From: Suzanne Wood
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:09:44

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Suzanne Wood (United States)

From: Derek Watkins
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:08:56

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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[SpS#2v2]
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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Derek Watkins (United States)

From: Donald Gash
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:08:50

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Donald Gash (United States)

From: Hermineh Miller
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:08:43

Dear Sir / Madam,

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Hermineh Miller (United States)

From: Marcus Jones
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:08:08

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Thank you,

Marcus Jones (United States)

From: Juli Hennessee
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:08:08

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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[SpS#2v2]
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Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Juli Hennessee (United States)

From: Heinz Scholz M.D.
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:07:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Heinz Scholz M.D. (Canada)

From: Jean-Sébastien Fafard
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:07:14

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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Thank you,

Jean-Sébastien Fafard (Canada)

From: William Robinson
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:07:14

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

William Robinson (United States)

From: Alastair Preston
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:06:33

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Alastair Preston (Canada)

From: Lucy Duroche
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:06:32

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Lucy Duroche (United States)

From: Juanita Hull
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:05:33

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Juanita Hull (United States)

From: Dan Blake
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:05:31

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Dan Blake (Canada)

From: T Hamboyan Harrison
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:05:01

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#1v2]
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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

T Hamboyan Harrison (United States)

From: toby dolinka
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:04:26

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

toby dolinka (United States)

From: Venkatesh K.N.
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:04:08

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Venkatesh K.N. (India)

From: Kelsey Laubenstein
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:03:20

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Kelsey Laubenstein (United States)

From: Ian Hackett
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:02:31

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Thank you,

Ian Hackett (United States)

From: alix liddle
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:02:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

alix liddle (United Kingdom)

From: David Hertko
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:02:14

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

David Hertko (United States)

From: David Lennam
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:54

Dear Sir / Madam,

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

David Lennam (Canada)

From: Sabrina Port
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:54

Dear Sir / Madam,

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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Thank you,

Sabrina Port (Canada)

From: Lynne Bursic
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:53

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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Thank you, Lynne Bursic. USA

Lynne Bursic (United States)

From: Kyle Kleckner
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:53

Dear Sir / Madam,

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Thank you,

Kyle Kleckner (United States)

From: Carolyn Perkins
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:53

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Carolyn Perkins (United States)

From: Jesse Brook
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:53

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

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Thank you,

Jesse Brook (Canada)

From: Andrea Chitouras
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:53

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

Andrea Chitouras (United States)

From: Christopher Topham
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:52

Dear Sir / Madam,

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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Christopher Topham (Canada)

From: Pierre Champagne
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:01:52

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Pierre Champagne (Canada)

From: Julius Simmons
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:00:08

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Julius Simmons (United States)

From: Daniel Marzani
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:00:05

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Daniel Marzani (United States)

From: Catherine DeGraw
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:59:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#1v2]
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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Catherine DeGraw (United States)

From: Valerie Snyder
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:59:11

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Valerie Snyder (United States)

From: Barb baker
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:58:59

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Thank you,

Barb baker (United States)

From: Ron Jupp
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:58:57

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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Thank you,

Ron Jupp (Canada)

From: John Rafalak
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:58:55

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Thank you,

John Rafalak (United States)

From: Leo Coyle
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:58:00

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Leo Coyle (United States)

From: Lori Leigh
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:57:35

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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Thank you,

Lori Leigh (United States)

From: Barbara Wyly
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:57:29

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Thank you,

Barbara Wyly (United States)

From: Thomas Desrosiers
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:56:28

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Thomas Desrosiers (Canada)

From: Gerry Cunningham
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:56:26

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Gerry Cunningham (United States)

From: Jennifer Tett
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:56:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Jennifer Tett (Canada)

From: Peter Reum
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:56:12

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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Thank you,

Peter Reum (United States)

From: Nicole Chaplain-Pearman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:55:31

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Nicole Chaplain-Pearman (Canada)

From: Tim Young
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:55:19

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Tim Young (Canada)

From: Zita Jimenez
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:55:16

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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Thank you,

Zita Jimenez (United States)

From: Robert Twiddy
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:54:50

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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[SpS#2v2]
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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Robert Twiddy (Canada)

From: Nigel Wigzell
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:54:21

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Nigel Wigzell (Canada)

From: Jason Day
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:53:26

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Jason Day (United States)

From: Ross McKee
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:53:21

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Ross McKee (Canada)

From: Steven Reid
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:53:18

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Steven Reid (Canada)

From: Duncan Shields
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:53:15

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Duncan Shields (Canada)

