

EMMA comments on BEREC's (Body of European Regulators for Electronic Communications) draft guidelines on net neutrality and transparency

The European Magazine Media Association, EMMA, is the representative trade association of European magazine publishers providing content on all platforms. We represent 27 national magazine trade associations from EU Member States, as well as 22 corporate members from all over Europe. In total, we represent the interests of 15,000 publishing companies, turning out more than 50,000 titles per year, in both print and digital versions.

1. Today's European magazine media

Today Europe's magazine media is increasingly technologically neutral. While the number of readers of printed magazines remains stable, technological developments have allowed publishers to provide access for additional readers online and there has been an increase in readership on new technical devices such as smart phones and e-readers.

Publishers therefore disseminate content via different channels while readers access content on different platforms.

At the same time media usage patterns are changing so that press content can be accessed in completely different ways and in different situations in everyday life compared to the past, and at any time.

2. Net neutrality is needed to safeguard a competitive, independent and diverse press

It is a fundamental basis of press freedom in a democratic society to protect access to information in the course of journalistic research; the production of press products; and distribution to readers, both offline and online. These essentials guarantee a competitive press environment and thus a free, independent, diverse and vibrant press.

It is therefore key that the internet service infrastructure and ISPs in Europe do not discriminate against or prioritise content, and that competition is maintained between providers of editorial content, to enable the diversity of the press across Europe. Should this be allowed, the result would be, for example, that users would not be able to enjoy unimpeded access to certain content or categories of content.

The impact on the great majority of publishers - who are small and medium sized enterprises - would be that they would risk only being able to offer a 'second class' service. This type of discrimination would be a further barrier for many publishers, who continue to invest a lot in developing online business models so their material can be enjoyed across the EU.

3. The BEREC draft guidelines¹

The net neutrality debate at EU-level has, amongst other things, resulted in the revision of the EU Regulatory Framework for Electronic Communications², which provide the main basis for the BEREC draft guidelines. As a result of these revisions, BEREC concludes that the European approach towards net neutrality³ “consists first of all of promoting competition and improving the conditions for end users’ to switch from service provider, while imposing on the providers an obligation of transparency regarding traffic management techniques and the quality of the Internet access service”. The draft Guidelines are concerned with “setting out the best ways to ensure transparency and to monitor how information is being provided by ISPs.”

4. Transparency alone is not sufficient to achieve net neutrality

The BEREC report concludes that the approach of the revised regulatory framework “should contribute to fulfilling the objective contained in the new Article 8(4)(g) of the revised framework directive, on promotion of the ability of end users to access and use content/applications/services of their choice (the “net freedoms” objective), an ability which is considered as one of the main drivers for innovation and freedom of expression.” However, we agree with BEREC’s additional statement which underlines that “transparency alone is probably not sufficient to achieve net neutrality, since other factors also have to be taken into account”.

5. Transparency is not an absolute guarantee for effective competition

EMMA particularly supports the concerns of the BEREC report that transparency is not an absolute guarantee for effective competition, with regulatory remedies to promote efficient competition being of fundamental importance in the context of net neutrality. We also share the concern that “even if there is competition, there still remains a possibility that the levels of quality of service offered by the market are considered insufficient with regards to the demands and expectations of end users and the wider society.”

¹ See http://erg.eu.int/doc/berec/consultation_draft_guidelines.pdf

² Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws and Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

³ In the BEREC guidelines document, for working purposes, it refers to the literal interpretation of net neutrality, as “the principle that “all electronic communication passing through a network is treated equally.” That means that all communication is treated independently of its content, application, service, device, sender and receiver address.’

6. Traffic management techniques could interfere with fundamental rights and freedoms

A major concern of magazine publishers is the widespread use of certain types of traffic management techniques which could interfere with the effective exercise of fundamental rights and freedoms such as - as the report states – “if operators were to block or throttle certain services or to give preferential treatment to some kinds of data flows that they consider more valuable, such as search traffic, which can bring them additional advertising revenue”. An additional concern highlighted by the BEREC report and shared by EMMA, is “if ISPs increasingly allocate most of their capacity to specialized services rather than the Internet access service, this could have a serious effect on the scope for innovation in new content, applications and services, which currently benefit from the low barriers to entry and innovation afforded by the Internet.”

7. Comments on BEREC recommendations

EMMA would agree that it is important in order to develop an optimal transparency policy, that end users need to be able to make informed choices and effective processes need to be put in place in order for users to have a proper understanding.

- While we support the suggested compulsory direct approach (i.e., ISPs making information transparent to end users), it is important that NRAs (or policy makers, depending on the legislation in each member state) properly ensure that operators make the information accessible, understandable, meaningful, comparable and accurate, and that there is robust enforcement of these rules. While indirect third party action might be useful, e.g., to improve comprehension among users, it should not be compulsory.
- We agree that it makes sense that for net neutrality transparency, information is needed on both the general scope of the offer and on the limitations (general and specific).
- We agree that common terms of references about aspects of the Internet access service, including agreement on which traffic management measures are “non-problematic”, can help to make the transparent information to end users simpler, and therefore can make a transparency policy more effective.
- In terms of the role of NRAs, a constructive approach might be for NRAs to set out how information should be made transparent and transmitted, in consultation with industry and consumer groups.
- Co-ordination at EU-level to minimize the differences in approaches of NRAs could be useful, but it is important that this is in collaboration with stakeholders, including content providers such as the press, in light of the impact that these decisions can have on the sector.

8. Conclusion

As set out above, EMMA shares many of the concerns raised by BEREC. It is now crucial that net neutrality is strictly adhered to in whatever the next steps are taken at EU level, in light of the risks to media diversity, freedom of expression and democracy, as set out above.

EMMA calls on BEREC to pay close attention to the threats posed, including to freedom of expression, in its upcoming reports on Quality of Service, Competition and discrimination issues.

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