

STATEMENT OF CONCERN NETWORK NEUTRALITY

BACKGROUND

The open architecture of the Internet has created unprecedented opportunities for artists, culture organizations, and entrepreneurs, regardless of their affiliation. Because of the Internet's level playing field, organizations and individuals can reach Internet users to promote their work or to sell their creative products and services without navigating a complex system of gatekeepers.

Internet Service Providers (ISPs), companies that sell customers access to the Internet, can exert immense control through the networks they operate. It's important to maintain open access so that ISPs cannot stifle certain types of speech that they regard as inflammatory, discriminate against business models deemed threatening, block certain Internet applications, slow down or speed up the delivery of certain online content, or even compromise users' privacy.

In December 2010, the Federal Communications Commission (FCC) approved its Open Internet Order to preserve "net neutrality"—the principle that allows any Internet user to access the lawful content or application of their choosing without interference from an ISP. These rules were passed by a 3-to-2 vote by the FCC, and made official in September 2011. Although the Order does provide some protections for the "wireline" Internet, the mobile space is left largely open to ISP discrimination.

Throughout 2011, ISPs attempted, in both the Senate and the House, to eliminate the FCC's Open Internet Order through legislative maneuvering. These attempts failed, leaving the ultimate fate of net neutrality to the courts, where telecommunications companies, including Verizon, have filed suit challenging the FCC's authority to propagate rules regarding broadband access. Rulings have yet to be made in these cases. If the courts decide to vacate the FCC's authority, then it once again becomes crucial for the arts sector to make the case to Congress that basic rules are needed to preserve expression and entrepreneurship online.

STATEMENT OF CONCERN

The Internet must remain a place where users can learn, express themselves, innovate, and build a business. Working artists of all genres, mediums, and styles depend on the Internet to promote and sell their work to their audience and therefore, make a living. The Internet is *critical* to creators working today *and* in the future. Therefore, it is important that the Internet remain accessible to all users, including artists. ISPs must not be allowed to discriminate against lawful online content based on business or other preferences.

While the FCC's rules provide some safeguards for wired networks, they provide meager protections for those accessing the Internet from wireless or mobile devices, such as cell phones or tablet computers. The Internet should be the Internet—regardless of how it is accessed. Increasingly, arts organizations are relying on mobile devices for their programs. For example, museums are creating specific tour apps for exhibitions, and many performing artists, creators, and arts organizations are increasingly using video to promote their works.

The FCC ruling provides a balance between net neutrality and copyright protection. Artists and arts organizations must have an open Internet on which to promote their works, but equally important, an Internet on which their creative works are safeguarded from theft. The FCC rules state that nothing prohibits "reasonable efforts by a provider of broadband Internet access service to address copyright infringement or other unlawful activity." Network neutrality regulations should not impair ISPs' or the federal government's ability to openly and transparently protect copyrighted content. However, intellectual property enforcement must not compromise users' privacy or inhibit free expression or frustrate consumer access to lawful online content.

It is critical that the FCC retains the authority to promote access and innovation on the Internet for the benefit of creators and the nonprofit arts sector. We hope that policymakers will support efforts to keeping the Internet open and accessible to all users, while at the same time protecting copyright, regardless of where and how they connect.