



**WRITERS
GUILD OF
AMERICA, WEST**

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On Behalf Of

Writers Guild of America, West, Inc.

Before the

Congressional Forum on Net Neutrality

Hosted by Congresswoman Doris O. Matsui

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Congresswoman Matsui, I appreciate the opportunity to come before you today at this congressional forum on net neutrality. I also appreciate Commissioners Mignon Clyburn and Jessica Rosenworcel for participating in this important forum. Thank you for traveling to hear from the consumers and creators who will be impacted by policies enacted in our nation's capital. My name is Melissa Rosenberg; I am a member of the Writers Guild of America, West, Inc. ("WGAW")¹ and a working film and television writer for over two decades.

At stake in this discussion is a political issue that transcends the seemingly technical debate over rules for the open Internet. Free speech and fair competition, quintessential American values exalted in our national rhetoric, currently flourish on the open Internet. Our protection of these values must match the esteem they are given in our national political dialogue. To promote these values and limit monopoly power, the FCC must reclassify Internet access service. As I will explain, without this necessary protection, the democratic ideals that foster online competition and innovation will give way to oligopoly and corporate censorship.

Today, my fellow panelists and I sit before some of the strongest proponents of an open Internet. You, clearly, are no ordinary open Internet supporters, because as policymakers you are also uniquely positioned to act. Congresswoman Matsui, on behalf of my Guild, thank you for your leadership on this issue. Your proposed legislation, the Online Competition and Consumer Choice Act, recognizes that it is necessary to ban paid prioritization of Internet traffic to prevent

¹ WGAW is a labor organization that represents more than 8,000 professional writers of film, television and online video programming. Guild members write feature films, dramas and comedies for broadcast, cable and pay TV networks, local news, documentary programs and the original series that are now available online through services such as Netflix, Amazon, Hulu and Crackle. Virtually all of the entertainment programming and a significant portion of news programming seen on television and in theaters are written by WGAW members and the members of our affiliate, Writers Guild of America, East (jointly, "WGA").

Internet service providers (“ISPs”) from becoming online content gatekeepers. I would also like to thank Commissioner Clyburn for her work in crafting the Commission’s 2010 Open Internet rules and her continued support for strong revised rules. And Commissioner Rosenworcel, thank you for all that you have done to push for stronger rules that would ban blocking and prevent unreasonable discrimination.

However, as all of you are probably well aware, the work is not done.

Currently, the open Internet works like the phone lines. When consumers pick up the phone, they can call whomever they want; no phone company is allowed to limit who they can reach. Likewise, consumers choose where they want to go on the Internet; an Internet provider doesn’t decide what legal content has preferential access or what is relegated to a “slow lane.” This content-neutral structure is, of course, known as the open or neutral Internet.

The free market and fair competition enabled by this structure have produced breathtaking results. The open Internet has revolutionized communication, democratic discourse, social engagement and commerce. In the industry I work in, entertainment, it has been a welcome development for both writers and viewers.

This is because, after decades of consolidation, seven corporations control almost everything we see on television. They own the television networks, the studios that produce the content, and in the case of Comcast-NBCU, the wires that deliver the content to your home. For writers, this means they wield ultimate control over what we create. In this environment, content from diverse and independent sources has all but vanished. For instance, only 10% of the broadcast networks’ 2013 Fall primetime schedule was independently produced, almost all of

which was reality television.² Only 25% of television writing jobs are with independent producers; that number used to be 89%.³ Great programming still makes it on the air, but it does so in spite of this consolidation, not because of it.

Faced with a shrinking pool of powerful buyers, the development of a new platform for video distribution, one where anyone can reach an audience, represents a second act for writers. It is an opportunity to reintroduce the competition that was lost when networks were given permission in 1993 to own everything. For women and people of color, who continue to be underrepresented as actors, writers and directors, the open Internet has meant an opportunity to participate more equally in the creation of our national culture; of course this opportunity to use the open Internet to reverse historic underrepresentation is by no means limited to entertainment.

