



Internet Society response to BEREC public consultation on BoR (12) 32 - Guidelines for Quality of Service in the scope of Net Neutrality

Introduction

The Internet Society welcomes the opportunity to comment on BEREC's Guidelines for Quality of Service in the scope of Net Neutrality. We would like to congratulate BEREC on the quality of these guidelines, which are well-aligned with principles that the Internet Society has long espoused. While the analysis provided by the guidelines is useful, we find that there is now a need to provide greater certainty for the Internet application providers whose businesses depend on the fundamental characteristics of an open Internet.

General remarks

Recent BEREC & EC findings BoR (12) 30 show:

- 35% of the fixed operators that responded manage their networks in order to offer specialised services (for the provision of facility-based applications, e.g. telephony or TV) in a way that could potentially affect the Internet access service being delivered through the same access network;

- widespread restrictions on the use of P2P and VoIP services on mobile networks, and P2P services on fixed networks, and;

- nearly a quarter of European broadband end-users are in markets where ISPs restricting P2P services for all users have over 50% market share.

Crucially, neither the competitive dynamic in some European markets for Internet access nor the vigilance of competition authorities, have been able to prevent the widespread restrictions to Internet use evidenced in these findings. These restrictive practices are much more prevalent in some European countries than others, indicating that there is no universal technical requirement for broadband networks to be operated in this fashion.

The dynamic and innovative nature of the Internet service industry makes it increasingly important for NRAs to establish monitoring programs and take action to prevent restrictive practices and degradation of the Internet access service becoming a permanent feature of the broadband service provision landscape in their countries. Businesses impacted by these network operator practices will only benefit from a level-playing field for service provision if action is taken swiftly.

Specific responses to consultation questions contained in BoR (12) 32 - Guidelines for Quality of Service in the scope of Net Neutrality

What are your views on:

1. The criteria proposed for the assessment of degradation of Internet access service as a whole? (Ref. chapter 4)

Monitoring must be both proactive and reactive. Trends only become apparent over time, and the dynamic nature of the Internet services industry means that reactive monitoring alone may only uncover a problem after the businesses that depended on a resolution have become insolvent.

Monitoring cannot be done exclusively by reference to terms and conditions of Internet service provision and must include technical measurements of the services themselves. Proactive monitoring of the services over time should include the following considerations:

- Specialized services vs. Internet access services
- Measurements of Internet service performance must be made in the presence of specialized services where they exist
- Peering and transit links – on-net and off-net destinations should be measured
- Measurements must be to a wide range of destinations, not just those currently most popular
- Connectivity and throughput tests must use a broad range of protocols, applications and destinations
- Measurements of latency under load

Performance of specialized services is not especially relevant. The presence of specialized services and the network management techniques used to support such services are, by themselves, not a cause for concern. Where provision of specialized services impacts the delivery of best effort Internet services then this is of serious concern. Performance of Internet access services over time, and in comparison with stated terms and conditions is critical to measure. We strongly agree with BEREC that, “There should be monitoring of the quality of Internet access service (IAS) over time, covering all aspects for which ISPs are responsible.”

2. The criteria proposed for the assessment of issues regarding individual applications run over the Internet access service? (Ref. chapter 5)

We agree with BEREC that, ‘Blocking or throttling of specific applications by one ISP will also have consequences for end users of other ISPs who may face problems using these applications to reach end users of the restricting ISP (the network effect).’

Rather than requiring end-users and other stakeholders to make complaints, and NRAs to conduct lengthy assessments of the practices being complained about and their impact in the context of the local market, it would be preferable to establish a principle that providing an Internet access service means not blocking applications. Not blocking applications represents the expected status quo. The onus should be on the Internet access service provider to apply to the NRA for permission to block

applications, providing suitable justification for doing so. The proposed criteria to assess a practice could then be applied in determining whether or not to permit the practice to be implemented.

3. The aspects proposed regarding the conditions and process for regulatory intervention? (Ref. chapter 6)

Article 22(3) of the Universal Service Directive 2002/22/EC as amended by the Citizens' Rights Directive (2009/136/EC) stipulates that, 'In order to *prevent* the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks' (our emphasis). The use of the wording 'prevent' indicates clearly that NRAs should be proactive, and not merely accept offers that entail the provision of subsets of the open Internet or application-specific restrictions, as legitimate or normal, and of which end-users must merely be informed. Such restricted offerings should not be referred to as 'Internet' access services.

In the interests of efficiency, NRAs should *ex ante* require undertakings to refrain from filtering specific applications or classes of applications, except where adequate justification for doing so has been presented to and accepted by the NRA.

4. To what extent are the scenarios described in these guidelines relevant with respect to your concerns/experience? Are there additional scenarios that you would suggest to be considered?

The scenarios described in the guidelines are very relevant to our concerns and as the recent BEREC & EC findings BoR (12) 30 indicate, they are not contrived by any means.