Creativity Works! calls on Member States to reject any type of "network fees" regime and warns of the negative impact of such proposals on Europe's creative & cultural sectors and European consumers

Creativity Works!, Europe's leading alliance of the creative and cultural sectors since 2013, wishes to express its concerns following continued calls for the application of a network fees regime. We oppose any type of such a regime, either through a mechanism based on mandatory negotiations or through direct or indirect payments to providers of electronic communication networks (ECNs) from content and application providers including over-the-top media services (OTTs) and creative content providers, to support the cost of telecom infrastructure investment. Such proposals pose **a threat to the sustainability of the European creative sectors and their ability to provide diverse content and services to European consumers**.

Creativity Works! members create, produce, publish, distribute and exhibit a wide range of creative and cultural content in the European Union. We understand and value the paramount importance of a strong telecom infrastructure and availability of high-speed internet access, which allows for the high-quality distribution of our creative content to a wide and diverse audience.

Creative content providers invest in content to the benefit of consumers, but also to ECN providers – the popularity of creative content services being a driver of selling and upselling of their services. The introduction of any type of direct or indirect payment obligation, be it through mandated negotiations or any other mechanism, would have unintended consequences on the significant investments made by the sector in a wide range of diverse creative and cultural content.

The assertion that creative content providers, such as online streaming providers, disproportionately enjoy the benefits of the internet ecosystem without contribution is incorrect. The content industries contribute to the internet ecosystem by minimising the impact of the delivery of their content on the bandwidth, for instance by using Content Delivery Networks (CDNs), compression technology, caching, peering and other measures to improve efficiency and sustainability of networks' backbone infrastructure.

As the results of the European Commission's exploratory consultation show, the concerns of the creative and cultural sectors are shared by a large and diverse group of stakeholders, and there is a wide range of evidence displaying the dangers of a network fees regime. Considering the effects of such measures on the whole ecosystem - including content creators and producers, and as a result, on European consumers - we call on Member States to reject any measure which would impose a direct or indirect payment obligation, be it through mandated negotiations or any other mechanism that would consequently amount to a network fees regime.

We would like to highlight that:

- The creative sectors already invest in content, which in turns contributes to drive sustained and sustainable demand for telecoms services and benefits the internet ecosystem;
- Creative content services already invest in the internet ecosystem;
- There is no market failure preventing investment in performant, sustainable digital infrastructure: investments are flowing in connectivity and the interconnection market is working well;
- Network fees would fundamentally affect the way the internet works to the detriment of the creative sectors and consumers;
- Pirates free ride on the internet ecosystem and generate congestion;
- Less content would be produced and distributed in Europe - reducing consumer choice and European competitiveness in the creative sector.

CW! stands ready to assist policy-makers and share with them the perspective of the creative & cultural sectors in Europe – which employ **15 million people**, are **Europe's third largest employer** and account for **4.4% of EU's GDP**. To that end, we call on EU Member States to reject proposals that would introduce any type of a network fee regime in Europe that would jeopardise the vitality and sustainability of European cultural and creative sectors.

1. The creative sectors invest in content, which in turn drive sustained and sustainable demand for telecoms services and benefits the internet ecosystem

The creative and cultural sectors support Internet Services Providers (ISPs) by allowing Europeans to derive value from the premium broadband connections they purchase to watch, stream, play or listen to our content. The content and creative works brought to EU audiences by creative content providers, in particular high-quality video-on-demand (VOD), music-on-demand (MOD) services, live sports content, as well as video game services, is one of the reasons why end customers ask for faster bandwidth speeds, driving additional revenues for ISPs (through the sale of higher bandwidth tariffs). ISPs also often partner with creative content providers, distributing content (i.e., through resale, bundles) which benefits all parties (Netopia, 2023). Rather than benefiting without paying, content providers both invest heavily in networks and content itself and increase the demand for ISPs' services.

The symbiotic relationship between internet connectivity and the services available online creates a virtuous cycle that fuels innovation and economic growth. As technology evolves, new and innovative services are developed that lead to a further increase in demand for connectivity. This organic relationship between services and connectivity is dynamic and responsive to market demands, driving investment and innovation. Technological advancements and consumer preferences continually shape and redefine the landscape of the digital economy.

2. Creative content services already support the internet ecosystem

The content industries and content providers already invest significantly to support, enhance and improve European network infrastructure or contribute to the internet ecosystem by minimising the impact of the delivery of their content on the bandwidth by financing or using content delivery networks (CDNs), compression technology, caching, peering and other measures to improve the efficiency and sustainability of networks' backbone infrastructure. These actions and investments are made to maximise consumers' experience by ensuring that content is delivered to them smoothly, in the best quality for their use, and without delays. Caching content closer to ISPs' end users (known as on-net caching) has had substantial benefits in terms of efficiency and quality improvements, from which ISPs themselves have also largely benefitted.

Traffic-related costs have not grown over the last years and are not expected to grow over time; in fact, **they are often falling** (WIK-Consult, 2022). The decrease in traffic-related costs is driven by a combination of technological progress (which has helped reduce the amount of data required to deliver the same content) and increased cooperation between ISPs and content providers in areas such as caching, Content Delivery Networks (CDNs), peering and transit. These significant cost reductions balance out any traffic increases, resulting in a net neutral effect. As a result, the majority of ISPs' costs are fixed rather than traffic-related, and there is no concrete evidence of any 'investment gaps' in internet networks.

The argument that traffic is "caused" by Content and Application Providers (CAPs) has been refuted by BEREC since 2012, which stated that the data flow request usually comes from the retail Internet access provider's own customer, who asks for content provided by the CAPs, and from whom the ISP is already deriving revenues.

