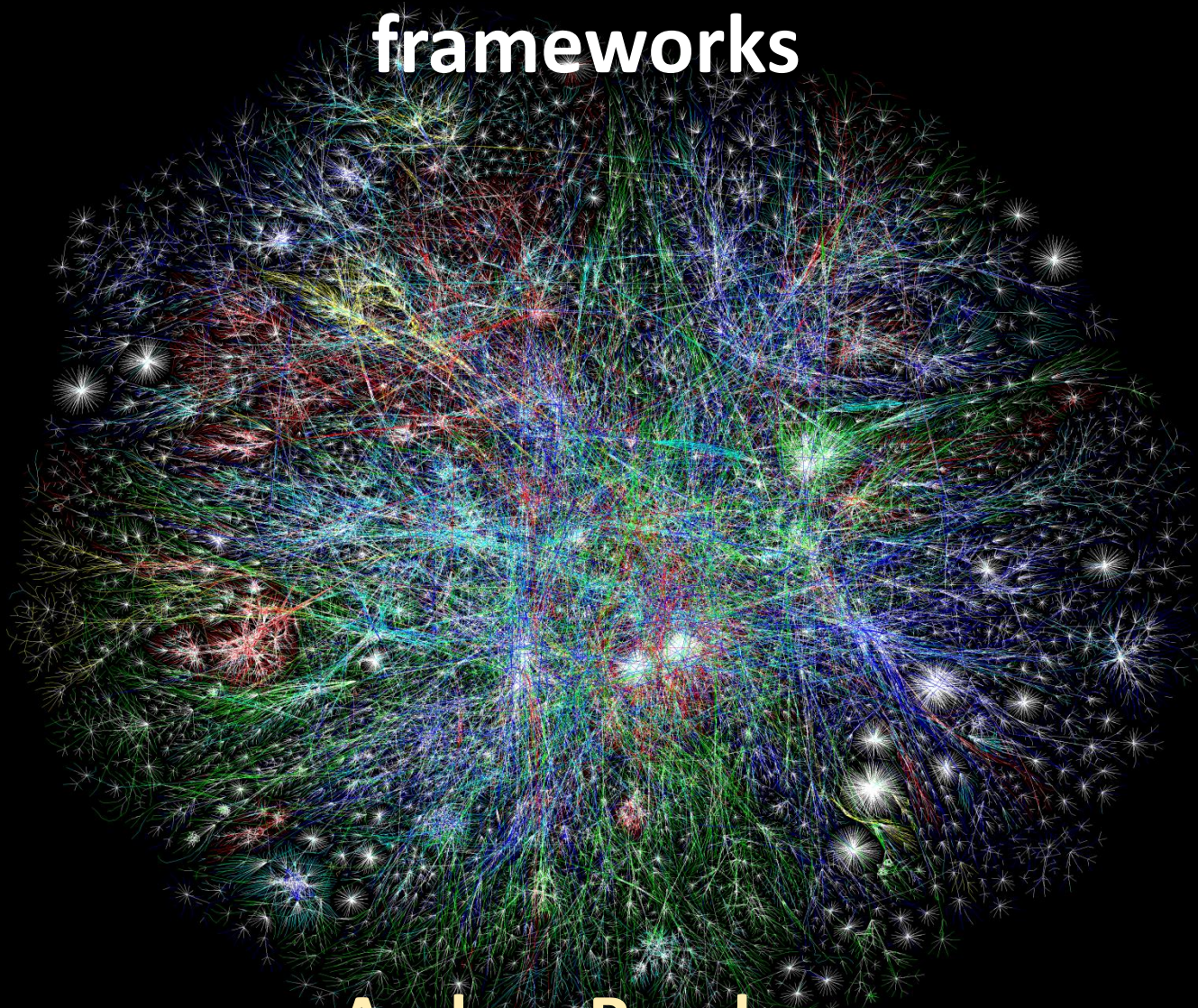


# The “Neutrality trap”: the US and EU frameworks



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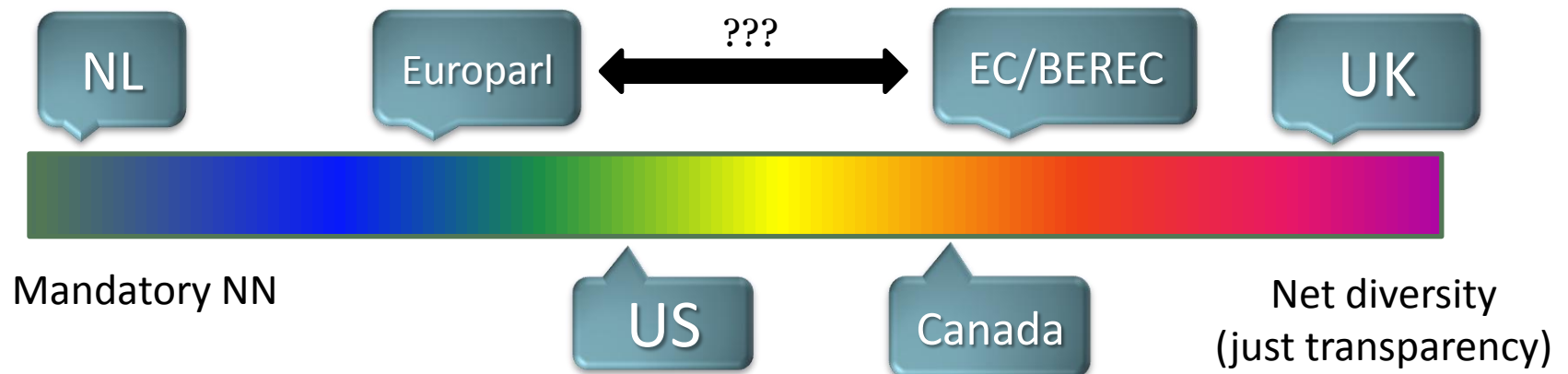
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# **INTRODUCTION: BEWITCHED BY NEUTRALITY?**

- **Policymakers are mesmerized by the word “neutrality”**
- **Originally, only at the infrastructure layer**
- **Increasingly, at the application, “platform” and cloud layers**
- **Several examples of “neutrality-oriented cases”:**
  - **FCC new Open Internet Order**
  - **EC antitrust case against Google**
  - **EP vote on Connected Continent**
  - **New call for “platform regulation” in the EU DSM dossier**

# THE NET NEUTRALITY SPECTRUM

- Over the past decade, several countries have taken action on net neutrality
- All of them imposed transparency, but there is wide divergence on “reasonable” traffic management



- Is this divergence plausible given the global nature of Cyberspace?

# **TRANSATLANTIC DRIFT?**

- **The new FCC Open Internet Order is likely to create significant uncertainty in the US market: the resulting level of required neutrality is still obscure**
  - Reasonable traffic management is permitted
  - No bright-line rule on mobile – a case by case appraisal of technological specificities
- **The rules have to be appraised in light of the different regulatory framework that applies in the two regions**
  - Different treatment of access to broadband networks
  - Different approach towards neutrality at the higher layers

# WHY DID WE WANT NEUTRALITY IN THE FIRST PLACE?

- ~~■ Anonymity~~
- ~~■ Competition and fair business practices~~
- ~~■ Innovation~~
- ~~■ User choice~~
- ~~■ Openness~~
- ~~■ Freedom of expression/Pluralism~~

## **IS NET NEUTRALITY THEN A GOOD CHOICE?**

- **It is the best policy option if its prospective net benefits are greater than those of any other alternative**
  - **Dynamic efficiency**
