

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Restoring Internet Freedom)	WC Docket No. 17-108
)	
)	

**COMMENTS OF THE DIRECTORS GUILD OF AMERICA AND SCREEN ACTORS
GUILD-AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS**

The Directors Guild of America (“DGA”) and the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) jointly submit these comments to the Federal Communications Commission’s Notice of Proposed Rulemaking in the above docket on “Restoring Internet Freedom.”

INTRODUCTION

Collectively, the DGA and SAG-AFTRA represent over 177,000 filmmakers and performers who work on feature films, television programs, documentaries and other programs that are enjoyed by millions of people around the world daily – programs that are the primary driver of Internet usage. Our members’ livelihoods are tied to the economic vitality of the motion picture industry and, in today’s digital age, increasingly to the broadband industry as well.

The DGA is a labor organization that represents more than 17,000 directors and members of the directorial team who work in film, television, commercials, documentaries, new media, news and sports. The Guild’s mission, today as it was when it was founded 81 years ago, is to protect and advance the legal, economic, and artistic rights of directorial teams, and advocate for their creative freedom. Entrepreneurial in spirit, directors are full stakeholders in both the creative vision they give to the works they create and in the revenue generated by those works long after they leave their hands. Directors, like most creative talent in the entertainment industry, work freelance; and go long periods of time developing a project before it comes to fruition. Directors take the risk that their investment of time and creativity will lead to financial success. But that end is never guaranteed nor certain. The freelance nature of our business is why directors depend on the residual income generated from secondary sales of their work to carry them and their families. It is because this downstream revenue is so essential to the director’s ability to earn a living that they are such stakeholders in the future of the Internet. The Internet is an increasingly important medium for distribution of the content directors create. Our filing stresses the importance we place on an Internet environment where the directorial team is protected – and enabled – to distribute films and TV programming and also to get fair compensation for those works.

SAG-AFTRA is a labor organization that represents approximately 160,000 actors, announcers, broadcast journalists, dancers, DJs, news writers, news editors, program hosts, puppeteers, recording artists, singers, stunt performers, voiceover artists and other media professionals. SAG-AFTRA is committed to organizing all work done under our jurisdictions; negotiating the best wages, working conditions, and health and pension benefits; preserving and expanding members' work opportunities; vigorously enforcing its contracts; and protecting members against unauthorized use of their work.

The DGA and SAG-AFTRA have a demonstrated record of interest in Net Neutrality and issues that surround it, as evidenced by our previous FCC filings.¹ In 2010, we filed a joint Net Neutrality statement, in which we stated our long-standing support for the principle that all lawful Internet traffic should be treated equally. The fundamental importance of the Internet, as a distribution system, means the legal content that passes through it must be accessible and available on non-discriminatory terms. We also believe that individuals must have the ability to make their films and programming directly available to Internet users.

That is why we stand by and reiterate our previous FCC filing statement that ISPs should not be allowed to engage in anti-competitive behavior, specifically:

- ISPs should be required to provide their users with access to all lawfully distributed content on reasonably non-discriminatory terms;
- ISPs should be prohibited from favoring their own content over the content of an unaffiliated provider and;
- ISPs should be prohibited from prioritizing the content of one unaffiliated provider over that of another, without a competitively neutral justification.

Additionally, we urge the FCC to ensure that any policies implemented by the agency to serve the goal of preserving a free and open Internet maintain and strengthen the distinction between the transmission of lawful and unlawful content. Internet users deserve non-discriminatory and open access to lawful content, but do not have a right to access illegal content, such as copyright-infringing versions of our members' movies and TV shows. Digital theft of copyrighted content continues to directly impact our members' opportunities for work and the revenue generated by that work.

Our interest in preserving a free and open Internet is as strong today as it was in 2010. As the Internet and the issues surrounding it have evolved over the last seven years, digital theft remains our most significant concern. In addition, we are also concerned with the gatekeeper power of ISPs who control the Internet infrastructure and "edge providers" who now have increased control over a large segment of the Internet and yield significant power. Internet users are not going to millions of individual websites to access content; rather, they visit a handful of Internet services to obtain professional audiovisual content.

¹See 1 F.C.C. 5 (2010), Comments of the American Federation of Television and Radio Artists, Directors Guild of America, International Alliance of Theatrical Stage Employees, and Screen Actors Guild, Filed Jan 13, 2010

The demand for our members' work is a significant component of the economics of today's Internet. The exponential growth of streamed content and its direct impact on downstream bandwidth is today's reality. A 2015 study by Sandvine concluded that over 70% of North American Internet peak evening traffic is now streaming video and audio through sites like Netflix at 37% and YouTube at 17%.² The growth of this marketplace and distribution platform has been explosive: just five years ago, streaming video represented only 35% of prime-time usage.³ Unfortunately, with the demand increasing for content, illegal streaming is also on the rise. It was revealed in MUSO's 2016 study that "nearly three-quarter of all visits to film & TV specific piracy sites in 2015 used web streaming as their method of consuming illegal content, highlighting a clear piracy audience trend change away from content 'ownership' using P2P/Torrents or web downloads." Streaming websites made up 73.7% of 78.5 billion visits to access pirated film and TV content with the U.S. ranking number 1 with a 12% global piracy audience.⁴ It is evident consumer demand for professional audiovisual content – the kind of films and TV shows created by our members – is a primary driver of that growth in Internet streaming. Globally, Internet traffic has had a steady growth, estimated at 22% per year; that growth manifests a host of issues related to the need for more bandwidth and how ISPs can meet those demands.⁵ Compounding the issues caused by Internet traffic into the home is the steady rise of streaming on mobile devices. In other words, the growth of the Internet has not diminished the need for the films and television programming that our members create; quite the inverse, it has increased the public appetite.

