

Net-Neutrality: The First Amendment of the Internet

The public debate for and against net neutrality – i.e. all data on the internet should or should not be treated as equal – has heated up considerably in recent months, and rightfully so as it is an important debate. Arguments pro and con are exchanged and lobby-power has been wielded, with governments and regulators caught in the middle.

In the camp of those questioning the principle of net neutrality we find parts of industry, mainly the ISPs and telecommunication industry, anti-state activists and right wing think tanks. Those advocating for preserving net neutrality include civil rights groups, communication rights activists and unsurprisingly parts of the content producing industry. Those against net neutrality claim that net neutrality constrains innovation because it stifles new business models, increases regulation and state intervention while also impeding the provision of better quality of service and reducing consumer choice. Advocates – amongst others – state that net neutrality precisely fosters innovation by assuring a level playing field for all those active online. Compromising on it would give current dominant players a clear competitive advantage over innovative start-ups and would transform ISPs into a kind of cable operator through their creation of artificial scarcity.

The internet today is, however, not what it was at the outset. It has in some regards outstripped its expectations and will continue to do so in the years to come. Because of this, the internet as a network and an information and communication infrastructure has become infinitely more complex, multi-nodal, more global and creatively destructive. It has opened up new channels of communication, displaced old ways of doing things, generated new patterns of behaviour and provided easy access to a wealth of information and digitized content unimaginable a few decades ago. It has done this at least for those on the right side of the digital divide and for those who are media literate.

As a result of all this, debates about the nature, the architecture and the governing principles of the internet are not merely technical or economic discussions. Above all, these debates have deep political, social, and cultural implications and become a matter of public, national and global interest.

In many ways, net neutrality could be considered the first amendment of the internet; no pun intended here. However, just as with freedom of speech the principle of net neutrality cannot be approached as absolute or as a fetish. Even in a democracy we cannot say everything applies all the time in all contexts. Limiting the core principle of freedom of speech in a democracy is only possible in very specific circumstances, such as harm, racism or in view of the public interest. Along the same lines, compromising on the principle of net neutrality should be for very specific and clearly defined reasons that are transparent and do not serve commercial private interests, but rather public interests or are implemented in view of guaranteeing an excellent quality of service for all.

One of the only really convincing arguments of those challenging net neutrality is that due to the dramatic increases in streaming activity and data-exchange through peer-to-peer networks, the overall quality of service risks being compromised if we stick to data being treated on a first come first serve basis. We are being told that popular content will need to be stored closer to the consumer, which evidently comes at an extra cost.

Implicitly two separate debates are being collapsed here and I would argue that we need to separate both. The first one relates to the stability of the internet as an information and communication infrastructure because of the way we collectively use that infrastructure. The second debate is whether ISPs and telecommunication companies should be allowed to differentiate in their pricing between different levels of quality of access, both towards consumers and content providers.

In regards to the first debate on internet stability, a case can be made for allowing internet operators to differentiate between different types of data with different needs – if for any reason the quality of service of the internet as a whole cannot be guaranteed anymore. And if this can only be fixed by partially transforming the internet into an intelligent network which can make differentiations based on kinds of data. For example, data-transfers requiring immediacy such as VOIP, peer-to-peer and streaming could be given another latency status than data that is accessed in delay such as email.

Just as with freedom of speech, circumstances can be found in which the principle while still cherished and upheld, can be adapted and constrained to some extent. To paraphrase [Tim Wu](#), the aspiration should still be 'to treat all content, sites, and platforms equally', but maybe some forms of content should be treated

more equally than others in order to guarantee an excellent quality of service for all. However, the societal and political implications of this need to be thought through in detail and as with freedom of speech itself, it will, I believe, require strict regulation and conditions.

Concerning the second debate on differential pricing, it is fair to say that from a public interest and civic liberty perspective the consolidation and institutionalization of a commercially driven two-tiered internet is not acceptable and impossible to legitimate. As is allowing operators to differentiate in the quality of provision of certain kind of content above others. A core principle such as net neutrality should never be relinquished for the sake of private interests and profit-making strategies – on behalf of industry or for others. If we need to compromise on net neutrality it would always have to be partial, to be circumscribed and only to improve the quality of service for all, not just for the few who can afford it.

Separating these two debates exposes the crux of the current net-neutrality debate. In essence, we are being urged to give up on the principle of net-neutrality to guarantee a good quality of service. However, this argument is actually a pre-text for the telecom industry to make content-providers pay for the facilitation of access to their audiences – the internet subscribers. And this again can be linked to another debate being waged amongst content providers: how do we make internet users pay for the content they access online? I won't open that can of worms here, but I will make my point clear. Telecommunication industry efforts to make content providers pay for access to their audiences do not offer legitimate reasons to suspend the first amendment of the internet.