

VIA INTERNET

June 8, 2009

The Honorable Michael J. Copps  
Commissioner Jonathan Adelstein  
Commissioner Robert McDowell  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: GN Docket Number 09-51**

**Filing by Arts+Labs  
In response to FCC Notice of Inquiry“  
A National Broadband Plan for Our Future”**

In response to your request for comments published on April 8, 2009, Arts+Labs wishes to offer its perspectives on the development of a national strategy to move the United States towards ubiquitous broadband.

Established in the fall of 2008, Arts+Labs is a unique alliance of technology, content and creative communities that seek to help build an inclusive “digital society” by enhancing Internet infrastructure, security and content. In our vision, that digital society includes a vibrant, safe and open digital marketplace that embraces a common set of principles that will help it grow.

**A Digital Society**

In the physical world, societies benefit most from strong economies, expanding opportunities and a sense of personal safety that offers citizens the chance to achieve their greatest dreams. The most prosperous societies consistently innovate and change to improve individuals’ lives. Successful societies take root where people know that there are standards to live by and that their rights are protected. A thriving digital society requires that same sense of stability and confidence.

We share this perspective in this proceeding because we believe the policy discussion should be informed by a larger vision of how the Internet can reshape our lives. Given the Internet’s limitless possibilities, we believe that the FCC’s policy review should similarly expand its scope beyond the boundaries that have historically marked the Commission’s work. Rather than a narrow look at the rules governing the traditional “telecom” service providers, we urge the Commission to map out a plan that considers the entire Internet ecosystem, including such pillars as safety and property rights that may be outside the FCC’s traditional jurisdiction, but are fundamental to a prosperous digital society.

Most significantly, the components of Internet and broadband policy are closely interconnected. Decisions in one realm have effects that spill over into another so that effective policymaking requires a holistic view that accounts for the way the pieces fit together.

For example, as explained in greater detail below, providing easy online access to professional quality entertainment and other compelling content can help drive the United States toward its universal

broadband goal by encouraging more consumers to subscribe to broadband. Increased adoption, in turn, stimulates greater private sector investment in network infrastructure generally and can encourage deployment in unserved areas by strengthening the business case for delivering broadband to areas that are costly to serve. Thus, actions that encourage the creation of appealing content and the development of innovative new ways to distribute it online should be a core part of any broadband adoption strategy.

Further, the continued availability of quality content online depends on creators' confidence that their property rights will be protected from digital theft. Today, that confidence is at risk. Creating and distributing content costs large sums of money. Before staking their economic future on creating new content, creators and the industries they work with must believe they will have a fair chance to earn a return. But the faith needed for investment is eroded every time creative works are illegally copied or downloaded with impunity.

If creators lose the opportunity to earn fair compensation for their work, they will be less likely to share it online – diminishing the Internet's value and eliminating an important incentive for consumers to adopt broadband. Finding a way to protect creators' economic opportunity in the digital world is, therefore, a vital part of the broadband strategy puzzle.

In sum, to build mass market demand for broadband, there have to be viable business models for distribution of video content. The FCC's plan should address how we make this ecosystem more friendly to rights-holders so that they will feel more comfortable with business models that bring compelling services like HD video content to the Internet marketplace.

## **Spreading Broadband**

Broadband connectivity is the *sine qua non* of the digital society because, to borrow from Stewart Brand, it enables us to move the right information to the right place instantaneously and to use that information in ways that can change our lives for the better.

Our broadband vision is deliberately inclusive. Every individual, every institution, every part of America should be linked to the network. The need to extend technologies widely is especially vital in broadband because so much of our future depends on it. Given our professional backgrounds, we would be remiss if we did not make special note of the political and policy implications of broadband. As we have seen from the recent election campaign, the ability to connect to the Internet with broadband offers new opportunities for citizens to participate directly in the democratic process. Increasingly, the Web is the 21<sup>st</sup> century version of the traditional town meeting where we come together to listen and debate.

