

Submission for the European Commission's public consultation on the open internet and net neutrality

Free Software Foundation Europe

September 30, 2010

Introduction

Free Software Foundation Europe (FSFE) is a non-profit and in some countries charitable organisation dedicated to Free Software. FSFE maintains that the freedoms to use, study, share and improve software are critical to ensure equal participation in the information age. We work to create general understanding and support for software freedom in politics, law and society-at-large. We also promote the development of technologies, such as the GNU/Linux operating system, that deliver these freedoms to all participants in digital society. Further information can be found on our website: <http://fsfe.org>.

The Internet is a, if not *the* key building block of the digital society, providing its users with opportunities for business, culture and social debate which were hitherto unavailable. Free Software developers around the world rely heavily on the Internet to facilitate distributed software development and other forms of collaborative work.

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Current Net Neutrality problems

Question 1 – “Is there currently a problem of net neutrality and the openness of the Internet in Europe? If so, illustrate with concrete examples. Where are the bottlenecks, if any? Is the problem such that it cannot be solved by the existing degree of competition in fixed and mobile access markets?”

Answer

There are currently numerous problems with Internet Service Providers (ISPs) and other actors not respecting Net Neutrality.

There are numerous instances where Internet Service Providers (ISPs) do not treat traffic on their network in a neutral manner. For instance, certain clients experience a disproportionately improved or reduced quality of service, or users are not allowed to use their internet access as they want to. Following are several examples.

Billing policies & unfair competition (plusnet)

UK ISP *plusnet* has a grid of traffic speeds¹ which is incomprehensible in practical terms thanks to the great variety of service at different times of day, for different activities². Such discriminating policies are hindering competition by applying a complex hierarchy of limitations to a spectrum of online activities and service providers:

- Traffic coming from Youtube is limited to an arbitrarily reduced speed. Restrictions of other competing video providers such as dailymotion.com and snotr.com are not stated. When ISPs bias their services towards or against preferred partners as YouTube, opportunity for market innovation from new market entrants is diminished.
- *plusnet* offers different speeds for: “Using FTP to move files to or from servers *not operated by us*” and “*Plusnet FTP*”. This clearly promotes the interest of the ISP at the expense of competing service providers. Even where other ftp providers offers a better product, maximum speeds of accessing their services may be reduced to levels that rule them out from the market.
- Peer-to-peer traffic is highly restricted. Even when selecting the premier *plusnet* service (at the highest price), only a maximum average speed of 500 KB/s can be achieved (rate between 8MB/s and 128 or even 50 KB/s). With such restrictions, the many service providers utilising peer-to-peer technology are disadvantaged. Free Software projects, including all major Gnu/Linux Distributions, use the bittorrent protocol to reliably transfer large files to users and developers at no cost. A variety of international media companies, including the British Broadcasting Corporation (BBC) and Channel4, distribute content via peer-to-peer systems. Peer-to-peer solutions can be innovative and highly effective; yet they may become impractical where ISPs artificially throttle network speeds.
- Unhindered download speeds are only facilitated to a small number of “sponsored” “websites³”. This, again, promotes provider lock-in, increased dependence of users on specific corporate partners, and reduces innovation and competition.
- *Plusnet* acknowledges that restrictions may be mistakenly applied to traffic that is not stated as being subject to restriction: “applications not using their standard ports may be classed incorrectly”. Such cases result in customers experiencing artificially reduced quality of products or services online as a result of misdetection of the ISP’s network controls.

Discriminating protocols (*Telecom Italia*)

Another example is that of former Italian monopolist *Telecom Italia*, which started discriminating among different types of data traffic in April 2010. Here is a quote from their website⁴:

“In order to guarantee a better service [...] *Telecom Italia* will experiment Network Management techniques. [...] optimisation of the maximum commitment of applications needing a major bandwidth consumption (e.g. peer-to-peer). [...] A sufficient availability will thereby be provided for a satisfactory service of real-time and near-real-time applications (e.g. browsing, mailing, etc.)”

¹https://www.plus.net/support/broadband/speed_guide/download_speeds.shtml

²Different speeds are set up whether you use “Peer-to-Peer; Binary USENET; **FTP (non Plusnet)**; **Plusnet FTP**; VPN; Download sites & servers; Gaming; Streaming; **YouTube**”. *Plusnet* adds that “Activities not listed are not restricted but are subject to Traffic Prioritisation”.

