

Your response

Please see our full response on the document attached.

Zero-rating

Question	Your response
<p>Question 1: Do you agree with our assessment of zero-rating offers and our proposed approach?</p>	<p>We find this approach worrying in certain aspects, particularly as it does not seem a good fit for interoperable, decentralised services that Ofcom identifies in its Internet Futures technical report as critical for the future of the Internet. This is because large numbers of interoperable and competing services would find it hard to participate, to be identified, or even for their traffic to be identified as belonging to them, in order to participate in such offers.</p>
<p>Question 2: Do you agree with the criteria we use to define Type One, Type Two and Type Three zero-rating offers and our proposed approach to such offers?</p>	<p>We can see the merit in allowing unmetered access to government websites as suggested. We are however worried about the impact of the “Type Two” offer, where CAPs can join a zero rating scheme; presumably there may be technical or logistical requirements to join, such as provision of content delivery systems. These could act as a barrier to entry despite the lack of a ‘payment’.</p> <p>This proposal seems to be at odds with Ofcom’s Internet Futures technical study, which emphasises the need for interoperable systems including for social media.</p> <p>In the not too distant future, Tumblr, Flickr, and around 10,000 mostly Mastodon-based federated social media services could be available as interoperable social media services. It is hard to see how these services could participate in a Zero rated service of this nature. Some – such as Tumblr and Flickr – may be able to join easily; others, run by non-profits or volunteers, could find it very difficult to participate. Some – such as Peertube services, which federates video sharing and content delivery across peered websites and users – could have specific technical barriers, as the</p>

	<p>origin of the Peertube video traffic could be impossible to identify.</p> <p>Ofcom should assess how decentralised, interoperable social media would be impacted by the Type 2 proposal, as a practical example of how competition and its own interoperability goals could be adversely impacted.</p>
Question 3: Do you agree with the approach in our guidance in Annex 5 in relation to zero-rating?	
Question 4: What are your views on whether zero-rated content should be able to be accessed once a customer's data allowance has been used up?	<p>This should be a very obvious 'no' for commercial products as it would not be treating traffic equally, and would give new and additional advantages to zero rated commercial services. We would agree to an exception being made for access to government or other socially beneficial and non-profit services or information.</p>
Please provide any further evidence you have to support your responses.	

Traffic management

Question	Your response
Question 5: Do you agree with our assessment of retail offers with different quality levels and our proposed approach?	<p>No. We are deeply concerned that opening up traffic management to categories of traffic will lead to dampening innovation at the edges of the network. While the desire to prioritise on the basis of category of traffic is understandable, it is not clear that it is always possible to do so; at least, methods are dependent on machine learning and are essentially a best guess. While this may be reasonable for most traffic most of the time, it may be less reasonable for innovative or less commonly used services.</p> <p>There should also be a concern that customers whose quality of service provision is limited by contract to certain kinds of content are then less able to vary what kinds of services they use.</p>

<p>Question 6: Do you agree with the approach in our guidance in Annex 5 in relation to differentiated retail offers, including transparency requirements, improved regulatory monitoring and reporting of retail offers with different quality levels as well as the general quality of the internet access services?</p>	
<p>Question 7: What are your views on a more permissive approach towards retail offers where different quality levels are content and service specific?</p>	<p>As above, we note that this will have technical limitations in practice, and thus is likely to penalise new and innovative services, especially those which are less commercially driven.</p>
<p>Question 8: Do you agree with our assessment of how traffic management can be used to address congestion and our proposed approach?</p>	
<p>Question 9: Do you agree with the approach in our guidance in Annex 5 in relation to the use of traffic management to address congestion, including transparency requirements, improved regulatory monitoring and reporting of general network performance metrics, the use of traffic management and the impact on service quality?</p>	
<p>Question 10: What are your views on a more focused approach to traffic management to address congestion?</p>	
<p>Please provide any further evidence you have to support your responses.</p>	

Specialised services

Question	Your response
<p>Question 11: Do you agree with our assessment of specialised services and our proposed approach?</p>	
<p>Question 12: Do you agree with the approach in our guidance in Annex 5 in relation to specialised services, including transparency requirements, improved regulatory</p>	

monitoring and reporting of the need for optimisation of a service, the general performance of internet access services and the impact of specialised services on the quality internet access?

Please provide any further evidence you have to support your responses.

