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Bonnier Response to the Commission's Consultation on the open internet and net neutrality in Europe

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INTRODUCTION

Bonnier is a multi-channel media company with experience and knowledge from a full range of media in 175 companies across 16 countries.

Bonnier welcomes the Commission's consultation on the open internet and net neutrality in Europe and is pleased that the Commission has taken the initiative to deepen the debate on how best to preserve the open and neutral character of the Internet.

Bonnier believes that guaranteed net neutrality is less and less likely in the future. While advancements in the quality of digital media will most likely be an advantage for content providers, the current media consumption model may not hold for the future. Internet providers today are primarily (although not entirely) net neutral, but there will most likely be a shift away from net neutrality as investments from internet providers in 4G networking continue to rise. We see this development as highly worrying since it could be detrimental to the content industry and to the development of new services.

Bonnier recognizes that ISPs must manage their networks to a certain degree, but we would like to highlight the need for transparent management techniques. Similar content from any content provider must be treated equally, i.e no filtering, no manipulation, no differentiation can be allowed.

We therefore urge the Commission to put in place measures so that no internet filtering can be done due to commercial interests. We also believe that acceptable filtering techniques, such as those necessary to ensure the safety and security of the internet, must be concisely defined and followed. If the market does not act on its own to regulate filtering, specific legislation should be introduced to do so.

More specifically, here below our answer to the questions raised in the Commission's consultation document.

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Question 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?*

In our view, there is a problem of net neutrality, since filtering on a large scale is occurring today. For example, a number of telecom operators are blocking certain services to protect their own commercial interests (e.g. Skype is currently filtered by Telefonica, among others).

The existing degree of competition is not a guarantee for an open internet. The customers' lack of flexibility due to extended and binding contracts and high switching costs might cause a problem. In addition, the internet operators deliver their services in a number of different ways: wireless, DSL (via telephone), mobile internet, fiber-to-the-home (FTTH). In many cases in Sweden, FTTH connections are provided by a specific operator based on the building or neighborhood in which you reside. Examples include homeowners' associations negotiating deals with a specific operator that limit their buildings to this operator's internet access. Another operator is building fiber optic infrastructure in certain municipalities, thus gaining access to the entire neighborhood's internet users. In these cases, pre-established deals between construction companies and internet providers can prevent the customers from choosing which provider they wish to subscribe to. The existing degree of competition and transparency is thus not enough, if end-users have limited access to competitive internet providers.

If ISPs can potentially favor the content of one provider over another, and end-users are forced to subscribe to a particular internet provider with a closed internet, specific web content may be blocked without users having a say. This is especially significant to the IPTV trend, as these types of services are delivered via FTTH technology.

Finally, as regards to competition, it is far from being a reality in many areas and there is nothing to prevent all providers to move toward a non-neutral Internet.

Question 2: *How might problems arise in future? Could these emerge in other parts of the internet value chain? What would the causes be?*

We fear that in the future there will most likely be a shift away from net neutrality as investments from internet providers in 4G networking continue to rise. As mobile surfing becomes more and more relevant (Forrester expects "40% of the European mobile population to be on 3G networks at the end of 2010"), ISPs will try to redefine the pricing relationship between content and internet providers.ⁱ This is even more relevant to the Swedish market, as Swedish telecom companies most probably will be the first to roll out 4G technology, from which high investment costs and potential profits provide even more incentives for ISPs to try to change their current cost and revenue structures.ⁱⁱ Given the limited number of available licenses (which will be auctioned off to an often even more limited pool of bidders), the open competition will not necessarily be a guarantee. We fear that in the near future we could see as few as four actors on the high-speed 4G market in Sweden, which could severely hamper the competition. While it is extremely difficult to assess today, many of the current non-digital business operations may require digital distribution in future. However, a closed internet may change the way content providers approach opportunities for future development.

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Potential future products that could be limited by a change in net neutrality include applications for Android and Apple devices, additional online and interactive print and magazines, and a digital store for selling all digital products (films, magazines, books, etc). These products may in future be in direct competition with services offered by operators, or may require heavy bandwidth to function properly. Today, these types of products generate little revenue, or have yet to be launched. But as present and future innovation is occurring largely on a digital level, it will be important to understand how these innovations may be bolstered or limited by the status of net neutrality. Online trends dictate a move toward on-demand products over subscription, with available platforms allowing for data to be traded in both directions. Affordable data transfer will be essential to ensuring the success of this future technology.

