

Internet Discrimination: Impending Threat to Technology Growth? Part 2 of 3



By [Leo Wrobel](#)

Date: May 3, 2011

[Return to the article](#)

The Internet, as we have come to know it, is one of the ultimate forms of democracy and expression of free speech. However, as soon as we begin creating haves and have-nots in cyberspace, we lose some of our freedom. In Part 2 of a three-part series, telecom expert Leo Wrobel digs deeper into the importance of maintaining Net Neutrality and how large corporations are already hacking into

NOTE

As of the time of writing of this article, the Libyan government had initiated an Internet blackout for the second consecutive day in response to protests against the country's leader Muammar Gaddafi. Libya's inbound and outbound Internet traffic was cut off at 7:15 p.m. ET on Friday, February 18, 2011 following two partial shutdowns that came earlier in the day. Libya is the latest North African country in recent months to shut down the Internet in an effort to silence anti-government protesters, who are using the Internet to organize the opposition efforts.

Control of the Internet in the hands of a few—whether government, large special interests, or both—is a sobering proposition. Hopefully by the time you read this article, the situations in the Middle East will have played out. In the meantime, while extreme, the events in North Africa should reinforce the importance of debates going on in the U.S. at this time.

In the last article, we discussed the principals of Net Neutrality including the notion that all connectivity infrastructure—including servers, Internet service providers (ISPs), and transmission lines—must be content-agnostic, non-discriminatory, and provide the same level of connectivity to all its users. We discussed the opposing arguments from critics of Net Neutrality (e.g., most major telecom carriers) who argue that pipeline capacity is limited, and that incentives (both financial and regulatory) are required in order for them to come to play well with the other children. Given the snide remark just made, and the comments from the previous article, it should be plain which side of the argument I come down. Nonetheless, I ended the previous article with a statement that it is possible to develop an even-handed national policy, which includes a fair rate of return for the large oligopolies looking to uphold the notion of a non-discriminatory Internet. This article digs deeper into the topic.

The Dangers for Net Neutrality

The Internet's most idealistic users tell us the Net does not discriminate between racks of information. The Internet allows you to access any website, from the smallest boutique to eBay.com. It does not censor access to blogs and forums where unpopular opinions are expressed. In addition, it does not transmit CB content any more efficiently than it does content from NBC, CNN, or Joe's News Service. This is Net Neutra

Net Neutrality is already so much a part of what the Internet is that most Internet users never even think about it. Yet through the efforts of special interests, Net Neutrality is at risk of going away. Proponents of Net Neutrality maintain that unless the unwritten law is codified into a federal law or regulation, the big telecom companies that provide Internet connectivity will try to impose tiered service models on Internet users, similar to those used by wireless companies in the early days of cell phones, that will create artificial scarcity in the pipeline as a way to weed out competition, ultimately ensuring their monopolistic control of the Internet.

"The Internet today is an open platform where the demand for websites and services dictates success. You've got barriers to entry that are low and equal for all comers. And it's because the Internet is a neutral platform that I can put on this podcast and transmit it over the Internet without having to go through some corporate

media middleman. I can say what I want without censorship. I don't have to pay a special charge. But the big telephone and cable companies want to change the Internet as we know it. They say they want to create high-speed lanes on the Internet and strike exclusive contractual arrangements with Internet content providers for access to those high-speed lanes. Those of us who can't pony up the cash for those high-speed connections will be relegated to the slow lanes. We can't have a situation in which the corporate duopoly dictates the future of the Internet and that's why I'm supporting what is called net neutrality.'

Barack Obama

June 8, 2006

Proponents of Net Neutrality claim that small business owners benefit from an Internet that allows them to compete directly, as opposed to an Internet where they can't afford the price of entry. The claim Net Neutrality ensures that innovators can start small and dream big about being the next eBay or Google without facing insurmountable hurdles. Without Net Neutrality, proponents claim, startups and entrepreneurs will be muscle out of the marketplace by big corporations that pay for a top spot on the web. For example, connecting to your office could take longer if you don't purchase your carrier's preferred applications. Sending family photos and videos could slow to a crawl. Web pages for online banking, access to health care information, planning a trip, or communicating with friends and family could fall victim to pay-for-speed schemes.

Independent voices and political groups are especially vulnerable. Costs will skyrocket to post and share video and audio clips, silencing bloggers and amplifying the voices of the big media companies. Political organizing could be slowed by the handful of dominant Internet providers that ask advocacy groups or candidates to pay to join the "fast lane."¹

Critics of Net Neutrality, on the other hand, argue that there's no skullduggery going on. Pipeline capacity is limited, they claim, and unless some kind of incentive is offered to the companies that are spending billions upon billions of dollars to extend broadband reach and improve its speed, those companies may decide that investment is not worth it and stop spending.²

