

**Comments on BEREC's public consultation on Net Neutrality by  
EMMA (European Magazine Media Association)  
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EMMA, the European Magazine Media Association, is the representative trade association of European magazine publishers providing content on all platforms. In total, we represent the interests of 15,000 publishing companies across Europe, producing more than 50,000 titles per year across a variety of platforms, including print, web, tablet and mobile.

### **1. Importance of net neutrality for Europe's magazine media**

EMMA welcomes the opportunity to respond to the BEREC (the Body of European Regulators for Electronic Communications) public consultations on net neutrality. Our comments are mainly focused on the consultations on:

- "Differentiation practices and related competition issues in the scope of Net Neutrality"<sup>1</sup>
- "Guidelines for Quality of Service (QoS) in the scope of Net Neutrality"<sup>2</sup>

It is vital that the **important principle of net neutrality is respected in order to safeguard a competitive, independent and diverse press.**

It is a fundamental basis of press freedom in a democratic society to protect access to information in the course of journalistic research; the production of press products; and distribution to readers, both offline and online. These essentials guarantee a competitive press environment and thus a free, independent, diverse and vibrant press. As BEREC has recognised, deviations from the principle of net neutrality "cause for concern for competition and society".

### **2. General comments**

It is key that the internet service infrastructure and ISPs in Europe do not discriminate against or prioritise content, and that competition is maintained between providers of editorial content, to enable the diversity of the press across Europe. Otherwise, users' unimpeded access to certain content or categories of content will be under threat.

While BEREC explains that the documents published for consultation focus on considerations such as competition, innovation and harm to end-users' interest rather than on "issues related to freedom of speech or access to certain types of content which may be deemed socially useful", these issues cannot be ignored given their relevance to the press and its important role in a democratic society. We note that BEREC recommends that these considerations should be examined in the light of the relevant national legislation.

As highlighted by BEREC in its explanatory paper on its public consultations, it is worrying that – according to the data currently available - huge numbers of mobile internet users in Europe experience some form of restriction. The mobile market is of growing importance for Europe's magazine media and concerns have been raised regarding potentially damaging projects which have reportedly been under consideration by certain mobile operators, such as the removal of

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<sup>1</sup> [http://erg.eu.int/doc/consult/bor\\_12\\_31\\_comp\\_issues.pdf](http://erg.eu.int/doc/consult/bor_12_31_comp_issues.pdf)

<sup>2</sup> [http://erg.eu.int/doc/consult/bor\\_12\\_32\\_guidelines.pdf](http://erg.eu.int/doc/consult/bor_12_32_guidelines.pdf)

advertising – the lifeblood of the digital press - from digital press accessed via mobile connections. This would remove the possibility to monetise digital press via smart phone or tablets and therefore negatively impact press freedom. It is vital that, as BEREC says, National Regulatory Authorities (NRAs) “continue to closely monitor the evolution of the market and are ready to act without hesitation if necessary.”

A further concern relates to ‘search neutrality’, an issue which has been raised by magazine publishers in various Member States, the abuse of which can distort competition to the detriment of both consumers and businesses.

As EMMA has previously commented, in relation to BEREC’s draft guidelines on net neutrality and transparency, transparency is key to enable users to have a proper understanding and make informed choices. However, as BEREC recognizes (in the aforementioned draft guidelines), transparency alone is probably not sufficient to achieve net neutrality and is not an absolute guarantee for effective competition, with regulatory remedies to promote efficient competition being of fundamental importance in the context of net neutrality.

### **3. “Differentiation practices and related competition issues in the scope of Net Neutrality”**

EMMA is opposed to differentiation practices<sup>3</sup>, whether based on the type of packet, application or content provided, or on the content provider himself, which are in direct conflict with the principle of net neutrality under which all electronic communication passing through a network should be treated equally.

In short, differentiation practices might have the following consequences:

- End-users like magazine readers might be harmed, as they do not get equal access to all platforms;
- Fair competition and innovation are threatened, which is a threat to magazine media businesses.

As recognized in the BEREC consultation document, differentiation could have the effect of affecting the relative quality available for content and application providers (CAPs) who do not wish to pay for a higher quality service (point 107). This type of discrimination would ultimately be a barrier for many European publishing houses, which continue to substantially invest in digital business models to the benefit of their readers. The concern is that the impact on the great majority of publishers - which are mainly small and medium sized enterprises - would be that they would only be in a position to offer a ‘second class’ service.

The consultation document also importantly highlights the very real risks of discrimination between CAPs and the fact that a distortion of competition may arise unless differentiation practices are non-discriminatory and based on objective criteria. In light of our concerns over discriminatory differentiation practices we agree with the “general preference for content and application agnostic practices”, referred to in the Quality of Service draft guidelines as “treating all applications similarly (e.g., IP packets from all applications put in the same forwarding queue). This is as opposed to application-specific traffic management under which individual applications are treated differently, described as “e.g., VoIP is blocked or P2P is throttled while other applications are not”.

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<sup>3</sup> BEREC defines differentiation as “a decision made by an Internet Service Provider (ISP), resulting in some applications or protocols being treated differently than the rest of the traffic on the Net.”

#### 4. “Guidelines for Quality of Service (QoS) in the scope of Net Neutrality”

The QoS draft Guidelines provide a useful basis for discussion as regards what should be the purpose as well as the scope and extent of Universal Service Directive Article 22 (3), which introduces the competence of National Regulatory Authorities (NRAs) to set minimum quality of service requirements in order to prevent degradation of service.

It is key that any degradation of service is identified and addressed as quickly as possible. The focus on the two main categories of degradation of service identified by BEREC<sup>4</sup> is important, given the potential impact on the quality of magazine media’s services to end-users. In this regard, it is important in our view that there is both effective “preventative monitoring” as well as “reactive monitoring”, under which a situation would be evaluated where a degradation of service is suspected (e.g., in response to a complaint about low performance)<sup>5</sup>.

The need for this is particularly clear in the case of individual applications using Internet access services, where according to the report there are typically cases of differentiation of traffic within the Internet access services, such as prioritization of traffic from specific content and application providers (CAPs).

#### 5. Conclusion

EMMA shares many of the concerns raised by BEREC in its consultation documents as regards the threats to net neutrality and believes that its suggestions as regards how to tackle this issue are largely constructive.

It is crucial that any future recommendations are properly and consistently implemented, in light of the risks to media diversity, freedom of expression and democracy, as set out above.

We welcome measures that will ensure fair competition between players of the value chain and moves towards having common criteria to enable NRAs to better assess traffic management practices. However, it is important that stakeholders, including the press, are involved in the ongoing discussions.

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<sup>4</sup> i.e., Internet access service considered as a whole; and individual applications using Internet access services

<sup>5</sup> As specified in paragraph 4.1, page 37