

18<sup>th</sup> July 2016

SUBJECT: ACADEMICS IN SUPPORT OF SOUND NET NEUTRALITY IN EUROPE

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

Dear BEREC,

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Olivier Alais, Fellow, Berkman Center For Internet & Society, Harvard University

Farid Ben Amor, Grad Student, University of Southern California

Chinmayi Arun, Assistant Professor of Law, National Law University Delhi

Peter Asaro, Assistant Professor of Media Studies, School of Media Studies, The New School

Giuseppe Attardi, Professor, Università di Pisa

Dr. Ewa Bacia, Postdoctoral Research Fellow (Wissenschaftliche Mitarbeiterin), Technische Universität Berlin

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

Amitabha Bagchi. Associate Professor, Computer Science and Engineering, Indian Institute of Technology Delhi

Dr. Anne Baillot, Expert in Digital Methods for the Humanities, Centre Marc Bloch (Berlin) & Inria (Paris)

Dr. Ingo Barke, Researcher (physics, PhD), University of Rostock, Germany

Carlo Batini, Full professor, University of Milano Bicocca, Italy

Oliver Baumann, Associate Professor, University of Southern Denmark

Luca Belli, Senior Researcher, Center for Technology & Society at Fundação Getulio Vargas

Eduardo Berton, Global Clinical Professor of Law, New York University - School of Law

Thomas Beschorner, Professor and Director of the Institute for Business Ethics, University of St.Gallen, Switzerland

Prof. Dr. Alexander Blankenagel, Humboldt-Universität zu Berlin, Faculty of Law

Dr. Theresa Blume, Senior Scientist, GFZ Potsdam

Herbert Burkert, Prof.em. Dr., President, Research Center for Information Law, University of St.Gallen, Switzerland

Thorsten Busch, Ph.D., University of Konstanz & University of St. Gallen

Professor Arturo J. Carrillo, Director - International Human Rights Clinic, Co-director - Global Internet Freedom & Human Rights Project, XD@GW Fellow - Innovation Through Cross-Disciplinary Collaboration, George Washington University Law School

Stefano Ceri, Professor, Politecnico di Milano

Danielle Keats Citron, Lois K. Macht Research Professor & Professor of Law, University of Maryland Carey School of Law

Ray Corrigan, Senior Lecturer in Maths, Computing & Technology, The Open University, UK

Dr Angela Daly, Vice Chancellor's Research Fellow, Queensland University of Technology, Faculty of Law (Australia), Research Associate, Tilburg Institute of Law, Technology and Society (Netherlands)

Todd Davies, Associate Director and Lecturer, Symbolic Systems Program, Stanford University

Joseph P. DeVeough-Geiss, PhD student, Universität Potsdam, Potsdam, Deutschland

Professor Juan Carlos de Martin, Faculty Co-Director, Nexa Center for Internet & Society  
Politecnico di Torino - Italy

Leonhard Dobusch, Professor of Organization, Universität Innsbruck – Department of  
Organization and Learning

Prof. Dr. Karin Donhauser, Lehrstuhl Sprachgeschichte, Institut für deutsche Sprache und  
Linguistik, Humboldt-Universität zu Berlin

Prof. Dr. Arno Ehresmann, Institute of Physics, University of Kassel, Germany

Dr Claudia Felser, Senior Researcher & Co-Director, University of Potsdam

Dr. Stefanie Fischer, Postdoctoral Researcher, University of Potsdam, Germany

Dr. Richard F. Forno, Jr. Affiliate Scholar, Stanford Law School Center for Internet and Society

Prof. Dr. Bettina Fritzsche, University of Education Freiburg/Germany

Giancarlo Forsio, Intermediary Liability Fellow, Stanford Center for Internet and Society

Dr. Jana Friedrichsen, Postdoctoral Researcher, DIW Berlin and Humboldt-Universität zu Berlin

Urs Gasser, Executive Director, Berkman Klein Center for Internet & Society, Professor of  
Practice, Harvard Law School

Lisa Giermndl, PhD student, University of Passau

Theodore L. Glasser, Professor of Communication, Stanford University

Nico Grove, Prof. Dr., Institute for Infrastructure Economics & Management, Munich, Germany

