



**Response of the Writers Guild of America, West, Inc. to the European
Commission's Public Consultation on the Open Internet and Net Neutrality in
Europe**

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Introduction

Writers Guild of America, West (WGAW) is a labor organization representing more than 8,000 professional writers working in film, television and new media in the United States.

WGAW members write television, film and Internet video content enjoyed by audiences in the United States, across Europe and around the world. The WGAW is a member of the International Affiliation of Writers Guilds, an international body representing guilds of professional screenwriters working to further the cause of screenwriters worldwide by lobbying governments to adopt writer-friendly legislation and through collective action, mutual support and common representation internationally. The WGAW works closely with the Fédération Scénaristes Europe (FSE), a network of national and regional associations, guilds and unions of writers for the screen in Europe, comprised of 27 members from 21 countries, representing more than 7,000 writers in Europe. The WGAW is also a member of UNI MEI, the global union for media, entertainment, arts and sport.

The WGAW submits the following comments on the open Internet and net neutrality in Europe. Over the past two years, the future of an open Internet in the United States has been contested by Internet service providers (ISPs) who oppose rules ensuring Internet users have access to the lawful content, applications and services of their choice. The WGAW has joined with President Obama and numerous Internet businesses and public interest organizations to support the codification of rules protecting net neutrality in the United States. As the Internet has become the town square of the 21st century, nondiscriminatory access to diverse and independent news, information and entertainment sources on this platform is necessary for the free exchange of ideas. In addition, the low barriers of entry online and limitless distribution

opportunities of an open Internet promise to spur competition across many industries. Further, the Internet's ability to cross borders and connect people around the world speaks to the importance of a global open Internet. The WGAW submits the following comments in support of protection of an open Internet in the European Union.

Protecting a Free and Open Internet is Critical to the Promotion of Diverse and Independent Content

A free and open Internet is vital for a competitive marketplace for content and the exchange of ideas. The WGAW supports net neutrality because writers and other creative artists need an open Internet to take advantage of new technologies promising to revive independent production through low-cost distribution opportunities, resulting in a wide- range of new entertainment programs for consumers. As ownership and control of traditional media platforms have become more and more consolidated, content creators have become concerned with defending a free and open Internet as a medium to independently deliver their creative work to a wide and increasingly global audience. Similarly, for democratic discourse to flourish, consumers need access to a variety of diverse and independent programs as well as a number of media outlets to choose from. It is possible for robust competition among Internet service providers to mitigate potential abuses but this type of competition does not exist in the United States. In most instances, consumers have only two Internet providers (in rural areas, only one option) to choose from. This lack of competition allows telecom and cable companies to charge higher prices for Internet connectivity and necessitates federal rules preventing ISPs from becoming gatekeepers to the Internet, deciding which start-up companies survive, or what content consumers can and cannot access.

In the United States, deregulation and consolidation have given rise to a handful of media companies controlling television and film. These same companies distribute their entertainment product in Europe. This consolidation has decreased the opportunities for independent production of programming and resulted, to the detriment of consumer choice, in fewer creative and economic opportunities for writers. The advent of the Internet and the development of online video promises to reverse this trend, but only if net neutrality rules are in place. While the opportunity to make and view independent content in traditional media in the United States has essentially disappeared due to deregulation and consolidation, the Internet poses fewer obstacles to the creation and distribution of independent content. The openness of the Web is rapidly attracting talented writers frustrated with the current system dominated by large media companies. The same opportunities apply for European writers who can use the low cost distribution option of the Internet to offer consumers unique and diverse content. Net neutrality, in both the United States and Europe, will make it easier for European content creators to reach American audiences and vice versa. Net neutrality rules prohibiting discrimination of Internet traffic offer the best solution for protecting diverse and independent content online.

Managed Services and Paid Prioritization Must Not Be Used to Circumvent Net Neutrality and Disadvantage Competition

In the United States, proposals to exempt managed services from net neutrality rules and allow paid prioritization threaten to undermine the efficacy of rules codifying an open Internet. Companies proposing exemptions to net neutrality include Google and major television and film studios operating in the United States and Europe. For example, the dominant media companies, represented by the Motion Picture Association of America (MPAA) have repeatedly advocated

what could amount to a blanket dispensation from net neutrality rules. The MPAA has asked the U.S. Federal Communications Commission to “make clear that content owners will have the flexibility to enter into innovative business arrangements with broadband providers.”¹ While the WGAW is decidedly in favor of innovation and successful business ventures, the vagueness of the MPAA’s proposed arrangements leaves us deeply concerned that, under the guise of providing high quality of service to consumers, these companies seek the ability to create a preferential lane for Internet traffic, in derogation of the most basic net neutrality principles.

This is not merely an American concern as companies operating within European Union countries have also voiced support for the creation of paid “lanes” on the Internet. Recently, ISPs in the United Kingdom stated they would prioritize content or applications on the Internet if companies were willing to pay for such enhanced services.² The ability to negotiate for preferential treatment is inimical to the free movement of Internet traffic. Allowing such developments both in the United States and the European Union would disadvantage new entrants who are unable to compete with incumbent firms with the resources to purchase faster access to consumers. This would result in less competition among firms and less diverse, independent content, all to the detriment of consumer choice.

