

Title:

Mr

Forename:

Michael J D

Surname:

Brown

Representing:

Self

Organisation (if applicable):

What do you want Ofcom to keep confidential?:

Keep nothing confidential

If you want part of your response kept confidential, which parts?:

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

You may publish my response on receipt

Additional comments:

Question 1: How enduring do you think congestion problems are likely to be on different networks and for different players?:

I think the growing use of the Internet for video delivery represents a major and persistent threat to the timely and efficient delivery of email, business file transfer, and general website browsing for shopping and public information services. I would favour restrictions on the Internet download of TV programme material, given that it is trivially easy for people to record at home for subsequent timeshift viewing

Question 2: What do you think are possible incentives for potentially unfair discrimination?:

With the growing focus on Internet data delivery speeds and the groundswell of public demands for publication of actual minimum and average data speeds achieved by Information Service Providers (ISPs), it is easy to envisage that ISPs would find it advantageous to reduce the priority of service given to customers with a persistent pattern of high volume traffic usage. The extent to which such discrimination is regarded as 'unfair' is essentially a policy value judgement, but the potential clearly exists and is likely to increase in accordance with my answer to Question 1 above. Additionally, there are opportunities for anti-competitive discriminatory 'side deals' between ISPs and commercial content providers.

Question 3: Can you provide any evidence of economic and or consumer value generated by traffic management? :

To the extent that traffic management could mitigate the adverse effects of traffic overloads on ISP data servers and the data transmission networks, it has the potential to enhance the quality of service offered to the average consumer. Traffic management, by its ability to mitigate peak traffic loads can permit more efficient and economic utilisation of network data capacity and associated hardware.

Question 4: Conversely, do you think that unconstrained traffic management has the potential for (or is already causing) consumer/citizen harm? Please include any relevant evidence. :

My answer to question 2 above clearly demonstrates the potential for 'side deals' to have a damaging impact on the value of Internet service delivered to consumers. On the other hand, judging by the apparent lack of publicised complaints by disgruntled users caught by ISP's 'fair use' policies, there is scant evidence of the actual application of traffic management by ISPs having a negative impact on consumers.

Question 5: Can you provide any evidence that allowing traffic management has a negative impact on innovation? :

I do not believe that traffic management would have a negative impact on innovation. Rather, to the contrary, I believe that traffic management and a subjective desire to avoid its associated presentational disadvantages could combine to promote a programme of innovative efficiency measures striking a fair balance between consumers and ISPs.

Question 6: Ofcom's preliminary view is that there is currently insufficient evidence to justify ex ante regulation to prohibit certain forms of traffic management. Are you aware of evidence that supports or contradicts this view? :

I would emphatically support the stated OFCOM view at the present time, though I can offer no evidence either way. I rather fear that regulations that defined what

traffic management was permissible would encourage the blanket use of such measures. There is, I think, a parallel with the now widespread exploitation of intrusive surveillance powers by local councils under the authority of the Regulation of Investigatory Powers Act (RIPA). Before the enactment of RIPA legitimised such underhand practices, public officials would have regarded it as improper to spy through people's windows, for example.

Question 7: Ofcom's preliminary view is that more should be done to increase consumer transparency around traffic management. Do you think doing so would sufficiently address any potential concerns and why?:

At present, it would seem that traffic management measures are generally covered by the 'fair use' provisions of service contracts between consumers and their ISPs. I certainly agree that greater clarity and definition of such contract terms would be helpful, as would also the provision of an objective measures of any alleged breaches of such provisions. In the absence of specific regulation I would consider the definition and measurement of customer compliance with 'fair use' policies to be essential, coupled with the establishment of an independent tribunal to adjudicate disputes between ISPs and consumers.

Question 8: Are you aware of any evidence that sheds light on peoples' ability to understand and act upon information they are given regarding traffic management?:

The lack of definition of 'fair use' policies in ISP consumer contracts clearly limits the ability of people to understand the application of traffic management to their own Internet usage. Under present arrangements it would appear that people's first intimation of the impact of traffic management upon their individual Internet usage is likely to occur in the context of a dispute with their ISP.

Question 9: How can information on traffic management be presented so that it is accessible and meaningful to consumers, both in understanding any restrictions on their existing offering, and in choosing between rival offerings? Can you give examples of useful approaches to informing consumers about complex issues, including from other sectors?:

In my opinion, there needs to be a common framework for defining Internet usage in terms of maximum, minimum and average data download and upload speeds, both instantaneously and over the past seven (say) days. Likewise the total, minimum, maximum and average data volumes transacted by each individual user needs to be recorded. The 'fair use' policies of ISPs need to be expressed as measures of such parameters, as also the quality of ISP service recorded. With standard parameters in place the provision of appropriate software applications for installation on consumers' computers can be envisaged that would monitor the service provided and utilised by the user. Warnings of impending 'fair use' policies breaches or ISP service standard failings could thus be provided automatically. On a consolidated basis the aggregated

quality of service measures for each ISP should be made available for the guidance of consumer choice, with the side effect of spurring competition between ISPs.

Question 10: How can compliance with transparency obligations best be verified?:

The availability of the sort of objective measures outlined in my answer to Question 9 above would enable individual consumers to monitor their ISP's performance and their own compliance with 'fair use' policies. Regular reporting of consolidated data to OFCOM by the ISPs would enable public transparency

Question 11: Under what circumstances do you think the imposition of a minimum quality of service would be appropriate and why? :

Until there is sufficient data available in terms of the objective measures outlined in my answers to Question 9 above, I believe that it would not be possible to define realistic minimum acceptable standards of service.