

16 May 2010

PUBLIC CONSULTATION ON NET NEUTRALITY

It is with great pleasure that the Internet Society forwards this submission in response to the French government's consultation on Network Neutrality. This submission focuses on questions 1 and 2 of the consultation and draws upon the English text version.

The Internet Society has previously submitted a position paper entitled "Open Inter-networking: Getting the fundamentals right: access, choice, and transparency" (the Open Inter-networking paper) to the French government as a part of its earlier preliminary outreach to stakeholders.

Question 1 - Different Aspects of the Debate:

Clearly, Network Neutrality, and issues surrounding traffic management, continues to gain attention around the globe as governments seek to craft national regulatory policies to address new communications challenges. However, as we outlined in our Open Inter-networking paper, this term has come to mean many different things to many different stakeholders: "Network neutrality is a broad and ill-defined term that encompasses a range of policy objectives including free expression, user choice and discrimination as well as business issues including network traffic management, pricing and overall business models."

Rather than focusing simply on the range of possible Network Neutrality definitions, the Internet Society believes it is more appropriate to concentrate more broadly on the imperative of preserving the open, user-centric Internet model that has been so successful to date. Open Inter-networking describes an environment of interconnected networks and open standards that is the prerequisite for the development and delivery of unlimited, innovative and diverse applications and services. Open Inter-networking underpins the success of the Internet to date and provides useful guidance on how to best address some of the core issues that have come to be seen as part of the Network Neutrality debate.

The Internet Society agrees that users should be able to "publish and access information online," "use and develop the services or applications of their choice," "connect the equipment they choose to a network," and "enjoy the benefits of competition" as suggested by the consultation paper. In general, users expect an Internet in which traffic is conveyed in a manner that is agnostic to source, content and destination. These principles are at the heart of an Internet environment characterized by choice and transparency, one that allows users to remain in control of their Internet experience, and thereby empowers them to benefit from and participate in the open Internet. Ensuring the primacy of these principles is essential to the future success of the Internet.

Question 1.1 - Neutrality and preservation of law and order:

The Internet Society does not believe that there needs to be, or should be, a trade-off between the openness and freedom of the Internet and the need to preserve law and order. The Internet is a tool, and just as with other tools it will be used for differing purposes. Indeed, while we recognize that certain new social challenges have arisen in the Internet age, we have also seen the Internet enable amazing opportunities for innovation and creativity.

We agree that measures to address “counterfeits, copyright infringement and the circulation of child pornography” are necessary, but believe that these measures should be focused on behaviour rather than on any specific technology. It is important that governments enforce laws that already exist in the non-digital world rather than simply focusing on creating new legal systems that only address criminal behavior in cyberspace. Governments have a responsibility to enforce their laws, cooperate with international partners, and also to work with the Internet community to ensure that users have the information and skills they need to use the Internet safely and within the law.

Question 1.2 - Neutrality and “smart” traffic management

The Internet Society recognizes that there is a clear role for network management in maintaining a smooth-running network and in delivering high-quality, innovative services to users. Regulatory approaches that affect the sustainability of the global open Internet must take into account the technical reality of how networks are operated and managed. However, traffic management measures should be neither anti-competitive nor harmful to the user's reasonable expectations to be able to access and use the Internet.

There are legitimate concerns about network security and stability stemming from spam and other malware. Network management approaches that identify and reduce the impact of such unwanted traffic are a current operational reality.

Current operational practices also include volume caps, traffic shaping and application throttling. However, traffic management techniques should be seen as one tool and not as a panacea. Widespread deployment of broadband network access has given rise to new congestion-related issues for network operators. Sometimes, the appropriate solution to congestion is more bandwidth and more competition. In the long term, standards and technologies should evolve to handle these new congestion patterns naturally. This will be more effective than intricate and expensive in-network and local tactics to manage traffic. Policy makers need to be sure that their measures do not lead to traffic management as a substitution for investment in networks and advancing network technology standards.

Question 1.3 - Neutrality and the economic models fostering Internet development

The Internet Society agrees that innovative and competitive service and investment models are needed to bring about further Internet deployment and innovation. Opportunities for innovation and creativity must continue to be available to service providers, content developers and application providers.

But we must be careful that further broadband investment does not come at the expense of the open Internet that we all depend upon. Blocking or hindering legal content, applications or services to gain commercial or competitive advantage runs contrary to the fundamental openness that has made the Internet the engine of creativity and innovation that it is today, and should be opposed.

Given the widespread deployment of broadband and increases in bandwidth intensive devices, content and applications, it is inevitable that the nature and scope of service offerings is changing. We may see new broadband service business models emerge that provide differentiated offerings based on speed, bandwidth usage, quality of service, or user preferences. There is a concern that this could lead to different levels of prioritization, content lock-in and inappropriate forms of traffic discrimination. To avoid this outcome, we again emphasize the importance of choice and transparency. User choice requires robust and effective competition, which, in turn, is the best mechanism to address the possibility of discrimination; transparency (defined as better user awareness and understanding of the conditions and characteristics of service offerings) also encourages competition – empowered users will demand a diversity of providers and services.

Question 2: Involvement of Public Authorities in these issues:

The consultation asks whether or not there is a role for government and regulatory intervention. The Internet Society believes that the key role for policy makers is to ensure that the policy and regulatory environment enables the Internet to continue to grow and thrive. Access, choice and transparency for end users are the principles that ought to inform policy and regulation. We also believe that regulatory intervention should be a last resort and should be tailored to address a clear, demonstrated problem that cannot be resolved through relying on marketplace solutions.

In crafting policy in the complex and rapidly-changing Internet environment, it is important not to rush to judgment and to seek input from a broad range of stakeholders.

In this regard, the Internet Society once again commends the French government for reaching out to the Internet community and we look forward to continued dialogue on this important topic.