

# NET NEUTRALITY: LAW AND REGULATION

PROFESSOR CHRIS MARSDEN  
NETWORKING CHANNEL - EMPOWER  
2 JUNE 2021

# MOST OF THE WORLD HAS NET NEUTRALITY LAWS



# NET NEUTRALITY LAWS

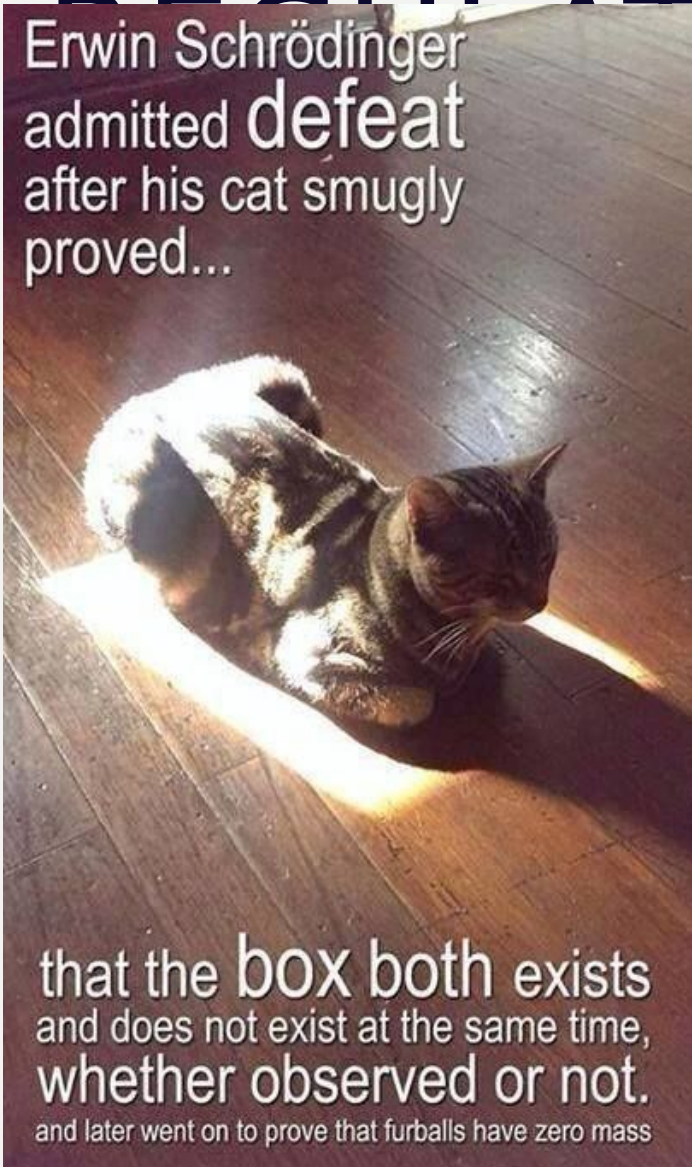
Nation	Net neutrality policy	Regulatory basis	Major cases
<b>Brazil</b>	Consultations 2015	Marco Civil 2014	Zero rating 2015
<b>Chile</b>	Regulations of 2011	Law of 2010	Zero rating 2014
<b>Norway</b>	Co-regulation 2009	Law of 2013	Zero rating 2014
<b>NI</b>	Regulations of 2013	Law of 2012	Zero rating 2015
<b>Slovenia</b>	Law of 2012	Regulations of 2013	Zero rating 2015
<b>Canada</b>	Telecom Act 1993	Hearing of 2010	Zero rating 2015
<b>United States</b>	Open Internet Orders 2010, 2015	Title II, Telecoms Act 1996	Zero rating 2015
<b>UK</b>	Code of Practice 2011	Self-regulatory & 2009 Directives	None to 2015

# EU REGULATION 2120/2015

- 27 October 2015
- “laying down measures concerning open internet access and
- amending Directive 2002/22/EC
- universal service & users’ rights

# FAR FEWER HAVE ANY

Erwin Schrödinger  
admitted defeat  
after his cat smugly  
proved...



that the box both exists  
and does not exist at the same time,  
whether observed or not.  
and later went on to prove that furballs have zero mass

