

**Threat to the net: “Network neutrality” is good, but enshrining it in law is not**  
**By Kenneth Neil Cukier**

To understand why the internet is so important, and how it represents a revolution in communications, consider the telephone system. It was a closed network and a centralised one. The phone company—usually a state-run monopoly, like the old BT—metered every call through its switching centre, and billed them based on duration and distance. Any new feature, from touch-tone dialling to call forwarding, had to be accepted and put in place by the company. There was little incentive to innovate—especially if it might disrupt the status quo.

The internet overthrew this model of communications. It does not have a central organisation overseeing things. As a quilt of interconnected, privately owned networks (ergo "inter-net"), the system was designed simply to carry data without regard to its content, be it a web page, phone call or song. It is open, in that it permits anyone to unleash new services to the world without asking for permission. Because of this, people pay for access based on the amount of bandwidth they use, rather than the specific things they do. If the internet worked on the telecoms model, every email would be individually charged according to its destination and the length of the message.

This decentralisation and openness is a stimulus to innovation. Because the network doesn't need to adhere to the interests of any one organisation, there is nothing to prevent new services cropping up. These things emerge from anywhere, be it the web (invented by a Brit in Geneva) or instant messaging (popularised by an Israeli firm), to Napster (created by a teenager in California). It can even challenge the existing powers—the price of phone calls fell so fast recently because competition came from calls routed through the net.

In the early days of the internet, the techies who built it summed up the philosophy behind their creation as the "end-to-end principle"—any entity can reach any other directly, without an intermediary like the centralised phone company to get in the way. Today, politicians and cyber-activists call the approach "network neutrality." It is like free trade: open interaction among parties. Troublingly, it is under threat.

In the US, telecoms and cable companies are making noises about charging customers depending on what they do online, and billing major websites for the right to reach users. This would be in addition to paying for broadband access. Basic things like email or surfing the web may be free, but there would be a surcharge for higher bandwidth activities like watching videos.

The matter has reached the floor of congress, which is debating new telecoms rules. Consumer groups and big web companies want to enshrine the principle of network neutrality in law, penalising attempts to undercut it. Based on the amount of lobbying dollars pouring in from all sides, there will be a political battle this autumn.

The controversy is cropping up in Europe, too, where former state-run carriers are laying down new high-speed networks, and are calling for a lighter regulatory touch.

In Britain, for instance, BT is building a "21st-century network" and wants to set prices as it sees fit. In Germany, the regulator plans to let Deutsche Telekom run a new high-speed network without much regulation, to the outrage of the EU's competition authorities.

The fear is that without network neutrality, telecoms and cable companies will act as online gatekeepers or tollbooths. Start-ups would have a harder time competing with major websites since they would need to pay extra for the right to reach users. And big sites like Google or eBay would face a form of extortion: pay up, or expect your site to stream to web surfers like clotted cream through a sieve. Moreover, it would undermine the internet's capacity for innovation, which has enabled its breathtaking success.

In some ways, the interest of telecoms companies seems reasonable: building new high-speed lines costs money, and they ought to be able to earn income as they see fit. Billing more for better service is only sensible, the argument goes. The problem with this view is that the desire to impose a surcharge is a function of market dominance. When there were scores of independent internet service providers in the 1990s, none dared undo network neutrality since rivals would pounce. But the advent of broadband means the service provider is now also the network owner—and the handful of operators have the power to change the rules.

In this polarised environment, the arguments on both sides are flawed. Internet companies are right that network neutrality is vital, but wrong to reach for the law to ensure it. The operators are correct to charge as they see fit, but ought to think twice before trying to overturn network neutrality.

Although the principle is desirable, using the law to preserve it is not. Such a rule would implicitly suggest that there is only one economic model that works for the internet. For a network typified by experimentation and diversity, this is unlikely. It risks encasing in amber the current technical design of the internet, at a time when network engineers are reconsidering its earliest approaches to make the net more efficient and secure. Isn't it "un-internet-like" to treat the net like this?

Yet if a law to ensure network neutrality is a bad idea, that doesn't necessarily mean the principle will be abandoned. Relying on the market should preserve it for two reasons. First, there is nothing to stop websites like Google, Amazon and others from joining together and announcing that they will disconnect from networks that refuse to respect neutrality—a strategy that would swiftly remind the telecoms carriers that the balance of power on the internet works two ways.

Second, telecoms companies have long adhered to "non-discrimination" of traffic partly in order to buttress their claim for immunity from liability regarding the content they carry. If network operators start to monitor traffic in order to charge more for certain types, they also potentially open themselves up to liability for everything from porn to copyright infringement.

Ultimately, the operators will see it as in their interest to maintain network neutrality—and the open network will live to fight another day.

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