

Arts & Labs
European Commission Net Neutrality Consultation Submission

- 1. Is there currently a problem of net neutrality and the openness of the internet in Europe? If so, illustrate with concrete examples. Where are the bottlenecks, if any? Is the problem such that it cannot be solved by the existing degree of competition in fixed and mobile access markets?**
- 2. How might problems arise in future? Could these emerge in other parts of the internet value chain? What would the causes be?**

There is no current problem involving net neutrality or the openness of the Internet in Europe. We firmly agree, that subject to reasonable network management and the needs of law enforcement, Internet users should be able to access the lawful Internet content of their choice, run the applications and use the services they choose, connect with the devices they prefer so long as they do not harm the network, and enjoy a wide range of competitive options from across the Internet marketplace. We are happy to say that these important principles reflect the open environment prevails today and that they have the support of every active participant in the Internet ecosystem.

We further believe in an Internet that is equally open to innovation by all participants – content creator, network operator, software developer, search engine, the “guy in the garage,” and others who take part in online activity. It must be open to new models for distributing legal content online, to user generated content, and the free flow of information, while also recognizing the right of all users to protect their personal information and their property from unauthorized use.

The Internet should be open to experimentation, new business models, and collaborations that cross industry lines. The web sites, content creators, service providers, network operators, search engines, and others who have built the Internet infrastructure, enabled it to operate, and filled it with content also have rights that demand respect so that our digital society delivers the greatest value to all.

In this regard, we are, concerned with the continuing proliferation of web sites dedicated exclusively or almost exclusively to the illegal distribution of copyright-protected content. Such activity, if left unattended, will jeopardize the continued viability of the Internet as a safe and reliable distribution network for creative content. While individual artists and large content creators alike are excited by the opportunity presented by the Internet to reach a global audience, they require some reasonable assurance that their rights will be respected and that the Internet does not become a safe haven for digital thieves to operate with impunity. Participants in the Internet ecosystem should work cooperatively to address this issue. Content creators must be able to collaborate with other Internet participants to protect their property and to counter illegal pirated content by offering consumers a higher quality product.

Content providers have the right to work with network operators, content delivery networks, and other Internet participants to optimize the content they offer to Internet users. Content providers also need the freedom to test a range of pricing and service models for creating and distributing online content. Network providers need the freedom to work with device and application producers, game developers, software designers and others to maximize the performance of online services.

More broadly, we believe lawful applications should have the opportunity to receive the treatment they require for smooth and effective operation. To that end, network operators should be allowed to enter commercial agreements for meeting the specific performance requirements of applications, content, and services that require specialized services in order to satisfy consumer expectations, providing they do not harm consumers or interfere with competition.

In our view, the most significant threat to the future of an Open Internet is needless regulation that would stifle innovation by trying to define a one-size-fits all model of Internet activity and restricts the right of various participants to experiment with new services and new business models.

- 3. Is the regulatory framework capable of dealing with the issues identified, including in relation to monitoring/assessment and subsequent enforcement?**
- 4. To what extent is traffic management necessary from an operators' point of view? How is it carried out in practice? What technologies are used to carry out such traffic management?**
- 5. To what extent will net neutrality concerns be allayed by the provision of transparent information to end users, which distinguishes between managed services on the one hand and services offering access to the public internet on a 'best efforts' basis, on the other?**

We believe the dramatic spread and continuing evolution of the Internet, and the growing array of services enjoyed by Internet users is strong evidence that the current regulatory system works. We believe that the universal support for an Open Internet from participants in the Internet ecosystem, combined with an appropriate focus on “transparency” measures will keep the Internet open without additions to the current regulatory framework. Transparency provides an important check against misconduct by ensuring that users understand what services they are paying for, any meaningful limitations on access or bandwidth, and the impact on their service experience from a provider’s network management practices.

From traffic lights to landing rights, management is an essential component of safe, efficient, and effective networks. In the case of the Internet, the ability to manage networks is critical for quality performance, especially in periods when high demand can create congestion that undermines the performance of applications such as VoIP and streaming video that can be extremely sensitive to delays. In order to serve consumers by enabling them to enjoy good performance by the legal applications of their choice, network operators require the flexibility to manage their networks in ways that maximize efficiency and keep traffic moving even in times of peak demand. Many of the same tools utilized to help manage network performance also may be used to help protect users from illegal content and other harmful conduct.

The proof is in the pudding: traffic management has been a mainstay of the Internet as it has developed and as we know it today; the economic and consumer value generated by today’s “traffic managed” Internet is undeniable. There is no cogent reason to risk the continued strength of the Internet with ex ante regulation, especially when that regulation may pose a greater likelihood of disrupting the evolution and expansion of the Internet than of enabling it.

It also is critical to recognize the danger to the development of the Internet posed by the growing tidal wave of digital theft that is clogging the networks and making it difficult for content creators to realize the full potential of legitimate services. Given the vital role of content in the evolution of the Web and the need to deliver it to users in a swift, safe and reliable fashion, effective network and traffic management must include the ability to take lawful steps to identify illegitimate traffic and to combat its presence on the Web.

In sum, effective network and traffic management encourages content creators and applications providers to continue to invest in innovative new content and services by providing assurance that the networks will provide the level of service needed to support new offerings. Undue restrictions on such management, on the other hand, will discourage such innovation because creators will lack the certainty that their products will operate effectively enough to satisfy consumers.