Finally, the increase in traffic volumes is not directly correlated to (higher) content providers' revenue, and it is therefore misleading to claim that creative content providers are the main beneficiaries of network investments. Some of the internet services with the highest revenues generate low traffic and vice-versa.

3. There is no market failure preventing investment in performant, sustainable digital infrastructure: investments are flowing in connectivity and the interconnection market is working well

Oxera concludes that from an economic perspective, introducing a network fee will not promote investment in the network: "*Promoting investment by network operators is not an economically sound reason for instituting a levy—there are more effective ways of achieving such a goal*." Critically, Oxera also states that transaction and regulatory costs of a network fees proposal would be significant, and that there might also be additional costs in terms of a degradation of internet quality (as has been seen in South Korea), reduced investment incentives for CAPs, and competitive distortions between CAPs affected by the charges and those that are not.

As demonstrated by the performance of countries leading in high Fibre to the Home (FTTH) deployment, **there is sufficient private investment capital today, and many financial institutions are eager to finance FTTH projects which are profitable**. The real bottlenecks to fibre deployment include organisational slack, time lags and time requirements to get necessary building permits and authorisations, and limited construction capacities – all of which would not be addressed by introducing a network fee.

Lastly, the interconnection market does not need regulation on infrastructure costs to ensure its functioning. The OECD found that *"the internet has developed an efficient market for connectivity based on voluntary contractual agreements. Operating in a highly competitive environment, largely without regulation or central organisation, the Internet model of traffic exchange has produced low prices, promoted efficiency and innovation, and attracted the investment necessary to keep pace with demand."* BEREC came to similar conclusions. In addition, the 2022 WIK report for Germany's Federal Network Agency (*Bundesnetzagentur*) stresses that the market is competitive and well functioning while the German Monopoly Commission also *"does not consider a regulatory intervention to be justified that forces OTTs to pay telecommunication providers."*

4. Network fees would fundamentally affect the way the internet works to the detriment of the creative sectors and consumers

A network fees regime – whether through the introduction of direct contributions or a mechanism consisting of an EU/national digital contribution or fund, would fundamentally change the way the internet operates. This threatens the rights of consumers and of content providers to receive and send data freely.

As established above, traffic originates from the requests of the ISP's own customer. As such, a network fee would be a toll on consumer behaviour and choice. Consumers would pay twice for the same internet service quality as the additional cost would likely have to be passed down to the subscribers of those in scope. Such an approach would undermine the spirit of net neutrality in Europe and also likely impair competition, entrench incumbent providers of ECNs' market power and distort market incentives.

5. Pirates free ride on the internet ecosystem and generate congestion

Infringing access to or transmission of **protected content** in the digital environment continues to drain the creative and cultural sectors' growth, jobs and investments. On average, illegal access to or transmission of protected content represented 82% of total piracy (be it sports events, films or music) in the EU in 2020 (EUIPO, 2021 - Online copyright infringement in the European Union). According to a recent VAUNET study, "*5.9m people in Germany watched illegal live TV signals in 2022. This resulted in losses of €1.8bn, and foregone taxes and social security contributions of €390m*." According to a study by Bournemouth University for the Audiovisual Anti-Piracy Alliance AAPA, infringing services made €3.21 billion in 2021 with illicit IPTV piracy services, which are used by 17 million Europeans.

The Film and TV Piracy Report 2022, measured 215 billion global visits to piracy websites in 2022, an 18% year-over-year increase compared to 2021. Also relevant for the discussion on network fees, 95% of the pirated content was delivered by streaming, and only 5% by download. Furthermore, illegal downloading of copyrighted materials takes up 24% of the global bandwidth according to DataProt.

Pirated content amounts to a huge part of total traffic and many networks are saturated by pirated content, in particular at peak hours: pirates do not invest in compression technology and free ride on the internet ecosystem; pirated content is also most energy inefficient. Pirated content remains rampant on telecoms networks and often negatively affects network quality. Pirated content undermines content creators, leads to losses of jobs and revenues, does not contribute to the economy and harms all parts of the creative ecosystem.

However, traffic to pirated content is completely omitted from the statistics used in the public debate when discussing the potential introduction of network fees. Large ISPs have not been transparent about which content providers generate what amount of traffic and how this affects their network. As a result, we would like to encourage ISPs to continue working hand-in-hand with the creative and cultural sectors to tackle piracy, as free-riders (e.g. pirates) drive traffic congestion.

6. Less content would be produced and distributed in Europe - reducing consumer choice and European competitiveness in the creative sector

The creative and cultural industries have proven their importance in the everyday lives of European citizens. Europeans enjoy access to almost 150 million musical works, on more than 2,000 licensed digital streaming and download services; thousands of catch up TV services; over +3,000 On-Demand Audiovisual Services (VOD); more than 2 million e-book titles; and countless images. In addition, video games deliver experiences that enrich the daily lives of more than 54% of all Europeans, and have been an important support system for players during Europe's lockdown. Together, we help make the online world a vibrant and engaging place for all while driving technological business developments.

Creative content providers, such as Video-On-Demand, Music-On-Demand and video game services, operate in a highly competitive and dynamic market resulting in significant investments in content and diversity of services. Requiring providers of such services to pay network fees would automatically impair their capacity to make investments in the production and distribution of a wide range of diverse creative and cultural content and in improving their distribution networks. Overall, more money paid in network fees would mean less money to invest in creative works and varied distribution, access and price options, which in turn would translate into less content being produced and made available. In addition, the concept of "network fees" would damage the creative and cultural sectors, the vast majority of which are SMEs, as it would unjustifiably divert funds from their creative process.

If consumers have to pay higher prices to access the Internet, internet connections would likely fall, which may result in less availability of content and content services or reductions in content quality (OXERA, 2023) and perhaps the disappearance of some services on the market due to the drop in consumers' access (ITIF, 2022).

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