

ISOC European Regional Bureau Newsletter

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Internet Access

EU: BEREC publishes Net Neutrality Guidelines

- The Body of European Regulators for Electronic Communications (BEREC) published final **Guidelines on the Implementation by National Regulators of European Net Neutrality rules**. The guidelines – released on 30 August - follow a public consultation that received almost half a million responses.
- Under BEREC's guidelines, "End-users shall have the right to access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice, irrespective of the end-user's or provider's location or the location, origin or destination of the information, content, application or service, via their internet access service"
- Telcos will still be allowed to provide "specialized services" if such a service is deemed **necessary and does not constitute an alternative for generic Internet access service and does not degrade the performance of the public Internet**.
- Also Telcos may implement **reasonable traffic management measures** providing such measures shall be **transparent, non-discriminatory and proportionate**, and shall **not be based on commercial considerations** but on objectively different technical quality of service requirements of specific categories of traffic. Such measures shall not monitor the specific content and shall not be maintained for longer than necessary.
- Finally **zero-rating** will be judged on a case by case basis to ensure the practice does not harm competition or choice. Those practices, BEREC recalls, **should not be driven by commercial considerations**, in other words they **should not discriminate** services so as to favor the ISP's own Internet services (or these of a commercial partner) to the detriment of competitors. Instead, such practices should be "**agnostic**" and applicable to a generic categories of services, and not to a specific service.
- BEREC's final guidelines also include a provision specifying that traffic management practices, specialized services and commercial practices do not require authorization from regulators. NRAs will provide their first annual report on implementing BEREC's guidelines by June 2017.
- Some consumer advocates warned that the guidelines contain loopholes that could be exploited by Telcos to the detriment of choice and innovation. This said, in general, the BEREC guidelines have been welcomed and **celebrated as a huge victory** by most consumers organizations and Open Internet proponents.
- **Telecoms operators reacted this week with disappointment** arguing that the guidelines created uncertainty and may cause delays in 5G investments. The European Telecommunications Network Operators' Association (ETNO) noted the majority of industry concerns were not included in the final version of the Guidelines. According to ETNO, the BEREC guidelines are "*restrictive*", preventing telecoms operators from delivering "*enhanced levels of service assurance and guarantees to cater for specialised use-cases*" by vertical industries through 'network slicing'. 5G network slices "*are meant to*

run on shared infrastructure without deteriorating the agreed levels of service”, says ETNO.

EU: European Commission Copyright Directive leaked

- A **leaked draft text** of the upcoming European Commission’s copyright directive provided an insight into the European Commission’s position ahead of formal adoption (due 21 September 2016).
- The leaked directive confirmed the Commission’s proposals related to neighbouring rights (European news publishers to be entitled to levy fees on Internet platforms for using their content such as snippets of their stories) and addressing the value gap (imposing obligations on video-sharing platforms to enter into revenue-sharing agreements with rights holders) as previously laid out in a **leaked Impact Assessment**.
- Given the resulting near-universal criticism from politicians and the creative industries, it is possible that the Commission may revise the Directive before final adoption on 21 September.

EU: Europe requires €700bn investment in digital infrastructure to reach US levels

- At the **Alpbach Economic Symposium** in Austria on 1 September, Guenther Oettinger - European Commissioner for Digital Economy and Society – stated his belief that the EU needs to invest up to **€700bn in its digital infrastructure to develop networks and next-generation high-speed 5G wireless applications** in order to catch-up with the developments in the US and China.
- Oettinger spoke in Austria as part of a tour of EU Member states to raise awareness about the need for unified digital standards, as well as the need to combine the strength and resources of European universities and industries to compete with Silicon Valley and China.

Trust

EU: France and UK agree encryption measures

- The French Interior Minister, Bernard Cazeneuve, met his British counterpart, Home Secretary Amber Rudd, in Paris on 30 August to discuss issues related to online security, counter-terrorism and encryption.
- In a **joint statement** France and the UK committed to prioritise information sharing between member states, strengthen security measures and make systematic use of databases to face the challenges of common threats posed by encrypted communications.

UK: Data privacy watchdog to examine WhatsApp’s data sharing with Facebook

- Following WhatsApp’s new privacy policy, the **UK’s data privacy regulator will closely monitor how it shares the data with its parent company** in order to ensure compliance with data protection laws. These changes come as part of WhatsApp’s plan to explore new ways for businesses to send messages using its platform.
- Last Thursday the company announced it would start sharing users’ telephone numbers with Facebook and allow more advertisements and friends recommendations on the social media platform. WhatsApp stated users will be given the choice not to share account information with Facebook.

UK: Internet of Things integration stalls

- A **report** by Deloitte found that **ownership of smart home gadgets had stagnated at a level of 2 per cent**. The popularity of connected homes has hardly changed since 2015, in spite of conscious efforts by manufacturers and retailers to boost sales.
- Paul Lee - Deloitte’s Head of Technology, Media and Telecoms research - opined connected gadgets are too expensive and do not bring enough value to justify their expense.

Others

EU: Apple to pay €13 billion EU tax bill

- On 30 August, Competition Commissioner Margrethe Vestager **announced Ireland had given illegal tax benefits to Apple worth up to €13 billion**. The outcome followed a state aid investigation launched in June 2014 after two tax rulings issued by Ireland to Apple were found to have substantially and artificially lowered taxes paid by Apple in Ireland since 1991.
- The allocation method employed in the Commission's ruling implied Apple paid an effective **corporate tax rate that declined from 1 per cent in 2003 to 0.005 per cent in 2014** on the profits of Apple Sales International. The normal rate of corporation tax in Ireland is 12.5 per cent.
- The European Commission ruled Apple's tax treatment was contrary to EU state aid rules and provided the company with a significant advantage over other businesses operating in the same market. Ireland was therefore requested to recover unpaid taxes from Apple for the years 2003 to 2014 of up to €13 billion, plus interest.
- The ruling triggered an angry response from both Apple and the Irish government, with Taoiseach Enda Kenny and Fine Gael Ministers stating their intention to appeal against the ruling. However, Independent members of the government made a number of demands in return for their support, many of which were accepted by Fine Gael. The Dáil will be recalled to debate the appeal.
- **Apple itself is appealing** under allegations that "the European Commission has launched an effort to rewrite Apple's history in Europe, ignore Ireland's tax laws and upend the international tax system in the process." The appeal will be made before the General Court of the European Union in Luxembourg.