The Pew Internet & American Life Project says that three-quarters of Internet users (55 percent of all adult Americans) used the Internet to participate in or gather information about the last campaign.<sup>1</sup> Both presidential campaigns established dedicated online components to recruit and mobilize supporters, while citizens and independent groups of all political persuasions also went online to organize their own activities and communicate their views. Extending broadband to every American can breathe new life into our democracy by empowering every individual with a tool for two-way communication with their political leaders. If some are locked out of broadband, however, they also will be increasingly locked out of the political process. That kind of a divide strikes at the very core of American democracy.

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<sup>1</sup> "The Internet's Role In Campaign 2008," Pew Internet&American Life Project, April 2009

## Facilitating Adoption

A look at the data makes clear that many Americans are not yet fully convinced that broadband is vital for them. Most Americans live in communities where broadband service is available, but roughly 4 of every ten homes have not yet signed up for service.<sup>2</sup> For some, the barrier is affordability. But surveys by both the Pew Internet and American Life Project and the Center for the Digital Future show that larger numbers say they simply don't see the value in broadband or can't think of any reason to have it.<sup>3</sup>

To address the adoption shortfall will require a combination of responses. We will need digital literacy programs that promote adoption by helping people understand how broadband connectivity can enrich their lives. For those who may be concerned or intimidated by the online world, we must find ways to ease their anxiety about entering digital society. We also will require new initiatives to deliver broadband, and perhaps computers themselves, to those who simply lack the income to afford it on their own.

But accessible, online entertainment and other compelling content may be the most powerful adoption engine of all. From our perspective in the technology and creative communities, we know that compelling content drives adoption by linking consumers to an expanding universe of music, television, games, sports and information resources that are available via broadband. The increasing availability of compelling content can be the first "on-ramp" to the digital highway. Once online, consumers will discover the Internet's vast array of other opportunities.

Think of how exciting online content and innovative delivery methods have transformed our lives in the past few years alone. Who imagined ten years ago that the Internet could give individuals a voice in the political process with a Facebook group, a weblog, or a YouTube video? Who expected that movies would be delivered to our home as streaming content on demand through online services such as Netflix? Who believed that we could miss our favorite television program, but catch up by watching it online the very next day on Hulu or other Web sites backed by content providers themselves? Who anticipated that the record store would give way to the iTunes Store and other Internet locations as the place to buy music? Who thought that we would be able to video chat with friends and family around the globe or work together in an online gaming community to play games created by a software developer's imagination?

These innovative services are magnets that pull people to broadband. It's happened because creators have had the freedom to innovate without undue regulatory constraints. From broadband providers on a variety of platforms, to web app designers who find new ways to deliver content, to artists and other professionals who make their goods and services available online, these independent actors have been free to invest time, energy and money to find out what consumers want and then set out to deliver it.

To this end, our national strategy should keep alive the spirit of innovation and stick with what works. We must avoid the restraints of counterproductive rules that restrict what innovators can do. Rather, we should embrace policies that boost private investment of time and money, stimulate creativity in broadband content, allow maximum flexibility in how that content is made available, and provide consumers with more choices for accessing it.

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<sup>2</sup> "Home Broadband Adoption 2008," Pew Internet & American Life Project, July 2008

<sup>3</sup> "Obama's Online Opportunities II," Pew Internet & American Life Project, January 2009; and "2009 Digital Future Project," annual survey, The Center for the Digital Future, University of Southern California's, Annenberg School for Communication, April 2009

## Respect for Creators Rights = Compelling Content That Boosts Adoption

But a massive wave of digital theft could drive out the professional content that is drawing non-adopters to opt for broadband. While the scale of the theft is hard to measure, there is universal consensus that illegal downloads of music, movies, games, television shows and software reach into the tens of billions. It's been estimated that 95 percent of music downloads, or about 40 billion songs, were illegally shared without compensation to the artists in 2008.<sup>4</sup> The cost of Internet theft to the U.S. movie industry was estimated at \$2.3 billion as far back as 2005, and that figure has certainly multiplied in the years since.<sup>5</sup> By one estimate, the total cost of all copyright piracy involving the motion picture, music, software, and video game industries exceeded \$23 billion in 2005.<sup>6</sup> Such losses deprive these industries of large amounts of capital that could otherwise be invested in new content and other economically productive activities.

