



GERMAN RADIO & TV

ARD-Liaison Office Brussels

ARD comments on the draft of BEREC Guidelines on Net Neutrality and Transparency

Summary

ARD welcomes the draft BEREC Guidelines on Net Neutrality and Transparency. Transparency is indispensable to safeguard the fair and open internet and is a prerequisite for consumers and content providers to detect problematic traffic-management measures as well as to make informed choices. However, as BEREC rightly points out, transparency is not enough. We therefore look forward to the upcoming reports by BEREC on other relevant issues.

Regarding transparency we would argue for a more robust approach. A purely market based approach like self-regulation seems not to be appropriate. Further thought should therefore be given on how to implement the principle of non-discriminatory traffic management effectively, either by properly monitored co-regulation or by specific ex ante regulation.

ARD welcomes the opportunity to comment on the draft BEREC Guidelines on Net Neutrality and Transparency. We consider that the creation and maintenance of transparency is a necessary, yet not sufficient condition to guarantee net neutrality in the open Internet. That transparency is a vital criteria is also documented by the draft FCC Guidelines recently published in the General Register. In this draft three constitutive criteria are mentioned: transparency, exclusion of blocking and avoidance of indecent discrimination. Therefore, ARD welcomes that BEREC intends to develop further guidelines for the topics quality of service, competition and discrimination as well as the IP interconnection market situation.

Public service broadcasters like ARD as much as other media/content providers use the Internet to create, distribute and make available their audiovisual and other

services, to reach their audiences/users and to fulfil their particular public service mission. The openness of the Internet and the acknowledgement of net neutrality foster the free-flow of information, universal access and the plurality of media content and providers.

The importance of the Internet for public service broadcasters and other media companies will increase, as part of an overall trend and as non-linear consumption in particular of audiovisual content will grow substantially while, at the same time, new technologies such as hybrid broadband broadcasting, bringing together television and the internet on the TV screen in a truly convergent manner, are currently introduced into the market.

With growing significance as a space of societal communication the Internet becomes ever more important for sustaining pluralism and diversity in the media. This gives rise to relevant questions concerning the definition and introduction of adequate political and regulatory frameworks. In this context, net neutrality ought to be discussed in its function for preserving access to and pluralism and diversity of the media.

Against this background the approach in the EU telecom package to strengthen transparency, competition and non-discrimination is a good way forward and should be fully implemented when transposing the regulatory framework into national law. This will help to secure the open and neutral Internet. The European institutions and BEREC likewise should further encourage the Member States to do so.

We agree with BEREC that regarding transparency the following set of minimum information should be provided to all users: all relevant details of subscription contracts, including declared quality of service parameters and any limitations, information concerning any traffic management practices and the reasons for their application, availability of monitoring tools and user guidance, parameters of actually delivered services (e.g. bandwidth, throughput, packet loss, latency, jitter, incidents). This information could also be a more realistic basis for billing (i.e. instead of the subscribed maximum speed which is normally used at present).

Beyond this the European Commission with the help of BEREC should further reflect on the principle of non-discriminatory traffic management and how to implement it effectively, either by properly monitored co-regulation or by specific ex ante regulation. A purely market based approach like self-regulation seems to be inappropriate. For this reason reflections of the functionality of net neutrality with respect to a) free and universal access to and dissemination of information, b) safeguards for overall connectivity and c) preservation of media pluralism are indicated as a part of the regulatory process.

Close monitoring of future developments by the European Commission and by BEREC is indispensable. It should be supported and possibly supplemented, if needed, by measures on EU and Member States level to give further guidance for appropriate means in order to safeguard net neutrality. In addition national regulatory authorities should evaluate whether further action is needed. In particular, the revised telecom package offers opportunities for them to impose minimum “quality of service” obligations on SMP operators and to oblige operators to be more transparent regarding their practises in traffic management and to improve consumer abilities to switch internet access providers easily. As a consequence the option of such obligations should be more emphasized in the BEREC Guidelines.

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