



POLICY BRIEF

An Official Publication of the Association for Educational Communications and Technology

POLICY BRIEF NUMBER 2014.2
JULY 12, 2014, UPDATED OCTOBER 1, 2014

Net Neutrality

EXECUTIVE SUMMARY

Internet neutrality—commonly known as “net neutrality”—refers to the principle of maintaining equality of access and treatment of data on the Internet. In 2010 the U.S. Federal Communications Commission (FCC) established rules regarding net neutrality in an Open Internet Order. A January 2014 District of Columbia District Court ruling struck down the 2010 FCC net neutrality rules. A new FCC proposal (FCC 14-61), currently under consideration, attempts to strike a balance between net neutrality and the use of fast and slow lanes in “commercially reasonable” circumstances. However, if such preferential treatment were deemed to be “commercially reasonable,” ISPs would be able effectively to control online innovation through the use of discriminatory pricing. The Open Internet Order articulated the belief that the Internet was, and should remain, a “level playing field,” free of corporate gatekeepers. Net neutrality, reiterated in any new FCC rules, is essential.

INTRODUCTION

Internet neutrality—commonly known as “net neutrality”—refers to the principle of maintaining equality of access and treatment of data on the Internet. The term is attributed to Columbia University professor Tim Wu, who used it in a 2003 article. Net neutrality is related to the “common carrier” concept, which in common law countries refers to persons or companies that transport goods or people for the benefit of the general public, in contrast to “contract carriers,” which transport only for certain clients and can refuse transport for others.

Considerable debate has taken place, particularly in the United States, with regard to whether net neutrality should be set into law. In 2010 the U.S. Federal Communications Commission (FCC) established rules regarding net neutrality in an Open Internet Order. The order stated, in part, that net neutrality rules were intended to “preserve the Internet as an open platform for innovation,

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investment, job creation, economic growth, competition, and free expression.”

However, in spring 2014 the FCC was reported to be considering new rules that would permit Internet service providers to use faster lanes of data transmission to favor certain users, thus effectively reversing the neutrality, or equal treatment, principle established in the Open Internet Order.

DISCUSSION

The debates surrounding net neutrality have long roots. Some commentators, such as Harvard University professor Robert Darnton, have traced them to Enlightenment Age controversies about regulating the power of print, issues related to commerce, politics, and free expression. Darnton recalls, for example, natural-law philosopher John Locke’s opposition to the Licensing Order of 1643, which in England had restored censorship following the collapse of the Stuart monarchy. The order was not renewed in 1695, thus effectively ending prepublication censorship at that time. Locke was a principal opponent of renewing the order. But although Locke was concerned with censorship, he was as mindful of commercial issues. For instance, he noted the high cost and shoddy quality of printing in England, because of exclusive rights—i.e., a monopoly—held by the Company of Stationers under the Licensing Order, compared to printing in Holland.

Current debates over Internet neutrality also are as much about commerce and innovation as they are about access, openness, and free expression. Under the FCC Open Internet Order of 2010 (FCC 10-201) large telecommunications corporations were prevented from stifling competition and innovation, that is, from gaining any advantage amounting to a commercial monopoly or, because several large corporations likely would emerge in power positions, a megalopoly. The next year, however, saw the controversial merger of the cable giant Comcast and the media conglomerate NBC Universal, which was approved by the FCC in 2011. The merger was characterized by some commentators as a “media megalopoly,” and the FCC acknowledged at the time that the merger could create risks “to the development of innovative online video distribution services” (quoted in Arango and Stelter 2011).

A primary reason for the consideration of new rules now stems from a January 2014 District of Columbia District Court ruling that struck down the 2010 FCC net neutrality rules. The decision, characterized by proponents and critics alike as confusing and contradictory, has nonetheless introduced uncertainty about what net neutrality means and what rules still apply. Concern among proponents of net neutrality centers on the potential privileging of Internet service providers (ISPs), who could, under the new rules, charge for preferential treatment—e.g., fast-lane transmission. The new FCC proposal (FCC 14-61) attempts to strike a balance between net neutrality and the use of fast and slow lanes in “commercially reasonable” circumstances (p. 5). However, if preferential treatment were deemed to be “commercially reasonable,” ISPs would be able effectively to control online innovation through the use of discriminatory pricing. In other words, large, wealthy corporations would essentially control the Internet at the expense of the common good.