With the rapid growth of the online video market, we are beginning to make good on the promise of an open Internet. Video streaming sites, Netflix, Amazon Prime, Hulu and YouTube, now make up more than half of all fixed Internet traffic in North America.⁴ And real-time entertainment traffic, which includes audio and video streaming, already accounts for 40% of mobile network traffic.⁵ Netflix has 35 million customers in the U.S.,⁶ while Amazon Prime has

² Comments of the Writers Guild of America, West, Inc., *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 14-16, (filed March 21, 2014), p. 5. WGAW defines independent producers as studios or production companies that are not owned or affiliated with a major broadcast or cable network or an MVPD provider. Such a definition is essential because it exposes the true amount of programming that reaches the air without the market power or guaranteed distribution provided by vertical integration.

³ Comments of the Writers Guild of America, West, Inc., *In the Matter of Promoting and Protecting the Open Internet*, GN Docket No. 14-28, (filed July 15, 2014), p. 6.

⁴ Sandvine, *Global Internet Phenomena Report: 1H 2014*, <https://www.sandvine.com/downloads/general/global-internet-phenomena/2014/1h-2014-global-internet-phenomena-report.pdf>, p. 6. Downstream Internet traffic

⁵ *Ibid*, p. 5.

20 million⁷ and Hulu Plus has 6 million.⁸ In 2013, advertisers⁹ and consumers¹⁰ spent \$6 billion on advertising and subscriptions for online video services. Amazingly, online advertising is expected to surpass television advertising by 2018.¹¹

Overwhelming demand for Internet-delivered video has created a new market for original, professional video programming. It is estimated that Amazon and Netflix will spend almost \$1 billion on original content this year. More online platforms are entering the original video market with Yahoo and Playstation set to become the next providers to offer TV-length series from professional writers.¹²

The rise of new outlets has also meant new creative and economic opportunities for writers. Hundreds of Guild members have begun to work on creating original online video

⁶ Netflix, Inc., "SEC Form 10Q," Filed July 22, 2014, For the period ending June 30, 2014, <https://www.sec.gov/Archives/edgar/data/1065280/000106528014000021/nflx-63014x10qxdoc.htm>, p. 21.

⁷ Jay Yarow, "Amazon Says It Has At Least 20 Million Prime Members," *Business Insider*, January 6, 2014, <http://www.businessinsider.com/amazon-prime-members-2014-1>.

⁸ Mike Hopkins, "Welcome Jenny Wall, SVP Marketing, Hulu Blog, May 13, 2014, <http://blog.hulu.com/2014/05/13/welcome-jenny-wall-svp-marketing/>.

⁹ PricewaterhouseCoopers, "IAB Internet Advertising Revenue Report: 2013 Full Year Results," April 2014,

http://www.iab.net/media/file/IAB_Internet_Advertising_Revenue_Report_FY_2013.pdf; and Marina Lopes, "Videos may make up 84 percent of internet traffic by 2018: Cisco," *Reuters*, June 10, 2014, <http://www.reuters.com/article/2014/06/10/us-internet-consumers-cisco-systems-idUSKBN0EL15E20140610>.

¹⁰ Netflix, Inc., "SEC Form 10k," Filed February 2, 2014, For the period ending December 31, 2013,

<https://www.sec.gov/Archives/edgar/data/1065280/000106528014000006/nflx10k2013.htm>, p. 19; and WGAW estimates of Hulu Plus subscription revenue.

¹¹ Sam Theilman, "Digital Media is Now Bigger Than National TV Advertising, Will Surpass Total TV by 2018," *Ad Week*, June 16, 2014, <http://www.adweek.com/news/television/digital-media-now-bigger-national-tv-advertising-will-surpass-total-tv-2018-158360>.

¹² Bryan Bishop, "Sony's first original TV series for Playstation will be 'Powers,'" *The Verge*, March 19, 2014, <http://www.theverge.com/2014/3/19/5527878/sonys-first-original-tv-series-for-the-playstation-will-be-powers>; and Douglas MacMillan, "Yahoo Bets on Two New Web Comedy Series," *Wall Street Journal*, April 28, 2014, <http://blogs.wsj.com/digits/2014/04/28/yahoo-bets-on-two-new-web-comedy-series/>.

programs. I am currently the showrunner for an upcoming Marvel series, based on the character Jessica Jones, which is being produced for initial distribution by Netflix. At least two dozen original, television length series are to be released online this year. These platforms have also created space for independent producers and for content that features diverse casts, such as *Orange is the New Black*. Shows that may have never made it onto television, like *The Misadventures of Awkward Black Girl* or *The Lizzy Bennet Diaries*, have become successful online and *House of Cards* has won multiple Primetime Emmy Awards.

