

Communications Consumer Panel response to BEREC's draft guidelines on Net Neutrality and Transparency

The Communications Consumer Panel is an independent group of experts established under the Communications Act 2003. Its role is to provide advice to Ofcom to ensure that the interests of consumers, including small businesses, are central to regulatory decisions. The Panel also provides advice to Government and champions consumers' communications interests with industry.

The Panel welcomes this opportunity to respond to BEREC's draft guidelines on Net Neutrality and Transparency. As the internet becomes ever more popular, consumers are using more sophisticated high-bandwidth services, particularly video services, on a variety of both fixed and mobile devices. This can result in congestion on networks, resulting in slow speeds and a frustrating experience for consumers.

Service providers are responding to the issue in a variety of ways, including:

- introducing data caps to manage the amount of data used by an individual consumer over a given period;
- introducing traffic management policies via which they may prioritise traffic by type;
- charging either the consumer or the content provider or both for guaranteed bandwidth; or
- blocking or degrading the quality of certain content.

While traffic management potentially offers some benefits to consumers there are concerns that:

- consumers are unaware of and/or do not understand these practices and their impact and so are unable to exert proper consumer choice;
- that prioritising some services or types of traffic over others could reduce long-term consumer choice and have a detrimental impact on those services that cannot afford to pay for prioritisation, including possibly some public services; and

- the technology used for traffic management could have implications for privacy and freedom of speech, as it involves analysis of internet traffic in order to decide how to manage that traffic.

For some time, the Panel's objective has been to encourage regulators, policy makers and industry to address the consumer and citizen interests in the debate about net neutrality and traffic management.

Our activity to date

In September 2010 the Panel, in partnership with Polis, the London School of Economics media think-tank, organised a seminar bringing together academics, government officials and consumer and industry representatives to begin to develop a shared understanding of the consumer and citizen interests in the net neutrality debate. The seminar involved Ofcom, the FCC, the EC, consumer groups and industry representatives. A video of the event is available to view at <http://www.youtube.com/watch?v=Zb3ehoJV0uk>. A summary of the discussion is available [here](#).

Informed by the debate at the event, the Panel then submitted responses to the [Ofcom discussion paper](#) and [European Commission consultation](#) in September 2010. The same month Anna Bradley, the Panel's then Chair, gave a [speech to the Westminster eForum Seminar - Net neutrality in the UK](#) setting out the Panel's views. She also gave the keynote presentation at the Broadband Stakeholder Group (BSG) one-day seminar on net neutrality. The Panel then continued to engage with the BSG, advising them on their work to develop a set of principles and key facts indicators to guide industry's approach to informing consumers about traffic management. Panel members also attended a number of other meetings with industry stakeholders in order to raise the Panel's concerns on these issues, including further meetings of the BSG and meetings with BT.

Anna Bradley spoke at a roundtable event organised by Ofcom to discuss approaches to transparency, emphasising the importance of understanding information about traffic management in the context of all the information and choices consumers are presented with when choosing or switching their broadband.

The Panel has continued to monitor the ongoing work of Ofcom on net neutrality with routine engagement.

Results

The Panel's activity helped to focus the debate on the perspective and interests of citizens and consumers. This was a move away from an industry focused debate. In particular, the Panel successfully raised the citizen elements of the debate and highlighted some of the issues with an over-reliance on transparency, both issues which subsequently became part of the mainstream debate.

The Panel's activity also influenced Ofcom's approach to this area. In particular, Ofcom gave considerable attention to considering the most appropriate approach to transparency and committed to undertaking research to understand how consumers use information in this area and the implications for information about traffic management. Ofcom's statement on net neutrality is due to be published shortly.

The Panel's activity also influenced the approach of industry stakeholders, encouraging them to take a more thoughtful and comprehensive approach to consumer information in this area.

There is a danger of the debate being cast too narrowly - focussing primarily on the potential benefits and risks to consumers in the short term, and the consumer remedies that could be put in place to mitigate those risks. However, there are also potential risks to consumers' long term interests, as well as important citizen issues to consider. Depending on how the market develops, these issues could result in consumer and citizen detriment in the future.

The Panel's current position

The Panel does have a concern that greater transparency is too often seen as a panacea to meet all kinds of consumer concerns. Whilst transparency is very important, there are a number of limitations to transparency for both consumers and citizens. Transparency relies on consumers being able to access, understand and compare information about traffic management, weigh it up against other information relevant to their purchasing decision and potentially switch their communications provider. If successful, transparency (although not by itself) facilitates individual consumer choice. However, the aggregate of individual choices, while possibly appropriate for each individual concerned, may not result in outcomes that are beneficial for society as a whole.