From: James Briere
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:52:49

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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[TM#1v2]
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Thank you,

James Briere (United States)

From: Mahmuda Zuberi
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:52:08

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Thank you,

Mahmuda Zuberi (Canada)

From: Ramiro Herrera
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:51:51

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Ramiro Herrera (United States)

From: Sheila Trujillo
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:51:23

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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[SpS#2v2]
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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Sheila Trujillo (United States)

From: Daniel Salehi
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:51:02

Dear Sir / Madam,

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Daniel Salehi (Canada)

From: Pat Chefalo
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:50:05

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Pat Chefalo (United States)

From: Peter Unterweger
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:49:56

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Peter Unterweger (United States)

From: Margaret G. Rego
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:49:47

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Thank you,

Margaret G. Rego (Puerto Rico)

From: Alicyn Simpson
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:49:34

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Alicyn Simpson (United States)

From: Nick Taylor
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:49:34

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Nick Taylor (United States)

From: Norman Mearns
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:49:17

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Norman Mearns (United States)

From: Mahmuda Zuberi
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:49:00

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Mahmuda Zuberi (Canada)

From: Jon Brown
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:48:33

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Jon Brown (United States)

From: David Kochberg
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:48:04

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

David Kochberg (Canada)

From: John Frey
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:47:50

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

John Frey (United States)

From: Kenneth Miller
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:47:41

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Kenneth Miller (United States)

From: Bernadine Helriegel
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:47:11

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Bernadine Helriegel (United States)

From: Bobbie Best
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:46:46

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Bobbie Best (United States)

From: Remi Thibault
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:46:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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[SpS#2v2]
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Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Remi Thibault (Canada)

From: Carl Tardi
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:46:19

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Carl Tardi (Canada)

From: Darren Page
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:46:15

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Darren Page (United States)

From: Kevin Smith
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:46:02

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Kevin Smith (United States)

From: Jonah Moses
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:45:54

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Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Jonah

Jonah Moses (Canada)

From: Jim Eppelin
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:45:50

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Jim Eppelin (United States)

From: Sylvene Trudel
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:45:34

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Sylvene Trudel (Canada)

From:	Theodora Crawford
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:45:29

Dear Sir or Madam,

Your proposal to commercialize the Internet closes the door on freedom of speech! Any moneyed interest would be able to post anything whether benevolent or not. I assume the regulators being addressed include these very moneyed interests...and some may not be at all benevolent!

Dictators control communication. We don't need them!

Theodora Crawford (United States)

From: Chris Thorsen
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:45:17

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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Thank you,

Chris Thorsen (United States)

From: Yvonne Henderson
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:45:15

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Yvonne Henderson (United States)

From: Erin Daly
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:45:13

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Erin Daly (United States)

From: Tony Wacheski
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:45:13

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Tony Wacheski (Canada)

From: Brie Gyncild
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:44:58

Dear Sir / Madam,

Thank you for soliciting stakeholder comment regarding the BEREC net neutrality guidelines.

As you know, the Internet has become a vital part of everyday life internationally - for work, education, entertainment, medical care, financial management, family and social communication, and almost every other area of our lives.

The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as

part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity, separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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Thank you,

Brie Gyncild (United States)

From: Isaac LePes
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:44:30

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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[SpS#2v2]
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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Isaac LePes (United States)

From: Evelyn Haas
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:44:29

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Evelyn Haas (United States)

From: Gregory Hall
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:44:18

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Gregory Hall (Canada)

From: Jan Stevens
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:43:42

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Jan Stevens (United States)

From: phil wagner
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:43:35

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

phil wagner (United States)

From: Zachary Schaefer
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:43:21

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Zachary Schaefer (United States)

From: Arlyne London
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:43:15

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Arlyne London (United States)

From: Dixie Davis
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:42:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Thank you,

Dixie Davis (Canada)

From: Mark Swiecki
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:42:45

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Mark Swiecki (United States)

From: Nancy Pates-Riches
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:42:14

Dear Sir / Madam,

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Nancy Pates-Riches (United States)

From: Susan Sielke
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:41:52

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Susan Sielke (United States)

From: Daniel Potts
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:41:50

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Daniel Potts (United Kingdom)

From: Erum Z
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:41:50

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Thank you,

Erum Z (Canada)

From: Chandra Bulucon
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:41:01

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Thank you,

Chandra Bulucon (Canada)

From: thomas blazier
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:40:01

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

thomas blazier (United States)

From: Mark Staebler
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:39:59

Dear Sir / Madam,

Kindly accept this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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Thank you,

Mark Staebler (United States)