The Internet, as a result, represents our greatest opportunity to reintroduce competition for what we create and sell and what consumers ultimately see. Protecting the open Internet is vital to free speech and a competitive market that rewards creators who offer compelling products, services and content. It's why I joined with almost **250 television and online series creators and showrunners** to sign a May letter to Chairman Wheeler urging him to set aside the proposal to allow ISPs to become online content gatekeepers.¹³ Recently, more than 1,200 of my fellow Guild members emailed comments to the FCC urging the Commission to reclassify Internet service and to institute legally sound rules to prohibit blocking and discrimination.

Writers are joining with millions of Americans, including other artists, consumer groups and venture capitalists, in support of net neutrality, because we know what will happen if the Internet is not kept free and open. The new services reintroducing competition in video programming rely on ISPs to reach consumers. And our nation's largest ISPs are the same companies that distribute cable television. They have both the incentive and ability to limit the development of a robust and competitive online video marketplace. The actions of the 4 largest

¹³ See Letter from WGAW television and online series showrunners and creators to FCC Chairman Wheeler, filed by the Writers Guild of America West, *In the Matter of Promoting and Protecting the Open Internet*, GN Docket No. 14-28, (filed May 13, 2014), p. 6.

ISPs, Comcast, AT&T, Verizon and Time Warner Cable, to charge Netflix for interconnection, threaten continued growth and investment in this market.¹⁴ The fact that ISPs own the doors through which consumers enter the massive town square and market known as the Internet should not allow them to tell consumers where they can go once they enter, nor charge vendors for preferential access to the consumers. The ISPs own the doors; we cannot allow them to own the Internet.

And so, we have arrived at the moment where a decision must be made.

The FCC may continue on its outlined path, but this has already led the Chairman to propose what amounts to a tiered Internet, with “fast” and “slow” lanes and the possibility for other preferential treatment. Allowing ISPs to prefer their own services or those services that can pay the most, will come at the expense of a free market that has enabled tremendous innovation. ISPs will have the power to put their thumb on the scale and determine market winners and losers. It will also allow ISPs to expand the tolls they charge to deliver Internet traffic that their subscribers have already paid for. The outcome of this path is that writers, innovators, and entrepreneurs will be marginalized. The ability of ISPs to push aside new competition serves neither innovation nor the best interests of society. The free market where consumers hold the power to decide what content they prefer will be lost.

But there is an alternative, one supported by the majority of FCC commenters¹⁵ and more than 1,200 professional writers. It is to recognize that Internet service, at its core, is a

¹⁴ Jon Brodtkin, “AT&T and Verizon finally giving customers decent Netflix quality,” *Ars Technica*, September 8, 2014, <http://arstechnica.com/information-technology/2014/09/att-and-verizon-finally-giving-customers-decent-netflix-quality/>.

¹⁵ Brian Fung, “Sunlight: 99 percent of net neutrality comments wanted stronger FCC rules,” *The Washington Post*, September 2, 2014, <http://www.washingtonpost.com/blogs/the->

telecommunications service, which consumers use to send and receive data with the expectation that the content will not be altered. Recognizing this fundamental truth would allow the Commission to reclassify Internet service under Title II of the Communications Act and institute rules that fully protect Internet openness through bans on blocking and discriminatory practices. These rules should cover wired and wireless Internet service and address behavior at interconnection points that mark the beginning of an ISP's network. Doing so will preserve a free market where consumers control access to the content, services and applications of *their* choice.

This story has been told before. As writers, we have lived it. Every time a new platform has emerged, incumbent companies have devised strategies to gain control of it and eliminate the competition. Where independent content once flourished, the market is now dominated by a few companies. If they are given control of the Internet, it will be the same story once again. And that is a sequel no one wants to see.

Thank you for your attention and I look forward to your questions.