  - **Type I and II errors**
  - **Litigation costs**
  - **Transaction costs**
  - **Impact on fundamental rights**
  - **...**

## **FIVE MYTHS...**

- 1. The net is neutral**
- 2. Users always want a neutral Internet**
- 3. Neutrality always helps start-ups**
- 4. With diversity, QoS fees would be positive and supra-competitive**
- 5. With diversity, market power would necessarily accumulate in the hands of ISPs**

# **DILEMMAS AND CONTRADICTIONS ON THE EU SIDE**


- **Imposing too strict neutrality rules can hamper traffic optimization (in particular, in 5G)**
- **At the same time, how could one implement a more flexible rule allowing for specialized services?**
- **Can ISPs be neutral and at the same time be made responsible for their subscribers' behavior?**
- **Online intermediaries (including search engines) cannot be neutral: if they were, they would be useless**
- **Online intermediaries cannot be obliged to act neutrally and also to filter traffic, protect privacy and children, combat hate speech and foster pluralism!**

# CONCLUSIONS (1)

- **Net neutrality at the infrastructure layer might have some merit, but would not make the Internet neutral**
- **Net neutrality legislation might even turn out being the best choice, but for reasons that differ from the ones typically invoked**
- **Users benefit from a non-neutral Internet**
- **Search & platform neutrality are fundamentally flawed principles that contradict Internet economics**
- **Neutrality is a very poor and ineffective recipe for media pluralism**

## **CONCLUSIONS (2)**

- **Managing incentives is very important: neutrality obligations would not necessarily have the same impact in the US and the EU**
- **Technology is plastic: depending on the rules, investment might move towards private networks, and traffic management can be done at lower or higher layers**
- **Regulating technology with technology: the next frontier of the debate?**



Thank you!