Some might wish it were otherwise, but economic reality affects behavior both good and bad. Abraham Lincoln, always a realist, once explained that the protection of intellectual property “added the fuel of interest to the fire of genius.” Even as the Internet transforms our lives, Lincoln’s wisdom reminds us that a robust online market in creative content is contingent on a critical core foundation – respect for creators’ intellectual property so that the artists know their creative content will be respected and their work will be rewarded. The abuse of intellectual property laws erode the economic incentives that lead to online creativity and content.

As Vice President Biden has noted: piracy is “pure theft, stolen from the artists and quite frankly from the American people.”<sup>7</sup> Commerce Secretary Locke has declared that the Obama administration is working to combat piracy and that efforts to “effectively address the problem of IP theft will require collaboration among government and industries...” and that this cooperation is necessary to “ensure that the United States remains the leading producer of entertainment.”<sup>8</sup>

The impact of digital theft goes well beyond the dollars and cents and lost jobs for individual artists or any one industry. The unchecked expropriation of creative works threatens to erode the value of the Internet and discourage broadband adoption by robbing digital society of one of its most attractive benefits. The Internet can and should be a cornucopia of exciting, compelling and valuable content; broadband policy must be designed to make sure the cornucopia is full – not for its own sake, but because an abundance of content will drive adoption and move the United States more quickly toward the goal of universal broadband.

Protection of creators’ intellectual property stimulates the availability of appealing content, which in turn drives adoption of broadband services. Increased adoption stimulates additional investment in the networks and also a demand for more content. Together, these mutually reinforcing activities create a virtuous cycle in which IP protection = content creation = adoption = network investment and more content = adoption.

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<sup>4</sup> “Digital Music Report 2008,” International Federation of the Phonographic Industry, January 16, 2009

<sup>5</sup> “Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative,” LECG, Nov 2007

<sup>6</sup> “The True Cost of Copyright Industry Piracy to the U.S. Economy,” by Steven Siwek, Institute for Policy Innovation, October 2007. This figure covers all copying and theft, not just Internet related theft.

<sup>7</sup> “Biden promises ‘right person’ as new U.S. copyright czar” – CNet, April 2009, [http://news.cnet.com/8301-13578\\_3-10224689-38.html](http://news.cnet.com/8301-13578_3-10224689-38.html)

<sup>8</sup> “Remarks to the Motion Picture Association of America Second Biennial Industry Summit”, [http://www.commerce.gov/NewsRoom/SecretarySpeeches/PROD01\\_007883](http://www.commerce.gov/NewsRoom/SecretarySpeeches/PROD01_007883)

The FCC cannot, by itself, end digital theft or ordain a new order. But it can take a strong stand for intellectual property protection as a fundamental part of its broadband strategy. We urge the Commission to declare the defense of intellectual property and the end of digital theft among its key broadband strategy goals. Further, the Commission should challenge all Internet participants to join forces and work with government to find effective ways to protect creative products while also serving the legitimate rights of consumers in a digital society.

### **A Safer Digital Society Moves Broadband Forward**

Broadband adoption will also accelerate if we make the Internet as safe as possible. In both the physical world and the digital world, people prefer safe neighborhoods. If the Internet is safe, more people will visit it. If potential dangers seem to be on the rise, more people will be reticent. To drive adoption and build a successful digital society that reaches every American, all of us must accept responsibility for minimizing online risks, protecting users' privacy, and ensuring data security against malicious online activity and cybercrime.