We await with interest the results of the BEREK traffic management investigation outlined in the 2012 Work Programme which will inform whether any further action is required.

It is important that research is carried out to examine the way consumers and citizens make decisions about broadband services and the extent to which they understand the information provided to them about such services. It is not possible to understand the impact of information about traffic management in isolation. It is important that policy makers take into account the way consumers make decisions and use information about broadband generally, to ensure that any remedies are useful to people in the round.

In considering how best to present information to consumers, policy makers should bear in mind that consumers need clear explanations about the content and services they will - or will not - be able to access and when. Small businesses are also likely to experience many of the same issues as consumers.

Existing evidence of consumer harm due to traffic management practices might not be forthcoming. Lack of evidence does not necessarily mean lack of harm; traffic management is an emerging phenomenon. Policy makers should frame policy with an understanding of what future harms might be, so that we do not unintentionally promote or encourage them and instead hopefully make them less likely to occur.

In the Panel's view, in relation to the provision of information about industry's traffic management policies, it is vital that industry engages at an early stage with representatives of consumer groups when developing initiatives.

At this early development stage it is also helpful if, as suggested by the draft guidelines, it can be agreed that the terminology to be used by all providers will be consistent. This is essential if consumers are to be able to easily comprehend and identify relevant information. Frequently used terms by providers include both "network management" and "traffic management" to describe the same thing.

The Panel agrees with the draft guidelines summary of the characteristics of a fully effective transparency policy, which are similar to those identified in the [Voluntary industry code of practice on traffic management transparency for broadband services](#), in that information supplied by providers about traffic management to current and prospective customers needs to be:

- understandable;
- appropriate;
- accessible;
- current;
- comparable;
- verifiable.

There is also a precursor to the provision of understandable information – in order for consumers to utilise the information to inform their choices, they need to be aware a) of what traffic management is and b) why it is relevant to them and therefore is an important element that they may wish to consider in their decision making in relation to both fixed and mobile broadband.

While the provision of information is a first step, it must also be easily accessible from a provider's home page and be easily located from a provider's search function and FAQs. To support consumers' needs at different stages, a layered approach to the provision of this information may be worth exploring.

Whilst the information provided directly to consumers by ISPs must be understandable, as noted in the draft guidelines, there is also an important role for the collators of information, whom consumers use to compare information about, for example, broadband speeds and price. Industry collaboration with such providers should bring about significant advantages for consumers' ability to easily use such information.

It is therefore important to actively monitor the development of this market to identify any emerging consumer or citizen issues and take early action to mitigate these issues. Further action could take the form of some kind of minimum quality of service or universal 'must-carry' obligation if developments in the market threaten important citizen goals, such as access to online public services.

The Panel intends to continue to champion the interests of UK citizens and consumers in this debate.

Conclusion

While traffic management potentially offers some benefits to consumers and small businesses there are concerns that there is a danger of the debate being cast too narrowly - focussing primarily on the potential benefits and risks to consumers in the short term. However, there are also potential risks to consumers' long term interests, as well as important citizen issues.

In summary, the Panel would suggest that:

- Lack of evidence does not necessarily mean lack of harm; traffic management is an emerging phenomenon and so it is important that the Commission and national regulators continue to monitor this area;

- Consumers need clear explanations about the content and services they will - or will not - be able to access and when;
- Many consumers are unaware of and/or do not understand these practices and their impact and so are unable to exert proper consumer choice;
- There are a number of limitations to transparency for both consumers and citizens. Transparency relies on consumers being able to access, understand and compare information about traffic management, weigh it up against other information relevant to their purchasing decision and potentially switch their communications provider;
- It is vital that industry engages at an early stage with representatives of consumer groups when developing initiatives;
- It is helpful if it can be agreed that the terminology to be used by all providers will be consistent;
- Information must be easily accessible from a provider's home page and be easily located from a provider's search function and FAQs;
- A layered approach to the provision of this information may be worth exploring;
- There is also an important role for the collators of information and independent comparison sites;
- It is important that research is carried out to examine the way consumers and citizens make decisions about broadband services and the extent to which they understand the information provided to them about such services;
- The results of the BEREC traffic management investigation outlined in the 2012 Work Programme will inform whether any further action is required; and
- It is important to actively monitor the development of this market to identify any emerging consumer or citizen issues and take early action to mitigate these issues.

Relevant links...

[Response to Ofcom discussion paper Traffic management and 'net neutrality', Sept 2010](#)

[Response to EC consultation on the open internet and net neutrality in Europe, Sept 2010](#)

[Summary of the discussion at the Panel/Polis Net Neutrality Seminar, Sept 2010](#)

[Speech by Anna Bradley at the Westminster eForum Seminar - Net Neutrality in the UK, Sept 2010](#)