

CDT response to the European Commission exploratory consultation on “The future of the electronic communications sector and its infrastructure”

19 May 2023

The [Centre for Democracy and Technology](#) welcomes the opportunity to provide input to the European Commission’s exploratory consultation on “The future of the electronic communications sector and its infrastructure”.

In this submission we provide input to the consultation to specifically address aspects of Questions 10, 54, 58 and 60 only. Additionally we submit our report published earlier in 2023 on Network Slicing.

CDT does not accept the premise that internet operators’ network costs are insufficiently accounted for under the current internet interconnectivity architecture. Furthermore CDT opposes any policy interventions that would restrict the ability for the Internet to evolve, reduce the open nature of the Internet, and fragment core Internet architecture across jurisdiction.

Background

CDT is a leading nonpartisan, nonprofit organization fighting to advance civil rights and civil liberties in the digital age. We shape technology policy, governance, and design with a focus on equity and democratic values. Established in 1996, CDT has been a trusted advocate for digital rights since the earliest days of the internet. It has offices in Washington, DC and Brussels, Belgium.

To help the internet retain its democratic values and openness, we work to protect users’ rights to access, create, and share content and services. CDT’s focus on the Open Internet supports activities and advocacy in preserving network neutrality and a competitive digital marketplace because an open internet allows its users to maximize the opportunities for free expression and innovation offered by an accessible, interconnected, and unrestricted platform.

Governments and companies that control vital communications infrastructures should not be allowed to leverage that control to limit access, expression, or innovation. But neither should companies be saddled with the responsibility to protect the interests of content owners. Moreover, competition among infrastructure owners, platforms, content owners, and other players in the internet ecosystem plays a vital role in ensuring that the internet is accessible to all and continues to drive innovation.

CDT's response to relevant consultation questions

Section 1: Technological and market developments: impacts on future networks and business models for electronic communications

10. Are there major obstacles to establish standards in relation to network access protocols and application programme interfaces (APIs) in order to support new service models and/or new network architectures?

We set aside the questions of whether a layer violation should be permitted or whether traffic can or should be quantified, all of which are unsettled contentions within the technical community and rather point the Commission to submissions from those bodies.

The proposed regulation for direct payments would hinder the ability for the Internet to evolve, reduce the open nature of the Internet, and fragment core Internet architecture across jurisdiction. Moving from general-purpose access to virtually any of the proposed service delivery models, including network slicing but also “revenue sharing,” has meant treating network traffic differently, which, by definition, violates the strictest definition of net neutrality — that every data packet should be treated equally. Net neutrality in practice does allow for differential treatment, but only so long as it is not discriminatory in ways that affect the internet user’s quality of experience or competition among edge providers.

Section 4: Fair contribution by all digital players

53. What could be the effect on the environmental footprint of the services provided over electronic communications networks of a potential mechanism whereby the largest generators of traffic would contribute to network deployment, and/or would be subject to obligations regarding data delivery mode?

The current service delivery model charges end users for their use of the network. Already internet service providers (ISPs) are complicit in content and application providers (CAPs) that keep traffic volumes high because they are rewarded for the cost per byte of unwanted advertising, high-resolution streaming, and services that are expensive to the network like augmented/virtual reality (XR). Uncapped data packages encourage users to ignore efficiency, which the market would normally correct. Under the current service delivery model, more could be done by both CAPs and ISPs to be more accountable to users by incentivizing traffic efficiency.

Nonetheless any disruption to the current model would only have an adverse impact on efficiency. The use of content delivery networks (CDNs) increases efficiency and reduces environmental footprint. And an attempt to quantify traffic volume based on source of data or services therefore would unfairly skew price regulations against smaller content providers that share the same CDNs as large content providers and that could face a financial penalty for growing larger, leading to less competition and more costs for users.

54. The European Declaration on Digital Rights and Principles states that all digital players benefiting from the digital transformation should contribute in a fair and proportionate manner to the costs of public goods, services and infrastructures to the benefit of all people living in the EU. Some stakeholders have suggested a

mandatory mechanism of direct payments from CAPs/LTGs to contribute to finance network deployment. Do you support such suggestion and if so why? If no, why not?

Direct payment would interfere with the ability for the Internet to evolve because it would lock in contractual arrangements between interconnected parts of the internet, not currently a feature of the resilient internet today. This overly prescriptive regulatory intervention would reduce the open nature of the Internet as a whole by introducing onerous coordination.

In addition to the coordination challenges, “sender pays” raises competition concerns, such as vertically-integrated providers having incentives to prioritize their own services or those sharing the European market. Where in the United States some CAPs have also become ISPs, and attempts at the converse are also emerging, our experience is that user choice and market competition are undermined. Priority to particular uses of the network or particular services that have pre-arranged agreements with network providers discourages generativity and choices of the kind we have seen, and hope to continue to be able to expect, from the internet.

Furthermore it impacts user choice. “Sender pays” would magnify the differences in the performance and popularity of CAPs that can afford and are willing to make direct payments. Like network slicing and other emerging delivery models, this may lead to the rise of a “premium” internet for only some and a “standard” internet with reduced capacity to support all remaining internet users. And it would prevent some CAPs from entering the European market at all, or at the expense of in-jurisdiction internet exchange points (IXPs), both of which are poorer outcomes for users over the current architecture.

58. Do you see any possible risks of a contribution to finance network deployment in the form of direct payments and if so, which? Please substantiate your answer, including with data.

As previously stated under Question 54, CDT disagrees with “sender pays” for considerations of net neutrality, competition, and user privacy.

Furthermore, “sender pays” provides no innovation nor does it guarantee expansion of network access. It does not improve traffic routing, but rather the contrary. It does not make content delivery more efficient, but to the contrary. Regulators should focus on service delivery models that expand access, introduce new functionalities, provide greater efficiencies, or bring other benefits, rather than cannibalizing the general internet or seeking rents from CAPs. Indeed, access to and capacity of the internet must expand, and its quality should continue to be increased even as other services are added.

Annotated references

Doty, N., Knodel, M., “Slicing the Network: Maintaining Neutrality, Protecting Privacy, and Promoting Competition”, Center for Democracy and Technology, April 2023, <<https://cdt.org/insights/slicing-the-network-maintaining-neutrality-protecting-privacy-and-promoting-competition>>.

CDT provides a technical and policy overview with recommendations for operators and regulators on network slicing, an emerging service delivery model that eliminates equality of voice, threatens user privacy and undermines a competitive market.