

February 7th, 2025

To: The Ministry of Information and Communications Technology (Mintic) and the Communications Regulatory Commission (CRC)

Re: Consultation on products and services offered by OTT digital service agents and Telecommunications Network and Service Providers (PRST) in Colombia

Submitted via email to estudioott2024@crcom.gov.co and proyectos.normativos.dicom@mintic.gov.co

Introduction

The Motion Picture Association (MPA) and the Television Association of Programmers Latin America (TAP) appreciate this opportunity to provide comments to MINTIC and CRC regarding products and services offered by OTT digital services agents and PRST in Colombia and the possibility of regulatory intervention.

Founded over 100 years ago, the MPA is a leading advocate of the film, television, and streaming industry around the world. The MPA's members currently include Disney, Netflix, Paramount, Prime Video & Amazon MGM Studios, Sony, Universal, and Warner Bros. Discovery.

TAP is also a leading advocate for main media companies that produce and distribute audiovisual content in the region through streaming services and pan-regional pay TV channels. TAP's members currently include A&E Networks; AMC Networks International Latin America; NBC/Universal/Telemundo International; Paramount Global; The Walt Disney Company/ESPN; Sony Pictures Entertainment; and Warner Bros. Discovery. TAP's mission is to help foster a favorable regulatory and business climate for the pay TV and streaming services industry in Latin America.

MPA and TAP member companies produce and distribute a wide range of Latin American and international film and television content in Colombia, including through online entertainment services. MPA and TAP understand and support the paramount importance of a strong telecom infrastructure and availability of high-speed internet access, which allows for the high-quality distribution of content to a wide and diverse audience. At the same time, telecom providers and content and application providers (CAPs) are part of a virtuous cycle and have a symbiotic relationship that benefits consumers and the digital ecosystem as a whole. Continued investments in audiovisual content all around the world from our members contribute to the increased consumer demand for better internet connection – the availability of a broad and diverse range of online content (including entertainment) is a key factor that encourages members of the public to subscribe to telecommunications services and go online. Accordingly, we state our position related to Sections 2 and 3, as to whether it would be appropriate for online entertainment service providers to assume part of the investments necessary for the deployment

of infrastructure to provide internet service. As we outline below, we see numerous reasons why governments should not impose network fees on online service providers. In response to Section 6, we also state our position against local content quotas and local content investment obligations and posit that Colombia's existing investment promotion policies are already successful in growing the creative economy and serve as a regional best practice. In response to Section 4, we further suggest that Colombia's antipiracy and law enforcement efforts can be harnessed to address online content theft, a significant barrier to the growth of OTT services.

We also note that efforts to impose network usage fees, local content quotas, or local content investment obligations on OTT services would likely contravene Colombia's commitments under the U.S.-Colombia Trade Promotion Agreement ("FTA").

These comments are made in response to the Consultation proposed by MINTIC and CRC, with the aim of positively assisting in the regulatory process, without this implying any recognition or submission to the Colombian jurisdiction and/or arbitration process, in any of its forms, if applicable.

Differentiation of Products Offered by CAPs (Question 1)

The term "OTT" lacks a precise definition and is commonly used by telecommunications companies. Within the context of telecommunications regulations, especially relating to the open internet, content and application providers (CAP) are those internet users who provide content or applications to others.

There is a high level of differentiation between online services and Telecommunications Network and Service Providers (PRST) from operational, regulatory, and economic perspectives. The roles within the telecommunications ecosystem are different. On the other hand, PRSTs are agents responsible for operating and managing telecommunications networks and the internet service they provide is considered a basic and essential service. PSRTs are responsible for providing connectivity and access to physical networks. They are in charge of managing the radio spectrum, which is limited and regulated by the State.

In contrast, CAPs are a set of internet users that provide content or applications to other users through the internet using the infrastructure of PRSTs. They do not operate their own transmission networks, nor do they own physical telecommunications infrastructure. They are value added services because they provide additional functionalities to basic connectivity as opposed to being understood as a basic and essential communication service.

