Net Neutrality Update

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What is Net Neutrality

Net neutrality is the principle that Internet service providers (ISPs) will not preference some sites or sources of traffic over others.

For example, an ISP might allow a website to pay a fee and have that website whitelisted into a faster download bracket or a bracket where that content would not count against customers' data caps, or they might charge websites a fee to be available to ISP customers at all. Alternatively, for example, an ISP might also produce its own content and run something like an in-house Netflix, and then not count access to that against customers' data caps.

Two real world realities affect how this would play out.

The difference in speed would likely be great. Fast versus slow; not super-fast versus okay. Think about your cell phone plan and your data plan. When you buy data in 2018, you generally are buying a certain amount of high-speed data. Once you hit that cap in a month, you get data, but not high speed. It is a dramatic difference, and that is the kind of data difference to expect for preferred versus not-preferred content in an absence of net neutrality.

Customers accessing the Internet often have little or no choice of company. The majority of people in the U.S. have only one or two ISPs to choose from that can service their postal address. Most reporting about this lack of choice cites back to Figure 5 of the Federal Communication Commission's (FCC) Industry Analysis and Technology Division Wireline Competition Bureau's report on *Internet Access Services: Status as of June 30, 2015*, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-340664A1.pdf. For someone with only one ISP servicing their postal address, if that ISP does not provide access to certain content, the person has no alternative way to buy the access. Therefore, if an ISP chooses what content to allow passing through to consumers, consumers likely will not have an alternate way to get the excluded content.

Industry

Industry breaks into two overlapping categories. First, there are ISPs. Since they tend to have monopolies over specific geographical areas, each would like additional income streams from content providers/publishers. This puts them against net neutrality regulations. Second, there are content providers/publishers. In the absence of net neutrality, they would likely have to pay additional fees to ISPs in order to get their content to customers. They tend to support net neutrality. There is some overlap. For example, Comcast owns NBC. Comcast is an ISP while NBC is a content provider/publisher. Overlap might play out in terms of ISPs always preferencing content from subsidiaries.

Why this matters for libraries

More and more library content is digital as opposed to print. Speed matters for online legal information. Pure text like a .txt file may be fine at low speeds. Even though law is largely textual information, scanned images of pages are the basis of databases like HeinOnline and Bloomberg Law. Instructional videos and video tutorials are ubiquitous in legal research and in state bar CLE (continuing legal education) programs. Webpages pretty much have to have pictures and graphics to look normal and not off-putting to people coming to the page.

In the absence of regulations requiring net neutrality, there is a chance that legal publishers would have to pay in order to let their websites be loaded online.

When libraries license electronic resources from a vendor, the library pays for Internet access (through the campus, law firm, or larger organization), and then the library pays for licensing the content. The library is paying to be able to receive information over the Internet. If an ISP is able to charge the vendors and require a fee in order for those vendors to send out content over that ISP's lines, then that is an extra cost for each vendor. The vendor has to pay to be able to send the content to the library. It is an extra cost that the vendor would pass on to the library in the form of higher subscription prices.

When libraries publish their own materials, for example by digitization projects or institutional repositories or by posting instructional videos, it might be the case that ISPs require the library to pay in order to send that info out to the public.

Even though any given postal address may only have one or two options for ISPs who offer service in that geographic area, it usually will be the case that a publisher is looking to reach several far apart geographic areas and would therefore have to pay multiple ISPs. The complexity of analyzing how to do this would likely be easier for large publishers and more difficult for small organizations like smaller publishers and individual libraries.

It might also be the case that it is not possible for a publisher to contract with ISPs in order to have a way to distribute content. In a total absence of net neutrality laws and regulation, there would not be a requirement for ISPs to price fairly or to contract at all with content providers/publishers. This could be a significant barrier to smaller publishers and to new websites and services.

For libraries, this is not an abstract public policy issue. Instead, it is key to how people get content.

Public Awareness of Net Neutrality

Historically, net neutrality has been a minor issue for the general public and has only been front and center or even on the radar for the tech industry rather than industry in general. That changed as first computers and then smart phones became ubiquitous.

The specific kind of technology that regular people are using matters. The government broke up AT&T in the 1980s, through government action on phone lines. In the 1990s and early 2000s, before Ethernet became common, Internet access was through phone lines. The early Internet had net neutrality built in as an artifact of restrictions on phone companies in place with the goal of breaking up the AT&T phone monopoly from the 1960s. Since around 2000, there has been a gradual shift in Internet access away from dial up to broadband. Then there has been a shift to cell phones. Because the underlying technology is different, regulations to break up the 1960s AT&T monopoly do not affect the vast majority of Internet use today. Along with those shifts in underlying policy, more and more people are Internet-connected such that today in the U.S., the majority of people use the Internet regularly for day-to-day tasks like watching videos and buying things.

Public awareness of net neutrality probably has emerged with consumption of streaming video and with ubiquitous smart phone access, where regular people shop for speed and shop for total amounts of data. When people buy a cell phone data plan, the monthly data cap is usually for high-speed internet access. Regular people understand that fast Internet and slow Internet is not a difference of fast versus almost-as-fast, but rather a difference of works well versus painfully slow.

Likewise, as online access and activity has become the norm for the general public, a broader industry group has emerged. Online sales have to take place over the Internet, so almost any business using the Internet to reach customers has a stake in reaching those customers with the fewest barriers possible.

