

From: Matei-Eugen VASILE
Sent: Saturday, November 05, 2011 9:01 PM
To: INFSO BEREC
Subject: BEREC Net Neutrality Consultation

Dear Sir/Madam,

My name is Matei-Eugen Vasile and I am a EU citizen. I am writing in regard to the BEREC net neutrality open consultation.

The transparency-based "wait-and-see" approach is not the solution. It is not even a solution, but what one might call "kicking the can down the road". Unfortunately, kicking the can down the road can not solve the already existing net neutrality violations happening across the EU right as we speak.

The transparency approach to net neutrality could work only in a highly competitive marketplace with a large and varied offering, and in which the costs of switching providers would be small. That is not the case. In many places across the EU, there is a small number of highly entrenched incumbent providers which prevent any would-be competitors from entering the market or buy off the ones that manage to enter the market. In this situation, changing providers would mean moving from one net neutrality violating provider to another net neutrality violating provider. Also, it can be even worse than this, because in some areas there is a single available provider, so even the token competition present in the previous case is missing. This is the situation for wired providers. In the case of mobile providers, the situation is even worse because the barrier to entry represented by the radio frequency licenses keeps out all but the most well-funded companies. Worse than that, the mobile providers are consolidating everywhere in the world (Orange UK and T-Mobile UK merged in the UK, in the US, AT&T wanted to acquire the American operation of T-Mobile) thus reducing the little competition that exists even further.

The UK is one of the places where the telecommunications regulator (OFCOM) adopted the "wait-and-see" policy and the results is a situation very much similar to that described in the previous paragraph, in most of the areas of the country.

More widespread reports of net neutrality violations can be seen at <http://www.respectmynet.eu> , a crowd-sourced platform tracking net neutrality violations across the EU.

At the core of the net neutrality violations is the fact that, in order to discriminate traffic, in the vast majority of cases, the providers have to use Deep Packet Inspection technologies. Before any of the problems with violating net neutrality are discussed, the problem of Deep Packet Inspection technology needs to be handled. The problem with Deep Packet Inspection technology is that it breaches the fundamental principle of the confidentiality of communications, not to mention that it is highly illegal because, as a matter of fact, it is nothing else but warrantless wiretapping.

The problems with violating net neutrality itself are:

1) Net neutrality is very important for fundamental rights, such as the right to free speech. Because of the nature of the Internet, it allows all the people connected to it to communicate their ideas and opinions. Without net neutrality, the providers decide who can say what. Also, by inspecting the contents of the communications themselves, the providers compromise the privacy of their clients. In a opinion published in October 2011

(http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2011/11-10-07_Net_neutrality_EN.pdf), the European Data Protection Supervisor (EDPS) talked about the importance of net neutrality for privacy.

2) The Internet is what it is today because of unhindered innovation.

Companies like Google, Yahoo, Skype, eBay, Amazon and many, many more are what they are today because when they started, the Internet was a level playing field. Back then, the concept of net neutrality did not even exist because it was taken for granted, as a natural consequence of how the Internet's architecture. Unfortunately, nowadays the providers find it inconvenient for themselves to keep the playing field level. Without net neutrality, the playing field will not be level anymore and the next Google or Amazon may not be allowed to pass the newly instituted barriers to entry to the marketplace.

3) Net neutrality spurs infrastructure development and investment.

When the only way to get more clients is to have a better network, the providers are motivated to invest more in hardware and infrastructure and to develop better networking technologies in order to attract more clients. Without net neutrality, providers can "nickel & dime" their clients for things that in a neutral network are taken for granted, like being able to communicate using any protocol the client wants or to use the full paid for bandwidth at any time etc.

On October 20th, 2011, the Industry (ITRE) committee of the EU Parliament adopted a resolution that makes a strong statement in favor of net neutrality. The resolution asks the Commission to move away from the "wait-and-see" approach.

Finally, the Internet architecture needs to be acknowledged and net neutrality needs to be defined in the context of how the Internet really works, not in terms of how the providers would want it to work in order to extract the most amount of money from their clients. Also, a framework of acceptable network management practices need to be defined in order to allow for the handling of technical unforeseen circumstances, such as network congestion or network security threats but not for commercially motivated violations of net neutrality.

Best regards,

Matei-Eugen Vasile