**Preservation of the Open Internet and Copyright Protection are Both Essential Objectives;
Neither Can Be Sacrificed to Achieve the Other**

Effective copyright protection is essential to writers and all other workers in the entertainment industry. The ability to generate revenue through the exploitation of intellectual

¹ See Comments of The Motion Picture Association of America, In the Matter of a Framework for Broadband Internet Services, GN Docket No. 10-127, pp. 6.

² Collins, Barry, “TalkTalk, BT: we’d put iPlayer in the Slow Lane,” *PC Pro*, September 28, 2010, <http://www.pcprouk.co.uk/news/broadband/361501/talktalk-bt-wed-put-iplayer-in-the-slow-lane>.

property provides funds that can be reinvested and fuel further innovation in many industries, including entertainment. Guild members rely on residuals – deferred compensation based on the continuing use of creative works – as a vital form of compensation. These payments in effect serve as R&D for the entertainment industry, allowing writers to develop new material while waiting for their next employment opportunity. Some of our members have famously nearly been counted out in their careers, surviving several dry years on their residuals, only to deliver international hits such as *The Sopranos* and *Desperate Housewives*. Any devaluation of copyrighted content could significantly diminish the ability of writers to spend time developing this new content. Strong enforcement of copyright law benefits society as well. The ability to generate revenue through the exploitation of intellectual property provides funds that can be reinvested and fuel further innovation in many industries, including entertainment.

The WGAW has a profound interest in the protection of copyrighted works. In 2008, professional writers represented by the WGAW relied on residual payments (for the reuse of original material on DVD, in international sales, syndicated on broadcast and cable channels, sold on iTunes, streamed online and viewed in many other markets) for \$286 million in income. These residual payments constitute approximately 25% of total writer compensation. Residual payments have continued to grow, increasing approximately 5% per year over the last five years. The growth in residuals demonstrates the long term value copyrighted works create and the importance preventing copyright theft has for the entire entertainment community. The European market is very important for American content and contributes to the residual compensation WGAW members receive.

Piracy threatens the ability to sustain and develop content. To protect the value of copyright and to preserve the benefits to society derived from the creation of intellectual property, piracy must be addressed. Piracy, however, cannot serve as a justification for discriminatory practices interfering with the free flow of lawful traffic on the Internet. Rather, solutions to piracy must be balanced with the preservation of an open, competitive Internet and protection of consumers' right to access the *lawful* content, services and applications of their choice. Achieving this balance requires the creation of guiding principles for the development of piracy detection and prevention tools not infringing on freedom of speech and the right to privacy. Further, piracy detection and prevention tools must not be used as a means for effectively creating an unfair advantage for large media companies.

The WGAW supports efforts to combat piracy, such as the graduated response regimes being developed and implemented in European Union countries. Graduated response is an effective tool because it gives rights holders remedies against those who pirate content and mandates strong penalties for habitual lawbreakers, without interfering with the flow of traffic over the Internet. A mature graduated response regime should be characterized by fair and efficient adjudicative processes, accompanied by escalating penalties. Strong measures, such as terminating the Internet connections of chronic thieves, would seriously diminish the amount of pirated content consumed online. Critical to these measures is the need for due process to ensure legal rights are protected. In accordance with an open and transparent Internet, ISPs should be required to inform regulators and consumers when they engage in graduated response. Such a requirement will create a system of accountability, providing a check against abusive behavior.

The WGAW also supports domestic and international efforts targeting and shutting down websites illegally hosting, streaming, or selling copyrighted material. We support the inclusion of ad brokers and payment processors such as credit card companies in anti-piracy efforts and believe the participation of these entities should be required. Many sites streaming illegal content rely on revenue from advertisers and payment processors. If these revenue sources were cut off, many of these sites would cease to exist. We encourage coordination between the United States and the European Union to present a united front to address piracy while maintaining an open Internet.

The WGAW is concerned with the effects of other, more intrusive piracy solutions such as unregulated content screening. There is a danger that content from unknown sources, while still being legal, may be slowed or blocked by such a filtering process. The result could be sites programmed by large media companies load quickly while new sites created by independent producers are caught by this filtering system. Some may argue this delay is a necessary step in addressing piracy, but it creates a significant competitive disadvantage for new entrants. Legitimate sites will lose viewers if content buffers or refuses to load because it is being screened. Further, network management practices should not be allowed to create a de facto fast lane for large content producers. Tools like Deep Packet Inspection (DPI), which allow Internet providers to look into packets to identify the data being transmitted, raise both privacy concerns and the potential for abuse. DPI would enable ISPs to favor certain content and frustrate other content, all in real time. Under the guise of network management, we could experience commercially motivated censorship. We urge the European Commission to look to other tools in addressing piracy rather than choose those eliminating privacy and permitting ISPs to provide preferential treatment to the content they choose.

Conclusion

The WGAW strongly supports efforts by the European Commission to strengthen net neutrality protections in the European Union. An open Internet is vital to the promotion of diverse and independent news, entertainment and information on a global scale. Strong protections enabling consumers to access the lawful content, service and applications of their choice will ensure the Internet remains open. The European Commission should carefully monitor developments such as managed services and proposals for prioritization to ensure they are not used to circumvent net neutrality rules and diminish competition. Further, we strongly encourage the development of effective tools to combat piracy that do not threaten an open Internet.