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Op Ed — Second Thoughts on Net Neutrality: What We Have Lost in the FCC's New Oversight of the Web

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The **American Library Association** and the library community in general came out strongly in favor of the decidedly controversial notion of “net neutrality” early in 2014. “Net neutrality” became in the course of both that and this year the new code word for an increasingly regulatory role of the Internet by **The Federal Communications Commission**, a role that both the **ALA**, the **ACRL**, and others in the library community insisted would protect not only libraries but the nation at large from potentially unscrupulous Internet service providers. As **Courtney Young**, **ALA** President, commented earlier this year, “Network neutrality is essential to meeting our mission in serving America’s communities and preserving the Internet as a platform for free speech, innovation, research and learning for all.”¹

One can, of course, have little quarrel with the laudable library mission goals for the Internet outlined by **Ms. Young**, and I applaud her defense of a free and innovative Web. Even so, I question her and the Association’s insistence that there is but a single sure means to reach such goals (net neutrality), and I openly wonder whether our national library organizations in this matter spoke for and in the best interest of libraries in the longrun.

Of course, like everyone in the library community, I share the goals of both the **ALA** and **ACRL** leadership. I too want to increase the robust dimensions of the Web — “to preserve the Internet’s platform for free speech and innovation.” But one still has to ask: will the notion of net neutrality actually ensure all of this? Will increased government regulation of the Web by the **FCC** actually give us a better Internet world, or will we be worse off than we were before?

Early in April of this year, the **FCC**, in a 3-2 decision split along party lines, voted to regulate the Internet. After a great deal of debate, and heavy-handed pressure from the White House with an agency that formerly had prided itself on its independency, the **Federal Communications Commission** increased its oversight role of the Internet enormously in its late February decision. The text of the decision runs to over four hundred pages with much of the language lifted from regulations governing railroads in the 1880s and the phone companies in the 1930s.²

The key issue at stake here was whether or not Internet service providers (ISPs) “could be allowed to prioritize, throttle, degrade, or block lawful content.”³ The new net neutrality regulations of the **FCC** insisted unequivocally that ISPs henceforth could never do any of these things. From now on, the **FCC** — by careful oversight and judicious regulation — would ensure fairness and equal rates. As the defenders of net neutrality insisted, the new **FCC** oversight guaranteed that the Web will no longer suffer under the tyranny of Internet service providers driven by unbridled greed or bent on cutthroat competition.⁴

On first blush, these new regulations seem like a plus for consumers in general and libraries in particular, since all of us should benefit from a level playing field and fair and even-handed rates. But this is actually far from the case. Libraries and regular consumers actually stand to suffer a great deal from net neutrality. Let me explain why.

To begin with, Internet service providers will now have to make sure that their practices square legally with the **FCC**’s definitions of “fair and reasonable.” The latter term, “reasonable” is arguably the most litigated term in American legal jurisprudence. What can we anticipate in the future?⁵ Expect expensive lawsuits and increased litigation. In early June 2015 for instance, the **FCC** ruled 3-2 in a partisan decision to fine **AT&T** \$100 million for slowing down broadband speeds among its most bandwidth-hogging users.⁶ Amazingly, the decision was retro-active. The commission created a regulation and then fined an Internet provider for actions it deemed unfair prior to its ruling.

Second, the new imposition of net neutrality will inevitably stifle innovation and risk taking. As **Tom Giovanetti** of the **Institute for Policy Innovation** remarked, “The rollout and adoption of broadband product services with minimal government involvement, and almost entirely with private risk capital, has been one of the great examples of

the creativity and innovation inherent in capitalism and the free-markets.”⁷ With the advent of net neutrality, expect capital to be more cautious — innovation more circumspect. Make no mistake about it. Uncertainty about how and where the **FCC** will apply “fairness” will inevitably quell even the boldest entrepreneur.

Thirdly, net neutrality will entail higher costs, if not immediately, certainly in the longrun. Someone will have to cover the expense of litigation, and that someone will likely be consumers. Increased regulation will also result in fewer ISPs and less competition — just as **Obamacare** or the **Affordable Health Care Act** inadvertently decreased the number of health insurance companies. Less competition will mean higher fees. As dissenting **FCC** commissioner **Ajit Pai** says, the **FCC**’s move gives it “the power to micromanage virtually every aspect of how the Internet works.” And of course part of that micromanagement means that ultimately the **FCC** will be setting the rates. “It could even establish a ‘universal service fee’ to your bill, just as you currently pay on your phone bill.”⁸

Now don’t misunderstand me in all of this. I appreciate the leadership of **ACRL** and **ALA**, and in defending net neutrality our leaders spoke reasonably, passionately, and persuasively. They are probably a whole lot smarter than I am. I simply think they were wrong. Moreover, I quarrel with their cocksure insistence that their approach was the only way for libraries to look at the question — the sole framework for us to understand the issues. Our association leaders — well-intentioned though they were — fatuously argued that net neutrality and the corollary of increased government regulation was an unquestioned good and that **ALA**’s analysis of the matter was both obvious and completely in the interest of libraries.⁹

In all of this, one thing for sure stands out regardless of whether you see net neutrality as good or bad news for libraries and users. We have now

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exchanged an Internet run by innovators, risk-takers, software designers, and engineers for one managed by corporate lawyers, stagey bureaucrats, and crafty regulators. Yes, that's right. We could have had, as librarians and as simply users of the Web, what we had from the beginning — a creative network of entrepreneurial originality, free from Federal oversight and management, an unfettered Web willing to toy with innovation and risk experimentation.¹⁰

Of course, some may suggest that we shouldn't have been surprised at both the ALA and ACRL's outspoken defense of net neutrality. We should have expected it. Championing net neutrality simply reflects the classic librarian stereotype: the unflattering image of the stodgy, conservative librarian, unwilling to risk or think outside of the box — insisting that bureaucratic rules have to be followed and “please, no talking in the reference area.”

I counter that a saner, more balanced option in all of this — for us as librarians and for both the ALA and ACRL — would have been to tell the FCC to go jump. We don't need a regulated Internet. Why would we want a Web that looks like the DMV or the Post Office? Forget net neutrality. We need a free Internet, one open to innovation, rife with competition and abounding in creativity. When it comes to the Web, we need less — not more — government. 🐼

Endnotes

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