Question 3: *Is the regulatory framework capable of dealing with the issues identified, including in relation to monitoring/assessment and subsequent enforcement?*

The practices and activities of network operators and ISPs are difficult to monitor and assess. We therefore believe that the protection of present and future digital services will be made easier if national legislation on net neutrality become more concise. Today's regulatory framework means that ISPs can manage internet traffic, meaning that operators can filter and prioritize certain types of traffic as they please. We fear that this behavior will continue to spread if no further measures are taken.

Question 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?*

To some degree traffic management might be necessary to ensure a certain level of service; ISPs must for example filter spam. We realize that the EU telecom package allows for steering and controlling of internet traffic in order to improve the quality of service development. Unfortunately this technique can also be used to reduce the quality of other services or to enhance a dominant market position.

In our view, traffic management should only be necessary to ensure the safety and security of the internet, to ensure life-critical or real-time services for emergency numbers as well as to ensure that legal obligations are met, for example with regard to illegal content. We agree with the Commission that clarity is needed as to what constitutes "reasonable traffic management". Under no circumstances should traffic management be done due to commercial interests.

Question 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?*

As already mentioned, in cases where the end users does have limited access to competitive internet providers, transparency is not of much help. Transparency is vital, but works only in circumstances with free choice of provider and a functional competitive market.

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Question 6: *Should the principles governing traffic management be the same for fixed and mobile networks?*

Yes.

Question 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 prioritisation affect other players in the value chain?*

Some operators are looking to purchase or enter into exclusive agreements with content providers and naturally the content industry is also trying various ways to best reach the consumers.

Depending on what is happening in the future, the content industry might see securing partnership with internet providers as a helpful step in ensuring the availability of their online content, meaning that big content providers can afford certain partnerships and arrangements, leaving small content providers behind.

Question 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?*

The same quality of service conditions and parameters should be available to all online service providers in the same situation.

With no specific rules in place for net neutrality we might see an explosion of exclusive agreements between operators and the content industry. Such a mass of bilateral commercial deals would not be of benefit to anybody, since it could lead to unfair priority on the Internet and create further problems, such as holding back innovation, hindering the development of new business models and discouraging a variety of services.

Question 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?*

Given the technical nature of the question, outlined concrete principles for operators to follow could be a more realistic recommendation than precise legislation. This outline could include the following:

1. No internet filtering techniques should occur due to commercial interests
2. Acceptable filtering techniques, such as those necessary to ensure the safety and security of the internet, must be concisely defined and followed
3. The Commission's stance that increased competition takes care of the filtering threat must be backed up by transparency within the ISP market
4. If the market does not act on its own to regulate filtering, specific legislation should be introduced to do so.

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Question 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?*

Yes in most cases. As a major content provider we would like to stress the fact that the development of new services is dependent on the respect for IP-rights online. We do believe that access to the internet could be limited in cases where repeated infringements of copyright have occurred, for example through the much discussed “three strikes rule” and/or through shutting down websites that are providing illegal downloads to users. This is necessary to uphold copyright in the digital environment.

Question 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?*

There are many such instances, such as blocking of VOIP products, blocking of video traffic or any other type of blocking. Furthermore, unreasonable delays or any type of degradation should also trigger intervention, as well as misleading advertisement from ISPs.

Question 12: *How should quality of service requirements be determined, and how could they be monitored?*

Delay times in loading web content, that incoming data requests are treated chronologically. The main requirement should be the perceived speed of the consumer which should also be fairly easy to monitor.

Question 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?*

It is important that the minimum quality of service requirements are the same across Europe and to that extent there has to be co-operation between NRAs.

Question 14: *What should transparency for consumers consist of? Should the standards currently applied be further improved?*

Consumers need to be aware of what sort of traffic management is done and what kind of agreements the operators and ISPs have made with other players on the market. The consumer must be informed if there is limited access to certain applications and services.

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Question 15: *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?*

One of our major concerns is the respect for copyright in the digital environment. We can see that the development of new services online have been delayed due to concerns of the protection of online content. A close cooperation must be put into place between regulators, ISP and content providers to ensure the necessary security for copyright holders to make their works available online.

We sincerely hope that the Commission continues to put effort into tackling Internet piracy and to stop illegal file-sharing on the Internet, in line with the recently adopted Gallo report in the European Parliament.

Stockholm, September 29, 2010

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ⁱ Husson, Thomas. 2010 Mobile Trends. Forrester report, 2010.

ⁱⁱ <http://www.theinquirer.net/inquirer/news/1050437/swedes-roll-out-4g-service>.