



IFLA Statement on Net Neutrality and Zero-rating

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Introduction

*Network neutrality*¹, or *net neutrality*, is the principle that all data or traffic on the Internet should be treated equally. Internet users' freedom of choice should not be restricted or affected giving preferential treatment to certain content, services, applications, or devices². The question of net neutrality has emerged due to two parallel fears. On the one hand, users fear that, in the absence of net neutrality frameworks, Internet Service Providers (ISPs) may implement undue traffic management, for instance blocking access to or downgrading the quality of applications providing competing services. On the other hand, ISPs argue that growth in traffic online (for example linked to use of video or other data-intensive services) is outstripping the capacity of Internet infrastructure (wires, mobile networks) to carry it.

The solution put forward by ISPs to this problem is to place 'caps' on how much data can use, or to create 'fast' and 'slow' lanes for different types of content or users. There is an additional dimension in developing countries, where a mobile Internet subscription remains out of the reach of many. In this context, adhering to the principle of net neutrality or compromising it – becomes a major issue for all information users, and so naturally for libraries and librarians.

Zero-rating is the practice according to which data consumption of specific applications or services is not counted against users' data allowance. Several major service providers have entered into arrangements with mobile network operators in a variety of countries to deliver "zero-rated" versions of their services.³ In some cases, this means that the use of certain websites or services does not count against a subscriber's monthly data cap. In other arrangements, users can access the service even if they do not have a data plan.⁴

Zero-rating violates the principle of net neutrality because the services that are zero-rated are positively discriminated, thus allowing ISPs to orientate the choice of the users. Moreover, in spite of the acclaimed risk that infrastructure may not bear traffic growth, zero rated services attract inordinate levels of traffic due to their low or no cost. This distorts the consumption of content and can lead to the "walled garden effect" where a user's experience of the Internet is limited to the zero-rated services alone.⁵ When differential price and use patterns occur in developing countries the practice can further exacerbate the problem of the digital divide⁶.

1 The phrase first appeared in a 2003 law review article: Tim Wu, *Network Neutrality, Broadband Discrimination*, 2 J. on Telecomm. & High Tech. Law 141, 141.

2 Model Framework on Network Neutrality (initiated by the Council of Europe and developed by the Dynamic Coalition on Network Neutrality). Accessed 11 February 2016. Available at <http://www.networkneutrality.info/sources.html>.

3 B.J. Ard, *Beyond Neutrality: How Zero Rating Can (Sometimes) Advance User Choice, Innovation, and Democratic Participation*, 75 Md. L. Rev. 984 (2016).

4 https://www.intgovforum.org/cms/wks2014/index.php/proposal/view_public/208. Accessed 11 February 2016.

5 Electronic Frontier Foundation, *Zero Rating: What It Is and Why You Should Care*. Available at <https://www.eff.org/deeplinks/2016/02/zero-rating-what-it-is-why-you-should-care>. Accessed May 25, 2016.

6 See the Principles on Public Access in Libraries, as signed by IFLA in 2016. Available at <http://www.ifla.org/publications/node/10328>, accessed 24 June 2016. Also the IFLA Internet Manifesto, available at <http://www.ifla.org/publications/node/224>, accessed 24 June 2016

Issues for Libraries

Freedom of Access to Information: Avoiding Information Monopolies

The right to seek, impart and receive information and ideas, and obtain equitable access to all content is a universal right, and central to the mission of IFLA. As set out in the IFLA Code of Ethics for Librarians and other Information Workers⁷, libraries have a mission to use the most effective ways to make material accessible, and to ensure that this access is not subject to barriers of any kind.

Without net neutrality, the ability of libraries, as information providers, is compromised. The library website will not be able to compete with commercial information and content providers that have the ability to offer differential levels of service, at preferential prices or for free as a 'zero-rated' service. In this situation, library websites may be confined to the slow lane or to the paid access that, obviously, cannot compete with the zero-rated access. Such situation would de facto tax access to knowledge while subsidising commercial content.

Furthermore, breaches of net neutrality compromise library users' ability to access information in a balanced fashion more broadly⁸. In the UN 2030 Agenda, target 16.10 calls on countries to:

“Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements”

Access to information is a prerequisite to development and, consequently, net neutrality must be strongly protected in all countries. A choice between zero-rated access that is limited to certain services versus no access at all is really no choice at all. When private and public actors can unfairly steer people towards certain services and away from others, this risks both censorship and consolidating the dominance of the powerful.⁹

Finally, the fact of discriminating between different services implies a breach of the privacy of users' communications, given that the ISP is monitoring the specific websites that are being viewed, and content that is being downloaded. This runs counter to IFLA's Internet Manifesto¹⁰ which states that library users should enjoy confidentiality in their use of resources and services.

