

Annual Meeting of the Dynamic Coalition on Net Neutrality

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Session organised by Luca Belli, Center for Technology and Society at FGV

Report by Maryant Fernández

Keynote by Guy Berger, Director of Freedom of Expression at UNESCO

UNESCO has 195 Member States. There's not a common position on net neutrality in UNESCO. As a political organisation, it's not fundamentalists. Net neutrality is considered a means to an end, not an end in itself.

He talked about a UNESCO Study on Knowledge Societies and Internet Universality

<http://www.unesco.org/new/en/communication-and-information/crosscutting-priorities/unesco-internet-study/internet-universality/>

This study touches on the subject of net neutrality. However, the debate was particularly as what happened in the US regarding fast lanes, etc. This study talks about the open internet and the implications for freedom of expression.

From a freedom of expression point of view, it's very important.

Since then, things have changed a bit. The issue is more about net neutrality and ethics.

In the Conference Connecting the Dots (2015), it says that if you want an universal internet, it needs to be based on 4 principles (ROAM):

- Rights
- open
- accessible
- multistakeholder

Now with zero rating, it's also about net neutrality and accessibility, which is an interesting shift.

Is access to a closed garden that may have some apples and snakes, is access to a garden than being outside? This is the debate that has many costs-benefits analyses and studies.

With Facebook's Free Basics – FB has a relatively closed garden, which raises concerns to the point of even banning it completely. e.g. in India. One of the reasons to ban it in India is because of media concentration (competition law). However, accessibility may be more important than R.

If you think about net neutrality only from the perspective of openness, you miss the rights direction. You would be missing a key component.

These 4 principles are a useful methodology for this issue.

In the study, various Member States proposed that there should be indicators for this ROAM model.

Presentation of the Annual Report of the UN IGF Dynamic Coalition on Net Neutrality

[Net Neutrality Reloaded: Zero Rating, Specialised Service, Ad Blocking and Traffic Management](#)

I. Net neutrality Implementation

Ornulf Storm, Norwegian Communications Authority

Ornulf's colleague, Frode Sorensen, was the co-chair on the developments of the EU guidelines on net neutrality.

Why were the Guidelines developed?

The European Parliament and Council passed a new Regulation on 25 Nov 2015, effect mid 2016. It regulates requirements for an open internet. In that Regulation, it states that BEREC must develop guidelines by 30 August 2016.

What are they?

They are supposed to contribute to a consistent application of this Regulation. It shall provide guidance to the different regulators in Europe on how to supervise and enforce the Regulation to safeguard the Open Internet.

The BEREC Guidelines are not secondary legislation, but guidelines for the Regulators and to provide guidance to the market. It's purpose is to show how to interpret the unclear or ambiguous provisions of the Regulation.

How are we going to use them and conduct supervision of the EU Regulation?

In Norway, they'll use their website

meetings with the Norwegian operators to discuss the matters and investigate cases on a case-by-case basis if needed. If they see commercial practices or traffic management practices that are not compliant with the Regulation.

They have a system to measure broadband speeds in Norway; they will contribute to use this and will develop an app to measure speeds on mobile as well – to be out in beginning of next year).

They will also see whether adjustments or operations will be needed.

BEREC is trying to develop a set of questionnaires for the operators to see what the practices are. They will also gather input from the market/users that can notify them of possible breaches of the Regulation. The result will be a report, also foreseen in the Regulation, to be submitted to BEREC and the Commission, so a comparison of the European market can be made.

They will continue their national NN forum. Since 2009, Norway has a forum on net neutrality.

They will also accept guidance from other regulators to discuss other practices presented in other countries.

Roslyn Layton, Aalborg University: Ad-blocking and human rights.

She used to work in internet advertising before working in academia.

Ad-blockers can be implemented by users but also by network operators.

One of the discussions we hear is that this is not about economy, but human rights.

However, economics comes from Human Rights. She tried to bridge this gap.

Indian case: what you have in India is an advertising monopoly, not allowing FB or any Indian company to provide advertisements.

1 in 5 people employ ad-blockers.

Ad-blocking doesn't mean that you're against advertising. There are a variety of reasons.

Ellen Gudman, Prioston: she talked about a critique 'edge-centrism'.

BEREC Guidelines said that ad-blockers cannot be implemented at the network level.

Almost a billion people use ad-blockers, but there are problems bc for example you cannot download ad-blockers from google play.

There is a real challenge to get network in rural areas. If a lot of advertising is used, this will have huge effects.

Goshtery survey: of 1 million people, the reasons for using it were: digital self defence (privacy), usability, but the number one reason was security (40%) - problem with malware.

Why network blockers are important is bc you need to prevent malware.

At the network level, ad-blockers are more effective (battery life, security, privacy, usability reasons...).

There are arguments against ad-blockers.

how to pay for internet content and this is against the idea of free culture and the idea of content providers to be willing to be compensated and the economic interest of willing to create platforms with content

if we dont have ads, we would not have internet.

The other issue would be privacy

Regulatory solutions:

- regulators can regulate if not fair/deceptive.

- Regulation has forced to improve advertising models. In many cases, the market response has forced to make less invasive

- no data caps. The challenge is that you don't address privacy issues

- new business models, microtransactions

- user compensation: in many cases, advertisers should be paying for the transmission of their ads

Carlos Brito, Red en Defensa de los Derechos Digitales (R3D)

What happens in Mexico

His article is a brief version of a report presented in 2015

In Mexico, the net neutrality process was supposed in August 2015, but 2 and a half year, but nothing has happened so far.

