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The Web's Worst New Idea

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If ever there was a solution in search of a problem, "Net neutrality" is it. Sometime recently, someone got up on the wrong side of bed and decided that the freedom that has been the hallmark of the Internet now threatens to destroy it.

Suddenly the Internet service providers, which you always thought were there to let you get onto the Net, are going to keep you off it unless the government imposes new laws and regulations.

Congressional hearings have been held. Vint Cerf, Internet progenitor and now Google evangelist, evangelizes. Thus has the cause of Net neutrality in its current incarnation become a new and ardent crusade of the political left.

Net neutrality is generally billed as a way of reining in Internet service providers (typically phone and cable companies), some of whom have made noises about charging content companies extra fees for guaranteeing priority to certain kinds of services. Net neutrality is supposed to save us -- and Google and Yahoo -- from this supposedly unconscionable behavior. Its effect would be more damaging.

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It's worth putting this zealotry in a broader historical context. In the decade or so since the commercialization of the Internet began in earnest, the number of users, the speed of their connections and the variety of things they can do on the Net have all rushed forward. Blissfully, but not coincidentally, all this has been accomplished with a light regulatory touch. Excepting pornography and gambling, no bureaucrats have decided what services could be provided over the Internet, or who could offer them or how they could charge for them.

The result has been rich and diverse. Web surfers can make phone calls -- sometimes free, sometimes for a fee. They can legally listen to music, either free, by subscription or by paying per song. They can watch some network television shows online -- again, some are free and supported by ads; others charge per program.

Some of the service ideas have been bad, and failed. Some are wonderful. But many would never have been tried if the Federal Communications Commission had been able to tell businesses whom they could charge, how much or how little, or what they could or couldn't sell on the Net. Freedom, in other words, has been the Web surfer's friend.

Enter Net neutrality, which has so far found its only official expression in a nonbinding policy

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statement issued by the FCC last year. The FCC statement says, "consumers are *entitled*" (our emphasis) to the "content," "applications" and "devices" of their choice on the Internet. They are also "entitled to competition among network providers, application and service providers, and content providers."

Take a moment to pause over this expansive list of "entitlements." If we take the FCC at its word, access to online pornography is now a right, even though in a different context the FCC is increasingly preoccupied with policing "decency" standards on television. We'd have thought FCC Chairman Kevin Martin would find all that entitlement talk a little embarrassing, given his campaign for decency standards.

But at least the FCC's guidelines were just that -- guidelines. Increasingly, and with the backing both of the Moveon.org crowd and "Don't Be Evil" Google, a movement is afoot to give these entitlements the force of law. Congressman Ed Markey has introduced a bill to "save the Internet" by codifying Net neutrality principles in law. The FCC would be charged with enforcing "non-discrimination" and "openness" rules.

Under a law like this -- variations are floating around both houses of Congress -- the country could look forward to years of litigation about the extent and nature of the rules. When the dust settled we'd have a new set of regulations that could span the range of possible activities on the Net. What's more, the rules aren't likely to stop with the phone and cable companies that have Mr. Markey and his friends at Moveon.org so exercised.

Non-discrimination cases could well be brought against Net neutrality backers like Google -- say, for placing a competitor too low in their search results. Google's recent complaint that Microsoft's new operating system was anti-competitive is a foretaste of what the battles over a "neutral" Net would look like. Yet Google and other Web site operators have jumped on the Net neutrality bandwagon lest they have to pay a fee to get a guaranteed level of service from a Verizon or other Internet service provider. They don't seem to comprehend the legal and political danger they'll face once they open the neutrality floodgates. We'd have thought Microsoft of all companies would have learned this lesson from its antitrust travails, but it too has now hired lawyers to join the Net neutrality lobby.

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All the recent scare-mongering about the coming ruination of the Internet is cloaked in rhetoric about how recent court rulings and regulatory actions by the FCC have undermined certain "protections." This is mostly bluster. Companies like AOL did not migrate from a "walled garden" to a more-open, Internet-centric model because of mandates from Washington but because the alternative was extinction.

Given the impulse on the left to regulate anything that moves, perhaps the real surprise here is that it's taken this long for someone to seriously suggest the Net will wither in the absence of a federal regulatory apparatus. "Don't ruin the Internet" is a slogan with a lot of merit. But it comes with a modern corollary, which is "Don't regulate what isn't broken."

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