In the case of Video-on-Demand (VoD) services, these services offer curated content (either directly to end users or through bundles and other kinds of offerings) and do not include any intermediation between users. Moreover, unlike platforms with user-generated content (like video-sharing platforms), VoD services maintain editorial control, ensuring their catalogs are free from risks of spreading disinformation, incitement to violence, or hate speech. Additionally, VoD services are structured to

safeguard children and adolescents by restricting communication between users and providing age-appropriate, culturally enriching content, as well as subject to age ratings and parental controls.

MPA and TAP Position on Network Fees (Questions 2 and 3)

Content providers already heavily contribute to the internet ecosystem

- Demand for online services drives consumer demand for high bandwidth speeds and additional revenues for PRSTs. The use of video services, and especially the demand for high-definition content, is one of the reasons why end customers are demanding faster bandwidth speeds, driving additional revenues for PRSTs. The content offered by content providers, high-quality video-on-demand services, enable PRSTs to sell higher bandwidth tariffs. Rather than benefitting without paying, content providers both invest heavily in networks and content and increase the demand for PRSTs' services. Moreover, PRSTs often partner with OTTs, distributing content (resale, bundles) which benefits all parties. As such, there is an interdependent relationship between online services and the provision of internet connectivity, which creates a virtuous circle that promotes the growth of both segments, generating benefits for consumers and the digital ecosystem as a whole.
- Through various forms of investments in the internet ecosystem, such as heavy (direct or indirect) investment in content delivery networks (CDNs), compression technology and backbone infrastructure, MPA and TAP members already contribute significantly to the supporting, enhancing, and improving of network infrastructure. These investments are made to maximize the consumer experience by ensuring that content is delivered smoothly and without delays.
- The most important purpose of the Communications Regulatory Commission (CRC) is to protect the interests of the consumer. Thus, it is essential to promote a competitive, transparent, affordable and diverse market that guarantees high quality services. An environment in which a large number of offerings coexist, including those provided by PRSTs or OTT digital service operators, benefits the consumer by fostering technological innovation, improving the quality of services, and generating more competitive prices.
- PRSTs not only provide the essential and basic service of internet connectivity, but in some cases also directly offer value-added services similar to those provided by OTTs. Any policy that directly or indirectly requires the transfer of resources from OTTs to PSRTs that also offer value added services risks creating competitive tensions and imbalances.

Traffic is an irrelevant cost factor

- Traffic and usage-related costs have not grown over the last years and are not expected to grow over time, due to a combination of technological progress, that serves to reduce the amount of

data required to deliver the same content, and cooperation between PRSTs and content providers in areas such as caching. In fact, transit prices are falling. Cost reduction is in a similar range as traffic increase, resulting in a net neutral effect. Operators have been able to keep total costs stable and enable a decreasing cost/price trend of unit prices.

- The incremental costs of internet traffic are therefore negligible for fixed broadband access.
- It is also false to claim that traffic volumes directly correspond to the costs of interconnection. The costs of interconnection expansion depend on the utilization of networks at peak times, and not on aggregated transmitted traffic or the origin of traffic.
- In addition, volumes of traffic are not directly correlated to content provider benefits/revenue. Some of the internet services that generate the most revenue generate low traffic and vice-versa.
- Furthermore, charging for traffic creates perverse incentives, and does not incentivize a solution if the level of traffic is truly the issue as claimed by telcos. If PRSTs are charging for traffic, they would have no incentive to reduce the level of traffic or optimize it – in fact, they would likely want more and more traffic, delivered at suboptimal metered interconnections, to increase their revenues.

Network fees would not have a positive impact on investment in infrastructure

- The performance of countries leading in high Fiber to the Home (FTTH) deployment demonstrates that financing is not necessarily a bottleneck to achieve a high level of FTTH infrastructure, and that there is sufficient private investing capital and many financing institutions available to finance FTTH projects.
- The real bottlenecks to fiber deployment include organizational slack, time lags and time requirements to get necessary building permits and authorizations, and construction capacities.
- Another reason why certain countries are lagging in FTTH deployment is because incumbent PRSTs were latecomers in fiber investment in those countries, with prominent examples of the UK, Germany, and Italy. In these countries, the incumbent PRSTs were happy with profits made through the copper network infrastructure, and only began to invest more heavily in fiber deployment once smaller entities such as local and regional operators and new entrants made significant steps to roll-out fiber.
- Content providers providing extra capital to telcos would not have a positive impact on achieving connectivity targets. These targets can be achieved through the huge resources the private investor market is willing to contribute and finance.