From: Holger Mathews
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:39:38

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

Holger Mathews (United States)

From: Matt Mandel
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:39:30

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

Matt Mandel (United States)

From: Rasho Donchev
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:37:34

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Rasho Donchev (Bulgaria)

From: Margaret Nyburg
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:37:21

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Thank you,

Margaret Nyburg (United States)

From: Martin O"Gleman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:36:21

Dear Sir / Madam,

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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Thank you,

Martin O'Gleman (Canada)

From: Lenora Roedner
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:36:05

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Lenora Roedner (United States)

From: Anne Rodman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:36:02

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Anne Rodman (United States)

From: Anne Rodman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:36:00

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Anne Rodman (United States)

From: Mary Anne McFadden
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:35:44

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Mary Anne McFadden (United States)

From: Jhene Canody
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:35:41

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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Jhene Canody (United States)

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To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:34:35

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Peter Pillmore (United States)

From: Peter Pillmore
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:34:34

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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Peter Pillmore (United States)

From: Marie Askins
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:34:06

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Marie Askins (United States)

From: Gloria Barnett
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:34:00

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Gloria Barnett (United States)

From: Charlene Hidalgo
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:33:49

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Charlene Hidalgo (United States)

From: Marcus Mulkins
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:33:40

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Marcus Mulkins (United States)

From: Bruce Higgins
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:33:39

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Thank you,

Bruce Higgins (United States)

From: G Fraser
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:32:16

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

G Fraser (Canada)

From: Margarita Politte
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:31:50

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Margarita Politte (United States)

From: Jack Reid
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:31:49

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Jack Reid (Canada)

From: Bruce Littlefield
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:31:16

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Bruce Littlefield (United States)

From: Patrick Crawford
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:31:12

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Patrick Crawford (United States)

From: Patricia Russo
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:30:38

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Patricia Russo (Canada)

From: Janet Barker
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:29:53

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Janet Barker (United States)

From: Carol Bentley
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:27:47

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Carol Bentley (United States)

From: Max Dziuba
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:27:35

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Max Dziuba (Australia)

From: Harold Guy
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:27:32

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the restriction on harmful commercial practices of Article 3(2) of the Regulation. This means

that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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[SpS#1v2]
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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity, separate from the Internet access service. They cannot undercut the average maximum

bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all

forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Harold Guy (United States)

From: Brenda Wissa
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:27:30

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Thank you,

Brenda Wissa (United States)

From: Derrick Vaughn
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:26:59

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Derrick Vaughn (United States)

From: Liz Chappell
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:26:49

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Liz Chappell (Canada)

From: fatemeh nassirian
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:26:35

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fatemeh nassirian (United States)

From: thomas (rick) mcaulay
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:26:01

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

thomas (rick) mcaulay (Canada)

From: Sharon Wojno
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:25:31

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Sharon Wojno (United States)

From: Kathleen Ryan
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:25:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Kathleen Ryan (United States)

From: Sandra F Wilson
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:25:14

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Sandra F Wilson (United States)

From: Jennifer Heneghan
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:25:12

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Jennifer Heneghan (United States)

From: Claire Carsman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:25:07

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Claire Carsman (United States)

From: Jeffrey Alguire
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:24:30

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Jeffrey Alguire (United States)

From: Teena Wildman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:24:12

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Teena Wildman (United States)

From: William Cox
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:24:00

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

William Cox (United States)

From: David Haynes
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:23:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

David Haynes (United States)

From: Melanie Kuhn
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:23:44

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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Thank you,

Melanie Kuhn (United States)

From:	Mikael Andersson
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:23:04

It is very important that EU take the Lead for a free and Net neutrality Internet so we can show rest of the world that we want a free Internet which is for the progress of common education and not only a place for large corporations (especially foreign) which want to make Internet only for their purposes.

Mikael Andersson (Sweden)

From:	Mikael Andersson
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:23:04

It is very important that EU take the Lead for a free and Net neutrality Internet so we can show rest of the world that we want a free Internet which is for the progress of common education and not only a place for large corporations (especially foreign) which want to make Internet only for their purposes.

Mikael Andersson (Sweden)

From:	Mikael Andersson
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:23:03

It is very important that EU take the Lead for a free and Net neutrality Internet so we can show rest of the world that we want a free Internet which is for the progress of common education and not only a place for large corporations (especially foreign) which want to make Internet only for their purposes.

Mikael Andersson (Sweden)

From:	Mikael Andersson
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:22:58

It is very important that EU take the Lead for a free and Net neutrality Internet so we can show rest of the world that we want a free Internet which is for the progress of common education and not only a place for large corporations (especially foreign) which want to make Internet only for their purposes.