Arthur Gwagwa, Senior Research Fellow, Centre for Intellectual Property and ICT Law,  
Strathmore University

Hans-Ulrich Heiss, Professor of Informatics, Technische Universität Berlin

Prof. Dr. Felicitas Hillmann, Head of the Research Unit "Regeneration of cities", IRS (Leibniz  
Institute on Society and Space), Visiting Scholar, Center for Urban Research, CUNY New York  
City

Prof. Dr. Katharina Hoelzle, MBA, Chair for Innovation Management and Entrepreneurship  
University of Potsdam, Editor-in-chief Creativity & Innovation Management

Prof. Dr Thomas Hoeren, Professor, ITM /University of Münster (Germany)

Prof Jeanette Hofmann, Berlin Social Science Center

Prof. Dr. Bernd Holznagel, LL.M., Institut für Informations-, Telekommunikations- und  
Medienrecht (ITM)

Dr. Sandra Huning, Fakultät Raumplanung, TU Dortmund, Fachgebiet Stadt- und  
Regionalsoziologie

Prof. Dr. Dr. h. c. Stefan Jaehnichen, Technische Universitaet Berlin, Fakultät IV - Elektrotechnik  
und Informatik

Prof. Dr. Ruth Janal, LL.M., Law Faculty, Freie Universität Berlin

Dorothea Jansen, Programme Leader, ProFiL Programme, Technische Universität Berlin

Rebecca Kahn, Research Fellow, Alexander von Humboldt Institute for Internet and Society

Dr. Lena Kästner, Humboldt-Universität zu Berlin, Berlin School of Mind and Brain

Prof. Dr. Dr. h.c. Michael Kleinaltenkamp, Freie Universität Berlin, Fachbereich  
Wirtschaftswissenschaft, Marketing-Department

Charlotte Kloft, Professor at the Freie Universitaet Berlin/Germany

Prof. Dr. Christine Knaevelsrud, Professor for Clinical Psychological Intervention, Freie  
University Berlin

Christiane Koch, Professor of Theoretical Physics, Universität Kassel, Kassel, Germany

Johann Kranz, Professor, University of Munich

Dr. Karoline Krenn, LB Makrosoziologie, Institut für Sozialwissenschaften, Humboldt Universität  
zu Berlin

Prof. Dr. Stephan Kreutzer, Professor for Logic and Semantics, Technical University Berlin  
(Technische Universität Berlin), Germany, Director of the Institute for Software Engineering  
and Theoretical Computer Science

Dr. Stephan Laske, Professor emeritus, University of Innsbruck, Department for Organisation and Learning(IOL)

Prof. Dr. Caroline Lasser, Technische Universitaet Muenchen, Mathematics

David Levine, Associate Professor of Law, Elon U. School of Law, Stanford CIS, Princeton Center for Information Technology Policy

Patrick Lin, Ph.D., Associate Professor, Philosophy Dept., Director, Ethics + Emerging Sciences Group, California Polytechnic State University

James Losey, Doctoral Candidate, Stockholm University

Professor Chris Marsden, Sussex Law School, University of Sussex

Dr. Konstanze Marx (PhD), Technical University of Berlin, Institute for Language and Communication

Fenwick McKelvey, PhD, Assistant Professor, Department of Communication Studies, Concordia University

Uta Meier-Hahn, Doctoral Researcher, Humboldt Institute for Internet and Society, Berlin

Diana Michl, M.A., PhD candidate, International Experimental and Clinical Linguistics, Universität Potsdam

Luiz Fernando Marrey Moncau, Intermediary Liability Fellow, Stanford Center for Internet and Society

Uwe Nestmann, Professor of CS, Technische Universität Berlin, Germany

Prof. (FH) Dr. Tassilo Pellegrini, Professor, St. Pölten University of Applied Sciences

Karin Pelte MA, Research associate at Technical University Berlin, Institute of Philosophy and the History of Literature, Science and Technology

Victor Pickard, Associate Professor, Annenberg School for Communication, University of Pennsylvania

Arnold Picot, Prof. Dr. Dres. h.c., Forschungsstelle für Information, Organisation und Management, Fakultät für Betriebswirtschaft, Ludwig-Maximilians-Universität München

