



Written by [C. Mitchell Shaw](#) on March 7, 2015

UN “Expert” Praises FCC’s Net Neutrality Rules: Ignores Facts

The United Nations special rapporteur on freedom of opinion and expression, David Kaye, has praised the Net Neutrality plan of the FCC, saying the FCC rules “support a free and open Internet” and are a “model for other governments.”

On February 26, the FCC reclassified the Internet as a public utility, allowing the agency to regulate it in much the same way it does the telephone and cable television industries. The UN’s “expert” issued a statement calling it “a real victory for freedom of expression and access to information in the United States.”



David Kaye is a clinical professor of law at the University of California’s School of Law in Irvine. He is also the director of the school’s International Justice Clinic. His university website profile says he is “interested in efforts to translate international law — especially human rights law — in a domestic American context, whether in courts, legislatures, or the executive branches of government, at federal and state levels.” His interest in bringing international law to the United States is in keeping with his membership in the Council on Foreign Relations. Net Neutrality seems to be right up his alley.

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Professor Kaye’s appointment as special rapporteur is honorary, and he is not on the staff of the United Nations. Though he is considered an expert in the field of international law, he seems to miss the finer nuances of how the Internet works. “This is a real victory for freedom of expression and access to information in the United States,” he declared. “I hope the new rules may serve as a model for other governments seeking to protect or expand an open and secure Internet.”

But an Internet regulated as a public utility will be anything but “open and secure.” What the professor misses is that regulation of the Internet will stifle the innovation that made it the greatest, most widely used form of communication and access to information the world has ever known. As Internet Service Providers (ISPs) are regulated in how they package and sell their services, they will of necessity focus on lobbying their regulators for permission to introduce new technology and services rather than taking the kinds of risks that are natural in a free market. As businesses, they will have to pass the costs associated with that lobbying on to their customers, who will be receiving less and paying more.

Even more disturbing is the hint of censorship in his statement, “The FCC’s rules will support a free and open Internet and ensure continued access to any lawful content individuals choose, without restriction or interference from Internet service providers (ISPs). The United States follows a small number of States, such as Brazil, Chile and the Netherlands, that have adopted net neutrality rules.”

So, rather than ISPs deciding content — which, with the exception of demands from government agencies, most of them have not done to any large extent — Big Government will decide content. Just



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what is meant by “lawful content” is left to be decided. Considering that Kaye’s statement puts the United States on the same list as countries such as Brazil, Chile, and the Netherlands, the future of the Internet does not look bright.

According to the [Wikipedia’s Censorship by Country](#) page, “In April 2010, Google reported that Brazil was the country with most requests from its government to take down content.” In September 2012 a Brazilian elections court issued a warrant for the arrest of a Google executive living in Brazil after the media giant “failed to take down YouTube videos attacking a local mayoral candidate.”

And Chile is no better. Margarita Valdes Cortes, of the University of Chile, wrote an article for [internetsociety.org](#) where she details the state of Internet censorship in that country:

In Chile, a parliamentary motion has been submitted in the Chamber of Deputies that aims at censoring the contents of the Internet. The bill proposes to punish individuals that use the Net to disseminate contents that are offensive to morals, public order or “proper customs.” This kind of description of conduct is what we call a “blank penal law,” because the determination of whether a given conduct is contrary to the law is in the hands of the judge.

The Dutch failed to keep censorship of the Internet, but it was [not for lack of trying](#). So the “small number of States” that welcomes the United States into their ranks is not such good company.

Professor Kaye seems hopelessly out of touch with the realities of not only how Net Neutrality plays out in practice, but also how the FCC came to decide on it. The two-to-three vote was divided precisely along party lines, and the two Republicans on the commission were quite vocal about the lack of transparency. Even still, the 332-page document which spells out the FCC’s plan has not been made public.

And yet, Professor Kaye — the UN’s expert on the subject — says, “Moving forward, I hope that implementation of the rules will be marked by the same openness that led to the rules themselves.”

Let’s hope not.



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