I'M COMING FOR YOU



SCHRODINGER

# LONGER TERM, THERE'S NO

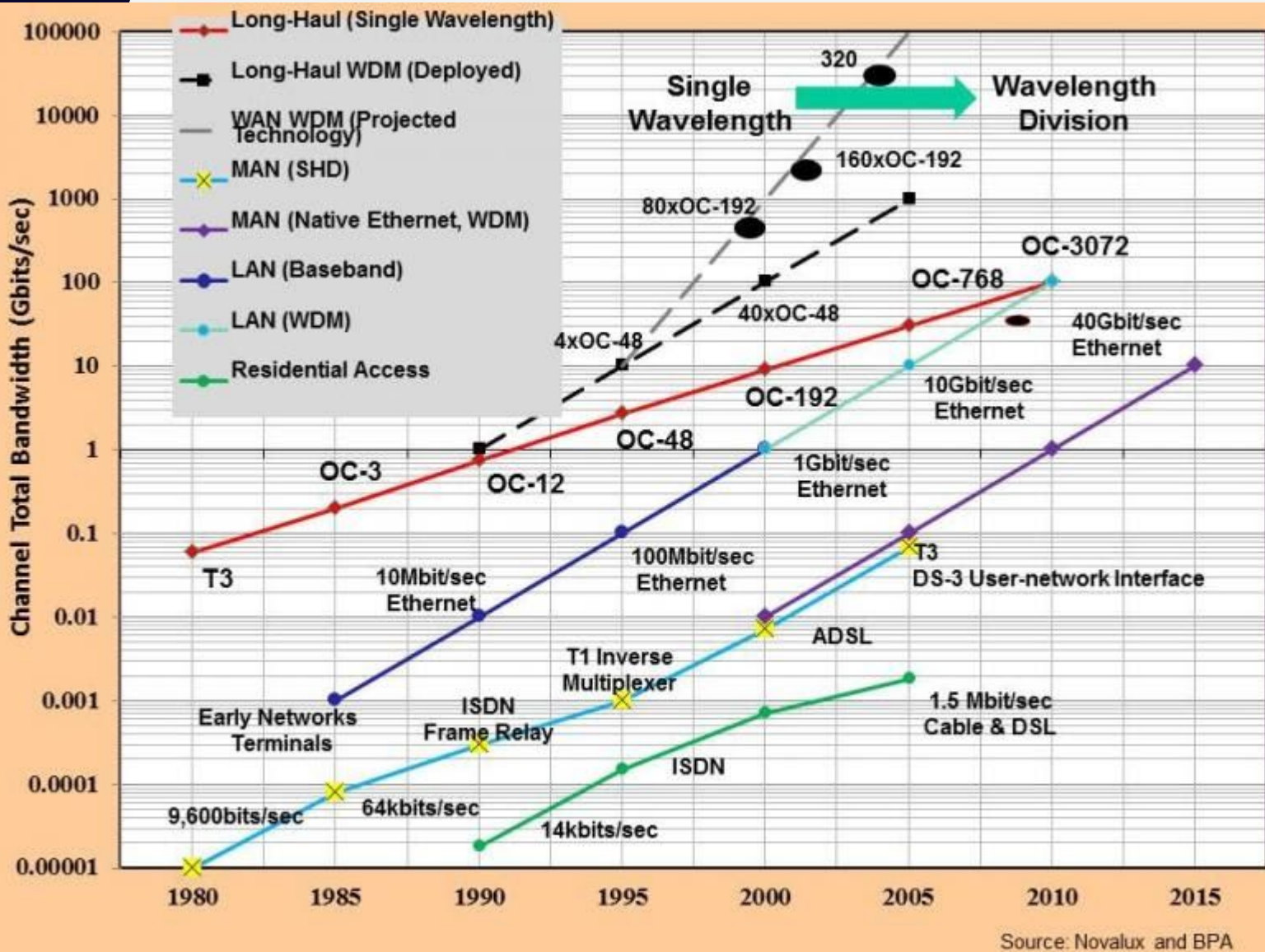