In this regard, IFLA supports sound frameworks guaranteeing net neutrality. In the Internet era the principle of net neutrality is a prerequisite for universal and non-discriminatory access to information.¹¹

Freedom of Expression: Ensuring Information Diversity

Further to the impact of compromises on library websites and broader freedom of access to information, net neutrality it also poses a challenge to freedom of expression. IFLA affirms the right “to seek, receive and impart information and ideas through any media and regardless of frontiers” as expressed in the United Nations' *Universal Declaration of Human Rights* (Article 19). The right to freedom of expression is not dependent on technological capacity or capability, and is guaranteed by international and national laws.

⁷ IFLA Code of Ethics for Librarians and other Information Workers (2012). Available at: <http://www.ifla.org/news/ifla-code-of-ethics-for-librarians-and-other-information-workers-full-version>. Accessed on 21 July 2016.

⁸ Ibid: 'Librarians and other information workers are strictly committed to neutrality and an unbiased stance regarding collection, access and service. Neutrality results in the most balanced collection and the most balanced access to information achievable'.

⁹ Philip Chwee, Note, Bringing In A New Scale: Proposing A Global Metric Of Internet Censorship, 38 Fordham Int'l L.J. 825 (2015); Derek E. Bambauer, *Orwell's Armchair*, 79 U. Chi. L. Rev. 863 (2012); and Raymond Shih Ray Ku, *Open Internet Access and Freedom of Speech: A First Amendment Catch-22*, 75 Tul. L. Rev. 87, 125 (2000).

¹⁰ IFLA Internet Manifesto (2014). Available at: <http://www.ifla.org/publications/node/224>. Accessed 21 July 2016

¹¹ Daniel Joyce, Internet Freedom and Human Rights, 26 Eur. J. Int'l L. 493 (2015) (New Voices: A Selection from the Third Annual Junior Faculty Forum for International Law); and Hannibal Travis, *Of Blogs, Ebooks, and Broadband: Access to Digital Media as a First Amendment Right*, 35 Hofstra L. Rev. 1519 (2007) (Thirty-Fifth Anniversary Volume :Reclaiming the First Amendment: Constitutional Theories of Media Reform).

The Internet is a prime means of communicating expression in the information society, and for many has become the primary source of information. An Open Internet can provide a platform for all to be heard and recognized,¹² as well as to access and share innovation, for better or for worse without the need for traditional gate-keepers such as editors or expert reviewers, but within the limits of national laws (e.g. anti-racism, anti-defamation, anti-harassment laws).

However, this same technology can be used to control and limit exercise of the right of freedom of expression through price and service differentiation that can distort patterns of content and service consumption.¹³ Without sound protection of net neutrality, only the voices of large and powerful actors would be available and heard. Without an open Internet the potential exists for the rise of information monopolies that destroy the diversity of information and points of view. These are essential for democracy to exist.¹⁴

Recommendations

While there are cases where ISPs can legitimately influence traffic (due to temporary congestion or for network security or integrity, for example), this should only happen in a transparent manner, and such measures should be necessary and proportionate to the achievement of a legitimate aim. Furthermore, it is important to stress that inadequate speed and capacity can disadvantage users and, therefore, ISPs should guarantee at least minimum quality levels in concertation with national regulators. Additionally, the level of service offered or the price charged by ISP should not depend upon the “user, website, platform, application, or mode of communication.”¹⁵

In this context, library professionals should

- Participate in policy discussions regarding net neutrality:
- Make clear their support for an open Internet
- Explain to users what net neutrality and zero rating are, and the challenges they pose
- Verify if local ISPs are compromising net neutrality, and make users aware of this
- Advocate for a legal guarantee of net neutrality at national and regional levels
- Call for rules obliging ISPs to be transparent about when and how they influence traffic as well as for what reasons such traffic management is implemented
- Advocate for a ban on zero-rating mobile contracts
- Advocate for reducing the cost of access to the full breadth of the Internet worldwide, including through well-supported public access in libraries
- Advocate for public investments in infrastructure and alternative Internet access strategies such as community networks

References

- [IFLA Code of Ethics for Librarians and Other Information Workers](#) (2012)
- [The IFLA Internet Manifesto](#) (2014)
- [UN 2030 Agenda](#) (2015)

12 See, e.g., *Reno v. A.C.L.U.*, 521 U.S. 844 (1997): “Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any *soapbox*. Through the use of web pages, mail exploders and newsgroups, the same individual can become a *pamphleteer*.” 521 U.S. at 870.

13 Michael Karanicolas, *Understanding the Internet as a Human Right*, 10 Can. J. L. & Tech. 263 (2012).

14 Marc Raboy, Media and Democratization in the Information Society, in *Communicating in the Information Society* 101, 114 (Bruce Girard & Seán Ó Siochru eds., 2003); and Nicola Lucchi, *Internet Content Governance and Human Rights*, 16 Vand. J. Ent. & Tech. L. 809 (2014).

15 Note, *Unlimited Data, but a Limited Net: How Zero-Rated Partnerships between Mobile Service Providers and Music-Streaming Apps Violate Net Neutrality* 17 Colum. Sci. & Tech. L. Rev. 204, 209 (2015).