Mikael Andersson (Sweden)

From:	Mikael Andersson
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:22:55

It is very important that EU take the Lead for a free and Net neutrality Internet so we can show rest of the world that we want a free Internet which is for the progress of common education and not only a place for large corporations (especially foreign) which want to make Internet only for their purposes.

Mikael Andersson (Sweden)

From:	Mikael Andersson
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:22:53

It is very important that EU take the Lead for a free and Net neutrality Internet so we can show rest of the world that we want a free Internet which is for the progress of common education and not only a place for large corporations (especially foreign) which want to make Internet only for their purposes.

Mikael Andersson (Sweden)

From:	Mikael Andersson
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:22:52

It is very important that EU take the Lead for a free and Net neutrality Internet so we can show rest of the world that we want a free Internet which is for the progress of common education and not only a place for large corporations (especially foreign) which want to make Internet only for their purposes.

Mikael Andersson (Sweden)

From:	Mikael Andersson
To:	NN-Consultation
Subject:	Stakeholder comment on BEREC net neutrality guidelines
Date:	15 July 2016 19:22:50

It is very important that EU take the Lead for a free and Net neutrality Internet so we can show rest of the world that we want a free Internet which is for the progress of common education and not only a place for large corporations (especially foreign) which want to make Internet only for their purposes.

Mikael Andersson (Sweden)

From: Thomas Warren
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:22:33

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Thomas Warren (United States)

From: David Kagan
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:22:28

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

David Kagan (United States)

From: Roberta Jackson
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:22:07

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[SpS#2v2]
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Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Roberta Jackson (United States)

From: Ken Putman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:22:04

Dear Sir / Madam,

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Ken Putman (Canada)

From: Heidi Erhardt
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:21:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Heidi Erhardt (United States)

From: Al Trutter
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:21:51

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Al Trutter (United States)

From: Marilyn Siddiqi
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:21:49

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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Thank you,

Marilyn Siddiqi (United States)

From: Gary Hull
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:21:48

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
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Thank you,

Gary Hull (United States)

From: Sandy Keese
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:21:48

Dear Sir / Madam,

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[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

Sandy Keese (United States)

From: Joseph thompson
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:21:48

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Joseph thompson (United States)

From: Larry Burgoon
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:21:08

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Larry Burgoon (United States)

From: Peggy Burgin
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:20:27

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Peggy Burgin (United States)

From: Elizabeth Schaeffer
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:20:07

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Elizabeth Schaeffer (United States)

From: melody brown
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:20:02

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#1v2]
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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

melody brown (United States)

From: Dan Nielsen
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:19:52

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Dan Nielsen (Canada)

From: David Butler
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:19:47

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

David Butler (United States)

From: Robert Albert
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:19:19

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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[SpS#2v2]
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Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Robert Albert (United States)

From: Cindy Sheaks
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:18:48

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Thank you,

Cindy Sheaks (United States)

From: Robyn Nolta
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:18:20

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Robyn Nolta (United States)

From: Matthew Barre
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:18:19

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Matthew Barre (United States)

From: Sharon Musson
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:18:12

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Sharon Musson (Canada)

From: Robyn Nolta
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:17:41

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Robyn Nolta (United States)

From: Richard Truong
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:17:41

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Richard Truong (United States)

From: David Leader
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:17:23

Dear Sir / Madam,

The Internet was engineered and designed to be free. It is a social device not a commercial device.

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as

part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity, separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

David Leader (United States)

From: Rebecca Morrill
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:16:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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[SpS#2v2]
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Thank you,

Rebecca Morrill (United States)

From: Idin Karuei
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:16:56

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Thank you,

Idin Karuei (Canada)

From: LAURA ESPARZA
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:16:56

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

LAURA ESPARZA (United States)

From: Ismael Cordeiro
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:16:54

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Ismael Cordeiro (Canada)

From: christine thomas
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:16:53

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

christine thomas (France)

From: Cindy Parrone
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:16:44

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Cindy Parrone (United States)

From: Scott Drake
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:16:25

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Scott Drake (Canada)

From: Phillip Martin
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:16:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Phillip Martin (United States)

From: Dale Goodin
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:15:53

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Dale Goodin (United States)

From: roger thomas
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:15:44

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

roger thomas (France)

From: Arnold Ruiz
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:15:34

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Arnold Ruiz (United States)

From: josh mong
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:15:25

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Thank you,

josh mong (United States)

From: Leslie Yardley
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:15:20

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Leslie Yardley (Canada)