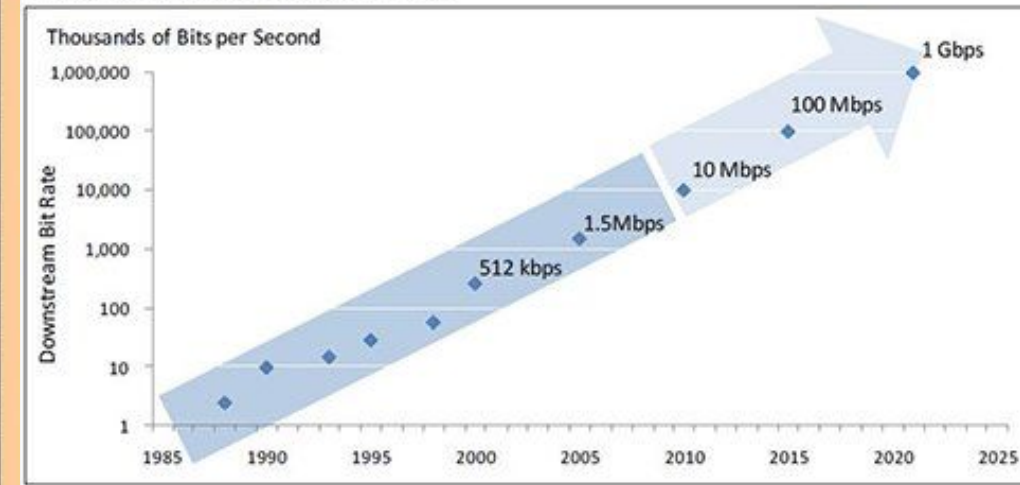
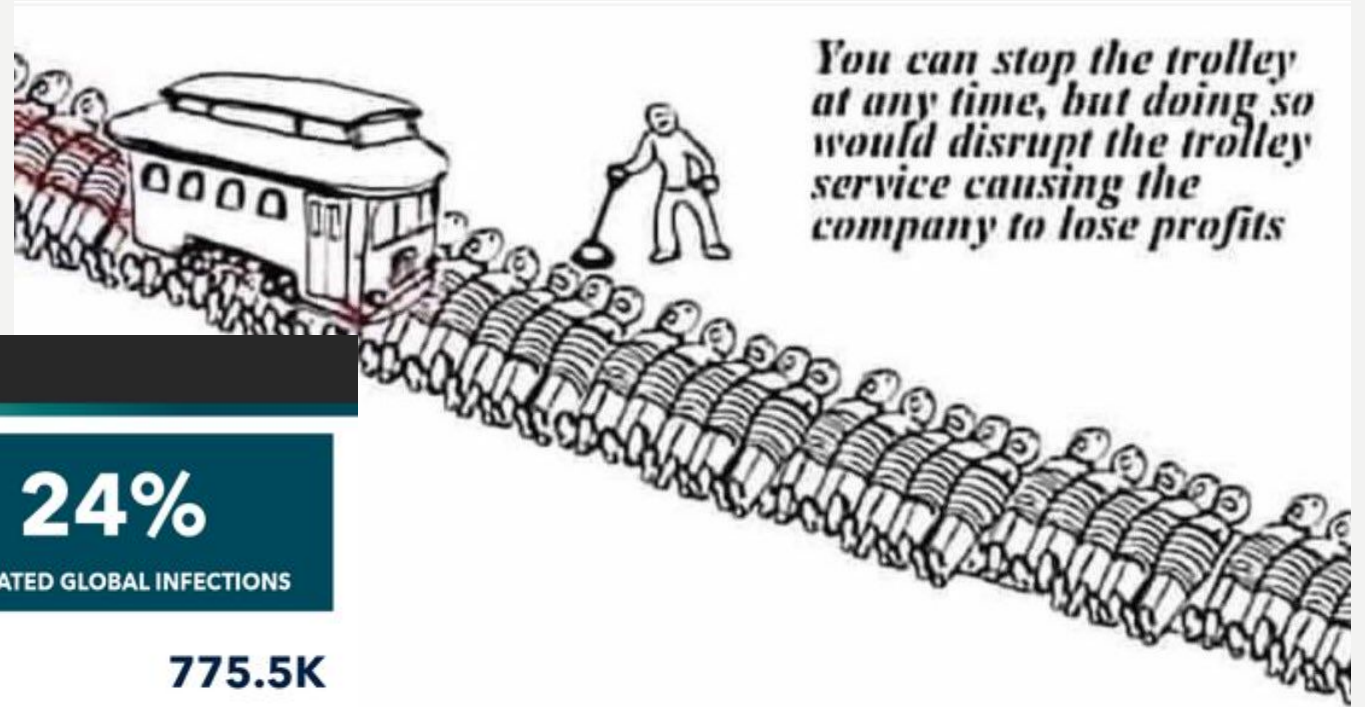