Scope of the net neutrality rules, terminal equipment and public interest exceptions

Question	Your response
Question 13: Do you agree with our assessment of the terminal equipment rules and our proposed approach?	We agree that it is extremely important to maintain consumer choice of terminal equipment. It can be increasingly hard for end users to choose their own routers on some commercial networks in particular. Ofcom should make sure that new rules emphasise the ability of users to choose all terminal equipment, including routers.
Question 14: Do you agree with our assessment of internet access services provided on aeroplanes, trains, buses and coaches and our proposed approach?	While we understand the position Ofcom is taking, we would note that filters on trains and in other public places can be just as problematic as at ISPs, by blocking material incorrectly or inadvertently. Greater transparency, review and appeal need to be put in place.
Question 15: Do you agree with our proposed approach to emergency 999 communications services and that we should consider amending the GCs to achieve this?	
Question 16: Do you agree that ISPs should be allowed to block scams and fraudulent content and provide in-network parental controls and content filters?	<p>We are responding to this question in the context of parental controls and also, the use of traffic management for blocking content.</p> <p>On the point of parental controls and family friendly filters, we would urge caution. Open Rights Group has been running a project monitoring blocking by family friendly filters since 2016. Our reports show the impact of this blocking</p>

on websites operated by UK businesses, often SMEs, where the unexplained loss of traffic can be tangible, and result in loss of business. Monitoring of these filters by Ofcom is important function. We don't agree that Ofcom should not take enforcement action against ISPs that implement them. We would oppose any move to make family-friendly filters mandatory. Please see the full suite of evidence at <https://www.blocked.org.uk/>

We are also concerned that Ofcom wishes to allow filtering for parental content without considering the need for robust independent appeals procedures and the reasoning behind such blocks. On fixed line ISPs refusal to review clearly incorrect blocks is a persistent problem. Even regarding fraud, domains lapse, and are bought and sold, leading to many new, legitimate sites being blocked by ISPs, for instance at launch. Technical services are also frequently blocked at potential fraud or abuse, when they are simply providing private email or editing facilities and the like.

Fixed line ISPs are also frequently filtering harmless content, such as corner shops or pubs, on the basis of the presence of 'alcohol'. If permission to filter is granted, then filters need to relate content to harm or risk, and be genuinely open to review, rather than be broad and rely on the idea that filters are 'chosen' by end users, as the blocks themselves are not chosen. In short this policy area is difficult and needs much greater thought before providing permission.

With regard to blocking of content, we would like to make a general comment about net neutrality and the position with regard to law derived from European Union legislation.

Your review notes [in Footnote 12] that the Open Internet Access Regulation is subject to the process of review and revocation as outlined in the Retained EU Law (Revocation and Reform) Bill 2022. This means that the Regulation would be subject to a sunset clause applying from December 2023, unless either its fate is made subject to delay until 2026, or it is “saved” by a government Minister from being automatically revoked.

Your review also notes [S.2.21 and Footnote 20] the EU-UK Trade and Cooperation Agreement, Article 178, which enshrines the principles of the Open Internet and net neutrality into an international agreement signed by the UK government. We would respectfully suggest that allowing this Regulation to sunset in December this year would be breaking international law.

We recognise that this is the responsibility of the government and not Ofcom, however, we nevertheless wanted to draw it to your attention.

Revocation of the Open Internet Regulation would leave ISPs exposed to blocking orders. Article 3.3 of the Regulation states that “reasonable traffic management” may be carried out in the exceptional circumstance where compliance with a court order is required. This has been done to limit the possibilities of arbitrary blocking either by the ISP itself, or on the demand of a third party. Specifically, it was done to support demands from copyright holders for blocking of infringing websites.

A precedent was set under UK law, in the case of *Twentieth Century Fox v BT* where an injunction was obtained by copyright holders for the blocking of a website. It established that the blocking order had to specify the precise content to be blocked, and that the interference with non-infringing content should be *de*

minimis. This case was followed by multiple cases litigated by copyright owners. These blocking orders were governed by the E-commerce Directive, which is also on the list to sunset at the end of 2023.

If the Open Internet Regulation is revoked, there would be no legal barriers to anyone demanding that ISPs block websites without any form of legal evidence or order.

In the context of the Online Safety Bill, it would leave Ofcom exposed. Ofcom has powers under the Bill to apply for court orders to have non-compliant websites blocked. A revocation of the Open Internet Regulation (and the E-commerce Directive) would result in legal uncertainty in this area.

Please provide any further evidence you have to support your responses.