receiver was based.[23]

Even if the principle of Internet neutrality is clearly breached, there does not exist any law to stop any provider from performing restrictions. Through a decision from 2011, ANCOM established some quality indicators (by the ISP's) the regarding the access service to the Internet which required to be published by the providers.

[20] Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii la adresa de web *http://www.ancom.org.ro*

[21] http://economie.hotnews.ro/stiri-telecom-8527578-vodafone-orange-operatori-practici-blocare-traficului-internetromania-nu-sunt-interdictii-lege-spune-arbitrul-telecom.htm

[22] https://www.vodafone.ro/consumption/groups/public/documents/digital_asset/vod010112.pdf

[23] http://www.orange.ro/young/ppy-young-ro.html



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**Conclusion**

The principle of Internet neutrality hinges on the acknowledgement of the principle of human rights and is required to be treated in this way to an international level. Just through its implementation in the strong industrialised countries' legislation, this will guarantee the existence of the Internet as it was originally built: open and competitive.

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