

STATEMENT OF CONCERN NETWORK NEUTRALITY

BACKGROUND

The level playing field provided by the open architecture of the Internet has created unprecedented opportunities for artists, culture organizations, and entrepreneurs, regardless of their affiliation. Today, organizations and individuals can reach Internet users with legal content to promote their organization's work or to sell their creative products and services.

Internet Service Providers (ISPs), companies that offers customers access to the Internet, can exert immense control over the Internet through the networks they operate and could 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 use "deep packet inspection" to invade users' privacy.

In December 2010, the Federal Communications Commission (FCC) passed rules regarding the issue of net neutrality, the principle that allows any Internet user to access any legal content, or use any legal application, without interference from an ISP. These rules were passed by a 3-to-2 vote by the FCC, and while they do provide some protections for Internet users, they also include dangerous loopholes for ISPs to discriminate against certain content, content creators, or Internet applications.

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 the success of artists in the 21st century. Therefore, it is important that the Internet remain open and free. ISPs cannot be allowed to discriminate against certain online content, companies, or creators.

The FCC's rules fail to prohibit "pay for play" on the Internet. The rules do not do enough to stop phone and cable companies from dividing the Internet into fast and slow lanes. Artists, arts organizations, and other creators are at risk from the ISPs if they cannot afford to have their content delivered at the same rate as other content providers.

While the FCC 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. The FCC should only permit ISPs to use technology that will curb Internet piracy without unduly invading users' privacy or overly restricting users' choices of lawful content online.

It is critical that the FCC create policies that let innovation thrive while allowing for the protection of artists' work and the nonprofit arts sector. We hope that Congress will work with the FCC to achieve the goal of meaningful net neutrality including unfettered access and speeds on all current and future Internet connections.