

BEREC Chair 2017 Sebastien Soriano speech at the “Digital-born Media Carnival” panel discussion “Promises and Perils of Net neutrality” – Kotor, 17 July 2017

Good evening everyone,

It is a great pleasure for me to be here with you to talk about net neutrality and in particular the action of BEREC in this respect.

A year ago, BEREC was drafting its guidelines on net neutrality. BEREC was requested to do so by the Open Internet Regulation of 2015.

A year ago, half a million people were contributing to the public consultation to say how much the open Internet counted for them.

By adopting its guidelines, BEREC has lived up to expectations. It has guaranteed an open Internet without hindering the operators' ability to innovate.

Now, almost a year after BEREC guidelines were adopted, I am relieved.

I am relieved because net neutrality is no longer a debate in Europe today. It is part of a robust legal framework established at European level.

It is worth mentioning it is not necessarily the case everywhere. Even in the US, a pioneer country in this area, the issue remains unresolved.

European rules on net neutrality cannot be rebutted anymore and it is a great asset for all of us because, in addition to an equal access to the Internet, it provides trust and certainty.

Moreover, at its core, lies the safeguard of several fundamental rights which are designing Internet as an infrastructure of freedom: protection of personal data, freedom of expression and information, freedom to engage in business and innovate, non-discrimination and consumer protection.

Lawrence Lessig once said about the structural conception of Internet: *“This feature of the Net [TCP/IP] protects free speech. It codes a First Amendment into the architecture of cyberspace, because it makes it relatively hard for governments, or powerful institutions, to control who says what when”*.

In the same vein, he also stated that: *“the end-to-end principle renders the Internet an innovation commons, where innovators can develop and deploy new applications or content without the permission of anyone else”*.

Permissionless innovation is important for citizens, individuals, but also for businesses, and most of all startups. We cannot conceive the new Google or the new Facebook without equal and free access to the Internet. Competition cannot exist without net neutrality.

Today, therefore, I am relieved that Net neutrality is a common good in Europe. But I am also fully aware of the challenges we are facing.

This common good is put into question on a global scale by several issues. As Tim Berners-Lee puts it: *"[the modern day web] controls what people see, creates mechanisms for how people interact, it's been great, but spying, blocking sites, repurposing people's content, taking you to the wrong websites — that completely undermines the spirit of helping people create"*.

It is now to national regulators and BEREC to make sure that the rules on net neutrality are properly and consistently implemented over Europe.

From a general point of view, in order to enforce net neutrality rules, NRAs have many responsibilities:

- Market monitoring (contractual information and commercial practices),
- Data collection through questionnaires to the ISPs and customer complaint platform,
- Measurements in order to detect traffic management practices.

But their action can be more coercive of course. They can require ISPs to:

- Provide remedies to the degradation of Internet Access Services (IAS);
- Cease or revise problematic traffic management practices;
- Cease providing specialised services in certain cases [absence of sufficient capacity for IAS or when usable as substitute for IAS]; and
- Ultimately they can impose fines on ISPs whose practices infringe the Regulation.

BEREC, as the umbrella organisation for European net neutrality rules enforcers, has a specific role to make net neutrality implementation a great success all over Europe and to safeguard an open environment for everyone, consumers, businesses, citizens.

A first step is to report on the implementation of the Open Internet Regulation to make sure that everyone is going the same way.

- Every year, NRAs have to publish an annual report. Those reports were released by NRAs for the first time only a few weeks ago.
- By the end of the year, BEREC will publish its own report, summarising and analysing the main findings from NRAs annual reports.
- In order to ensure a consistent implementation and on a continuous basis, BEREC is acting as a forum. The expert working group in charge of net neutrality issues, composed of national experts, discusses regularly all practical issues faced when implementing NN rules, in particular on zero rating.

To illustrate the need for coordination on a day-to-day basis, let me take the example of zero rating as it is a major issue NRAs are facing today. Many cases have emerged across Europe and they give a flavour of BEREC's course of action.

BEREC guidelines are very clear on the issue of zero rating:

First, all the offers that do not throttle the zero-rated application after the data cap (and do throttle other sources of traffic) shall be banned.

Second, commercial offers shall be assessed on a case by case basis according to a suggested list of criteria.

Therefore, the compatibility of zero rating with the Regulation depends very much on market conditions. National decisions taken so far attest of this contextual but nevertheless consistent approach (national and transitional legislative particularities aside).

The regulation is rather new and it takes some time to find the right approach on these complex cases. On all of these cases and the cases to come, coordination between NRAs is needed and BEREC is here to make this happen.

A second step in BEREC action is to ensure that NRAs have the proper tools to ensure an open environment to every consumers, citizens and businesses. This year, many projects were launched:

- The analysis of all the existing methods and tools to identify Net neutrality infringements - including an investigation template to help NRAs to track technical and commercial practices - will be released by the end of the year.
- The establishment of specifications for the development of a QoS monitoring system. NRAs could use it to measure quality of service and detect potential practices infringing Net neutrality rules.
- The definition of a common measurement methodology. A report to be adopted in October will provide guidance to NRAs on how to best measure the performance of Internet access services and how to best detect traffic management practices.

So BEREC action is not just paperwork. It provides solution, consistency and legal certainty.