Exhibit 2.12: Download Speeds since 1985

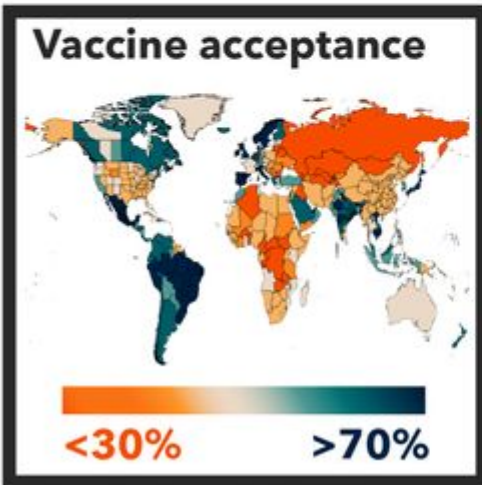


# LONGER TERM, WE'RE ALL DEAD



## IHME COVID-19 projections Global

**24%**  
ESTIMATED GLOBAL INFECTIONS



PAST WEEK

-5.5%	↘	DAILY CASES	775.5K
-1.9%	↘	DAILY DEATHS	30,300
-2.6%	↘	DAILY HOSPITALIZATIONS	380,880
		TOTAL DEATHS*	9.177M

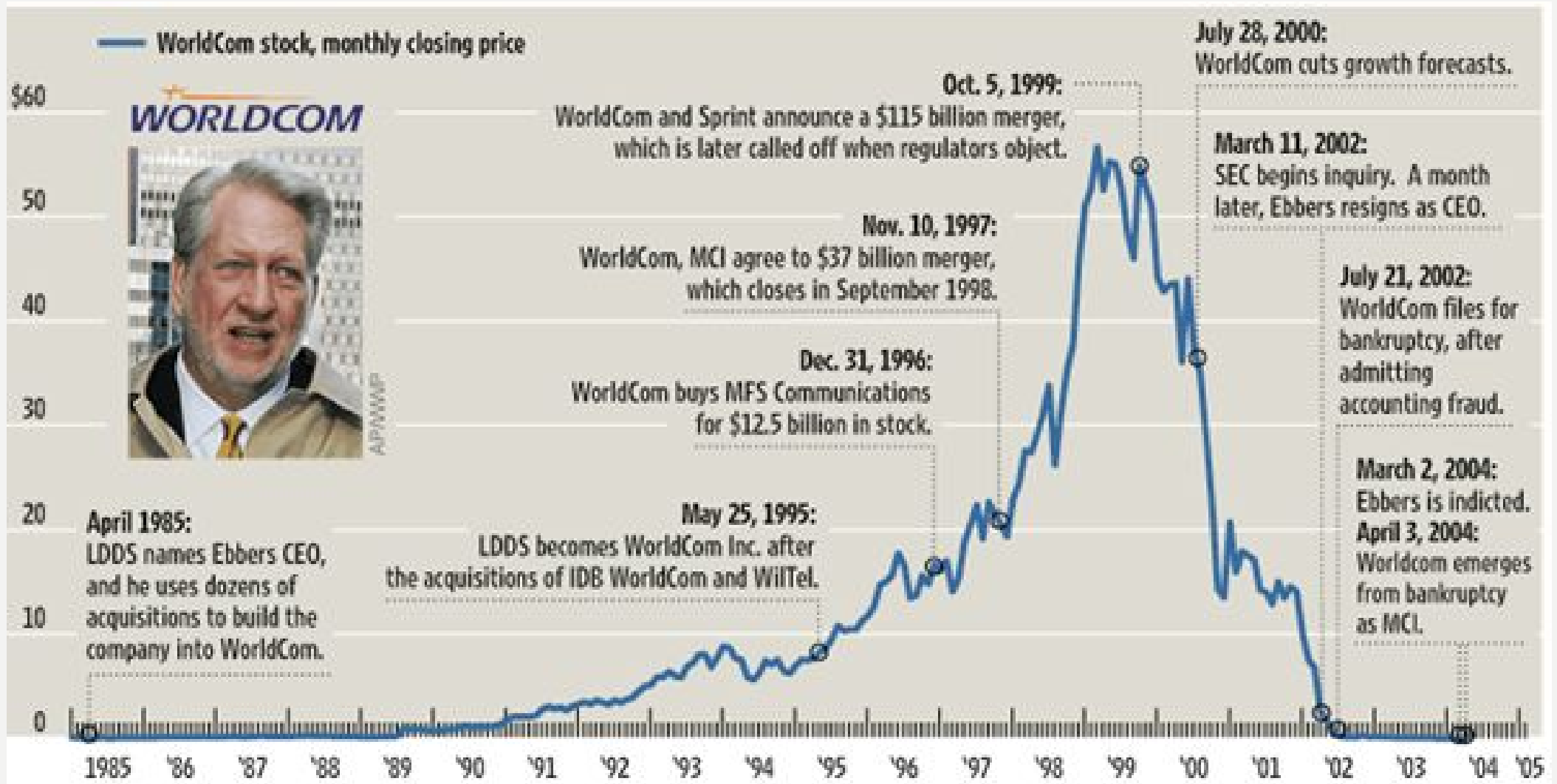
**66%**  
WEARING MASKS