From: bella burak
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:15:02

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

bella burak (United States)

From: Patricia Baldwin
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:15:00

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Patricia Baldwin (United States)

From: bella burak
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:14:59

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

bella burak (United States)

From: Craig Allen
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:14:47

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Craig Allen (United Kingdom)

From: Carole Plourde
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:14:32

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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Thank you,

Carole Plourde (United States)

From: Mea Cadwell
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:14:25

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Mea Cadwell (United States)

From: Bet Cecill
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:14:21

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Bet Cecill (United States)

From: Barbara Orr
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:14:08

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Barbara Orr (United States)

From: kathy weltzin
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:13:55

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

kathy weltzin (United States)

From: Patricia Ladd
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:13:43

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Patricia Ladd (United States)

From: Andrew Lenards
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:13:42

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Andrew Lenards (United States)

From: Robertson Walker
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:13:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Robertson Walker (Canada)

From: Stephen Markowski
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:13:08

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Stephen Markowski (United States)

From: Michael Ji
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:12:53

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Michael Ji (United States)

From: James Andrus
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:12:30

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

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[TM#1v2]
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Thank you,

James Andrus (United States)

From: Glen Monette
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:12:27

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Glen Monette (Canada)

From: Peter Blouin
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:12:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

Peter Blouin (Canada)

From: Wendy Hamilton
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:12:17

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

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Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Wendy Hamilton (United States)

From: M Wire
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:51

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To: NN-Consultation
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Date: 15 July 2016 19:11:51

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Date: 15 July 2016 19:11:50

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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Thank you,

lemuel bezares (United States)

From: JUDITH CANTOR
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:50

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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:50

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To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:50

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Nancy Pape (United States)

From: Robert Machover
To: NN-Consultation
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Date: 15 July 2016 19:11:49

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Robert Machover (United States)

From: James Myers
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:49

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

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[SpS#2v2]
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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

James Myers (United States)

From: Mark Locke
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:23

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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Thank you,

Mark Locke (United States)

From: George Harrill
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:18

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

George Harrill (United States)

From: Roberta Carlson
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:13

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Roberta Carlson (United States)

From: Lelia and Edward Lloyd
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:11:08

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Lelia and Edward Lloyd (United States)

From: Apollonia Fan
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:10:17

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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Thank you,

Apollonia Fan (Canada)

From: Edward Rengers
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:10:05

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Edward Rengers (United States)

From: Chiara Ogan
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:10:04

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Chiara Ogan (United States)

From: Vinzon Pingol
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:10:03

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Vinzon Pingol (Canada)

From: C JOnes
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:09:41

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Thank you,

C JOnes (United States)

From: Christine Kubiak
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:09:11

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Christine Kubiak (United States)

From: Elizabeth Wahl
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:09:10

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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[SpS#2v2]
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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Elizabeth Wahl (United States)

From: jacqui skill
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:08:51

Dear Sir / Madam,

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

jacqui skill (United States)

From: Peter Zimmerman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:08:43

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Peter Zimmerman (United States)

From: Paul Harmon
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:08:28

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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Thank you,

Paul Harmon (Canada)

From: Kenneth Hundzinski
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:07:27

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration. I am not enthusiastic about fighting corruption worldwide, but I think it is necessary.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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regulation. National Regulatory Authorities have a strict mandate to implement the restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]

Specialised services allowed under the EU Regulation must come with their own capacity, separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Kenneth Hundzinski (United States)

From: Eileen Hale
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:07:20

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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Thank you,

Eileen Hale (United States)

From: Juan Caban
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:07:17

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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Thank you,

Juan Caban (United States)

From: Kathy Gonzalez
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:06:46

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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[SpS#2v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

The Internet is the one thing that has been able to bring people together for good...we need to keep the good and get rid of the bad...

Thank you,

Kathy Gonzalez (United States)

From: Dunn Harding
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:06:34

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Dunn Harding (Canada)

From: Henryk Kolny
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:06:33

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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Thank you,

Henryk Kolny (Canada)

From: Cesare Paolo Umeton
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:06:33

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

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Cesare Paolo Umeton (Italy)

From: Henryk Kolny
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:06:33

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

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Thank you,

Henryk Kolny (Canada)

From: Henryk Kolny
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:06:32

Dear Sir / Madam,

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Thank you,

Henryk Kolny (Canada)

From: Michael Neeman
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:05:44

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Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Michael Neeman (United States)

From: Marianne Stowers
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:05:41

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Marianne Stowers (United States)

From: Richard Bailey
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:05:11

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Richard Bailey (United States)