In 2013: major constitutional reform in telecommunications and competition. Created two new institutions (autonomous from gov). However, the telecoms regulator is also for competition.

The problem could be a judicial issue on what the law of the antitrust unit will be a net neutrality issue or not.

[Carlos read an article of the Mexican Constitution on telecommunications being public services of national interest]

What's the perspective on the work of the regulator? Are they dealing with HR?

In the design of the regulator, the constitution says that the regulator should protect human rights (including freedom of expression & competition).

This reform was to solve problems of concentration in broadcasting and telecom services.

The reform is working quite well, with some flaws. Also problems in vertical concentration what's the public opinion? Pretty silent.

In ANATEL, they are pretty shy to talk about these issues.

TelMex was blocking skype in 2007-08. there are different opinions on the intervention needed by gov.

Zero rating is everywhere, in small and big players. No diversity of apps.

No evidence of throttling. There are some science that there may be a problem of it, but the user has no possibility to create evidence.

The regulator has to take into consideration so many human rights. They dont have the same tradition as the right to privacy in Europe. The same with freedom of expression.

In his view, the BEREC guidelines are very good that can be of inspiration in Mexico. However, we need strict control of constitutionality in the Mexican case.

Q&A

Roger Matthews, represents Indian operators argues that the notion of the internet based on rights is a bit dangerous. Suggest Internet based on opportunities

Response from Layton: she understands his perspective.

Digital self defence: you create an opposition between the user and business. Do you think competition can be healthier?

Ad-blocking in a short period of time sent a message to the market, which responded quickly.

The EU has an EU cookie law that has not proven to be effective and has loss in productivity.

Gonzalo, Telefonica: there is a difference between downloading an app and a user activating it or asking an ISP to block the ads? In his view, there is no difference. There is not a differentiation in that regard.

Layton says that she disagrees with the view of the BEREC Guidelines that network ad-blocking is not acceptable.

II. Zero rating

Luca: There are 7 chapters in the book. Some are pro and some against ZR. Some provide a taxonomy. 1st chapter of the book.

ZR sponsors specific applications. Is it a switch from a generic internet to Minitel?

The internet differs from its predecessors. The internet is a generative and general-purpose network. Its predecessors were purpose specific networks. Some ZR practices, combined with low data caps, have the potential to transform the Internet into a predefined purpose network, like a mobile Minitel.

The opposite phenomenon in The Netherlands: the main operator doubled the data caps to promote care-less usage of the internet, when ZR was banned. The goal was to increase usage by increasing volume.

The same thing happened in Brazil.

It's very important to have a taxonomy in zero rating. The first chapter of the report offers isuch taxonomy, distinguishing:

- application ZR
- application sponsoring
- ZR platforms
- application-agnostic data sponsoring

Javier Pallero, Access Now

The internet is a rights-based technology because the design of the internet (agnostic end-to-end) was the main idea behind of the internet.

From a free speech perspective, it's a good resource to do that.

The role of regulation in states is very important. Even the idea of deregulating the market is a regulatory decision. In case of the FCC order, it has encouraged actors to express themselves even more without fear.

Zero rating: they differentiate between two types:

- the telco model, where the telco strikes deals with specific partners (e.g. to provide music services).
- the sub-internet model (the man in the middle model): e.g. FB Freebasics; intermediary between the user and the internet experience.

In the sub-internet model, it's incompatible with encryption bc you need monitoring to exempt some applications with the data caps. There is a control (surveiling the traffic, providing less innovation and less opportunities for users). These restrictions and control is negative.

In the BEREC guidelines, the sub-internet model is banned (paras. 17, 42-48)

Something that normally is missing from the debate: How the network traffic should or not be surveiled/monitored and what limitations should these technologies have.

Q&A:

- Jorge Vargas, Wikimedia Foundation. He mentioned the wikipedia zero.

Two years ago, they come up with their operating principles (10 rules to have a programme to be in line with the open internet principle and at the same time be aligned with their mission).

Are these principles for responsible zero rating a good way forward instead of having a black/white approach?

We need more data to see the impact of zero rating.

R from Carlos Brito: we're far away from the black/white approach. We're going to the grey area.

Principles are good, but the question to be asked is what are you trying to protect and what are the tools to assess the zero rating practice? In this sense, BEREC guidelines are good.

- Ivan, Macedonia: it's a dangerous door to open. If we start opening that door, difficult issues ahead.

- Allen, from Privacy Fundamentals.

Before we was with Comcast and PBS.

When we talk about net neutrality, we need to mess with the net neutrality principle. The EU Regulation has some limited exceptions for reasonable traffic management. Is there a prioritisation for child pornography?

R Layton: even in utility markets, there are limits.

Louis Pouzin: there are a lot of technical matters involved and they were misunderstood. It depends how we cant to share capacities, share opportunities and benefits among citizens of a certain part of the world.

Some countries are suffering, not all. There is no solution for the whole world; A solution, whatever it is, it's a political solution in each country and in each segment of the world.

In Europe, there will be some challenging cases. we'll see how it develops.

Luca Belli: there is not a clear-cut question. There is not a silver bullet. It's necessary to have a public debate about this. This report is meant to inform policy-makers.