

The mission of the European VoD Coalition (the “Coalition”) is to inform the general public, policy makers and regulators about the importance and the specificities of the European VOD sector and to advocate on policy issues of relevance to the sector. We believe in supporting the role of the European audiovisual and technology sectors by promoting European content to wider global audiences and in giving consumers greater choice in accessing content.

European VOD Coalition Background and Key Policy Concerns for EU “contribution to network costs”

Since November 2021¹, a number of publications have called for “big tech platforms” that “generate a large part of network traffic” to “contribute fairly to network costs”. These claims have been made repeatedly in the past decade². The most recent such open letter³ makes worrisome reference to “signs of change” taking South Korea as an example, and calls for new rules at EU level, in the context of BEREC reviewing Net Neutrality rules.

The European VOD Coalition believes that these statements are based on counterfactual premises, and, if taken into consideration, would lead to policies detrimental to investments in Internet infrastructure and the digitalization of Europe. Of particular concern, the ongoing discussions on the Decision establishing the 2030 Policy Programme have made such references in the text without sufficient discussion about its inclusion and potential consequences. The Coalition stresses the significant investments already being made by many of its members in content and content delivery networks either directly or through external partners, and encourages European Policymakers to reaffirm their commitment to a neutral, open internet and the mutually beneficial cooperation between Internet Content Providers and Internet Service Providers.

Key Policy Concerns

- **VOD Content Providers (CPs) do not “generate traffic”, internet users generate traffic when they use the connection they pay for.** Internet users use their internet connection to request content of their choosing. While video streaming has indeed represented a large share of how consumers are using their internet connection and

¹ Joint CEO Statement: Europe needs to translate its digital ambitions into concrete actions (November 29, 2021) <https://etno.eu/news/all-news/717-ceo-statement-2021.html>

² In their 2012 “Proposal to Address New Internet Ecosystem”, ETNO wrote:

“The current interconnection model has some shortcomings that need to be addressed. Today there is a huge disproportion amongst revenues and a clear shift of value towards players (Over the Top players - OTT) who are not contributing to network investment. Traffic and revenue flows need to be realigned in order to assure the economic viability of infrastructure investment and the sustainability of the whole ecosystem.” <https://etno.eu/datas/itu-matters/etno-ip-interconnection.pdf>

³ Letter: Europe’s telecoms market risks falling behind rivals (Financial Times, February 21, 2022) <https://www.ft.com/content/68f989f5-96e6-440e-90f4-2a11840d9c99>

forecasts indicate it might remain so, it is a testament to the value of video content and it being a reason for users to purchase an internet connection in the first place.

- **CPs already invest in content delivery networks and have mutually beneficial relationships with Internet Service Providers (ISPs).** CPs have been investing billions of Euros in content to develop programming that European consumers value. The ability to access this quality content allows consumers to derive even more value from the broadband connections that they purchase from their ISPs for a variety of purposes. Furthermore, CPs have invested heavily in technology such as Content Delivery Networks (CDNs) to help bring content closer to the users, and relieve backbone networks in cooperation with ISPs⁴. CPs similarly have invested in innovative technology such as versatile video coding and variable bitrate to more efficiently transfer video across networks. By cooperating with ISPs to build out CDNs, interconnection, and by developing innovative encoding solutions, CPs have invested in the resilience of European networks, benefitting European Internet users and ISPs⁵.
- **“Network fees” imposed by ISPs to CPs create wrong incentives and jeopardize network neutrality.** The concern that ISPs use their position over access to customers in order to extract network fees from CPs instead of working together to provide the best quality of service under a more cooperative approach is at the heart of EU’s network neutrality rules. Indeed, seeking network payments leads to perverse incentives for the ISPs as the only way to force a content provider to pay is to ensure the congestion of all alternative routes into the ISP’s network. Customers of the ISP will receive poor performance on any content or service not directly connected to the ISP, despite paying for access to the *entire* internet.
- **A “Network use tax” is an inadvisable policy as Europe aims to foster innovation and digitization.** Some have argued that network traffic creates negative externalities in the form of increased energy consumption and emissions, and should be taxed⁶. Not only is the premise unsubstantiated⁷, but such a tax proposal would be highly problematic as it would deter investments into digitalisation in Europe. Both CPs and

⁴ Analysys Mason has estimated that between 2014 and 2017 online content providers spent \$75 billion annually on infrastructure to bring content closer to consumers. Analysys Mason, *Infrastructure Investment by Online Service Providers*, December 2018
<https://www.analysismason.com/consulting-redirect/reports/online-service-providers-internet-infrastructure-dec2018/>.

⁵ Netflix alone has estimated that its content delivery networks saved Internet service providers \$1.2 billion in 2020 (<https://openconnect.netflix.com/Open-Connect-Briefing-Paper.pdf>).

⁶ How sustainable is unlimited data growth on the Internet? (Wolfgang Kopf, Deutsche Telekom, January 13th, 2022)
<https://www.telekom.com/en/company/management-unplugged/details/how-sustainable-is-unlimited-data-growth-on-the-internet-644368>

⁷ Electricity Consumption and Operational Carbon Emissions of European Telecom Network Operators, Jens Malmodin, 2022
<https://www.mdpi.com/2071-1050/14/5/2637/pdf#:~:text=For%202018%2C%2014.5%20TWh%20of,TWh%20between%202015%20and%202018>

ISPs invest into resource efficiency because it is in their interest to keep infrastructure costs down, whether network, servers or data centers. This could lead to an environment where a burden is imposed on European companies, or those operating an EU business, while favouring operators based outside of Europe.

- **The claims made about network investments and costs are based on false premises.** The vast majority of an ISP's network costs are concentrated in the access network (or 'last mile') that provides the final connection to the home. Access network costs grow proportionate to the number of subscribers, not traffic. Investments in next generation access networks in Europe are healthy: The European Telecommunications Network Operators' Association (ETNO) reports that FTTH coverage in Europe has passed 50% in 2021⁸, a significantly higher figure than the OECD average.
- **The reference to the South Korean “example” is worrisome.** Internet regulation in Korea is unique: interconnection between ISPs is regulated by a “sender party network pays” system, a system that BEREC commented in 2012⁹ was “*fundamentally at odds with the principles of [...] networks underlying the success of the Internet to date, based on decentralisation and simplicity*” and ran the risk of “*inducing an abuse of market power by telecoms carriers*”. Indeed, this model has resulted in Korea in inflated bandwidth costs¹⁰ and lower investments in internet exchange points and international network capacities.

We ask that policymakers currently working on the Decision establishing the 2030 Policy Programme take these facts into account when finalising the "Path to the Digital Decade" to ensure that obligations reflect current realities in this space. We believe that Europe following the route that South Korea has taken for the regulation of internet interconnection would be particularly inadvisable and we call on European legislators to weigh the potential effects of action in this space.



⁸ The State of Digital Communications 2022, February 2nd, 2022 - <https://etno.eu/library/reports/104-state-of-digi-2022.html>

⁹ BEREC's comments on the ETNO proposal for ITU/WCIT or similar initiatives along these lines - November 14, 2012 - https://berec.europa.eu/eng/document_register/subject_matter/berec/others/1076-berecs-comments-on-the-etno-proposal-for-ituwcit-or-similar-initiatives-along-these-lines

¹⁰ The Korea Internet Corporations Association report on IP Transit pricing in Korea, December 14th, 2021 - <http://kinternet.org/policy/data/view/63>