**494K**  
LIVES SAVED WITH UNIVERSAL MASKS\*

**646.2K**  
LIVES SAVED WITH VACCINE SCALE-UP\*

\*projected by September 1, 2021

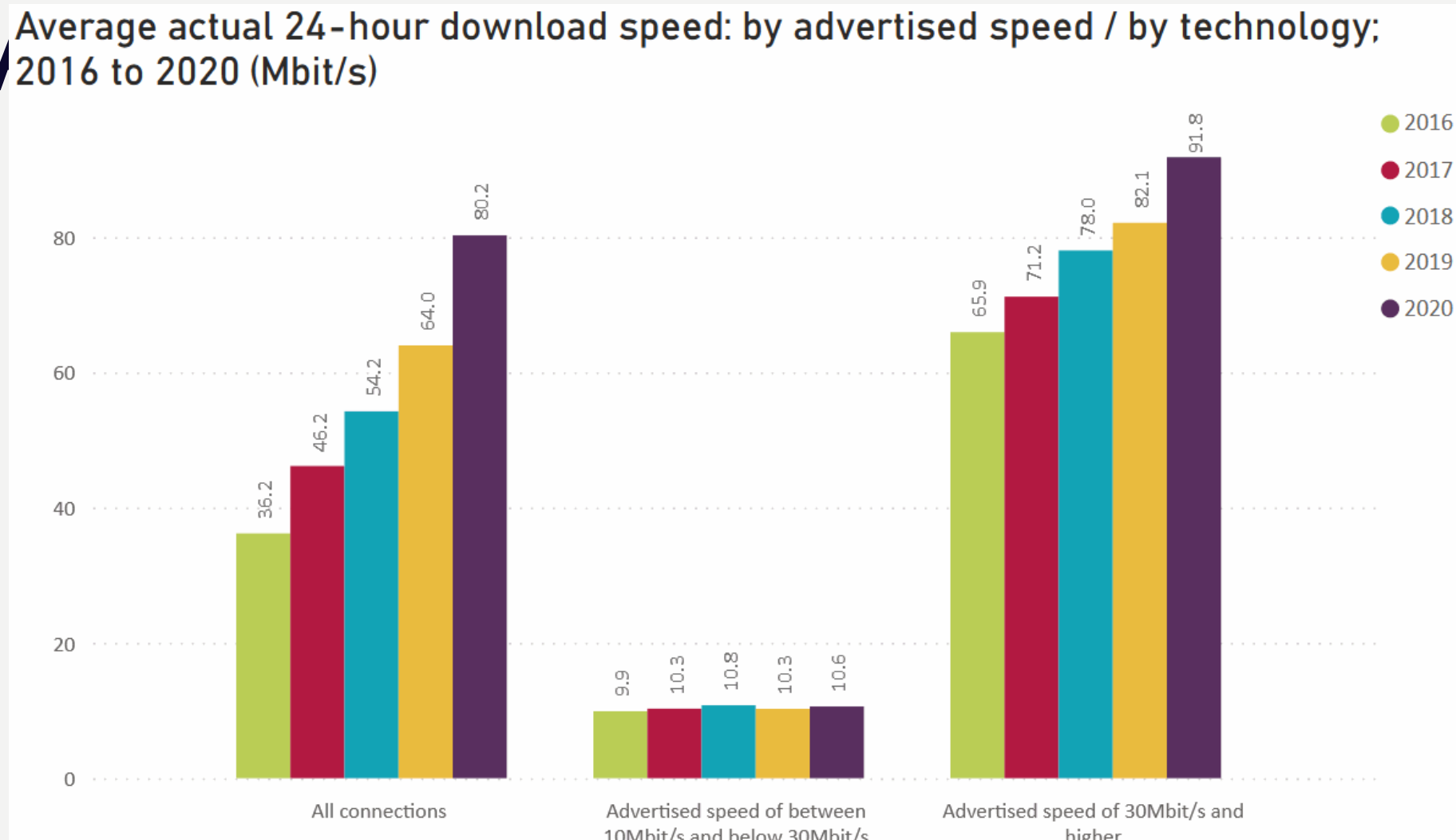
# SHORT TERM, SOME FIBBED: INTERNET TRAFFIC DOUBLING EVERY 100 DAYS?





# BUT FOR DEVELOPED NATIONS, WE SURVIVED THE

P Average actual 24-hour download speed: by advertised speed / by technology; 2016 to 2020 (Mbit/s)