Given the pervasive power of the Internet, not only in commercial contexts but also in education and daily life, both in the United States and elsewhere across the globe, policy makers, educators, and

concerned individuals everywhere have a stake in ensuring that meaningful net neutrality is established in principle and maintained in practice. Whether this can be achieved in concert with the approval of fast and slow lanes is questionable.

A number of suggestions have been put forward with regard to modifying the proposed new FCC rules to ensure the maintenance of net neutrality. The Internet advocacy group Public Knowledge (www.publicknowledge.org), for example, has suggested that reclassifying the Internet as a telecommunications service, rather than its current status as an information service, would allow the FCC to have authority to enforce net neutrality. Others have suggested that ISPs need to be classified as “common carriers” because, lacking such classification, ISPs are free to charge companies for access and users for certain services—i.e., to function as “contract carriers.”

An online petition in February 2014 drew a response from U.S. president Barack Obama that he “strongly supports” a free and open Internet but, because the FCC is an independent agency, cannot order the FCC to reclassify broadband service as a utility (Wyatt 2014).

Net neutrality is not exclusively a United States issue. Experts see the potential for “ripple effects” abroad. If new FCC rules hamper innovation, for example, that could be a boon for other countries. On the other hand, if other countries adopt similar rules, it could bode ill for net neutrality elsewhere as well (Hilburn 2014). As an example, in April 2014 the European Union (EU) approved new rules “aimed at guaranteeing equal access to the Internet.” However, final endorsement must be given by the next European Parliament, which will be elected in May 2014), and the debate over net neutrality is as fierce in the EU as it is in the United States (Scott and Kanter 2014).

CONCLUSION

Strategies for achieving effective net neutrality aside, the important principle remains ensuring that the Information Highway continues to be a freeway of innovation, information, and free expression and is not turned into a commercial toll road, to which privileged access is granted to wealthy corporations that can then encourage or stifle innovation as they see fit and inhibit competition. “Preferred” access risks disempowering those consumers—whether individuals, institutions, or other entities—who cannot afford the tolls.

Digital Media Association, a trade organization primarily representing online audio and video industries, which supports net neutrality, points out that

consumers already pay for network access, and that networks can seek higher prices from users of higher amounts of bandwidth—but that networks should not be able to discriminate against content providers based solely on the identity of the information source or the competitive attributes of the information being provided.
(<http://www.digimedia.org/issues-and-policy/net-neutrality>)

Blocking or limiting access to Internet content is anathema to education for the common good. Commodifying access by privileging wealthy corporations at the expense of rendering everyone else

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second class risks substantial educational harm to institutions and individuals and upends the democratic ideals of equity and equality regardless of socioeconomic status and other potentially discriminatory factors.

IMPLICATIONS AND RECOMMENDATIONS

AECT urges caution in the adoption of new rules by the FCC and specifically opposes rules that privilege ISPs or other corporate entities. Net neutrality is a vital concept. In the words of the 2010 Open Internet Order,

the Internet has thrived because of its freedom and openness—the absence of any gatekeepers blocking lawful uses of the network or picking winners and losers online. Consumers and innovators do not have to seek permission before they use the Internet to launch new technologies, start businesses, connect with friends, or share their views. The Internet is a level playing field.

Especially in the context of fostering equity and equality in education, we believe the maintenance of this “level playing field” through net neutrality is essential.

New FCC rules are expected to be announced by the end of 2014. AECT encourages its members and other concerned individuals to share this policy brief with state leaders, local officials, and others who shape policies regarding Internet use.

NOTES

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