

September 30, 2010

Submission in response to the European Commission's Questionnaire
"for the public consultation on the open internet and net neutrality in Europe"

The members of the undersigned organization are businesses active in the film sector in Europe. Their activities include are mainly in distribution (theatrical, video and online channels) and may also include production and co-production of films. Many of our members are pursuing the offer of cinematographic works online, either directly to end-users or working in cooperation with service providers or content aggregators deploying different business models (e.g. time-limited viewing, streaming or digital delivery of permanent copies). Such new services bring wider choice to consumers as they involve an increasing variety of content, both on the Internet, but also through other types of networks.

However, the ever-increasing availability and distribution of illegal, unauthorized audiovisual content on the Internet compromises consumer confidence in the safety and security of the Internet in general, and as a consequence thereof in e-commerce as a whole. It also results in massive pressure on the broadband network to the detriment of the quality and speed of legitimate access and legal services.

We appreciate and support the European Commission's comment on p. 5 of the Questionnaire which states that it is up to customers and content/service providers to choose what they would like to access or provide online "as long as it is legal" [emphasis added].

We welcome the opportunity offered by this public consultation to contribute to the reflections on a topic which our members consider crucial to the future development of legal online content services.

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?

The European telecommunications market is characterized by a wide variety of operators active in both national and regional markets. Regulation, including the application of competition law, safeguards open access to high-speed networks to new entrants, e.g. in the broadband access market. This contrasts with the market make-up in other world regions, where national markets are typically served by fewer, larger operators and where open access to the networks of incumbent telecommunications operators has not been mandated by law. This has led to many European broadband subscribers enjoying a larger choice of service providers, range of services and cheaper access.

In this context, we are concerned that congestion in European electronic communications networks caused by the transmission of audiovisual content illegally made available on the Internet will threaten the quality of service expected and demanded by European broadband subscribers as well as hamper the launch and viability of legal online content services.

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

In addition to the network congestion caused by the transmission of audiovisual content illegally made available on the Internet, issues of future quality of legal services are also at stake. To date, audiovisual services on the Internet have mostly been provided in standard definition. There is no doubt, however, that European consumers expect the improved quality of sound and image offered by high-definition services or even 3D. Such improved resolution services entail increased bandwidth requirements and quality of service without interruptions. Such requirements cannot be guaranteed exclusively by investment in improved and better performing networks – network operators also need to be able to address illegal traffic through technological means.

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

It is our view that quality and consistency of service are of key importance in order to ensure the ability of end-users to access services and distribute information of their choice.

We therefore support regulatory mechanisms which provide for adequate minimum quality of service requirements and safeguard transparency in information about the quality of services provided to subscribers. In this context, traffic/network management is a legitimate tool for the provision of quality legal services and safeguarding the efficient functioning of networks, in particular by preventing the illegal transfer and streaming of audiovisual copyright content.

Question 4: To what extent is traffic management necessary from an operator's point of view? How is it carried out in practice? What technologies are used to carry out such traffic management?

Although this question would appear to be directed mostly at telecommunications and network operators, we wish to contribute the following general thoughts on traffic management:

- ISPs could derive cost savings from the reduction in traffic and network congestion resulting from actions taken to reduce illegal activities on the Internet;
- The additional traffic generated by illegal activities on the Internet, if left unaddressed, could result in increased costs for ISPs due to the additional capacity required to accommodate this illegal traffic over and above legal activities on the Internet; and
- It is widely known, and accepted, that ISPs have adopted traffic management systems on a widespread basis over recent years, reducing the need to increase the total capacity of networks by managing traffic involving illegal activities at peak times.

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?

Consumers should be informed about the tools which ISPs use to manage network traffic to protect privacy, ensure quality of service and safeguard the security of the Internet. Appropriate transparency rules will enhance consumer understanding and acceptance of network management tools.

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

In our view, the principles governing traffic management should be identical for fixed and mobile networks, taking into consideration, however, that bandwidth resources devoted to mobile networks are currently less significant.

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?

Dedicated content and application providers are better placed to address this question.

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?

Network traffic is managed today in order to ensure smooth transmission of e.g. video content, voice over IP, etc., and this is a necessary part of the day-to-day management of reliable, quality services on and access to the Internet. Any consideration of possible future non-discrimination requirements should be limited to cases of a demonstrable, anti-competitive effect on access to the network and/or services. Such an approach will ensure the required degree of flexibility at the regulatory level to promote the development and sustainability of new, innovative services on the Internet delivered without delay, disruption or interference.

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?

Differentiation of network traffic should not be precluded as a matter of principle. Restrictions and associated remedies should be limited to address anti-competitive effects on access to services and/or networks. In particular, as mentioned above, the possibility of addressing traffic involving illegal activities should be maintained so as to contribute to the establishment of a level playing field for legal online services.

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?

This question is better addressed by individual, commercial operators.

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?

We support the general tools set out in the 2009 Universal Service Directive providing national regulatory authorities with the potential possibility of setting minimum quality of service requirements to prevent the degradation of services and the delay of traffic in networks.

We are of the view that such intervention should be limited to essential services such as Internet telephony; market forces will ensure that the quality of services offered will meet the needs of different applications.

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

See above our reply to Question 11.

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?

National regulatory authorities are better placed to contribute to this point.

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

Consumers should be informed about the tools which ISPs use to manage network traffic to protect privacy, ensure quality of service and safeguard the security of the Internet.

Appropriate transparency rules will enhance consumer understanding and acceptance of network management tools.

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?

Given the high level of competition in European national telecommunications markets, we expect a wide variety of digital content and services to be offered to European consumers over broadband networks. A first important step in safeguarding media pluralism and cultural diversity in European is to enhance the tools to address illegal activities involving copyright audiovisual content on the Internet. Such activities raise both societal and technical issues in that they seriously threaten the possibility of amortizing the investment in the production and legal distribution of audiovisual content while at the same time reducing the quality and reliability of services for legal activities and services on the Internet. They also undermine consumer confidence in the safety and security of the Internet as a whole.

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We urge the Commission to focus on how to ensure a sustainable European content production and distribution industry in the emerging digital future. It is creative boldness, innovation and excellent marketing skills that help film and audiovisual content find its way on the Internet and gradually build up consumer demand for new innovative online content services. The future sustainability of online content services will depend not only on individual creativity, innovation and entrepreneurial vision but also on a supportive European legal regime which ensures a level playing field on all distribution platforms for legally distributed content.

We remain available for further information where necessary.

Contact: Antoine VIRENQUE, general secretary, virenque@fndf.org

FIAD – INTERNATIONAL FEDERATION OF FILM DISTRIBUTORS ASSOCIATIONS

74 avenue Kléber

F-75116 Paris

Tel: +33 1 56 90 33 00, Fax: +33 1 56 90 33 01

www.fiad.eu

The International federation of film distributors associations (FAID) gathers the national organisations of film distribution companies. Film distributors are the intermediaries between film producers and cinema exhibitors. FIAD covers the entire range of companies: small and medium-sized companies specialized in art house films as well as larger companies specialized in mainstream films. FIAD's members operate in 16 European countries where they achieve from 90% to 110% of the theatrical market.