- The experience of the leading fiber countries shows that nationwide coverage needs a certain period, usually 15 to 20 years. Therefore, if more money was introduced, there is a risk that the substitution of time by money would result in inflated deployment costs making the use fiber networks more expensive to end-users.
- The most likely scenario is that the additional money would simply go to shareholders. There is no reassurance that extra money gained from content providers would go to infrastructure.

The market for interconnection is competitive and well-functioning

- The interconnection market does not need regulation on infrastructure costs to ensure its functioning. In a 2013 report on internet traffic exchange, the OECD found that “the internet has developed an efficient market for connectivity based on voluntary contractual agreements. Operating in a highly competitive environment, largely without regulation or central organization, the Internet model of traffic exchange has produced low prices, promoted efficiency and innovation, and attracted the investment necessary to keep pace with demand.” In its 2024 study on IP interconnection and net neutrality, BEREC considers that the IP-IC ecosystem is still driven by functioning market dynamics and by the cooperative behavior of market players. Already in 2012 and 2017, BEREC had identified that the IP-IC ecosystem is largely driven by competitive forces. The markets developed very well without regulatory intervention.
- Also, the content provider market is competitive, and the relationship to most PRSTs is cooperative. Efficient on-net caching requires a series of network planning agreements and in this respect, the relationship between content providers and PRSTs has become much more cooperative in the last 10 years.
- Furthermore, although content providers have significantly invested in their own network infrastructure, this has not changed the PRSTs' access monopoly for their end-users.
- Nothing has changed in the cost structure and/or cost burden telcos are facing which would give reason to change the well-established and proven IP interconnection and pricing principles for a new distribution of the relevant costs. If something has changed, it is even to the benefit of the PRSTs. The significant infrastructure investments of OTT in backbone capacity and delivery generated cost savings to telcos, and declining traffic-related costs are fully covered from end-user charges under the current regime.

There is no evidence of a market imbalance that requires regulatory intervention

- There is no evidence of any investment gap in telecommunications networks or that there is a market failure preventing the development of a sustainable digital ecosystem. On the contrary, the evidence shows that the digital market (both from the point of view of connection providers

and VoD providers) is highly competitive, and the imposition of excessive regulatory measures, such as the creation of a charge for so-called "major users" of the network, tends to unbalance this ecosystem, negatively impacting its growth.

- There are several reports that support the conclusion that the current interconnection players coexist symbiotically, and challenges should be addressed through technological innovations, not regulatory interventions. AKAMAI's study, "State of the Internet", which has a technical and infrastructure perspective on Internet traffic, analyzes how services and applications drive demand on the network¹. Furthermore, the CISCO Annual Internet Report, does not recommend regulatory interventions to manage increasing network demands. Instead, it emphasizes technological advancements and strategic approaches to enhance network efficiency and performance.²
- The study *The Impact of Tech Companies' Network Investment on the Economics of Broadband PRSTs* (cited in the chart below) shows that, globally, over the last few years, while data traffic has grown, the costs related to telecommunications infrastructure have remained constant. This data shows not only that increases in traffic do not necessarily mean increases in infrastructure costs, but also that telecommunications networks have been able to adequately meet consumer demand for data.

"The growth in traffic has not been accompanied by corresponding increases in network costs, as a significant part of Internet service providers' networks are not traffic-sensitive. (...) We estimate that core and backhaul costs of traffic-sensitive fixed networks typically represent 20-30% of network costs and 10-15% of revenue."

- The same study also states that, while traffic is no longer a significant factor in infrastructure costs today, with further technological development in telecommunications networks, brought about especially by the gradual transition to optical fiber, infrastructure costs will become even less sensitive to traffic in the future. As a result, the trend is for the costs of expanding and maintaining the internet network to remain stable over the next few years, despite the growth in demand for data.
- Similarly, the study *BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to PRSTs* (cited in the chart below) concludes that the Internet network has consistently demonstrated its ability to cope adequately not only with higher volumes of traffic, but also with changes in the standards, technologies, and business models of this market.

