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## **FEP Answer to the public consultation on the open internet and Net Neutrality**

*The Federation of European Publishers (FEP) is the association representing book and learned journal publishers from 26 national associations from the European Union and the European Economic Area Member States. Thus, FEP is the voice of the great majority of publishers in Europe. FEP has been dealing with European legislation since 1967, year of its foundation, and advises publishers' associations on copyright and other legislative issues.*

FEP is in favour of net neutrality as a principle, as long as net neutrality does not act as a shield for illegality. Therefore we are supporting a regulated internet market, protecting intellectual property rights and encouraging the development of new business models.

European publishers back the Commission's efforts to ensure fairness on the internet market maintaining fair competition between internet service providers (ISPs) telecom and mobile phone operators. But most importantly, it is fundamental to ensure consumers' choice to access the entirety of content and services available on the internet, provided that they are legal, through whichever ISP and whichever device.

The regulator, at European or national level, should ensure that ISPs' practices are transparent and fair and should consider the issue of net neutrality and open internet in the light of the protection of IPR and the promotion of cultural diversity. Our position is thus to support an open internet and net neutrality in order to preserve consumers' freedom to access lawful content on the internet and to prevent ISPs from stifling new businesses and SMEs offering innovate and create services online by applying a differentiated pricing wall.

Indeed, ensuring net neutrality entails that ISPs cannot create a two-tiered system of "fast-lanes" and "slow lanes" where they could intentionally speed up or slow down traffic based on which content or service is used. ISPs claim that broadband is expensive and that a company that wants its consumers to have faster access should pay more. But allowing this means that ISPs would be able to discriminate in the economic sense by charging content providers extra when users access their content. Such pricing practices would result in a wealth transfer from content providers to ISPs. This will then generate fewer incentives for content owners and service providers to expand their online offering and most importantly would create a barrier for SMEs and innovative companies to develop



content. Most of the publishers, and creative enterprises for that matter, are SMEs with limited financial means and who strive to offer an attractive legal offer online.

In the consultation, the Commission mentions that Peer-to-peer (P2P) is responsible for slowing down the traffic when “bandwidth-hungry content” is being downloaded. On this point, FEP would like to remind the Commission that the core problem with this phenomenon is the infringement of IPR which is facilitated by P2P services.

Network neutrality should be considered only in relation to legal content and should not be used as an excuse to slow down the fight against copyright infringement. Net neutrality should be combined with the respect of intellectual property rights (IPR), in relation to P2P services that enable people to upload and download illegally creative content without prior authorisation of the rightholders.

Indeed, intellectual property, and copyright in particular, is the vital legal infrastructure which underpins and protects all original acts of creativity in Europe and internationally, as well as the creative and cultural industries which depend on them. Without such a robust and flexible form of legal protection for authors and their publishers, there would be little or no protection for creativity. Equally importantly, there would be no incentive for authors to continue creating new works, and no incentive for publishers to keep investing the substantial amounts – and the substantial skills – necessary to publish them and make them available in the digital age. All creative and cultural industries need an efficient intellectual property system which is actively enforced, so that piracy and cybercrime which remain constant problems in the digital environment can be reduced to a minimum. This is not only necessary to protect the authors’ creativity and the publishers’ investment, but equally to encourage public awareness of the need to respect intellectual property rights, as one would protect one’s own property, in the public interest.

Regarding the market structure, even though ISPs and telecom/mobile operators are increasingly developing their own offers of content, they should not favour these over other offers. The European Commission should make sure that exclusivity agreements may not restrict access to a wide range of content offers by consumers, and therefore create some kind of a fragmented Internet, or lead to abuses of a dominant position.

Finally, European publishers request that any policy taken on the way the internet functions must be framed to keep firmly those premises in mind. Freedom of speech, media pluralism and cultural diversity are core values upheld by FEP members.

The absence of net neutrality could challenge those values and be used as a means of censorship or lead to cultural dominance.