From: Harvey Metzger
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:04:50

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Thank you,

Harvey Metzger (United States)

From: Joel Platt
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:04:32

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Joel Platt (United States)

From: Stephanie Payne
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:04:32

Dear Sir / Madam,

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Stephanie Payne (Canada)

From: Darlene Ingram
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:04:18

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Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Darlene Ingram (United States)

From: jan bukovnik
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:04:12

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

jan bukovnik (United States)

From: Lisa Moston
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:03:53

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Lisa Moston (Canada)

From: Gary Putnam
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:03:30

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Gary Putnam (United States)

From: susan waggoner
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:03:20

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Thank you,

susan waggoner (United States)

From: Richard Fenner
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:01:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Richard Fenner (Canada)

From: Ken & Linda Bailey
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:01:52

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Ken & Linda Bailey (United States)

From: Don Lust
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:01:49

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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Thank you,

Don Lust (Canada)

From: Danielle Craig
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:01:36

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Danielle Craig (United States)

From: Phil Shake
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 19:00:17

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Phil Shake (United Kingdom)

From: Thomas Jowett
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:59:51

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Thomas Jowett (Canada)

From: james keats
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:59:50

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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Thank you,

james keats (United States)

From: Sergei Gumenyuk
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:59:41

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

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Thank you,

Sergei Gumenyuk (Canada)

From: John Wolff
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:59:41

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

John Wolff (United States)

From: John Salvis
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:59:01

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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Thank you,

John Salvis (Canada)

From: Patricia Rivait
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:59:01

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Patricia Rivait (Canada)

From: Drew V
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:58:47

Dear Sir / Madam,

The internet has become a crucial part of all of our lives synonymous with electricity. It should be treated as such; a utility.

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as

part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity, separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Drew V (United States)

From: john bankston
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:58:46

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Thank you,

john bankston (United States)

From: Francis Demuro
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:57:47

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Francis Demuro (United States)

From: Cheryl MacKenzie
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:57:16

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Cheryl MacKenzie (Canada)

From: Ellen Halbert
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:57:15

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Ellen Halbert (United States)

From: phil chaban
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:57:12

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

phil chaban (United States)

From: Sarah Petzel
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:56:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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[TM#1v2]
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Thank you,

Sarah Petzel (United States)

From: Huw Gregory
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:56:24

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Huw Gregory (Australia)

From: Vivian J Watkins
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:56:05

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Vivian J Watkins (United States)

From: carolyn weaver
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:56:04

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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Thank you,

carolyn weaver (United States)

From: Joyce Baskind
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:55:58

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Joyce Baskind (United States)

From: Cheryl Sharpe
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:55:39

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
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Thank you,

Cheryl Sharpe (United States)

From: Susan Livingston
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:55:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Susan Livingston (Canada)

From: Ron Cameron
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:55:05

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Thank you,

Ron Cameron (Canada)

From: Heloise Auger
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:54:22

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Heloise Auger (Canada)

From: Darryl Murphy
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:54:15

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

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Specialised services allowed under the EU Regulation must come with their own capacity,

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Darryl Murphy (United States)

From: Barbara Brueckner
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:53:50

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Barbara Brueckner (United States)

From: daniel oconnor
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:53:32

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

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Thank you,

daniel oconnor (United States)

From: Lee Brandon
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:53:05

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Lee Brandon (United States)

From: Vitor Pereira
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:53:04

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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[SpS#2v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Vitor Pereira (Portugal)

From: Vitor Pereira
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:53:00

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Vitor Pereira (Portugal)

From: Medora Van Denburgh
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:52:22

Dear Sir / Madam,

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Medora Van Denburgh (United States)

From: Kimberly Flynn
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:52:18

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Kimberly Flynn (United States)

From: A Fredette
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:52:11

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

A Fredette (Canada)

From: Judy Romanowski
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:52:06

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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[TM#1v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Judy Romanowski (United States)

From: Edward Michel
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:52:03

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Edward Michel (United States)

From: Richard Plancich
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:52:02

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
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It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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[SpS#2v2]
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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Richard Plancich (United States)

From: Joseph Gilbert
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:57

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

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[SpS#2v2]
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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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[TM#1v2]
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Thank you,

Joseph Gilbert (United States)

From: Charles Mixon
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:51

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Charles Mixon (Canada)

From: Jason Flatt
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:51

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

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The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

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Thank you,

Jason Flatt (Canada)

From: William Smith
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:48

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

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Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

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Thank you,

William Smith (Canada)

From: Thomas Mora
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:48

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Thank you,

Thomas Mora (United States)