¹ Akamai Technologies, Pushing CDN-ISP Collaboration to the Limit. Accessed January 13, 2025.
<https://www.akamai.com/site/en/documents/research-paper/pushing-cdn-isp-collaboration-to-the-limit-technical-publication.pdf>.

² Cisco Systems, *Cisco Annual Internet Report (2023–2028)*. Accessed January 13, 2025.
<https://www.cisco.com/c/en/us/solutions/executive-perspectives/annual-internet-report/index.html>.

"(...) In general, Internet network infrastructure costs are not very sensitive to traffic. Existing capacity can be used up to a certain point at no extra cost, and only when more peak capacity is needed will investment in network expansion be required. The costs of the Internet network upgrades needed to handle a higher volume of traffic are very low compared to the total network costs, and the upgrades involve a significant increase in capacity."

- The study adds that the costs of fixed networks are generally not sensitive to traffic, and the prices charged by connection providers to consumers are calculated in such a way as to recover these costs over time. In this sense, the costs associated with access networks are sensitive to the number of users and not to traffic. Mobile networks, on the other hand, show a certain level of sensitivity to traffic, given the need to build additional stations to increase capacity in certain areas. However, even in these cases, BEREC considers that the increase in traffic volume does not generate significant incremental costs when compared to the total costs of the network.
- This is even more relevant for users of VoD, that mostly use fixed access networks, as mentioned in the CRC's OTT report. BEREC found that fixed access networks are to the largest extent not traffic-sensitive.
- As far as backbone networks are concerned, the study states that they are sized according to the expected peak traffic, so that data consumption within this limit does not generate any incremental costs. When this maximum limit is no longer sufficient, it is necessary to upgrade the backbone; however, this type of upgrade is carried out quite sporadically, since when this investment is made, it results in a much greater increase in capacity than would be necessary to meet the data demand of current technologies. Therefore, these costs are easily recovered in the long term and can be considered very low when compared to the total costs of the network.
- Therefore, given that there is no investment gap in telecommunications networks, and that the growth in traffic does not result in a significant increase in costs for these networks, there is no reason for regulatory intervention.

Network fees are likely to harm competition, entrench incumbent telcos' market power and distort market incentives

- Network fees are likely to further disturb the level playing field between incumbents and entrants. There is indeed a risk that mainly the big incumbent telcos may be able to receive payments from content providers due to their stronger bargaining and lobbying power, while smaller operators would be in a less favorable position. This would result in competitive distortions in favor of incumbent telcos, entrenching their market power and risking abuse as they may then be able to leverage better terms than competitors. Competitors to incumbent telcos, in particular access-seekers, would also suffer from network fees if incumbent telcos do not pass them through to their wholesale prices. Otherwise, incumbents would get flexibility in their own end user pricing

policy and access-seekers would not. All of this would distort competition to the detriment of competitors and to end users. All said, network fees can serve as barriers to market entry for new competitors and hinder innovation, posing a financial obstacle for startups.

- Forcing content providers to pay network fees distorts market incentives in several ways, to the detriment of end users and efficiency in the networks. For example, to compel a content provider to pay network fees, an ISP could be incentivized to leave traffic congestion on its network unaddressed or to limit performance by design, effectively restricting end users from receiving the requested traffic from the content provider (see also net neutrality point above). Such an exploitation of the termination monopoly to levy network charges could distort competition in the content market. In this context, many PRSTs are in direct competition with content providers for video streaming.
- PRSTs may also be unwilling to accept co-investment and cost-saving measures offered by content providers that would decrease traffic and increase service performance for end users, such as caching and peering, to receive maximum network use fees.
- The negative competitive consequences stemming from the imposition of network fees would ultimately harm consumers, who have come to expect access to a diversity of services under equal conditions and high quality audiovisual experiences without sacrificing competitive subscription pricing.
- In the September 2024 *19º Taller Internacional de Regulación Mercados Digitales*, held in Cartagena, Kyun Sin Park, a law professor at the University of South Korea, cautioned that the much championed South Korean model often used as a poster child for network fees has led to rising connectivity rates, disincentives for ISPs from hosting popular content, reduced competition, and limited diversity and innovation in content. According to Park, internet access fees in South Korea have skyrocketed, causing even public-interest applications such as COVID-19 contact tracing to face difficulties operating due to costs. This has led to a lack of new players in the content market and forced companies to reduce their presence in the country.

