



**The open Internet in the EU today:
a reality check and emerging regulatory practices**

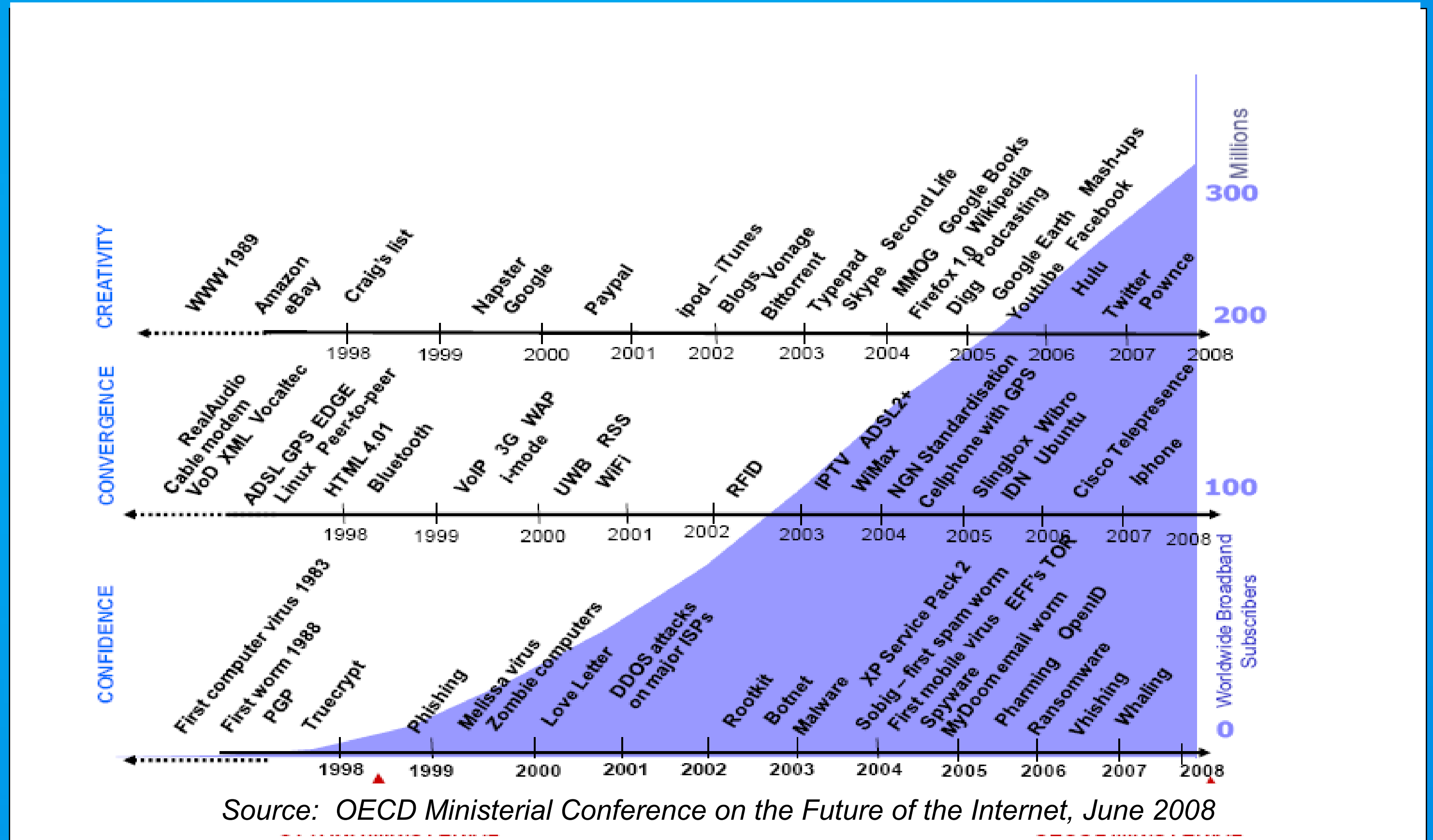
Jean-Jacques Sahel, Skype, 6 October 2010