From: LeRoy Boyce
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:44

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

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According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

LeRoy Boyce (United States)

From: Kathryn Lawrence
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:39

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

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There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

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Thank you,

Kathryn Lawrence (United States)

From: Peter Ayres
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:30

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

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separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

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Thank you,

Peter Ayres (United States)

From: William Van Bel
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:29

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
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Thank you,

William Van Bel (United States)

From: Mark Tobia
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:51:13

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

[TM#1v2]
The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

Class-based traffic management also harms applications and services that are misclassified, whether deliberately or not. This is a particular risk for traffic from small businesses or start-ups. Class-based traffic management also risks discriminating against encrypted and anonymised traffic, which could be throttled by ISPs. It also harms users whose needs for accessing a certain class of service differ from the ISP's assumptions. Finally, the lack of transparency around this practice creates uncertainty about the performance of particular applications in any particular network. As with zero-rating, the complexity and ambiguity of this approach makes it more difficult for regulators to enforce it. Therefore, applying class-based traffic management instead of application agnostic traffic management is unnecessary, disproportionate, discriminatory and hinders transparency.

In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Mark Tobia (United States)

From: Andrea Molina
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 18:50:57

Dear Sir / Madam,

Please take this Stakeholder comment regarding the BEREC net neutrality guidelines creation into consideration.

[NN#1v2]
The diversity and innovative capacity of the Internet comes from the low cost of innovation and low barriers to entry. These principles ensure that every established business, start-up or non-commercial service - regardless of their size - has an equal opportunity to communicate with a global audience in a manner equal to their competitors. This driving force for the prosperity and diversity of the online economy can only be ensured by an open, neutral and non-discriminatory Internet. When internet providers are allowed to interfere with the decisions of their customers by economic or technical discrimination, this freedom is lost. Recital 1 of the EU Regulation on net neutrality says that legislation has to be interpreted in a way that ensures our freedom to access and distribute information and that protects the Internet as an engine for innovation.

The current BEREC guidelines create a solid foundation for the protection of these principles. The enormous task BEREC was left with by the legislator has been fulfilled in a balanced and careful manner that ensures the protection of the rights of consumers and businesses guaranteed by the regulation. The guidelines provide much needed clarification to the text, but need to be further specified in a few points.

[ZR#1v2]
"Zero-rating" is a commercial practice imposed by internet providers. It allows unlimited access to certain sites and services, but imposes a payment for accessing the rest of the internet.

It is good that there are a number of clear restrictions on zero-rating in BEREC's draft guidelines. However, if most of the current forms of zero-rating are going to be banned or severely restricted, why not ban zero-rating altogether? That would cut five pages from the guidelines and make the job simpler for the National Regulatory Authorities whose job it is to implement the guidelines.

There are forms of commercial practices that interfere with users' rights protected under Article 3(1) of the EU Regulation to access and, in particular, to distribute information freely. When a commercial practice of an ISP discriminates between providers of content, applications and services by making them unequally accessible (for example, if you have to pay to access some sites/services, but get "free" access to others), this constitutes an arbitrary interference of users' rights established under Article 3(1) of the Regulation and should be prohibited according to Article 3(2).

Recital 7 of the Regulation defines the types of commercial practices that require national regulators to intervene. However, the language of this recital that "National regulatory and other competent authorities should be empowered to intervene" and "should be required, as part of their monitoring and enforcement function, to intervene" only provides the minimum floor for regulatory intervention and not a maximum ceiling of the scope of this regulation. National Regulatory Authorities have a strict mandate to implement the

restriction on harmful commercial practices of Article 3(2) of the Regulation. This means that a slower (and resource-intensive) case-by-case approach is not an appropriate implementation of the legislation.

Application-specific zero-rating (i.e. zero-rating of individual applications or whole classes of applications) and zero-rating for a fee (i.e. where application providers pay to have their data zero-rated) are commercial practices that systematically -- regardless of their scale and the market position of the players involved -- interfere with the end-users' right of Article 3(1) to impart information, and therefore materially reduce end-users' choice in practice. If people have to pay to access YOUR information and get access to other information for free, this is quite obviously a restriction on the right to distribute information, as described in Recital 1 of the legislation. It is therefore logical that such practices be banned under the provisions of Article 3(2).