VoD services operate in a highly competitive market and network fees would undermine investments made in content

- Content providers, such as VoD services including those of MPA and TAP members, operate in a fiercely competitive market, with many players both on and entering the market. Content providers also compete with some PRSTs themselves in providing content. VoD services do not have market power to exploit PRSTs and the relationship is mostly cooperative.
- This fierce competition also results in heavy investments in content. Forcing providers of audiovisual services to pay network fees would mechanically reduce the investments available.

Through their investments in content, MPA and TAP members support both the production of local creative content as well as global competitiveness. Furthermore, if telcos can block certain content providers that do not pay network fees, this would undermine investments made in local content as consumers would not be able to access it or view it.

Network fees would have a negative impact on net neutrality

- Imposing fees of this nature also goes against net neutrality which is legally protected in Colombia. The party responsible for transmission, switching or routing has the duty to treat all data packets equally, without distinction by content, origin and destination, service, terminal or application. The aim of net neutrality is to preserve competition and freedom of expression on the internet, preventing connection providers from favoring or disfavoring traffic transmissions associated with content, services, applications, or devices. As such, this rule seeks to ensure that users are free to use the internet - within legal limits, of course - without privileging or harming specific uses. In addition, competition in the digital environment is also preserved, preventing, for example, connection providers from signing commercial agreements with certain service providers so that their content is delivered more quickly to end users. This concept is essential for the maintenance of an open, competitive, and equitable digital ecosystem, protecting the rights of consumers and promoting technological innovation.
- The Constitutional principles of equality, freedom of expression, access to information and free competition establish a solid framework to support net neutrality. Specific measures, such as Law 1450 of 2011 and CRC Resolutions 3502/2011 and 5050/2016, have further developed and established this concept within the Colombian regulatory framework, aligning it with Constitutional values.
- Any agreement made between OTTs and PRSTs must respect the concept of net neutrality, with a view to the benefits generated for users. Neutrality ensures that users can access a diverse range of applications and services, promoting competition and reducing barriers that could restrict their choices. This encourages a greater variety of digital products, competitive pricing, and the ability for developers to innovate without hindrance, allowing consumers to enjoy more personalized services aligned with their needs.
- Serious risks ensue when systems or agreements between OTT and PRST are not implemented in a way that respects net neutrality. If public policies allow for paid prioritization practices, consumers could face restrictions in accessing certain content or applications, limiting their ability to choose. In addition, the lack of transparency in traffic management policies could lead to inequalities in the supply of services, negatively affecting less informed consumers. This type of distortion could reduce competition and consolidate the power of certain dominant players, affecting both diversity and innovation in the digital marketplace.

- In addition, any agreement or action that affects net neutrality would generate adverse consequences for small ISPs or PRSTs that would not be able to compete with large companies, which would go against core policies and principles defended by the government.
- In conclusion, respect for net neutrality is critical to ensure that the proposed systems offer real opportunities to consumers, such as greater access, innovation, and fair prices, while mitigating risks such as limited choice and concentration of power.

Imposing network fees may violate the U.S.-Colombia FTA

- Internet services fall under Chapter 14 of the FTA; therefore, the Colombian government must implement public policy related to internet service that abides by the rules and obligations set forth in the Agreement.
- Chapter 14 of the FTA include provisions on net neutrality, and non-discrimination. Any attempt to impose a discriminatory network fee measure would breach this provision, disrupt the competitive balance, and contravene the FTA's commitment to fair and equal treatment.
- The FTA includes a number of chapters (e.g. Chapter 15 on e-commerce, including digital services; and Chapter 14 on telecommunications) which are relevant to the consultation.