The reality

The socio-economic benefits of an open Internet: 'innovation without permission' driving growth & productivity

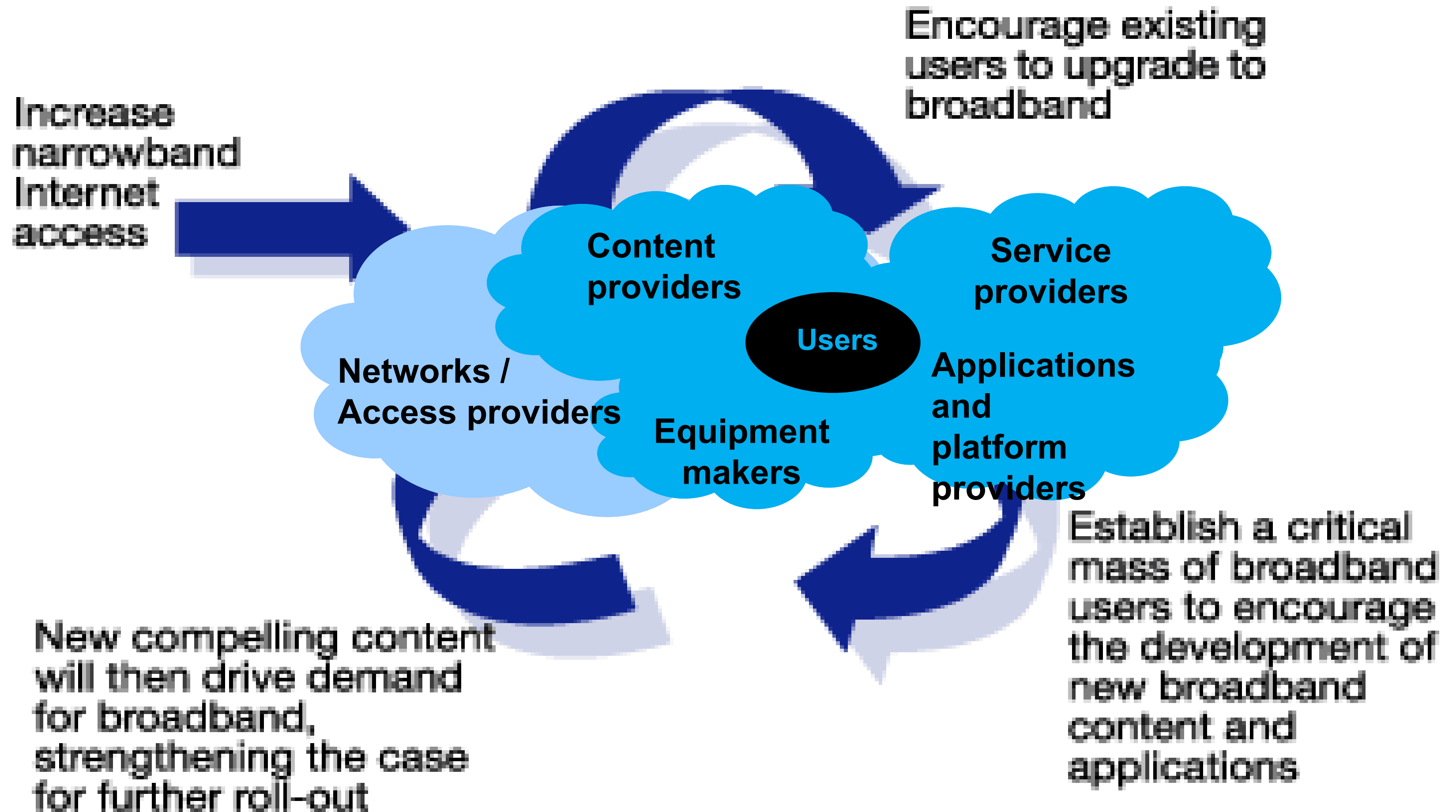
- 40% productivity increase across the EU