Consider what happened with Comcast, the largest provider of home Internet service in the U.S., as well as the largest cable TV operator and the third-largest telephone provider. Comcast currently provides high-speed Internet services to close to 16 million subscribers. In October 2008, Comcast updated its terms of service to reflect what had long been rumored to be an unofficial company policy: Customers who used an excessive amount of bandwidth as defined by Comcast in August 2008 as 250GB or more per month were subject to termination. To combat this excessive use, Comcast had been decelerating downloads through the BitTorrent service, deployed primarily by users to gain access to illegally distributed music and movies. Comcast's behavior was only partly a blow struck on behalf of defenders of intellectual copyright. Mostly, Comcast had imposed its BitTorrent embargo because the BitTorrent downloads were slowing the rest of the pipeline traffic to a crawl. In effect, Comcast's decision to slow down BitTorrent transmissions was an act that placed a higher priority on non-BitTorrent content than it placed on BitTorrent content. In other words, it violated the basic tenet of Net Neutrality. Nonprofit Internet watchdog groups like Open Internet Coalition quickly got into the fray. So did the FCC, which reprimanded the cable-broadcasting giant publicly, and instituted proceedings against the company.

Then as now, however, adherence to Net Neutrality rules is purely voluntary since Net Neutrality is nowhere codified into law or even formalized as part of a standard of professional conduct. Comcast sued the FCC, and in March 2010, a federal appeals court granted Comcast's petition for review, vacating the FCC's 2007 order.³

Since the court's ruling was made, the FCC has continued to advocate strongly for Net Neutrality while it searches for a way to establish jurisdiction over broadband services. FCC chairman Julius Genachowski, an Obama appointee, maintains that the FCC's jurisdiction can be re-established through Title II of the Telecommunications Act. Meanwhile the FCC continues to meet with ISP lobbyists and representatives from companies like Google, Skype, and Facebook to hammer together a consensus on how the agency should regulate broadband Internet service and where net neutrality fits into the picture.⁴

Footnotes

¹ Adopted in part from advocacy groups such as <http://www.savetheinternet.com> and others.

² In 2009, Arizona Senator John McCain introduced legislation designed to prevent the FCC from imposing its

rules on ISPs. He stated that by stifling innovation, net neutrality would slow the economic recovery, depressing a weak job market even further.

³ In 2009, Arizona Senator John McCain introduced legislation designed to prevent the FCC from imposing its rules on ISPs. He stated that by stifling innovation, net neutrality would slow the economic recovery, depressing a weak job market even further.

⁴ Aaron M. Kelly, Esq. is a partner with The Kelly Law Firm, L.L.C., <http://www.aaronkellylaw.com>, 13430 N. Scottsdale Road, Suite 106, Scottsdale, Arizona 85254. Mr. Kelly can be reached at aaron@aaronkellylaw.com or by calling 480-331-9397. He also has a blog at <http://kellylawblog.com>. The author thanks Aaron for his lucid and thoughtful input to this article.

Control by Large Corporations: It's Already Starting

True to form, the week of March 15, 2011, AT&T announced that it would limit the amount of data its DSL and U-verse broadband subscribers can access per month. Beginning in May, AT&T will cap broadband use at 150GB a month for DSL and 250GB for U-verse (fiber-optic line) users, and will charge \$10 for each additional increment of 50GB. In doing so, AT&T is throwing into question the future of online movies, gaming, programming and VoIP calling. Microsoft's monopoly is coming back in a big way. By exploiting its near monopoly on D services, for example (which was largely excluded from the unbundling and wholesale requirements of the 1996 Telecom Act courtesy of the AT&T lobby), AT&T is positioned to control just about everything we do on the web these days, and much of what innovators are trying to create.

Consider Netflix. The service allows customers with high-speed Internet access to watch movies and other programming via their high-speed Internet connection. It's a runaway success, in part due to the fact that Americans have become accustomed to watching TV on *their* schedule, and often without commercial interruption. It's also a cost-effective service. At \$7.99 a month, it is giving AT&T U-verse, Comcast, and others a good run for their money. This all stands to go away if the large content providers have their way. This is because the 150GB of data AT&T proposes does not buy all that much in the way of movie content. If you exceed the amount, and are an AT&T DSL user, you have to pay extra to AT&T. As an example, if you stream a movie such as *Avatar* in HD, you're probably going to use 3-4GB of data. A single 44-minute HD episode of *Brothers & Sisters* saved to your computer for later viewing potentially eats up 3GB, based on my own personal observation. As a rough estimate, this means only about three hours of TV programming a day, before you ever surf the web, read email, access Facebook, tweet, or make a VoIP phone call.

Summary

I contended in the first article that fiber-optic capacity was like Doritos: Once you want, we'll make more. AT&T and others, however, have not gotten that message and instead are trying to reassert their former monopoly, this time on the Internet. Rather than trying to outdo its competitors by investing in more capacity (which is not expensive to do, relatively speaking, as I pointed out in Part 1), AT&T is taking advantage of its status as the owner of the existing outmoded pipes (which are mostly copper plant) that carry their DSL service to squeeze out potential rivals like Netflix and Hulu. This will make it harder and more expensive for its customers to access services online. It's an awful precedent, a deplorable business model, and a practice that the rest of industry will be following in short order, absent government rules and oversight.

We will discuss options like these in the third and final article of this series. In the meantime, Google Onet Neutrality and learn more. Write your representatives. Enjoy a free and open Internet now, while you still can.