In addition, National Regulatory Authorities have to ensure clarity and predictability of authorised business models in the digital single market to fulfil the goal of this Regulation to "guarantee the continued functioning of the Internet ecosystem as an engine of innovation". BEREC's mandate pursuant to Article 5(3) of the EU Regulation is to contribute to the "consistent application of this Regulation" by issuing clear rules. A case-by-case approach falls short, since the legality of each zero-rating offer will have to be assessed individually by 31 enforcement bodies and radically different patterns of what is permitted and prohibited in each country will accumulate over time, as a direct result of these case-by-case decisions. This legal uncertainty discourages long-term planning and innovation, and is therefore detrimental to investment in the European start-up economy.

Finally, most of the commercial practices highlighted by BEREC have a harmful effect on the fundamental rights of end-users protected under the Charter of Fundamental Rights of the European Union. By making certain services unequally accessible, zero-rating infringes on the media freedom and pluralism (Article 11(2) of the Charter). Zero-rating also constitutes a discrimination against the right to provide services in EU Member states and the freedom to conduct a business for every competitor of the services or applications that are being zero-rated. (see Articles 15(2)), and 16 of the Charter of Fundamental Rights).

[SpS#1v2]
The EU Regulation on net neutrality allows specialised services ("services other than internet access services") under strict safeguards. Article 3(5) and Recital 16 require the optimisation of specialised services to be objectively necessary for the functionality of key features of the service. This would not be the case with services that could also function on the open, best-effort Internet. Furthermore, Recital 16 prevents specialised services from being used to circumvent general net neutrality traffic management rules. Any deviation from these safeguards that would widen the applicability of the concept of specialised services would increase market entry barriers and thus weaken the innovative potential of the Internet as a whole.

If ISPs are allowed to charge online services for preferential treatment, they have an incentive to stop investing in network capacity for the "normal" Internet and reduce their data caps, in order to encourage their customers to use specialised services. This effect would be detrimental for minorities, disadvantaged people, not-for-profit services and start-ups that cannot afford special access to all networks. This would also be detrimental to the development of the free, open and innovative Internet ecosystem.

[SpS#2v2]
Specialised services allowed under the EU Regulation must come with their own capacity,

separate from the Internet access service. They cannot undercut the average maximum bandwidth that the EU Regulation guarantees.

Paragraph 118 of the draft BEREC guidelines suggests that the delivery of specialised services could limit an individual end-user's Internet access service capacity. This is not in line with Article 3(5) of the EU Regulation. It also contradicts the requirements for the provision of specialised services in paragraphs 113 and 117 of the draft guidelines.

Furthermore, the legislator clearly established its intention to ensure that end-user's Internet access service capacity remains unaffected by the delivery of specialised services by modifying the wording accordingly during the negotiations. In these final negotiations on 6. July 2015, the legislator decided to delete the word "other" before "end-users" in Article 3(5). That final version of that article now establishes that specialised services cannot be usable or offered to the "detriment of the availability or general quality of Internet access services for end-users."

Finally, paragraph 118 of the draft guidelines is not in line with Article 4(1)(d) of the Regulation (on transparency) nor with paragraphs 142 and 144 of the draft guidelines, as the average and maximum bandwidth agreed between the ISP and the end-user are no longer met.

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The EU Regulation has very clear rules on what constitutes reasonable traffic management. According to its Article 3(3), all traffic management should be as application agnostic as possible. Every deviation from this rule, such as class-based traffic management, could harm competition by offering priority to some classes of applications, but not others, for example.

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In light of these harms, paragraphs 54, 55, 57 and 63 of the draft guidelines are not yet fully in line with the EU Regulation. Article 3(3) subparagraph 2 clearly requires traffic management to be transparent, non-discriminatory and proportionate, in order to be deemed reasonable. Those conditions have to be read in the context of Article 3, to distinguish reasonable and unreasonable forms of traffic management measures.

Paragraph 63 of BEREC's draft guidelines interpret "reasonable traffic management" in a way which is inconsistent with the legislator's intentions. The draft guidelines would allow far too broad class-based traffic management measures. These would be based on the functionality of the service and protocol used, but it seems clear from recital 9 and the structure of Article 3(3) of the Regulation that the legislator only intended "reasonable measures" to be based on the Quality of Service requirements of traffic (classes for sensitivity to latency, jitter, packet loss and bandwidth).

According to the proportionality principle and paragraph 58 of the draft guidelines, all forms of user-controlled quality of service and consumption based traffic management should be applied and exhausted before more intrusive measures are taken. Therefore, BEREC should bring paragraphs 54, 55, 57 and 63 more clearly into line with the EU Regulation.

Thank you,

Andrea Molina (United States)

From: Elaine Christine
To: NN-Consultation
Subject: Stakeholder comment on BEREC net neutrality guidelines
Date: 15 July 2016 20:10:04

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Thank you,

Elaine Christine (United States)