

The Net Neutrality Punch-up

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The Debate in Brief

Net neutrality as a phrase did not emerge in the popular media until late 2004 as it was popularized by then-FCC Chairman Michael Powell. The term implies that broadband providers should be required to be neutral between various uses and applications. Internet service providers and content providers are now spending \$1 million daily on advertising and lobbying, while a befuddled Congress struggles with enacting—or blocking—legislation related to the traffic carried on networks across the U.S. The net neutrality issue is the focal point in an overall effort to amend federal communications law.

Proponents like Google and Microsoft are urging that net neutrality be legislated because carriers are likely to discriminate against content and applications now that the common carriage requirement is defunct.

Moreover, proponents see the avenues for redressing any abuse by providers—set forth in regulations by the FCC (statutory commerce), the FTC (consumer protection) and the Justice Department (anti-trust)—as too slow and otherwise inadequate to sufficiently protect content providers and consumers from unfair behavior by ISPs. Additionally, the lack of competition in broadband in the United States is asserted as a chief reason why market intervention in the form of a net neutrality law is necessary. Most Americans do not have much choice in broadband, as opposed to the past when the dial-up ISPs numbered in the hundreds or thousands, creating a very competitive market.

As way of response, the broadband provider community has spent \$42 million dollars in the first half of 2006 on ads against net neutrality,¹ stressing the possible unintended consequences of net neutrality regulation: higher prices for service, slower broadband deployment, and lower incentives to invest in network infrastructure. The providers have also called net neutrality premature, arguing that no evidence that providers are discriminating has been demonstrated. Additionally, opponents of net neutrality have relied on the familiar refrain that the Internet has thrived under minimal regulation.

Despite the hyperbole in the lobbying efforts, both sides' claims can point to some reasonable supporting evidence, which has created a difficult debate for Congress.

International Dimensions

There are a number of international dimensions to network neutrality that extend the implications of the current debate.

¹ Washington Internet Daily, July 20, 2006

- **Non-Neutrality on State-Controlled Networks.** Outside the United States, many national governments operate networks in distinctly non-neutral ways. Saudi Arabia blocks content counter to specific interpretations of Islam; China has closed down access to numerous sites, including American think tank sites, including CSIS.org. However, state-controlled or state-directed manipulation of network traffic within their borders is a different issue from regulation on independent broadband providers' actions.
- **Policy Migration?** Would any net neutrality regulation affect the rest of the world's Internet traffic? In one sense, the United States could serve as a policy case study for other nations. It is important to note that EU states' regulatory environments are not direct parallels to the United States: for example, the EU is largely free from the facilities-based competition in which US providers operate. However, European telecommunications companies will roll out Internet Protocol TV (IPTV) and may invest in content, which could move the issue of neutrality onto the agenda of European Commission.² Also P2P networks and P2P telephony such as Skype may depend on net neutrality and may stir the pot in any future debate. Moreover, as carriers build next-generation networks (such as Deutsche Telekom's VDSL fiber system) they will face the issue of who should be able such infrastructure, which may explain DT's interest in the outcome of the U.S. debate.³ In April, DT and Telecom Italia were reported to be lobbying the EC for permission to charge Google and others for carrying their content. Other carriers, however, such as France Telecom and BT, have remained relatively quiet on the issue.
- **Competitiveness and Broadband Penetration.** The notion that a net neutrality law will slow network development feeds into the issue of U.S. competitiveness in international indices on broadband penetration. Countries in Asia and Europe that currently lead the US in terms of cost and speed will be eager to see if unregulated, non-neutral behavior does in fact lead to great network investment in the United States.

² Communications Daily, June 16, 2006.

³ Financial Times, March 26, 2006.