Prof. Dr. Axel Polleres, Professor, Institute for Information Business, WU Vienna

Riana Pfefferkorn, Cryptography Fellow, Stanford Center for Internet and Society

Frank T. Piller, Vice Dean, RWTH School of Business & Economics, Professor and Chair of Technology & Innovation Management, Academic Director, RWTH Aachen & Fraunhofer Executive MBA, RWTH Aachen University

Dr. Julia Pohle, Research Fellow, WZB Berlin Social Science Center

Dr. Michel José Reymond, Post-doctoral Assistant, University of Geneva

Neil Richards, Thomas & Karole Green Professor of Law, Washington University

Prof. Dr.-Ing. Vera Susanne Rotter, Technische Universität Berlin - Berlin University of Technology, Professor for Circular Economy and Recycling Technology - Institute of environmental technology

Dr. Daniela Rupp, Postdoctoral Scientist, Inst. f. Optik u. Atomare Physik, Technische Universität Berlin

Pamela Samuelson, Professor, Berkeley Law School

Dr. Christine Scharlach, Freie Universität Berlin, FB Mathematik und Informatik, Mathematik für das Grundschullehramt

Prof. Dr. Björn Scheuermann, Full Professor of Computer Engineering, Humboldt University of Berlin, Germany

Dr. Marianne Schwarz-Scherer, Lecturer Literature, Universität Rostock, Institut für Germanistik

Nishant Shah, Visiting Professor, Institute for Culture and Aesthetic of Digital Media, Leuphana University, Germany

Shaheen Shariff, Associate Professor, McGill University

Maarten A. Siebel, PhD, MSC, PE, UNESCO-IHE, Associate Professor env. Biotechnology, Insure for Water Education, The Netherlands

Sarveet Singh, Programme Manager, Centre for Communication Governance at National Law University, Delhi

Dr. Johanna Sprondel, Philosophy and Comparative Literature, Humboldt University, Berlin (Ass. Prof.), Stanford University (Visiting Scholar)

Prof. Dr. Manfred Stede, Dept. of Linguistics, University of Potsdam, Germany

Thomas Streeter, Professor, Sociology, University of Vermont

Rebecca Tabasky, Manager of Community Programs, Berkman Klein Center for Internet & Society at Harvard University

Craig Thiersch, Emeritus, Universität Potsdam, Linguistik, Ehrenprofessor, Universiteit Utrecht, HiL/OTS, Gastdocent

Marco Torchiano, Associate Professor, Politecnico di Torino

Assoc.-Prof. Dr. Theresa Treffers, Private University Seeburg Castle

Samuel Trosow, Associate Professor, Faculty of Law / Faculty of Information & Media Studies (London, Ontario Canada)

Prof. em. Dr. Peter Ulrich, University of St. Gallen, Switzerland

Jeffrey Vagle, Lecturer in Law, Executive Director for Center for Technology , Innovation & Competition, University of Pennsylvania Law School

Prof. Dr. Ing. Barbara van Schewick, Professor of Law and, by courtesy Electrical Engineering, Stanford University

Nikki Vercauteren, PhD, Freie Universität Berlin

Isabell Wartenburger, Professor Doctor, University of Potsdam, Germany, Dept. Linguistics

Morgan N. Weiland, PhD Candidate, Stanford Communication Department, JD '15, Stanford Law School, Junior Affiliate Scholar, Stanford Center for Internet & Society

Prof. K. Weinberg, Lehrstuhl für Festkörpermechanik, Universität Siegen, Fakultät IV, Dept. Maschinenbau, Institut für Mechanik und Regelungstechnik

David Weinberger, Senior Researcher, Harvard Berkman Klein Center for Internet & Society

Dr. Katharina Wieland, Humboldt Universität zu Berlin, Institut für Romanistik - Fachdidaktik romanische Sprache

Marta Wierzbna, research associate at the University of Potsdam

Dr. Joss Wright, Research Fellow, Oxford Internet Institute, University of Oxford



Prof. Dr.-Ing. Tanja Zseby, Institute of Telecommunications (E389), Faculty of Electrical Engineering and Information Technology, TU Wien, Austria

Theresa Zueger, Associated Doctoral Researcher, Humboldt Institute for Internet and Society in Berlin