



IFPI Response to the Commission Consultation on the Open Internet and Net Neutrality

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IFPI¹ represents the global recorded music business with 45 affiliated national groups and more than 1,400 members in 66 countries, ranging from major multinational companies to small independent labels.

IFPI welcomes the opportunity to provide comments on the Commission Consultation on the Open Internet and Net Neutrality. In this debate, the key element for the music industry is the fact that operators, services and applications must be able to differentiate between illegal and legal content, enabling them to take appropriate steps to control infringement. The debate must not undermine the Commission's efforts in effectively protecting intellectual property online.

The recording industry is at the forefront of developing the market for creative content and services online, and is a key actor in the development of the Internet. Music companies are licensing their content widely to all sorts of digital music services, offering Europeans a wide choice of music. Today there are more than 270 unique legitimate digital music services in Europe, offering over 12 million licensed tracks. A comprehensive list of these services can be found at www.pro-music.org. The market for recorded music (physical, digital and performance rights) in the EU totalled €4.5 billion in 2009, with digital channels accounting for revenues of €605 million. Digital sales now account for 15% of the European music market.

Digital content is the driving force behind the development of internet networks, which would have little value to consumers without appealing content. The music industry has been at the forefront of providing the content that fills the network pipes, driving the uptake of broadband. This is reflected in the sector's revenues: the revenues of the music sector online are more than twice those of the film, newspaper and magazine industries combined.

However, the development of the online market for music, and for creative content in general, is severely hampered by online piracy. This has been recognised by the Commission in its 2009 Communication "Enhancing the Enforcement of Intellectual Property Rights in the Internal Market", and has been recently confirmed in the European Parliament Resolution of 22 September 2010 on Enforcement of Intellectual Property Rights in the Internal Market (2009/2178(INI)).

All creative sectors are suffering significant losses because of online piracy. Piracy has a direct impact on jobs across Europe as well as investment in culture, and illegal downloads of copyright protected works are stifling the development of legitimate services online. Traffic management problems also arise from piracy. A very large proportion of "broadband-intensive" applications such as peer-to-peer downloading or online streaming or cyber-lockers are widely used to unlawfully distribute copyrighted content. Piracy clogs networks with illegal content and reduces speeds and access to content for anyone using the networks for legitimate purposes.

¹ The International Federation of the Phonographic Industry www.ifpi.org

Cooperation from ISPs is necessary to address piracy and enable meaningful intellectual property protection and enforcement in the online context. There are a number of feasible and reasonable options that ISPs can take to help address copyright infringements on their networks – and ISPs in many areas already are taking action, often supported by technological solutions. For example, ISPs routinely safeguard their systems in many ways, including the filtering or blocking of harmful content such as viruses, malware, and spam. Copyright infringements can and should be addressed by similar approaches.

The Commission acknowledges that “traffic may be managed to ensure that legal obligations are met in some Member States, particularly for example with regard to illegal content.” Traffic management used in this way does not impose any undue restrictions on fundamental freedoms, and should not be limited by any form of Net Neutrality. On the contrary, it improves the flow of information and fosters the development of channels providing lawful content. Whatever form of Net Neutrality that may be adopted should not be framed so as to block the enforcement of intellectual property rights or dealing appropriately with illegal and harmful content online.

The issue of Net Neutrality has been under discussion for several years now in the US. There the Federal Communications Commission (“FCC”) approved in 2005 four general Internet policy principles. Under these principles, consumers are entitled to access the Internet content of their choice, but only to the extent that this content is “lawful”. In October 2009 the FCC tabled a proposal to add an additional principle of non-discrimination of lawful content, again premised on the concept that **no unlawful conduct is to be shielded**. These principles are similar to that expressed in the Consultation (p.5 of the Questionnaire), namely that customers and content/services providers should be able to decide what they want to access or provide online, so long as it is legal.

In conclusion, however Network Neutrality is defined or implemented, it is essential for the effective protection of content in the online environment to ensure that operators, services and applications can appropriately distinguish between legal and illegal content and services, and treat them differently.

We ask that the record industry, and indeed the whole content sector, be kept involved in the discussions on Net Neutrality. IFPI remains at the disposal of the Commission for further discussions on this issue.