6. Should the principles governing traffic management be the same for fixed and mobile networks?

Both fixed and mobile networks are experiencing massive increases in data and the upward trend will continue for the foreseeable future. Thus, ensuring flexibility is critical for both platforms, but especially critical for the mobile platform, given the inherent bandwidth scarcity associated with spectrum limitations and the more nascent nature of the mobile broadband marketplace. Sophisticated traffic management and smart networks are absolutely necessary to deal with these new data flows, which are driven by massive consumer demand for data intensive services such as online gaming and video streaming. Given the myriad of services – some existing, some being developed, and some not yet even conceived – service providers can best serve consumer needs by developing to develop newer and smarter ways to manage traffic on fixed as well as mobile networks. Regulation that restricts such management efforts – particularly “one-size-fits-all” regulation that does not take into account the technical differences between wireline and wireless technologies – would hurt consumers by potentially compromising the network’s ability to support the services that consumers want and expect, especially during times of high demand or congestion.

- 7. What other forms of prioritisation are taking place? Do content and application providers also try to prioritise their services? If so, how – and how does this prioritization affect other players in the value chain?**
- 8. In the case of managed services, should the same quality of service conditions and parameters be available to all content/application/online service providers which are in the same situation? May exclusive agreements between network operators and content/application/online service providers create problems for achieving that objective?**
- 9. If the objective referred to in Question 8 is retained, are additional measures needed to achieve it? If so, should such measures have a voluntary nature (such as, for example, an industry code of conduct) or a regulatory one?**

Managed services hold significant potential to improve the delivery of content on the future Internet through individualized solutions for consumers and content providers. Arts & Labs welcomes the development of innovative managed services, and we believe that service providers, content providers and consumers should be free to enter agreements within the parameters of existing competition law.

Given the rapidly evolving nature of the Internet, we are concerned that additional regulation may interfere with the successful evolution of the Internet by locking networks into systems and technologies that will quickly become outdated or will not be flexible enough to support future content or applications.

Whereas regulation tends to freeze certain practices in place and hamper innovation, voluntary measures allow service providers and content providers to develop new and better practices to the benefit of consumers. A voluntary system also tends to facilitate a more fruitful dialogue between consumers and providers. Regulation tends to create a “race to the bottom” where providers get “off the hook” if they are simply following the rules, whereas a voluntary system spurs a “race to the top” by encouraging

innovation and enabling networks to compete with one another by offering a range of differing services and capabilities.

As to the precise nature of possible prioritization, we believe the fundamental issue is protecting consumers' right to access the services of their choice and to enjoy the benefits of fair competition. Rather than pre-emptive regulation or even bans on possible services, we believe generally that Internet participants and network operators should have the freedom to offer a wide array of services so long as they do not harm consumers' online experience or wrongly interfere with competition.

10. Are the commercial arrangements that currently govern the provision of access to the internet adequate, in order to ensure that the internet remains open and that infrastructure investment is maintained? If not, how should they change?

The Internet has developed as rapidly as it has exactly because it has been generally free from regulation. In fact, the Internet is not a single entity, but a collection of largely private networks that have voluntarily agreed through commercial arrangements to interconnect and exchange traffic. Continuing this structure should be the foremost goal of policy makers, given its unequivocal success. The explosion in Internet-based services and content – indeed, the very fact that we often speak of an “Internet economy” – in recent years is solid evidence that the market is working well. Net neutrality regulation would represent a fundamental break with the principle of openness and non-interference by government authorities that has served consumers well for the past two decades. Such regulation is unnecessary and would almost certainly prove harmful if adopted.

Lack of Internet access remains a problem for many citizens in Europe and around the world, notably in rural and low income areas. Expanding access requires significant private sector investment and innovation, which would be hampered by so-called net neutrality measures that limit Lines of business or otherwise interfere with networks ability to generate revenues to support additional investment.

- 11. What instances could trigger intervention by national regulatory authorities in setting minimum quality of service requirements on an undertaking or undertakings providing public communications services?**
- 12. How should quality of service requirements be determined, and how could they be monitored?**
- 13. In the case where NRAs find it necessary to intervene to impose minimum quality of service requirements, what form should they take, and to what extent should there be co-operation between NRAs to arrive at a common approach?**

The Internet is a rapidly evolving and innovative marketplace characterized by a highly diverse range of consumer needs and demands. It is virtually impossible to set one-size fits all quality of service requirements in such an environment, and rapid technological development virtually guarantees that such quality of service requirements would soon prove obsolete.

13A??? What should transparency for consumers consist of? Should the standards currently applied be further improved?

We support a strong transparency requirement that provides consumers with information about the impact on their service from network management practices and also ensures that content and application providers receive the quality of service they expect from operators. Transparency rules also support competition by enabling operators to differentiate themselves by seeking to appeal to consumers

by developing effective and relatively non-intrusive traffic management techniques. Any transparency rules, however, should not require the disclosure of technical details that would enable third parties to circumvent reasonable network management practices.

In general, Arts+Labs believes that an appropriate focus on “transparency” measures will provide an important check against misconduct by ensuring that users understand what services they are paying for, any meaningful limitations on access or bandwidth, and the impact on their service experience from a provider’s network management practices.

14. Besides the traffic management issues discussed above, are there any other concerns affecting freedom of expression, media pluralism and cultural diversity on the internet? If so, what further measures would be needed to safeguard those values?

Private investment in smart networks and innovative traffic management is absolutely necessary to fully harness the potential of the Internet. Arts & Labs welcomes the explosion in online creative content, which will greatly improve the ability of citizens to exercise their freedom of expression and freedom of information.

We believe the best way to assure a wide range of diverse voices online is to build a robust Internet infrastructure where service providers and content providers are free to create new services. Unnecessary regulation, including new net neutrality rules, would hamper the development of new Internet services and could thus limit the diversity of creative content and media services online.

We are wary of regulatory intervention on behalf of freedom of expression. No matter how well intentioned, we believe such action may set a dangerous precedent that contravenes the stated right in Article 10 of the European Convention on Human Rights) to freely receive information without government interference.