

18th July 2016

SUBJECT: ACADEMICS IN SUPPORT OF SOUND NET NEUTRALITY IN EUROPE

To the Body of European Regulators of Electronic Communication (BEREC)

Dear BEREC,

The signatories of this letter congratulate the European Union for opening a consultation on the draft guidelines implementing the EU Regulation 2015/2120. This consultation represents a precious democratic opportunity to provide clear guidelines on some key elements for the protection of the rights of Internet users while ensuring a thriving digital single market.

Enshrining sound safeguards for net neutrality within the guidelines is critical for allowing people in Europe and around the world to enjoy the full benefits of competition and exercise their rights to privacy, freedom of expression, freedom of assembly, and freedom to conduct a business online.

As agreed by all members of the Council of Europe, including all European Union members, “the principle of network neutrality underpins non-discriminatory treatment of Internet traffic and the users’ right to receive and impart information and to use services of their choice [and] supports technological innovation and economic growth.”¹

As professional seekers, imparters, and receivers of information and ideas, we understand the pivotal importance of freedom of expression and urge you to take all necessary measures to guarantee that all individuals have the right to freely communicate and innovate without permission, so that they can truly be active participants in the information society, rather than mere consumers.

In particular, we urge you to carefully consider the following points:

- ZERO-RATING. This practice has the potential to undermine individuals’ ability to communicate and innovate freely, restrict consumer choice and distort competition. Addressing zero-rating on a case-by-case basis adds a further level of complexity, uncertainty and, ultimately, fragmentation, due to the fact that every national regulator will have to independently deliberate on each zero-rating practice. Instead, the guidelines should ban harmful forms of zero-rating (such as application-specific zero-rating and zero-rating for a fee), providing legal certainty and sustainable solutions that empower individuals, rather than relegate their Internet experience to a selection of sponsored services.

¹ CoE. (2016). Recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality.

[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2016\)1&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2016)1&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true)

- INTERNET TRAFFIC MANAGEMENT. In order to safeguard network neutrality and preserve the openness of the Internet, any traffic management should be as application-agnostic as possible, and exceptions to application agnosticism should be carefully tailored in order to avoid undue discrimination. Operators should be encouraged to enhance and fully exploit network capacity in order to avoid congestion, and should only use protocol-specific traffic management to mitigate the effects of temporary and exceptional congestion when protocol-agnostic measures do not prove practicable.² This principle applies even more to traffic management under Art. 3, Subparagraph 2 in the absence of temporary and exceptional congestion. Furthermore, the guidelines should ensure that traffic management measures do not to jeopardise the unrestricted use of privacy enhancing tools such as encryption.
- SPECIALISED SERVICES. Such services, described by the Regulation as "Services other than Internet access services" involve the intense use of application-specific traffic management. To prevent operators from using these services to circumvent the net neutrality rules, the guidelines should ensure that ISPs will not be permitted to provide specialised services to regular Internet applications that could function on the normal Internet. The Guidelines require that specialised service offerings are not to the detriment of regular internet access services and may only be offered if the ISP has sufficient network capacity to offer them in addition to any internet access service. We urge BEREC to guarantee an appropriate level of clarity in order to avoid risks of abusive conduct.

Led by the belief that neutral access to the Internet in its entirety is a necessary precondition for the full enjoyment of human rights, we trust your judgement in defining sound guidelines allowing the European digital ecosystem to thrive.

The subscribers would be pleased to discuss further these all-important issues with BEREC, if you would so desire.

Sincerely,

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² IGF. (2015). Policy Statement on Network Neutrality. Outcome of the 10th United Nations Internet Governance Forum. <http://review.intgovforum.org/igf-2015/dynamic-coalitions/input-document-on-network-neutrality/>

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