Given our interests and position, we do not seek to address the full range of issues raised in the NPRM, nor do we seek to comment on the issue of Title II reclassification. Our comments focus on Net Neutrality and the implications of a "light touch regulatory framework" on an open Internet as well as the ongoing need for reasonable network management to protect content and our members' interests.

IMPLICATIONS OF A LIMITED (LIGHT TOUCH) REGULATORY FRAMEWORK

The fundamental importance of the Internet and the role it plays in people's lives today underscores how critical it is that legal content that passes through the Internet must remain accessible and available on non-discriminatory terms to internet users. That importance also requires our members must have access that enables them to make their content directly available

² "Over 70% Of North American Traffic Is Now Streaming Video and Audio." *Sandvine*. N.p., 07 Dec. 2015. Web. 11 July 2017 <<https://www.sandvine.com/pr/2015/12/7/sandvine-over-70-of-north-american-traffic-is-now-streaming-video-and-audio.html>>.

³ D'Onfro, Jillian. "More than 70% of internet traffic during peak hours now comes from video and music streaming." *Business Insider*. 07 Dec. 2015. Web. 11 July 2017. <<http://www.businessinsider.com/sandvine-bandwidth-data-shows-70-of-internet-traffic-is-video-and-music-streaming-2015-12>>.

⁴ MUSO, "MUSO's Global Film and TV Piracy Insights Report 2016." July 28, 2016. Web. 12 July 2017 <https://www.muso.com/magazine/press-release/musos-global-film-tv-piracy-report-2016-released/?utm_source=Triggermail&utm_medium=email&utm_campaign=Post%20Blast%20%28bii-digital-media%29-%20Illegal%20streaming%20dominates%20online%20piracy%20%E2%80%94%20Amazon%20double%20its%20investment%20in%20video%20content%20%E2%80%94%20Wikipedia%E2%80%99s%20new%20app%20sets%20a%20template%20for%20publishers&utm_term=BII%20List%20DMedia%20ALL>

⁵ Hecht, Jeff. "The Bandwidth Bottleneck That Is Throttling the Internet." *Scientific American*. Nature magazine, 10 Aug. 2016. Web. 11 July 2017. <<https://www.scientificamerican.com/article/the-bandwidth-bottleneck-that-is-throttling-the-internet>>.

to the public. They should be able to do so without interference by those who have power, whether they are ISPs or Edge Providers, over what and how content is made available and viewed on the Internet. However, at the same time, an accessible and open Internet for lawful content does not mean an Internet that is a haven for stolen content any more than it should be a haven for hackers or those who seek to disrupt the flow of information and impinge on consumers' privacy rights.

DGA and SAG-AFTRA have consistently sought to balance our interest in a free and open Internet, with our belief in network management that differentiates between legal and illegal content. Our consistent position is grounded in our recognition that both principles are necessary and any regulatory framework established by the FCC must reflect the interests of filmmakers and performers as it does the consumer, ISPs and Edge Providers.

With the FCC currently considering whether a limited (light touch) regulatory approach best meets the interests and needs of today's world, we urge that such a regulatory approach ensure both the non-discriminatory flow of *legal* content and the right of content creators to have their work protected from illegal distribution of copyrighted films and TV programming. A limited regulatory framework should maintain the non-discrimination standard that prohibits ISPs from prioritizing their own content over others. That same non-discrimination principle should be extended to Edge Providers whose role as – and ability to be – gatekeepers has significantly increased since 2010.

REASONABLE NETWORK MANAGEMENT

The end user should be allowed access to all **lawful** content while gatekeepers (ISPs and Edge Providers) must, at the same time, be allowed to develop and manage tools to prevent the distribution of **unlawful** content, including content that infringes on copyrighted materials. It is for that reason we continue to advocate for reasonable network management that enables ISPs and Edge Providers to minimize the traffic in illegal content and the other illegal actions on the Internet that have been amply shown to put both creators and consumers at risk. A regulatory framework should not be so “light” that it disadvantages the creators of content and removes protections for the public.

Moreover, as we have also stated in past filings, if an ISP or an Edge Provider chooses not to engage in content protection, it should not be entitled to engage in “reasonable network management.” Additionally, ISPs and Edge Providers should be required to be transparent in informing users if they are routinely inspecting files for illegal or other harmful content.

Reasonable Network Management should neither stifle competition nor violate end-users' privacy or freedom of expression. Reasonable network management should be a tool for ISPs and Internet Edge Providers to prevent the dissemination of harmful material.

CONCLUSION

We appreciate the opportunity to comment on this proceeding. We urge the FCC to ensure that any policies laid forth in any proposed “light regulatory touch” framework preserve a free and open Internet while providing for the management of the transmission of unlawful Internet content. Finally, it is critical that a non-discrimination position is maintained so that ISPs and Internet Edge Providers are prohibited from anti-competitive behavior. Because individually and collectively, they now wield an enormous amount of control over the determination of what content gets delivered, how, and to whom, we believe this principle is fundamental.

Our members should be able to create films and television programming with the knowledge that ISPs and Internet Edge Providers will not abuse their dominant market positions to engage in anti-competitive behavior. We believe that such protections are necessary to enable the Internet to continue to flourish and meet the growing demand for our members’ work.

Respectfully submitted,

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