Politics and Net Neutrality

Historically, net neutrality has not been a partisan issue. Individual politicians have each tended to go with lobbyists and donors working specifically with them. ISPs have big money, but so do content providers. In addition, the issue historically did not matter for the public and only started to matter as more and more people have gotten Internet access.

Recent History of Net Neutrality

On June 12, 2015, the FCC's net neutrality regulations took effect. These regulations are available in the FCC; *Protecting and Promoting the Open Internet*, 80 Fed. Reg. 19,737 (Apr. 13, 2015). The summary for these regulations states in part, "In this document, the Federal Communications Commission (Commission) establishes rules to protect and promote the open Internet. Specifically, the Open Internet Order adopts bright-line rules that prohibit blocking, throttling, and paid prioritization; a rule preventing broadband providers from unreasonably interfering or disadvantaging consumers or edge providers from reaching one another on the Internet; and provides for enhanced transparency into network management practices, network performance, and commercial terms of broadband Internet access service. These rules apply to both fixed and mobile broadband Internet access services."

Those regulations held up to challenge in court: United States Telecom Ass'n v. FCC, 825 F.3d 674 (D.C. Cir. 2016).

In April 2017, the FCC opened public comments on whether or not to repeal the net neutrality regulations. In Fall 2017, the FCC began rulemaking to repeal the net neutrality regulations. On February 22, 2018, the FCC published new regulations rolling back the 2015 FCC net neutrality regulations. (FCC; *Restoring Internet Freedom*, 83 Fed. Reg. 7,852 (Feb. 22, 2018)). A portion of the repeals was effective April 23, 2018 (83 Fed. Reg. 7,852), and a portion of the repeal is to be effective on June 11, 2018 (FCC; *Restoring Internet Freedom*, 83 Fed. Reg. 21,927 (May 11, 2018)).

On Feb. 27, 2018, S.J.Res.52, *A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Federal Communications Commission relating to "Restoring Internet Freedom"* was introduced in the Senate. This joint resolution, if passed, would repeal the FCC's *Restoring Internet Freedom* regulations and instead keep the 2015 net neutrality regulations in place. On May 16, 2018, the Senate voted to pass the joint resolution. If the House passes the resolution and the President signs it, the 2015 net neutrality regulations will remain in place.

All relevant votes, including votes of commissioners at the FCC to approve the 2015 rules and the 2018 repeal, have been along partisan lines with Democrats voting in support of net neutrality and Republicans generally voting to repeal net neutrality.

LIBRARY METRICS

Connecting Metrics to the Big Picture

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When collecting metrics about library usage, it is very easy to get caught up in the small details of the statistics themselves. When this happens, it is possible to arrive at a place where you are collecting statistics simply for the sake of collecting statistics. Sometimes it is useful to take a step back and make sure that you are actually measuring things that make a difference for your library. One way to do that is to look at what metrics can be used to measure how the library is engaging with its larger organization, whether that is a law school, a law firm, or any other environment.

In an article entitled "Using library search service metrics to demonstrate library value and manage workload," Laurissa B. Gann and Greg F. Pratt from the Research Medical Library (RML) at the University of Texas MD Anderson Cancer Center wrote about their experiences with assigning an "information use" value to the reference metrics they record (Gann and Pratt 2013). Librarians at the medical library had already been recording the topics of literature searches they were asked to do, but in 2010, they "decided to also record intended use of information requested" (p. 228). According to the article, the librarians "believed this information use metric would help the expert search service better manage a demanding workload and hoped it would help the RML discover and relate how its search services impact institutional activities" (p. 228). In order to provide some level of standardization in this "information use" metric, the search team identified possible categories for which information could be used, ending up with 21 categories.

For RML, the effect of collecting statistics on information use is that the library "is able to show its contributions to faculty research, publication productivity, development of educational classes and presentations, and overall contribution to the publication impact of the institution" (p. 229). The RML search team found that by simply adding this one piece of information to statistics they were already collecting, they were able to more effectively tie their work into the overall goals of their institution.

Gann and Pratt showed how making a small addition to the statistics kept about the library's day-to-day interactions can help make a case about the library's engagement with the goals of its larger organization. In another study, Craig Gibson and Christopher Dixon of George Mason University Libraries took a somewhat more top-down approach and studied the ways in which academic libraries make efforts to use metrics to measure library engagement (Gibson and Dixon, 2011). These librarians' definition of engagement is based on "the Boyer 'Scholarship of Engagement' construct, which sees higher education institutions, and their members, developing a 'public scholarship' which unifies research, teaching, and service in creating connections with a broader set of issues, concerns, and agendas beyond their institutions" (p. 341).

Gibson and Dixon interviewed librarians from ten academic libraries to determine their concerns about engagement in their university communities. As a result of these interviews, when it comes to measuring engagement, Gibson and Dixon suggest focusing on metrics in these five broad categories, giving examples of both qualitative and quantitative measures that can be used to measure engagement:

1. **Mission and strategy.** Metrics in this group include "engagement embedded in mission and vision statements" and "extent of involvement in stakeholder planning meetings across campus units."
2. **Role definition and positioning.** Metrics that fall into this category include "degree of library participation in teaching, research, and service processes of the institution" and "contributions to core strategic, institutional-level goals."
3. **Management and resource allocation.** Examples of metrics in this category are "flexibility and adaptation skills of library staff" and "externally-focused workload of staff."