



US SENATE I

Net Neutrality Update

By Marc Steinberg

Introduction

Given the relative ease with which billions of people can access the internet and subsequently affect the actions of other internet users, a natural question arises as to who truly controls the internet. In recent times, many internet users have ardently supported the idea of **net neutrality**. Net neutrality essentially guarantees all internet users the ability to utilize the internet in a free and uninhibited way. Net neutrality accomplishes this lofty goal by not discriminating against lawful content, ensuring equal access and equal prices to all, as well as providing internet users with the ability to select their own preferred equipment and software.

Net neutrality—a network that is free of restrictions on content, sites, or platforms, on the kinds of equipment that may be attached, and on the modes of communication allowed.

Summary of the Problem

When considering the internet, it may be beneficial to look back on how Congress has regulated other modes of communication throughout history. For example, as per Title II of the Communications Act of 1934, all telephone companies are regulated as common carriers by the Federal Communications Commission (FCC). Such governmental oversight had ensured equal access to all prior to 2005. However, in the 2005 Supreme Court case *NCTA National Cable and Telecommunications Association v. Brand X*, the Supreme Court ruled that internet service providers were to be classified as an information service. As a result, such service providers are no longer subject to discrimination actions and no longer have to share their facilities with competitors. This unique situation regarding the Internet provides several complications that need to be addressed by the United States.

Recent Developments

Telecommunications Act of 1996

The Telecommunications Act of 1996 reclassified internet service providers as information services rather than telecommunications providers. The Act both deregulated and created new regulations. Congress forced local telephone companies to share their lines with competitors at regulated rates if the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer. This proved

substantial due to the fact that the Communications Act of 1934, which served only to regulate telecommunications providers stringently, holds no jurisdiction over information services.

Internet Freedom Preservation Act

On January 9, 2007, Senators Olympia Snowe (R-ME) and Byron Dorgan (D-ND) introduced the Internet Freedom Preservation Act, also known as the Snowe-Dorgan Bill. The bill intends to bring about widespread net neutrality by banning the blocking of lawful contact as well as the deals established between **network providers** and **service providers**. While still allowing for the prioritizing of content, this bill does render the ability to enforce internet complaints under the jurisdiction of the Federal Communications Commission.

Internet Freedom Preservation Act of 2008

On February 12, 2008, Representatives Ed Markey (D-MA) and Chip Pickering (R-MS) presented the Internet Freedom Preservation Act of 2008 to the House of Representatives. This bill aims to enact definite broadband policies. Additionally, this bill aspires to enact Federal Communications Commissions to assess consumer choices and competition among internet service providers. Essentially, the proceedings called for as per this bill will serve to render judgment on whether or not certain internet service providers are taken actions to promote or violate net neutrality.

Comcast Violates Net Neutrality

On August 17, 2007, an internet user named “Torrent Freak” lodged a complaint against the internet service provider Comcast for interfering with the natural operations of **BitTorrent** servers. On August 1, 2008, the FCC ruled that Comcast had indeed violated net neutrality and shortly thereafter ordered Comcast to cease its current course of discriminatory actions with respect to the management of its broadband network.

Network provider—a business or organization that sells bandwidth or network access by providing direct backbone access to the Internet and usually access to its network access points.

Service provider—a company that offers its customers access to the

BitTorrent—a peer-to-peer file sharing protocol used to distribute large amounts of data.

Possible Solutions

For those who remain opposed to complete net neutrality, a multi-faceted system of regulation and price discrimination can be employed. As per this two-fold model, the FCC would be able to regulate internet service providers although such providers would still be able to offer preferential services based on the price paid by the consumer. Alternatively, one could also embrace an internet policy which allows for discrimination against specified internet activities and services yet does not allow discrimination against the service provider itself.

In order to bring about widespread net neutrality, one must embrace both government regulation and the jurisdiction of the FCC. If the

government is allowed to regulate the actions of internet service providers, it will preclude such entities from discriminating against internet users.

Questions for Policymakers

When debating this issue, try to keep these issues in mind: Should internet service providers be deemed telecommunications services or information services? Is **price discrimination** or service discrimination amongst internet users by service providers ethically sound or should allow internet users be privy to the same services at the same price? Who should regulate internet service providers and how should violators of established legislation be punished? If different people desire to utilize different network software and equipment, should they be allowed to purchase alternative equipment at prices different than those of the standard equipment availed by the internet service providers?

Price discrimination—*a pricing method by which different customers are charged different amounts.*

Conclusion

The issue of net neutrality is an important and complex one that has thus far largely avoided much public dialogue. With the ever-growing importance of the internet to people's everyday lives, policymakers can rest assured that they will have to become more extensively involved in its regulation.

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