But recent trends are disturbing. John Horrigan of the Pew Internet and American Life Project has observed that many non-Internet users shy away from the online world in fear that it is "a dangerous place."<sup>9</sup> And, the Center for the Digital Future reports that Internet usage declines as concern about safety increases. Three out of four Americans who do not use the Internet report they are "very concerned" or "extremely concerned" about the safety of their personal information online. Fifty-eight percent of "light users" report similar concerns. The anxiety level falls to a much lower, but still significant, 42 percent for "heavy users."<sup>10</sup> Certainly, these concerns discourage broadband adoption and also reduce activity levels for many who are online.

According to *Consumer Reports*, one in five online consumers report they have been victimized by cybercrime in the past two years; two million households say they have experienced identity theft in connection with Internet activity, and an estimated seven million consumers were duped into providing personal information to phishers. One in 12 reported serious problems with spyware and more than 500,000 households said they had to replace corrupted computers in a six-month period.<sup>11</sup> Web Security firm Sophos says that malicious e-mail attachments were five times as likely at the end of 2008 as at the beginning of the year.<sup>12</sup> Spam is said to account for 80 percent of all e-mails.

Unchecked online threats such as these are contrary to our view of a well-functioning, prosperous digital society. Consumers and businesses alike need to know that their data and personal information is safe when they connect to the online world. When safety is compromised, consumers stay away, which erodes the business case that drives the private sector to create content, engage in commerce, and develop new services for the online world. Businesses follow their customers. When consumers refuse to adopt broadband or limit their online activities because of fear, the value of the Internet declines and the incentive for private sector investment falls with it. As part of our efforts to drive broadband adoption, our national strategy must identify policies that will limit the threat of cybercrime and other anti-social activity online.

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<sup>9</sup> Horrigan, John – "Why it Will be Hard to Close the Broadband Divide," Pew Internet and American Life Project, August 2007

<sup>10</sup> "2009 Digital Future Project," annual survey, The Center for the Digital Future, University of Southern California's, Annenberg School for Communication, April 2009

<sup>11</sup> "Boom Time for Cybercrime," Consumer Reports, June 2009, <http://www.consumerreports.org/cro/magazine-archive/june-2009/electronics-computers/state-of-the-net/overview/state-of-the-net-ov.htm>

<sup>12</sup> Sophos "Security Threat Report 2009"

We have the tools to build a safe online world. Technology, the freedom to implement it and public-private partnership can keep the risks in check. Effective, cooperative action against known threats can protect network operations, personal privacy and data security and, in so doing, also encourage reluctant Americans to adopt broadband in greater numbers. Like the protection of intellectual property in an online environment, Internet safety must be a core goal of national broadband strategy. But it is not just government's job, it is everybody's job. We urge the Commission to summon all Internet actors to join a collaborative public-private effort to achieve the highest possible level of cybersecurity.

## **Why Networks Matter**

But spreading broadband is only part of the policy challenge. In order to build the thriving digital society we all seek, we must make sure that the Internet functions effectively so that users can easily and reliably get where they want to go and do what they want to do when online. Ease of use drives adoption and also enables those who are online to achieve the maximum benefit. Reliability and ease of use also enables broadband to facilitate the achievement of vital national goals in such areas as health care, education, energy, and sustainability.

To those ends, and to maximize the value of broadband, Arts+Labs urges the Commission to stand by its existing four principles, including the right to reasonably manage the networks that make a well-functioning Internet possible. Networks must be robust, intelligent and smartly managed to provide the reliable and safe delivery of the Internet content and services and to ensure that consumers can confidently connect to the legal Web sites of their choice. A national broadband strategy should encourage the aggressive and expanded use of smart management tools and techniques that serve and protect consumers and commerce. Used effectively, smart management of our networks will stimulate broadband adoption by expanding the scope of activities available to consumers, by addressing network congestion, and by defending against hacking, phishing, identity theft and other forms of cybercrime.

