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The Right to Communicate

Essay by Daithí Mac Síthigh, June 9, 2008 in response to Freedom of Listening: An Eighteenth Century Root for Net Neutrality

Lewis Hyde's thoughtful essay on network neutrality and the trials of 18th-century preachers-without-pulpits is a timely reminder that the issue of net neutrality is not one that should be the sole business of a small group of Internet activists and lobbyists. It's about time to acknowledge that, while increasingly vehement disagreements between economists on how to stimulate the development of broadband in the US are undoubtedly fun to watch, a broader conversation on the cultural and political impact of new technologies is slowly emerging from the confusion that is net neutrality.

There is something poignant about Benjamin Franklin's idea that the privately-funded lecture hall would "accommodate ... the Inhabitants in general". It is a simple and elegant notion of public service that can exist in any organisational or regulatory context; an ethos that accommodates the contradictory and puzzling whims of the community is, after all, the ultimate in corporate social responsibility. Yet there is also a strong similarity between the decisions of the debate-favouring friends of Franklin and the millions of hours spent by developers, programmers, moderators, designers, bloggers and more in building a vibrant, chaotic and global Internet. It is unsurprising, therefore, that there has been significant popular participation on the "pro-neutrality" side, and arguably less so on the opposite side.

Those opposed to legislation on net neutrality often argue that the law should not get involved in a matter like this. They forget, though, that the pride and joy of much of the US Internet industry, the broad immunity from suit granted by the Communications Decency Act, is of course a privilege granted by law, not something that came down from the sky above. Indeed, the expansive interpretations of the key section (47 USC 230c) by successive courts serve as a reminder that without a law tailored to the needs of service providers, we would have a very difficult environment for online speech. It may be sensible, then, for lawmakers elected by the people to say that if carriers wish to benefit from the legal protection of being treated like passive carriers (immunity), they may also have to act like passive carriers (neutrality).

On the other hand, it's important to avoid falling into the trap of "ISPs bad / providers and platforms good". Of course, for those who support a statutory or regulatory basis for net neutrality, the support of big players is welcome, particularly from a tactical point of view. However, if their dreams came true, and the ISPs were brought under control, the question of the control of content, expression and innovation by culturally significant (and in certain cases, essentially hegemonic) business in the areas of social networking, search and user-generated content would still be on the table. This is not to say that we should be demanding that Google be run by government - but to emphasise that net neutrality is part of a spectrum of issues relating to media, speech and freedom. Indeed, "divided sovereignty" itself, as cited with approval by Hyde, is surely threatened when users must play by the rules of the platform if they wish to interact with their "friends" who have all joined it. Jerome Barron shook the world of First Amendment scholarship in the 1960s by arguing for the right of "access to the media" and the reading of those famous words as a positive right. If the net neutrality debaters return this issue to the centre of the political debate, they will have done us all some service, whatever our creed or views may be.

As Jon Garfunkel points out in the comments to Hyde's essay, though, our friend Franklin didn't turn to the legal system. Instead, he took decisive action, bringing others on board and circumvented the status quo. The point I would make, however, is that the question should be not just a matter of where and how steps should be taken - Franklin was not averse to the role of Government acting pro bono publico where appropriate - and more a matter of why. From a non-US perspective, then, we need our own Franklins, to make sense of it all. I would suggest that one aspect, particularly valued in the European Union (and indeed elsewhere), is the idea of public service broadcasting (PSB) - an interesting but marginalised aspect of the US media environment, but a source of national pride in the case of some broadcasters like the BBC in the UK. The role of PSB in providing a cultural space for diverse political, artistic and social expression is a hugely important part of European media history. It is not just about the legal provisions that founded and developed the BBC, though, but the voices and ideas that came over its airwaves, and the impact they had on the community. Similarly, the quiet and determined work of the states that developed the UNESCO Convention on Cultural Diversity shows that the idea that new media has a positive role to play in sustaining and amplifying the range of perspectives and languages, however commercially unfeasible or politically controversial, is getting the recognition it deserves at the level of international law and policy. The challenge facing defenders of PSB and cultural diversity is to build common ground with those who have joined the debate on net neutrality, and to ensure that - through legal or non-legal means, as appropriate - the ideas and vision common to Greek democracy and tumultuous Philadelphia remain a part of the future of the Internet.

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