There is no practical or legal justification for OTTs to contribute to the Single Fund for Information and Communication Technologies

- The *raison d'être* of the Single Fund for Information and Communication Technologies is to promote universal access to information and communication technologies, guaranteeing connectivity in rural and marginalized areas, and strengthening the telecommunications infrastructure in the country. These services are provided by PRSTs, who are the ones who use the radio spectrum, receive the concession from the state, and therefore are the ones who directly benefit from the Fund.
- The law recognizes internet services as essential service. It is a resource granted under a concession by the State since it uses the radio spectrum, a public and limited good of the nation. Given its strategic and finite nature, it is the responsibility of the State to grant, supervise and regulate its use to guarantee its availability and proper functioning.
- CAPs do not operate as Telecommunications Network and Service Providers (PRSTs); they are digital service providers that depend on, but do not directly own or manage existing telecommunications infrastructure.
- CAPs are complementary services to connectivity. They boost data consumption and demand, contribute indirectly to the development of the telecommunications sector, are an engine of

innovation, and generate indirect jobs in related sectors such as digital advertising, content production and technological services.

- CAPs are platforms that offer content and applications over the internet. They do not require a state concession, since they operate as complements to internet access and do not make direct use of the radio spectrum, which differentiates them in terms of regulation and government oversight.
- Since CAPs neither utilize the radio spectrum nor operate under state concessions, they do not directly benefit from the Single Fund for Information and Communication Technologies. Consequently, there is no legal or practical basis to justify their contribution to it.

Relevant Studies on Network Fees

For additional consideration, we submit the following literature from third parties, regarding the imposition of network fees:

The Economics of Universal Service Fund Reform (Link)	The Brattle Group for INCOMPAS, 2023
Proposals for a levy on online content application providers to fund network operators: An economic assessment (Link)	Oxera for the Dutch Ministry of Economic Affairs & Climate, 2023
The Impact of Tech Companies’ Network Investment on the Economies of Broadband PRSTs (Link)	Analysys Mason for INCOMPAS, 2022
Netflix’s Open Connect program and codec optimisation helped PRSTs save over USD1 billion globally in 2021 (Link)	Analysys Mason for Netflix, 2022
Infrastructure Investment by Online Service Providers (Link)	Analysys Mason for Google, 2018
Consumers Are the Ones Who End Up Paying for Sending-Party-Pays Mandates (Link)	ITIF, 2022
Preliminary Assessment of the Underlying Assumptions of Payments from Large CAPs to PRSTs (Link)	BEREC, 2022
Value-Added Services & the Future of Telecommunications: Empirical Evidence to Inform the Network Fees Debate in Brazil (Link)	Prado, 2023
Competitive conditions on transit and peering markets Implications for European digital sovereignty (Link)	Wik Consult for BNetzA, 2022

Response: An internet traffic tax would harm Europe's digital transformation
([Link](#))

Communications
Chambers for CCIA,
2022

Promoting the Production and Access to National Works (Question 6)

Video-on-Demand services already provide meaningful access to national works without the need for further regulations

- In the past decade, the Colombian Government has pursued investment promotion policies, including the Colombian Film Fund (FFC) and the Audiovisual Investment Certificate (CINA), which have developed Colombia into a globally competitive territory for audiovisual production, widely regarded as the best practice for such policies in all Latin America. These policies have succeeded in attracting record levels of international investment to produce both local and international stories, to the benefit of Colombia's local employment, national economy and country brand.
- To complement these investment promotion policies, in May 2020, the Ministry of Information and Communications Technology executed a decree to regulate Article 154 of the National Development Plan, to increase availability of local content on streaming services for users in Colombia. Thus, Colombia has already taken official steps to increase the visibility of local content on OTT services, and no further regulatory intervention is needed.
- As a result of Colombia's forward-thinking public policies, local Colombian stories are now being produced and exported to a global audience at historic levels, in partnership with many MPA and TAP member companies. Thus, there is no need for regulatory intervention to compel OTT services to invest in local content production, or to satisfy quotas for local content distribution.
- Even if such policies were of interest, implementing content quotas or investment obligations on online services would contravene the spirit and the letter of the U.S.-Colombia FTA. Such policies would call into question Colombia's compliance with provisions related to services, investment and e-commerce.
- Moreover, the implementation of highly interventionist measures in market dynamics, such as investment obligations, poses risks that can lead to outcomes opposite to those intended. Instead of attracting and expanding resources invested in the sector, such obligations interfere with investment decisions of each agent, which in such a dynamic industry are being reviewed and modified as we speak. Thus, it would also modify basic competition structures — ultimately reducing the total return on investment and, consequently, reducing investment volumes in the medium and long term. We also cite the empirical study "[Cuotas o Incentivos para el Desarrollo de la Producción Audiovisual Nacional](#)," by Raúl Katz and Juan Jung, which concluded that