# AS PREDICTED

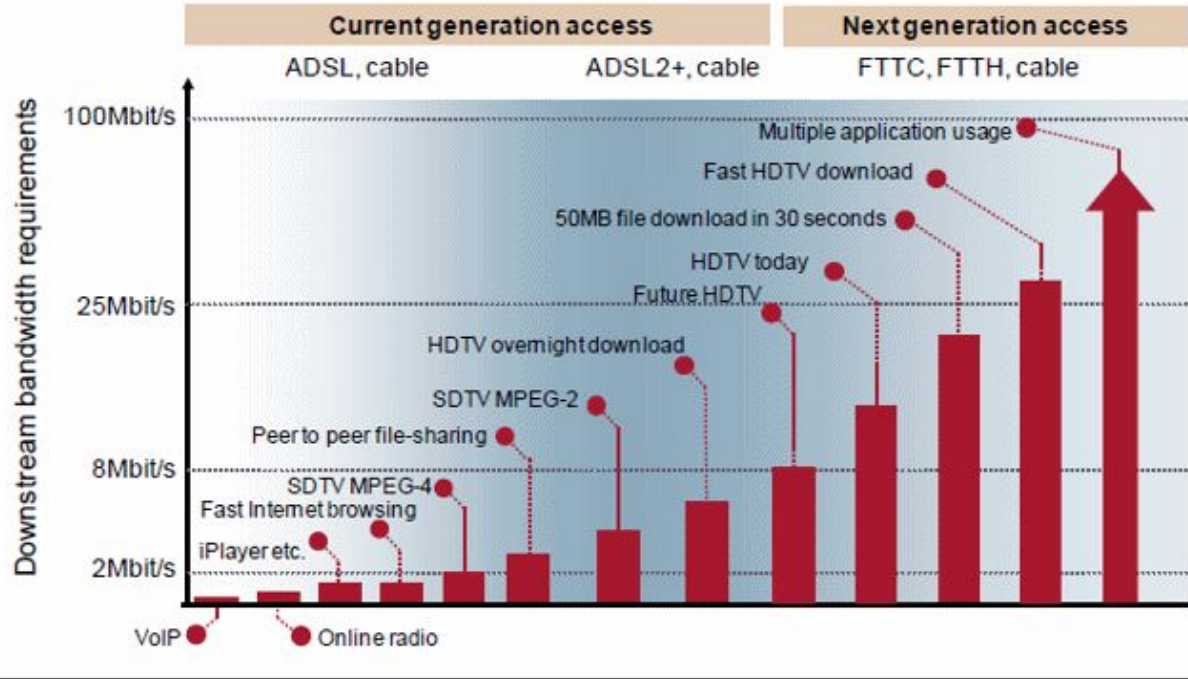


Figure 8.3: Service evolution in relation to bandwidth provided [Source: Ofcom]

Figure 1: Change in broadband providers' average download speeds in March 2020 (higher is better)

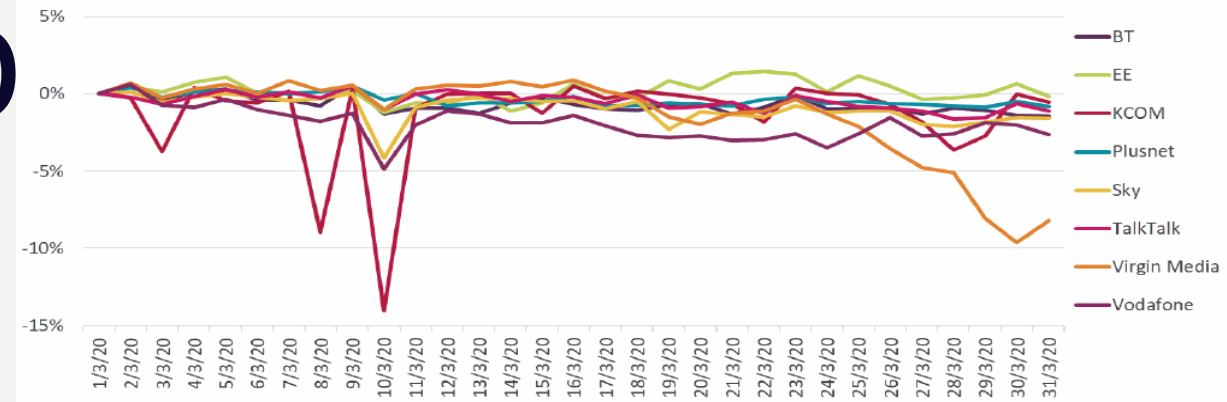


Figure 3: Change in broadband providers' average upload speeds in March 2020 (higher is better)