³e.g. Bangbros Online (sic); Rapidshare; ImageShack; Megaupload

⁴<http://www.187.alice.it/cda187/c/assistenza/newsPopupAction.do?ID=19784>, in Italian

This consideration on “real-time browsing and mailing” (sic) is very questionable, still more than fourty cities/villages are concerned. *Telecom Italia* has begun this test period without any consultation with other network operators, even if these practices affect both their own and others’ networks. The *AiIP*, Italian Association of Internet Providers, as raised several concerns⁵:

- “we fear that users registered at competing ISPs will also see their connection degraded” (Net Neutrality violation)
- “if *Telecom Italia* has found a better Network Management technique, we want it to be available for other operators” (openness issue)
 - “there is no complete transparency on what is happening on their [*Telecom Italia*] network”
- “in the future these machines [used by *Telecom Italia*] could be used to [...] e.g. increase access speed to Google services while slowing down Microsoft’s ones, or vice-versa” (fairness and fair competition issue)

Port blocking and user restrictions (*Belgacom*)

Belgacom, main operator in Belgium, has often been criticised for blocking ports, e.g. 80 incoming (invoking security reasons). Even if this can be changed on a configuration interface, most users won’t know it. This can result in loss of functionality on the user’s side, such as the inability to send email from a local SMTP server.

Furthermore, Belgacom’s *acceptable usage policies*⁶ specify that “it is prohibited to use e-mail servers, POP Fetch servers [...]”. This means that users are merely offered crippled access to the Internet, without full functionality. There is no valid reason to forbid a user to have a mail server at home. In fact, this precisely allows users to gain better privacy and be service provider dependent, to regain control over their data. This topic is being discussed in almost every software conference these days, along with the development of “cloud computing”. Under these premises, this *Belgacom* practice does not seem to be justified.

Future problems?

Question 2 – How might problems arise in future? Could these emerge in other parts of the internet value chain? What would the causes be?

Answer

Besides a lack of implementation of the directives regarding transparency and competition provided in the Telecoms Package (2009), the main risks lie with imminent changes in the regulatory framework. Changes which would damage net neutrality which are currently being discussed include web filtering as suggested by Commissioner Malmström, and ISP liability as discussed in the ACTA (“Anti-Counterfeiting Trade Agreement”) negotiations. The former would put in place an architecture of censorship, which may easily be pressed into the service of the interests of dominant companies, leading to the inhibition of new network-based business models. On the latter, we unfortunately see ourselves unable to comment in detail, as the European Commission has chosen to continue its participation in the ACTA negotiations while refusing to make current drafts of the text available as demanded by the European Parliament in Written Declaration 12/2010. However, unofficial drafts that have emerged show a worrisome effort to shift the responsibility for copyright

⁵<http://www.aiip.it/page.php?id=952&aiip=4f21c777739f159beb86d9d49d9e9200>, in Italian

⁶http://www.belgacom.be/private/gallery/content/products/documents/conditions/en/aup_v1_en.pdf

enforcement to ISPs, in the process endangering the overwhelming part of Internet traffic that is entirely legitimate from a copyright standpoint. Here, the European Commission appears poised to throw the baby out with the bathwater.

Current commercial arrangements

Question 10 – “Are the commercial arrangements that currently govern the provision of access to the internet adequate, in order to ensure that the internet remains open and that infrastructure investment is maintained? If not, how should they change?”

Answer

The Internet’s main benefits arise from its nature as a network of networks. Network operators have an incentive to connect their network to the larger Internet, because this adds value to their own.

While network operators should be free to enter into commercial agreements with other network operators, the Internet will only continue to serve as a basis for the creation of value (both economic and societal) only if information can flow across it freely and without discrimination.

Free Software, an important driver for innovation and competition in the realm of ICTs⁷ and the basis of a 50 billion dollars economy, relies heavily on the Internet as a medium for cooperation, and for the development of software. Actors are often individuals or SMEs (many of them based in Europe), alongside large companies or public-sector organisations. If they were to be relegated to a “slow lane”, this would seriously damage Europe’s capacity for technology innovation and the continent’s standing in the global ICT market.

Freedom of expression, media pluralism and cultural diversity

Question 15 – “Besides the traffic management issues discussed above, are there any other concerns affecting freedom of expression, media pluralism and cultural diversity on the internet? If so, what further measures would be needed to safeguard those values?”

Answer

The Internet has become the most dynamic medium for European citizens to express their views, interact with each other, and discuss with each other. It has made political and social discourse exponentially more dynamic. The network’s ignorance of the data it transports is the key enabler of this progress, as it transmits the signals of a state broadcaster with the same priority and speed as the comments of an individual on a forum. The programs of Free Software developers (whether individuals or corporations) are carried alongside those of dominant proprietary software houses without discrimination. In this way, the Internet has gone a long way towards levelling the playing field in the digital society, encouraging innovation and competition.

From FSFE’s point of view as an organisation working for freedom in the digital society, it is imperative that the European Commission should work with member states and technology providers to preserve the Internet as a neutral channel where the speed of transmission is the same for all.

⁷Information and Communication Technologies

Other issues

We are concerned by the fact that the questionnaire focuses almost exclusively on aspects related to ISPs business models and conduct.

The Internet is not merely a business facilitator. It also represents enormous progress in humanity's ability to communicate, discuss, create knowledge, and achieve progress as a result. The Internet has become indispensable to those wishing to avail themselves of their fundamental rights of freedom of expression and freedom of the press, among others. It is *because* of the neutral handling of data traffic that the Internet is a powerful driver for innovation and development, not *despite* of it. A free digital society needs a neutral Internet.