imposing catalog quotas reduces national production by 10 percent, decreases the number of platforms due to higher entry costs, diminishes the quality of works, and undermines market competitiveness — thereby harming consumers.

Imposing regulatory conditions on VoD services similar to those for traditional television or PRST is fundamentally inappropriate

- Traditional television operates on a linear model, where content is delivered at scheduled times, whereas VoD services are designed to provide content on demand. For instance, requiring time slots for OTT streaming services is illogical, as their appeal lies in user-driven access. Moreover, in areas like access systems and charging models, VoD services are self-regulated, adopting globally recognized business practices to effectively serve consumers without the need for heavy-handed oversight.
- Unlike PRST or traditional broadcasters, VoD services do not rely on public resources such as the radio spectrum. Their operational model is inherently different, placing them outside the scope of regulatory frameworks designed for telecommunications networks and services. Extending such regulations to VoD would disregard these fundamental distinctions and stifle innovation without serving any public interest.

Market Barriers in Digital Services Market (Question 4)

Ex ante regulations would play a detrimental role in the interactions between PRSTs and OTT digital service agents

- CAPs are not telecommunications providers that provide basic connectivity. They are value-added services that operate on the internet. They do not depend on their own physical infrastructure or the radio spectrum, key resources that justify regulation under the Colombian regulatory framework.
- By operating in multiple jurisdictions without the need for localized physical infrastructure, imposing specific regulations on them in each country would generate regulatory fragmentation that would not only complicate their business model, but would also contravene principles of best regulatory practices and provisions of international treaties signed by Colombia.
- This reinforces that its regulation is not justifiable from a jurisdictional or regulatory perspective.

Content theft (piracy) is the real supply barrier threat that regulations should address

- Online piracy is an enduring threat to the audiovisual industry against which our associations' members have dedicated extensive resources to address directly and through a global antipiracy coalition, the [Alliance for Creativity and Entertainment](#). Online content theft especially harms over-the-top/digital services markets while its perpetrators steal legitimate content from rightsholders and distribute it online to internet users. These illegal actions are often connected to international organized crime, fraud, and money laundering, and contribute to discourage private investment, tax collection and employment in each affected region. With the recent growth of Colombia's creative economy, including its emerging role as an audiovisual production hub for Latin America, there is a critical need for the Colombian government to direct resources towards the enforcement of intellectual property rights.
- Colombia has one of the highest penetrations of content piracy among all Latin American countries, [reaching out to 48% of its households*](#). Signal and online theft together with non-authorized IPTV lists and illicit devices are common in the territory. As a significant trade barrier to the digital marketplace, infringement must be tackled not only by the industry but also through the Colombian Government's dedicated efforts. The National Copyright Office (DNDA) should implement an effective campaign against digital piracy, including issuing blocking orders against piracy streaming sites and cyberlockers, including on the basis of copyright infringement, in response to rightsholders' applications, that specifically target the Colombian marketplace, and irrespective of the prior identification and/or the location of the illegal streaming site/cyberlocker operator(s). This type of recourse via administrative enforcement mechanisms is fully consistent with Article 16.11.14 of the U.S.-Colombia FTA. Our associations commend recent police raids in Colombia against people involved in the sale and supply of illegal streaming service *Magis TV*, and Colombian authorities should replicate this enforcement model. Colombian authorities should also consider joining the regional antipiracy efforts of Operation 404 which is an effective model of stakeholder collaboration.

--oo0oo--