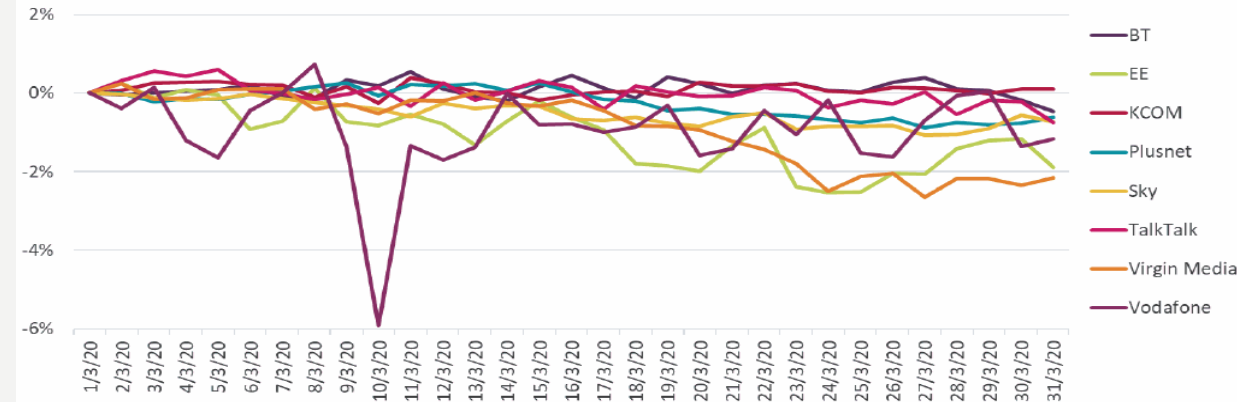
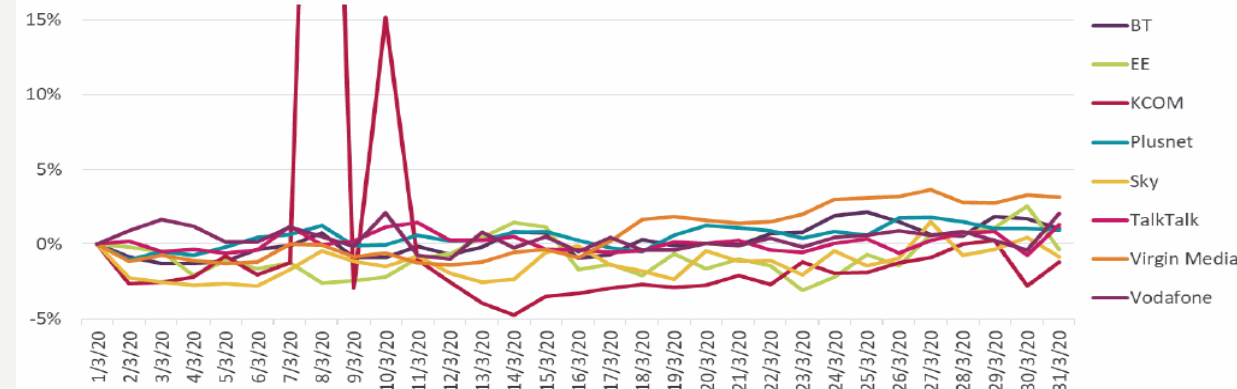


Figure 5: Change in broadband providers' average latency in March 2020 (lower is better)



# 2020 PANDEMIC ZOOM PAN

EC request to NetFlix & YouTube to stop UHD during work hours

**Roslyn Layton, PhD** @RoslynLayton · 15 Apr  
The @FCC was right to roll back #netneutrality 🌟. In EU, heavy-handed regulation is forcing internet providers to throttle video speeds, writes Christopher S. Yoo [wsj.com/articles/coron...](https://www.wsj.com/articles/coronavirus-crisis-vindicates-the-fcc-s-net-neutrality-rollback) via @WSJ



← Tweet



Opinion | Coronavirus Crisis Vindicates the FCC's 'Net Neutrality' Rollback  
In Europe, meanwhile, heavy-handed regulation is forcing internet providers to throttle video speeds.  
[wsj.com](https://www.wsj.com)

1 1 3

**Jesper Lund** @je5perl

Replying to @RoslynLayton

The video quality throttling by Netflix has nothing to do with EU #netneutrality 🌟. It's the EU Commission trying to "do something" by solving a problem which does not exist. Internet traffic is greater in the evening than daytime, despite increases from people working at home.

03/06/2021

5:02 pm · 15 Apr 2020 · [Twitter Web App](#)

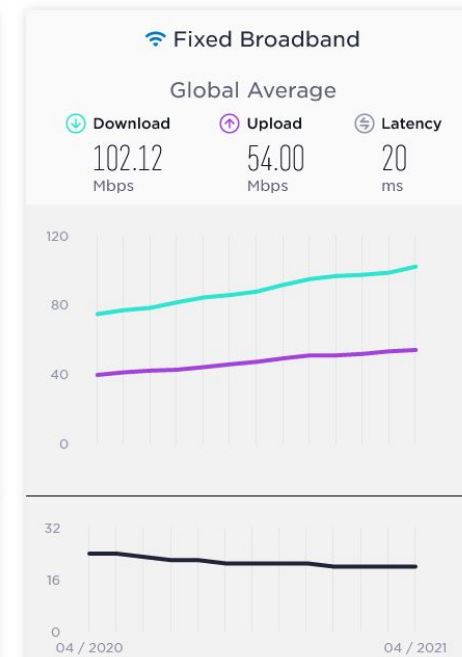
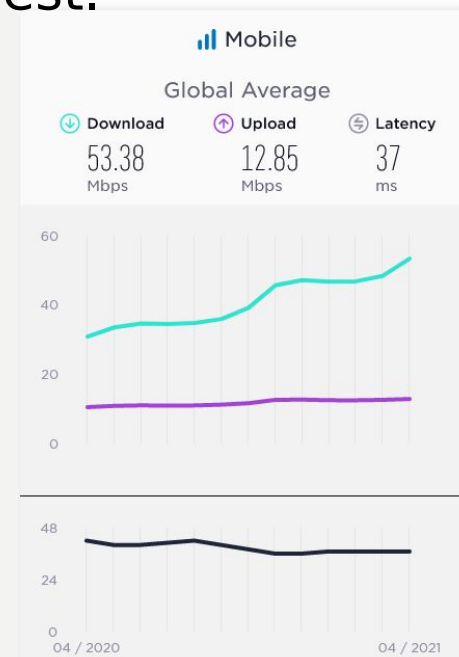
# LUCKY YOU NOT LIVING IN A LESS DEVELOPED BROADBAND NATION

- Yemen slowest internet speed average speed of 0.4Mbps
- 5 fastest download speeds 125x faster than 5 slowest.
- 37/50 fastest European,
- 10 Asia-Pacific, 2 North America, 1 Africa
  - Zero South America
- 141 countries have average speeds below 10Mbps,
  - minimum required for functional service

## Speedtest Global Index

Tracking mobile and fixed broadband speeds from around the world on a monthly basis.

