

Net Neutrality and the Transatlantic Relationship in the Digital Age

By Amy Studdart

WASHINGTON, DC — On Tuesday, the U.S. Federal Communications Commission (FCC) released its plans to revoke net neutrality — a series of policies that require Internet service providers (ISP) to treat all Internet traffic equally. Without those policies, an ISP like Comcast, Verizon, or AT&T will be able to charge consumers more for access to certain websites and charge websites for preferred access to consumers; make some sites faster or slower, potentially privileging, for example, their own streaming services over Netflix and YouTube; and block access to some sites altogether. It will also eliminate FCC authority over data privacy. In essence, it will give telecommunications companies the power to control how Americans use the Internet, undermining Washington's claim that its technology policies are geared toward protecting entrepreneurship, defending freedom of speech, and prioritizing consumer choice.

While the decision will not significantly impact European policies or consumers directly, it will exacerbate the gap between Washington, DC and Brussels on law, values, and interests when it comes to the role technology plays in our society.

In November 2014, then-President Obama gave a speech urging the FCC to introduce strong rules on net neutrality, echoing rules issued by the European Parliament earlier that year. The speech came at a difficult time for transatlantic cooperation.

The year before, Edward Snowden leaked documents detailing the extent of NSA surveillance, including of European citizens, and famously of Chancellor Angela Merkel's personal phone. In April 2014, Safe Harbor — the agreement that allowed for the transfer of data from Europe to the United States — was overturned by the European Court of Justice on the basis that it violated the EU Charter of Fundamental Rights. European sentiment was also turning against U.S. technology companies. That same month, Matthias Dopfner, an influential German publisher, said that Google's business model "in less reputable circles would be called a protection racket."

Obama's net neutrality speech provided a useful antidote, suggesting that perhaps the gap between Brussels and Washington, DC on technology was not as wide as it might seem. A few days after Obama's speech, Andrus Ansip, then and still the EU's vice president and commissioner for the Digital Single Market said, with some degree of amazement, "The president of the

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United States is using our wording — the wording of the European Parliament in the United States of America.” It was a coincidence, but a positive one for the transatlantic relationship.

President Trump inherited a more stable but still fragile relationship with Europe on technology policy. Brussels still had (and has) its issues with major U.S. technology companies around tax and monopoly law, but — for the most part - the policy relationship has been acceptable and the policies themselves are interoperable. The EU–U.S. Privacy Shield, which replaced Safe Harbor, had been agreed and was in operation, avoiding the shutdown of data transfers from Europe to the United States. President Trump’s threats to revoke Obama-era executive orders — which included crucial data privacy provisions — were avoided, thanks in large part to the role played by Congress and Congressman Jim Sensenbrenner in particular. The first annual review of the Privacy Shield went better than could reasonably have been expected at the beginning of the year.

But this detente is likely only temporary. The EU–U.S. relationship on technology policy is now informed as much by atmospherics and transatlantic trust as it is by the substance of our bilateral agreements or the architecture of the Internet itself. When the European Commission announced the introduction of Privacy Shield, it opened its statement not by lauding the strength of the Privacy Shield itself, but by paying tribute to the transatlantic relationship: “We have common values, pursue shared political and economic objectives, and cooperate closely in the fight against common threats to our security.” Then-Commissioner Viviane Redding described the Privacy Shield as, “a gift which the EU makes to the United States.”

The gap between the United States and Europe on technology remains, with senior European Commission officials recently describing Europe’s approach to technology as “society first, innovation second” and the U.S. approach as “commerce first.” The revocation of net neutrality rules may further reinforce that view. It may also strengthen the critique

that Washington’s policies are less about protecting innovation and freedom of speech and more about crony capitalism at home and mercantilism overseas.

America and Europe should be cooperating to create a technological future that supports our shared values and interests in democracy, global cooperation, and open markets. At present, they are in competition — a fact most evident in American nervousness about the inclusion of digital economy issues in the EU–Japan free trade agreement. As major powers compete to set the norms, rules and standards that will govern the future of the digital economy, America’s revocation of net neutrality will further embolden Brussels in its belief that it is alone in its values-first approach to technology.

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