

The Need to Keep the Internet Open, Accessible, and Fast

Background

Open access is a basic principle of our Internet. The Internet, after all, was invented and built with public tax dollars. All Americans should have the right to use Internet software, sites, and services without the interference of the large telephone and cable companies. But AT&T, Verizon, Comcast and other giants want to change the rules that have made the Internet a success.

Think of the Internet as a superhighway for information where anyone – from Apple’s iTunes to a garage band distributing songs on their own home page -- can gain access to the road. Both the big player and the new entrant can reach individuals, anywhere, on equal footing. But now, AT&T, Verizon and Comcast want to change the rules and put up toll booths on the Internet, despite the fact that all of us already pay hefty, monthly charges for our DSL, cable and fiber optic connections to the Internet.

If the phone and cable companies get their way, websites and online service providers who aren’t able to afford these fees would be put in a slow lane. Large media companies who can pay the tax to use the fast lane would dominate what you can access. The less powerful voices would be lost. That would mean a lot less consumer choice and it would strangle individuals and small companies trying to get their businesses off the ground. The alternative is net neutrality. Simply, net neutrality guarantees that broadband networks cannot use their networks to give preferential fast lane access to any content provider, nor can they slow down content or services that are unable to pay. The Open Internet Coalition seeks to ensure that the transmission of internet traffic remains open, accessible and fast, and does not favor one particular brand or type of content over another.

We aren’t seeking anything new or radical – net neutrality was the law of the land from the Internet’s inception until 2005, when the cable and telephone companies successfully lobbied the Federal Communications Commission to change the rules. We want to preserve the best of the Internet: giving consumers greater choice at the lowest possible cost; ensuring that the Internet’s economic engine keeps moving ahead; protecting innovators and small business; and advancing the founding principles of the Internet.

The Internet Has Enabled Innovation. The remarkable success of the Internet can be traced to a few simple network principles – end-to-end design, layered architecture, and standardized protocols – that give consumers choice and control over their online activities. This “neutral” network has supported an explosion of innovation at the edges of the network by enabling innovators to connect their Internet content and services freely to users without any fear of discrimination or prohibitive access costs. As a result, we have witnessed an array of unpredictable new offerings – from Voice-over-IP to wireless home networks to blogging – that might never have evolved had central control of the network been required by design.

The Heritage of the Internet Is At Risk. The Internet as we know it, however, is at risk because the basic openness rules no longer apply. A June 2005 decision by the Supreme Court upheld an FCC order removing nondiscrimination requirements on cable modem broadband services. Then, in August 2005, the FCC adopted a similar ruling for DSL broadband provided by telephone companies. At the same time, the FCC refused to adopt enforceable non-discrimination protections for the broadband market, instead adopting short-term merger conditions on two telephone companies and an unenforceable “policy statement” for the remainder of the market.

Network Operators Will Discriminate. There is a clear and present danger to the open Internet. In the absence of a legislative mandate upholding network neutrality, the big network operators will discriminate against unaffiliated content. The largest telephone and cable companies provide more than 98% of the broadband service received by Americans. As AT&T CEO Ed Whitacre has said:

Now what they [Google, Yahoo! or eBay] would like to do is use my pipes free, *but I ain't going to let them do that* [W]e and the cable companies have made an investment and for a Google or Yahoo! or Vonage or anybody to expect to use these pipes [for] free is nuts!¹

Since the FCC's decision in August 2005, all the big telephone network operators have publicly stated that they will exercise their right to discriminate against unaffiliated content.² Cable companies likewise pose a threat to the open Internet. These are the very companies that sought to limit the amount of streaming video consumers could view over their broadband connections, tried to charge extra for the “privilege” of using a VPN connection, and threatened litigation against customers who attached Wi-Fi devices at home. The cable companies have not changed their stripes: Time Warner and AOL recently blocked delivery of all e-mails referencing a “Dear AOL” petition circulating on the Internet — i.e., they prevented consumer from receiving lawful content over the Internet simply because they did not like the content

Network Neutrality Is Compatible with Broadband Deployment. Consumers and content providers already pay for broadband services and they will continue to do so with Network Neutrality protections in place. The network operators claim that Internet content companies are free-riding on their investments and that a network neutrality requirement would preclude a reasonable return on their investment. Such assertions are simply wrong, by billions of dollars. First, the largest content providers alone pay hundreds of millions of dollars a year to the network operators to connect their servers to the Internet, and network operators collected \$14 billion last year for transmitting data. Second, the network operators earn billions of dollars more from consumers for broadband Internet access – demand driven

¹ Patricia O'Connell ed., *Online Extra: At SBC, It's All About "Scale and Scope"*, Business Week, Nov. 7, 2005, at http://www.businessweek.com/magazine/content/05_45/b3958092.htm.

² See, e.g., Dionne Searcey and Amy Schatz, *Phone Companies Set Off A Battle Over Internet Fees*, Wall Street Journal, Jan. 6, 2006, at A1. Jonathan Krim, *Executive Wants to Charge for Web Speed*, Washington Post, Dec. 1, 2005, at D5 (noting that Bell South Chief Technology Officer said company should be able to give one search engine the opportunity to have its search site load faster than that of another search engine).

by the Internet content developed not by the Bells but by those companies investing at the edge of the network. Third, the network operators will earn more by delivering content and services to consumers, provided they can deliver content and services that have appeal to the market. No one is saying that network operators should not be able to earn a fair return on their investment. But how many times should they get paid?

Network Neutrality is Vital to Investments in Innovative Content. Network operators are not the only ones investing large sums to shape the future of the Internet. Internet content companies, both established enterprises and upstart firms, are investing to develop new content, applications, and services for the Internet. These are the kinds of investments and innovations that made the Internet what it is today. Future investments in content and applications **depend upon assurances that network owners will not discriminate against bits based on their source or affiliation with the network owner.**

The Time is Now To Preserve the Vital Heritage of the Internet. The Internet has grown because no central gatekeeper controlled the rate of innovation. As the father of the Internet, Vint Cerf, testified before Congress: the Internet is “innovation without permission.” Had the narrowband Internet of the 1990s been limited to a limited range of content chosen by the local telcos, it never would have developed into the broadband Internet of 2006. Preserving an environment for innovation and competition among content, services and devices that connect to broadband networks is thus an essential part of broadband policy. The future of innovation on the Internet is too important to leave to a handful of network operators instead of the free market.

“Fifth Principle” is necessary to maintain the open Internet. In order to maintain the open Internet that we have today -- the Internet that has ensured innovation and economic growth in America – *at a minimum* it is necessary to have a principle that requires nondiscriminatory treatment of bits at no charge. Anything else is simply not the Internet. Without this “fifth principle,” the Internet is a two-tiered fast and slow lane in which the *network operators choose* what and how consumers receive content – *a complete flip* from the world we have today, where users are in charge of the Internet.