Global Speeds April 2021



# PROBLEM: VERTICAL INTEGRATION

**Network operator**



**Content or application  
provider**

**Economic incentive to  
discriminate**

# FAVOUR VERTICALLY INTERGRATED SERVICES

- 2014 **Deutsche Telekom**
- (60 % of Germans' broadband connection)
- proposed to impose **download limits** for customers,
- while exempting traffic generated by
- its own video on demand (VOD) service
  
- **Zero-Rating?**

# WHAT'S THE FUTURE OF NET NEUTRALITY?

- From theory, legislation and regulation
- To enforcement

# ECJ NET NEUTRALITY JUDGMENT

## 15 SEPTEMBER 2020

### Joined Cases C-807/18 and C-39/19

### Telenor Magyarország Zrt. v Nemzeti Média- és Hírközlési Hatóság Elnöke

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-09/cp200106en.pdf>

Violated article 3(3): *Providers of internet access services shall treat all traffic equally,*

- ❖ *without discrimination, restriction or interference, and irrespective of the sender and receiver,*
- ❖ *content accessed or distributed, applications or services used or provided, or terminal equipment used*

Must decisions subject to scrutiny be examined in light of Article 3(2) of Regulation 2015/2120 (1st Q)

- or are they governed by paragraph 3 of that provision (2nd Q)?

If Article 3(3) is applicable, does that impose a general, objective and unconditional prohibition (3rd Q)

- and, if so, does this rule out the need to conduct a circumstantial evaluation
- in order to determine whether the end-users' rights have been infringed (4th Q)?





# What did the CJEU decide?

ECJ concludes that relevant zero-rated products in this case:

1) are incompatible with Article 3(2) and (1) , where those packages, agreements, and measures

blocking or slowing down traffic

limit the exercise of end users' rights.

2) are incompatible with Article 3(3) where those measures blocking or slowing down traffic

# IS UK ABOUT TO CHANGE POST-BREXIT?

Ofcom flexibility to adjust its policies,

EU adopted net neutrality legislation in 2015.

Ofcom has confirmed it plans to review the UK's net neutrality rules,

potentially opening the door for more flexible regulations for mobile and broadband operators.

mobile and broadband operators argue that it unfair that they have to invest in the network infrastructure

to support increasingly data intensive applications such as online gaming and streaming from which others profit.

Ofcom is understood to be in the early stages but suggested there might be room for wiggle room following Brexit. by 2022

BT CEO called for greater freedom for operators: Coronavirus pandemic demonstrated the benefits in being more flexible.

<https://www.techradar.com/uk/news/ofcom-to-review-uks-net-neutrality-framework>

# REFERENCES

- <https://edri.org/net-neutrality-vs-5g-what-to-expect-from-the-upcoming-eu-review/>
- O'Donoghue, Robert and Pascoe, Tom, Net Neutrality in the EU: Unresolved Issues Under the New Regulation (2016). Available at : <https://ssrn.com/abstract=2741173>
- Marsden, C. 'Net Neutrality Law and Regulation' Chapter 2 in Lilian Edwards 'Law, Policy and the Internet' 2018
- Lilian Edwards 'Law, Policy and the Internet' 2018
- Chris Marsden 'Network Neutrality: From policy to law to regulation' (Manchester University Press, 2017) at <https://www.manchesteropenhive.com/view/9781526105479/9781526105479.xml>
- Telecom Regulatory Authority of India, 'Consultation Paper on Net Neutrality', 4th January 2017
- Telecom Regulatory Authority of India, 'Recommendations On Net Neutrality' 28th November, 2017
- <http://dot.gov.in/net-neutrality>
- Global COVID19 Traffic Patterns (2020)  
[https://docs.google.com/presentation/d/1OyKbXMkHCWt21LsGn3BS7rsJqRDS1lCqhkWkbKSpqmc/edit?ts=5e7d28ec#slide=id.g7218cf8921\\_110\\_0](https://docs.google.com/presentation/d/1OyKbXMkHCWt21LsGn3BS7rsJqRDS1lCqhkWkbKSpqmc/edit?ts=5e7d28ec#slide=id.g7218cf8921_110_0)