

**VPRT CONTRIBUTION TO THE PUBLIC CONSULTATION ON BEREC'S DRAFT DOCUMENTS ON "GUIDELINES FOR QUALITY OF SERVICE IN THE SCOPE OF NET NEUTRALITY"; "AN ASSESSMENT OF IP-INTERCONNECTION IN THE CONTEXT OF NET NEUTRALITY"; "DIFFERENTIATION PRACTICES AND RELATED COMPETITION ISSUES IN THE SCOPE OF NET NEUTRALITY"**

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The German Association of Commercial Broadcasters and Audiovisual Services (VPRT) represents the interests of 140 companies in the fields of commercial television and multimedia, as well as commercial radio and audio services, including national, state and regional TV and radio providers and telemedia offerings (e.g. teleshopping, user generated content portals), along with broadcasting companies operating in several countries.

VPRT members distribute their content and services via traditional means of transmission (cable, satellite, terrestrial) as well as new platforms and the public internet. The debate on net neutrality is of the utmost importance for VPRT members. VPRT welcomes the opportunity to comment on the three draft documents on

- "Guidelines for Quality of Service in the scope of Net Neutrality";
- "An assessment of IP-interconnection in the context of Net Neutrality";
- "Differentiation practices and related competition issues in the scope of Net Neutrality".

In our contribution we take a horizontal approach, which highlights some of the main points which are particularly important to VPRT members in the course of the net neutrality debate. A perspective for net neutrality can only be developed on a meaningful basis by integrating content and service providers in the whole debate.

**VALUE OF THE OPEN INTERNET:** The internet becomes increasingly important for VPRT members to distribute and to make their content and services available to consumers. It is important to highlight that traffic management and differentiation practices enable ISPs to act as new gatekeepers and set access conditions. **A non-discriminatory access to a well-functioning, open and high-capacity internet for both, content providers and users is essential to ensure media pluralism, freedom of information and diversity of opinion.** The public internet is an integrated part of the European media landscape and by this means fulfills an essential social, democratic and innovative function within the European information society.



**FURTHER ASSESSMENT OF NETWORK CONGESTIONS:** With regards to the debate on network congestion VPRT believes that further investigations are needed if, and to what extent congestions may occur in the future. This could involve independent monitoring and standardised measuring methods of the entire network infrastructure. Considering the transparency principle, these results should be publicly available. As network congestion is often used by ISPs as an argument for traffic management and differentiation practices, we welcome any further attention from policy makers and regulators on this particular aspect. **Traffic management and prioritisation practices for legal content should not be the solution to network congestions. At least there must be objective evidence that further expansion of capacities cannot solve the problem.** The congestion argument should be also linked to the question of how unlawful content is treated. ISPs need to respect that their infrastructures enable business models which are based on illegal streaming and downloading. Those offers are not only often particularly capacity-intensive they also put at risk investments into high quality content within the creative industry as one of the main European assets.

**NETWORK INVESTMENT COST AND FLOW OF FINANCE WITHIN THE NET:** Next to congestions, also the lack of refinancing prospects for ongoing capacity expansion is a central argument from some ISPs. However, as BEREC confirms in its draft documents **there is no free-ride problem as content and application providers make substantial payments for hosting and connectivity.** At the same time **network upgrading costs are expected to develop moderately or even decline.** So in fact, the net neutrality debate seems to be rather a debate about reallocation of income between providers of hosting and connectivity on one end and the providers of end-user connectivity at the other end. However, this debate should not be at the expense of content providers. VPRT therefore supports BEREC's investigation in both areas. VPRT is of the opinion that the **necessity of differentiation practices by ISPs, in particular traffic and service classes, has not been plausibly justified.** At the same time, it is important to underline, that once new traffic and service classes are introduced the development might be extremely difficult to retract.

**RISK OF NEW DIFFERENTIATION PRACTICES:** At the same time the lack of concrete designs of those differentiation practices, including so called traffic or service classes, make the consequences of their implementation unclear. Obviously **any differentiation should be fair, non-discriminatory and based on the principle of free choice.** Also **transparency and competition are extremely important pillars** when ensuring the openness of the internet. However, we still see the **risk that new differentiation practices, in particular if based on any commercial considerations of ISPs, would lead to closed systems in the public internet.** It is important to underline that the access to the internet by content providers must not solely depend on the financial power of the individual provider. **Services of smaller media providers as well as audiovisual media services, which are as**



much cultural services as they are economic services, **need to be able to reach consumers irrespective of their negotiation power.**

**ENSURING AN OPEN AND NEUTRAL INTERNET:** There seems to be a wide political consensus about the importance of maintaining a robust, neutral and open internet, which is based on the best effort principle. Whatever instruments one might chose to reach this objective we argue for a straight-forward approach, which also puts any differentiation and traffic management practices in the open internet under further scrutiny as they are likely to a) create incentives to reduce investments in network capacities and b) infringe the connectivity of users as well as of content and media providers. This would lead to a negative impact on the social, democratic, innovative function of the internet. Regulators and policy makers may consider whether an ex-post approach can sufficiently preserve the open and neutral character of the public internet. At least **those who question the best effort principle should** provide evidence for the necessity of changing the current system and **be forced to provide meaningful solutions on how to prevent the possible negative impacts.**