

Channel 4 submission to Ofcom's 'Net neutrality review' call for evidence

November 2021



Key points

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- 01** Channel 4 strongly supports the principle of net neutrality

 - 02** The provision of Public Service Media (PSM) must be protected within the net neutrality framework

 - 03** Anti-competitive digital markets are putting huge pressure on the efficacy of the net neutrality framework

 - 04** Protecting net neutrality, alongside complementary interventions by the Digital Markets Unit and legislative reforms to prominence are crucial for promoting a fairer, more competitive regulatory environment

 - 05** Channel 4 urges Ofcom to conduct further research on the impact of zero-rating in the UK, particularly in light of major legal developments
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Channel 4 strongly supports the principle of net neutrality

- Channel 4 welcomes the timely call for evidence by Ofcom and the forward-looking scope of the review. The net neutrality framework must be fit for purpose as demand continues to increase on networks.
- The principle of net neutrality is vital for a fair regulatory landscape which protects the rights of consumers. Net neutrality ensures the freedom of citizens and consumers to access all lawful content equally, without internet service providers (ISPs) discriminating against particular services or websites.
- Channel 4 believes the principles which underpin the net neutrality framework continue to best serve citizen and consumer interests and crucially promote access and choice.
- In principle, net neutrality ensures fair and non-discriminatory access to public service media (PSM) content. The UK's PSM ecology plays a vital role in British public life, supporting democratic values and culture, promoting social cohesion and driving investment in world class creativity and skills.
- Within this, Channel 4 plays a unique role – reaching young and underserved audiences, covering unheard stories, and supporting the wider creative sector.

The provision of PSM must be protected within the net neutrality framework

- Evidence from Ofcom highlights that viewing habits continue to gravitate towards internet consumption, with 2020 seeing record levels of online streaming.¹ As the public service broadcaster with the youngest audience profile, Channel 4 is at the forefront of responding to changing viewing habits.
- Channel 4 is committed to a digital future, prioritising online growth and investing in our digital capabilities. Our video-on-demand service, All 4, had a record 2020 with 1.25bn views and market leading digital revenue growth.
- As consumers increasingly engage with media online, it is important to consider the long-term future of PSM delivery and the role of net neutrality in supporting that. As we move increasingly to a world of IP delivery for TV it is going to be crucial that PSM content is accessible to all viewers regardless of the quality of their broadband connection.
- The future provision of PSM over the internet must retain the fundamental features of universal availability and free to view, which have been cornerstones of the success of the existing terrestrial system.
- Channel 4 believes that, as Ofcom assesses the future of the UK's net neutrality framework, a key priority should be to ensure that PSM has a guaranteed level of service, is widely available, and prominent.

Anti-competitive digital markets are putting huge pressure on the efficacy of the net neutrality framework

- Ofcom's review is important given the evolving nature of digital markets, particularly the concentration of market power amongst a few key firms and changes in how consumers are utilising the internet.
- Government, regulators, and numerous expert panels have concluded that unfair and anti-competitive practices are widespread in digital markets.² Increasingly a few global technology companies and online platforms dominate both gateways to content and the content consumed.
- As discussed in more detail below, we are also concerned that companies are undermining the net neutrality framework through extensive zero-rating offers.
- Protecting net neutrality, alongside complementary interventions by the Digital Markets Unit and legislative reforms to prominence are crucial for promoting a fairer, more competitive regulatory environment.
- Relaxing net neutrality rules risks further entrenching the influence of companies who dominate consumption online and could use their market power to gain further competitive advantages, such as through paying for priority traffic.

The surge of zero-rating deals threatens net neutrality rules

- Channel 4 has concerns that companies are circumventing net neutrality rules by offering deals for apps or services so that they do not count towards any data limits (known as "zero-rating").
- There are cases where zero-rating is beneficial and justifiable - such as with emergency health services or specifically designed public policy goals like providing free educational resources.
- However, we are concerned that the practice is increasingly widespread and potentially discriminatory. It is telling that it is overwhelming larger technology companies which can sustain zero-rating deals with ISPs. A

¹ https://www.ofcom.org.uk/__data/assets/pdf_file/0023/222890/media-nations-report-2021.pdf

² <https://www.gov.uk/cma-cases/digital-markets-taskforce>

recent report found that the company most benefitting from zero-rating in Europe is Facebook.³ Additionally, out of the top 20 zero-rated offers, 16 are for private US technology companies.⁴

- International evidence shows, particularly in countries with limited internet infrastructure, that zero-rating has been used to give consumers unlimited access to social media. The impact of this has been demonstrated to distort access to legal content and increase the spread of viral misinformation.⁵
- In an age of rapidly increasing online consumption, this raises important public policy questions about fair access to public service media. Firstly, that the zero-rating practice has the potential to be exclusionary as few public service media organisations have the financial resources to agree these commercial deals. Secondly, that zero-rating has the potential to undermine PSB prominence frameworks as by their nature these deals give preferential access to certain apps and services.

Channel 4 urges Ofcom to conduct further research on the impact of zero-rating in the UK, particularly in light of major legal developments

- In 2021, the Court of Justice of the European Union (CJEU) ruled against zero-rating practices by Vodafone and Telekom, stating that is not accordance with the EU's net-neutrality law.⁶
- Analysis of the judgement from Europe's top court highlighted that it sent "a strong signal... that zero tariff offer[s] can stifle competition and innovation"⁷ and are fundamentally not compatible with the EU's net neutrality regulation.
- As Ofcom conducts its review into net neutrality, we encourage Ofcom to conduct further analysis of the impact of zero-rating on the UK market. This analysis would be particularly beneficial given the priority focus on digital competition by the DCMS, the CMA, and the Digital Regulation Cooperation Forum.

³ <https://en.epicenter.works/content/closing-the-loopholes-in-eus-net-neutrality-framework>

⁴ <https://en.epicenter.works/content/closing-the-loopholes-in-eus-net-neutrality-framework>

⁵ <https://www.forbes.com/sites/davidebanis/2019/02/18/how-zero-rating-offers-threaten-net-neutrality-in-the-developing-world/?sh=39ec12e03b41>

⁶ <https://curia.europa.eu/juris/document/document.jsf?jsessionid=6832169868EB7B3683CF22E02133FF09>

⁷ <https://www.pinsentmasons.com/out-law/news/cjeu-applies-net-neutrality-rules-against-zero-rating>