Let's be clear about reasonable network management: In a digital society, network managers owe their customers transparency about their network management practices, including proactive disclosure of new policies or innovations that may affect users' experiences. Network managers must not misuse management tools in order to interfere with competitors' or to disrupt the consumer right embodied in the FCC's first principle: "access [to] the lawful Internet content of their choice."

Some have suggested a range of proscriptive regulations that would limit network management. That would be a grave mistake. Needless restrictions will only constrain the ability of ISPs to upgrade performance and to innovate as needed in order to accommodate expanded demand for bandwidth and to keep pace with continued changes in the applications emerging in the online world. Rather than restricting activities, policymakers should open the door to greater experimentation, including new collaborations, among all participants in the digital society. In our view, network operators, content providers, artists, application creators, software developers, search engines and advertisers, gamers, educators, health care providers, and all others who are part of the digital society should be working together to ensure that new products work effectively with one another and ride smoothly on the networks that connect us.

The *Notice of Inquiry* raises the issue of "open networks" and its impact on investment, innovation, entrepreneurship, competition and content among others. We strongly believe that networks should be open to experimentation, new business models, competition, and collaborations that cross industry lines. We believe that networks should be open to creative partnerships that allow content owners to try a

variety of pricing models for online content. Networks should be open to collaborations that allow network operators to work with device and applications producers to ensure that the networks and new products and services work efficiently together. Rules that limit the flexibility of Internet participants will stifle the creative spirit and discourage the investment that has nourished the Internet. Such overregulation will retard progress toward a successful and inclusive digital society.

We believe generally that a light touch is better; especially as the FCC has demonstrated that it has the tools it needs to advance innovation throughout the network while still protecting consumers. In this respect, we believe that Google CEO Eric Schmidt's recent comments to its annual Zeitgeist event are instructive and serve as an important guiding principle: "Historically, when markets are regulated, the rate of innovation slows dramatically... We don't think that's a good outcome – we think a better outcome is for us to use good judgment."<sup>13</sup> We wholeheartedly agree, and in that context recommend the following principles to the Commission:

- Reasonable and transparent network management that protects privacy while also addressing congestion, spam, malware, and other malicious activity enhances the user experience and enables the safe delivery of legal products and services. Network operators should not be locked into specific business models, nor locked out from trying new innovations by needlessly restrictive regulation or law.
- The flexibility to offer consumers a wide range of pricing options and technology innovations – including traffic management, usage-based pricing, expanded service options, and more that can help minimize congestion, enhance network efficiency, address latency issues, and safely deliver content.
- Protection of user privacy and the confidentiality of both personal information and proprietary business data should be a core goal of network management. Management techniques that may impact users' online experience or the operation of legal applications or devices should be fully disclosed in advance.
- Affirming ISPs', content providers', and creators' flexibility to offer a full range of service options, pricing plans and customized packages would maximize consumer choice by enabling users to select the options that best suit their needs.

## **Spreading the Magic of Broadband**

Ask consumers what the Internet means to them and you'll hear that it belongs to everyone; it has no limit and is only defined by what we can do with it. It's magical, special, transformative, and empowering. In many ways it has become as fundamental as the air we breathe.

Those who are not connected to the Internet are missing out on the vast opportunities of our growing digital society. The rest of us will be poorer as well if all cannot participate. The divide that separates those without broadband and those with broadband is wide and threatens to grow wider still over time.

Closing that gap and bringing every American into a broadband world is among our most important challenges. Building an inclusive digital society and achieving our broadband goals will require all of us

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<sup>13</sup> "Google, Power and Privacy" – BBC News, May 20, 2009, [http://www.bbc.co.uk/blogs/technology/2009/05/google\\_power\\_and\\_privacy.html](http://www.bbc.co.uk/blogs/technology/2009/05/google_power_and_privacy.html)

to think outside of silos, to choose pragmatic and effective policies over ideology, and to drive broadband adoption by encouraging the creation of exciting content, protecting intellectual property, and ensuring that the Internet is a safe place to be. And, the guiding principle on every issue should be to find the solution that moves broadband forward.

Respectfully submitted,

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