

International Game Developers Association

Open Internet Policy

DRAFT FOR MEMBER REVIEW - April 16, 2010

Topic

This paper summarizes the IGDA's position in support of the FCC's "Open Internet" initiative.

Position Statement

The IGDA supports a free and open Internet, and urges that it be protected through codification of the principles discussed by the FCC in their *Notice of Proposed Rulemaking* released on October 22, 2009 ^{1,2}. Specifically, the FCC intends to codify four principles that it adopted unanimously in 2005, so that Internet users would not be prevented from exercising their free choice in sending or receiving content, in accessing services, in using applications, or in connecting and using devices. Of course, the content, services, applications, and devices in question must be lawful, and the devices must not harm the network. Competition must be protected among network providers, and among providers of content, applications, and services.

The FCC has proposed two additional principles that are particularly important to providers of online content, such as the games industry:

1. **Nondiscrimination:** Providers of lawful content, applications, and services must be treated equally by Internet service providers (ISPs). For example, a broadband ISP "may not charge a content, application, or service provider for enhanced or prioritized access to the subscribers"³ of that ISP. This principle will protect the free competition and lively innovation that we associate with the Internet. Of course, an ISP would remain free to charge subscribers different prices for different levels of service.
2. **Transparency:** Both users and providers should be informed about network-management practices. When ISPs block specific content or applications without any disclosures, their subscribers have been unable to understand why they are frustrated in making certain connections. At the same time, content-providers have been forced to become investigative technologists⁴, in protecting their access to their market.

Why?

More game developers are becoming dependent on the Open Internet. More games feature online multiplayer experiences, including 36% of games for Wii, Xbox 360, and PS3. Almost half (48%) feature some online functionality, such as social features or downloadable content.⁵ In addition, entire game-industry sectors depend on the Internet, including

massively multiplayer games, web-based casual games, and social-network games. Even the remaining titles that are purely-offline, single-player experiences are increasingly likely to be distributed online, offer promotional trailers, or support online player communities.

The game industry has thrived through innovation and competition at the boundaries of new technologies. Unpredictable blockages (a lack of transparency) and the risk of having to pay each of our customers' ISPs for fully-competitive access (a lack of nondiscrimination) would not merely harm our revenues and profits, they would cast doubt on the viability of new offerings, and of new ventures. As venture capitalist Fred Wilson cautioned, "If we lose Internet Freedom, we won't have any companies we would want to invest in and we'll close up shop and move on with our lives".⁶

Games are particularly vulnerable to discriminatory "network management" practices of ISPs. Online games often use higher bandwidth, and different patterns of Internet protocols, than other forms of content. For example, a multiplayer game might rely on a mix of client-server and peer-to-peer communications, with both TCP- and UDP-intensive traffic.

A small number of broadband ISPs serve the huge majority of our customers. Because we can only reach a customer through that customer's ISP, an ISP enjoys what economists call a termination monopoly.⁷ Historically, these ISPs were generally granted exclusive access to municipal poles (or street trenches) by local governments. Even where that access has been thrown open, incumbent ISPs enjoy the competitive advantage of a daunting barrier to entry, thanks to the capital-intensive nature of their business. Because a public-private partnership brought these telephone and cable TV companies into U.S. homes, those companies have historically been regulated in the public interest, while continuing to enjoy lucrative earnings. Now that the Internet has become an engine of commerce in the public interest, the ISPs are appropriately regulated to preserve free and open competition.

Our industry has thrived in an environment of intense competition and free markets. In a monopoly context, added regulation can increase competition, and thus innovation and investment.

Summary: the IGDA's Position on Internet Policy

1. The IGDA strongly supports a rule that prohibits blocking and discrimination. Legal uses of the Internet should be freely allowed.
2. The IGDA strongly supports prohibiting ISPs from charging providers of content or services for the right of access to their Internet-service customers. This applies to mandatory charges for access to the network (or subsystems thereof), and to charges for fully-competitive transport.
3. The IGDA strongly supports transparency, for benefit of both customers and providers.

What is the IGDA Doing?

IGDA members have been involved in informal conversations, and at least one formal meeting, with FCC staff on the topic of Open Internet.

That meeting was organized in conjunction with the FCC's January 13, 2010, Open Internet Workshop⁸ at MIT's Media Lab. Several IGDA members were included, one of whom filed a summary of the meeting with the FCC.⁹

Citations

¹ FCC Notice of Proposed Rule Making, October 22, 2009. http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-93A1.pdf [107 pages]

² "About the Open Internet NPRM". FCC OpenInternet.gov website. <http://openinternet.gov/about-the-nprm.html>

³ FCC NPRM, op. cit., paragraph 106.

⁴ FCC Notice of Ex-Parte Communication, GN Docket No. 09-191; WC Docket No. 07-52; January 15, 2010. <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020380907>. Page 4, paragraph 1.

⁵ Electronic Entertainment Design & Research (EEDAR), April 2010.

⁶ Fred Wilson, "Internet Freedom," April 8, 2010. http://www.avc.com/a_vc/2010/04/internet-freedom.html

⁷ Lee, Robin S., and Tim Wu. "Subsidizing Creativity through Network Design: Zero-Pricing and Net Neutrality." *Journal of Economic Perspectives*, Volume 23, Number 3 (2009), 61-76. <http://pages.stern.nyu.edu/~rslee/papers/NetNeutrality.pdf>

⁸ "Open Internet Workshops: Workshop: Innovation, Investment, and the Open Internet", retrieved from OpenInternet.gov on April 15, 2010.

<http://openinternet.gov/workshops/innovation-investment-and-the-open-internet.html>

⁹ "Notice of *Ex Parte* Communication": Letter from Dan Scherlis to FCC Secretary Marlene H. Dortch. January 15, 2010. <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020380907>