- 0.5% annual productivity growth across the OECD since 1995



This virtuous cycle of innovation, demand and return on investment has delivered much - but is now in real danger

(diagram from UK Cabinet Office, Office of the e-Envoy)



Many European operators restrict Internet use

Some Internet access providers have stated that they may filter, block, delay, or degrade the packets of data used to transmit certain applications

Use of Skype and VoIP, and/or Peer-to-Peer, newsgroups, video, audio, IM, etc. etc. are routinely restricted in contracts or T&Cs or 'fair use' policies

Some operators increase fees to users for access to certain online products, such as VoIP, on top of their normal Internet access fees

It has nothing to do with managing network traffic for technical, legal or security reasons

The regulatory context

Competition and transparency are not sufficient to ensure consumer choice or protect innovators

- EU Competition law is narrowly focussed, and ill-suited to an ecosystem of online innovators made of mainly small firms
- Switching remains one of the most difficult challenges for European consumers – and for European regulators (see BEREC workstream), with difficulties in number portability as only one of many examples
- Recent UK / Ofcom report (10 September 2010): 45% of broadband subscribers find switching '*too much hassle*'
- Consumers unlikely to move just because one or two of their Internet uses are prohibited or over-charged

The revised EC Telecom Framework can help

“The reform will substantially enhance consumer rights and consumer choice in Europe's telecoms markets, and add new guarantees to ensure the openness and neutrality of the internet.”

EC Statement, 4 November 2009 after adoption of the Telecom Package

ISPs "shouldn't be allowed to limit the access to service or content out of commercial motivation, but only in cases of security issues and spamming".

Neelie Kroes approval hearing, 14 January 2010)

Implementation into national law should:

- uphold clearly the principle that end-users can access and run the lawful services and applications of their choice on the Internet,
- with no loophole legitimising arbitrary restrictions by operators
- with NRAs having a clear duty and the legal powers to prevent abuse

From Norway to France, good practices are emerging

ARCEP's *ten proposals and recommendations for promoting a neutral and high quality Internet*, 30 September 2010:

1/ Freedom and quality of Internet access

“... in accordance with the legislative provisions that are in effect, ISPs marketing Internet access be required to provide end users with:

- the ability to send and receive the content of their choice;
- the ability to use the services and run the applications of their choice;
- connect the hardware and use the programmes of their choice, provided they do not harm the network ;
- a sufficiently high and transparent quality of service. “

2/ Non-discrimination between Internet traffic streams

“...as a general rule, no differentiation be made between the way in which each individual data stream is treated, whether according to the type of content, the service, application, device or the address of the stream's origin or destination. This applies to all points along the network, including interconnection points.”

3/ Supervising Internet traffic management mechanisms

“... when ISPs do employ traffic management mechanisms for ensuring access to the Internet, that they comply with the general principles of relevance, proportionality, efficiency, non discrimination between parties and transparency. “

4/ Managed services

“To maintain all of the players' capacity to innovate, all electronic communications operators must be able to market “managed services” alongside Internet access, to both end users and information society service vendors (ISV), provided that the managed service does not degrade the quality of Internet access below a certain satisfactory level, and that vendors act in accordance with existing competition laws and sector-specific regulation.”

5/ Increased transparency with respect to end users

“... clear, precise and relevant information on: the services and applications that can be accessed *through* these data services, their quality of service, their possible limitations, and any traffic management practices

- the term “Internet” cannot be used to qualify these services if certain of these restrictions do not comply with the demands of proposal no. 3;
- the term “unlimited” cannot be used to describe service offerings that include “fair use” type limitations that result in access being cut off temporarily or extra billing for the services, or an excessive degradation of access speeds or the quality of the service.”

