



Via: Courier/ Email

March 21, 2017

To:
Mr. Asit Kadayan,
Advisor (QoS) TRAI
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi – 110002
E-Mail – advqos@traigov.in.

Re: MPDA Comments on the TRAI Consultation Paper on *Net Neutrality*

Dear Sir,

The Motion Picture Dist. Association (India) Pvt. Ltd. (MPDA) is a trade association representing the interests of six major international producers and distributors of films, home entertainment and television programs.¹ The companies that we serve devote substantial effort and resources to developing a wide range of entertainment content and services in a variety of formats. This content is distributed, accessed and consumed through a variety of media, including through the Internet.

We thank the Telecom Regulatory Authority of India (TRAI) for the opportunity to comment on the Consultation Paper on Net Neutrality issued January 4th, 2017. We focus our comments on questions Q.5, Q.7 and Q.13.

If the Internet is to remain a platform for innovation and a driver of pioneering new choices for consumers, market forces will best devise appropriate and acceptable business models. Generally, traffic management practices (TMPs) used by

¹ MPDA is a wholly-owned subsidiary of the Motion Picture Association, a trade association representing six major international producers and distributors of films, home entertainment and television programmes: Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, and The Walt Disney Studios and Warner Bros. Entertainment Inc.

Telecommunications Service Providers (TSPs) to manage the safety, security and efficiency of their networks should not be the basis for TSPs to manage or throttle content delivery services. However, we do support certain exceptions to the net neutrality policy of non-discrimination in emergency situations or when combatting unlawful content to ensure that the Internet remains a safe and secure environment.

1. Question Q.5

Q.5 Should the following be treated as exceptions to any regulation on TMPs?

- (a) Emergency situations and services;*
 - (b) Restrictions on unlawful content;*
 - (c) Maintaining security and integrity of the network;*
 - (d) Services that may be notified in public interest by the Government/Authority, based on certain criteria; or*
 - (e) Any other services.*
- Please elaborate.*

Comment re Q.5

Question 5 of the Consultation correctly recognizes that situations which are emergencies or where security of the network or restrictions on unlawful content require a deviation from the general policy applicable to traffic management practices. For MPDA's members, as representatives of an industry that creates and distributes copyrighted content, it is critical that the Internet does not serve as a haven for illegal activity and that TSPs should be permitted to take reasonable action to prevent the transfer of stolen copyrighted content.

Section 3.5 of the Consultation lists three categories for exceptions to restrictions on TMPs: emergency services, content that is not lawful, and government-notified content. Specifically, section 3.5.2 states:

It is commonly accepted that the requirements of NN apply only in respect of access to lawful content. This implies that a TMP to, say, block content pursuant to a direction from authorities authorised by law to do so, and after following due process – will not be considered unreasonable. This, however, does not put any positive obligation on TSPs to verify the

lawfulness of the content or discriminate among content based on its lawfulness.²

We agree that the Government has the right and authority to regulate content in specific emergency situations or where the content is deemed illegal or unlawful according to legally promulgated and transparently communicated rules. Such illegal or unlawful content can and should be treated differently from legal content and, as such, should not be affected by the rules governing net neutrality. It is necessary and proper for certain exceptions to be made for unlawful content.

Content that infringes copyright is, by definition, unlawful. We urge that a clear statement be included in any eventual net neutrality regulation that specifies that pirated and infringing content is unlawful and therefore not subject to the normal net neutrality policy of prohibiting content-based regulations. Exceptions must be made for the situations stated in Q.5 (a) and (b) above.

2. Question Q.7

Q.7 How should the following practices be defined and what are the tests, thresholds and technical tools that can be adopted to detect their deployment

- (a) Blocking;*
- (b) Throttling (for example, how can it be established that a particular application is being throttled?);*
- (c) Preferential treatment (for example, how can it be established that preferential treatment is being provided to a particular application?)*

Comment re Q.7

The Consultation at section 4.2 discusses restricted practices such as “blocking” and “throttling”. Normally, the use of such measures to discriminate against certain types of content is inconsistent with net neutrality principles. However, as a remedy to address the dissemination of, or unauthorized access to, unlawful content, blocking and throttling are necessary and appropriate measures. Blocking access to infringing sites is not inconsistent with net neutrality. In fact, blocking illegal sites, especially when they originate from outside the country, is often the only effective remedy to prevent access

² See Consultation Paper at p.26 (emphasis added).

to illegal content in India. TSPs must be able to block sites that link, stream, make available, or otherwise communicate to the public unauthorized or illegal content.

We respectfully urge TRAI, when setting regulatory policy related to unlawful content, that it:

- (i) encourage TSPs to work with content owners to employ the best available tools and technologies to combat online content theft;
- (ii) affirm that TSPs' use of reasonable TMPs includes the right to use tools and technologies to address the flow of stolen content on their networks;
- (iii) specify that TSPs engaged in network management are entitled to a presumption that good faith efforts to manage networks to deal with online theft are reasonable; and
- (iv) clearly state that the use of reasonable TMPs to deter online content theft should not depend on an advance judicial or regulatory determination of "lawfulness" prior to every use.

3. Question Q.13

Q.13 Can we consider adopting a collaborative mechanism, with representation from TSPs, content providers, consumer groups and other stakeholders, for managing the operational aspects of any NN framework?

(a) What should be its design and functions?

(b) What role should the Authority play in its functioning?

Comment re Q.13

In our view there should be a specific mention of "rightsholders" (or associations representing such rightsholders), to the parties listed in Q.13 rather than assume they will be included in the process through the catch-all term of "other stakeholders".



Concluding remarks

As a final comment, we suggest that rightsholder decisions pertaining to what content they will make available, to whom and under what circumstances, should remain with the rightsholder. To extend TRAI regulatory authority to such decisions would risk running afoul of the exclusive rights in copyright under domestic law as well as under India's international commitments under the *Berne Convention* and related international agreements.

We thank you for the opportunity to comment and remain available and interested to participate further in TRAI's continued consideration of these important issues.

Best regards,

A handwritten signature in black ink, appearing to read 'Uday Singh', written in a cursive style.

Uday Singh
Managing Director