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The battle to enact network neutrality

The U.S. is falling behind in the race to provide affordable broadband service and keep the Internet free and open.

A year ago, you'd probably never even heard the phrase "network neutrality." Today, it's hard to miss, as a battle thunders in Washington over what both sides - in a rare point of agreement - insist is at stake: the future of the Internet and the U.S. economy.

What is network neutrality? One easy example is how phone companies treat calls. They can't block some and allow others, or base prices on who is calling or what they say.

The phone companies that first offered public access to the Internet followed the same rules. They couldn't discriminate, say, by blocking some Web sites, or striking special deals to make other sites work better.

When cable companies introduced high-speed "broadband" Internet service, they behaved similarly. But their original business was never bound by such rules. Cable companies generally choose which channels to carry, and they have made decisions that blocked some consumers' access to local sports programming in Philadelphia, New York and Washington.

Last year's little-noticed *Brand X* decision by the U.S. Supreme Court backed cable companies' rights to control their broadband networks. Phone companies cried out for the same, and regulators granted them similar rights for their Internet products, such as DSL and Verizon's new fiber-optic FiOS service.

So what began as buzz among a handful of policy wonks has sparked a historic battle between the Old Economy and the New Economy.

An exaggeration? Perhaps. But just look at the scorecard.

Who likes neutrality? Internet entrepreneurs, leaders of the computer and Internet revolution of the 1980s and '90s, including Amazon, eBay, Google, Intel, Microsoft and Yahoo. Backing them is a large coalition of academics, consumer and open-media activists, and nonprofits as varied as the ACLU, the Christian Coalition, and the American Library Association. (See www.SavetheInternet.com.)

What are they arguing? That network owners want to turn the Internet into a proprietary fiefdom - a place where they can tax or control virtually any other company's business conducted over their wires, much as cable companies do.

Who doesn't like neutrality? Major network owners such as AT&T, Verizon, Comcast and Time Warner - companies rooted in the original monopoly providers of telephone and cable-TV services. Backing them are free-market advocates such the American Conservative Union and the National Taxpayers Union, hardware manufacturers, and regulation-wary economists and technologists. (See www.NetCompetition.org and www.HandsOff.org.)

What are they arguing? That net neutrality would needlessly regulate the Internet without evidence of harm. That Internet behemoths want "subsidized, special-interest pricing," or a "socialized Internet."

Why this fight now? Clues lie in the Internet's history.

Born in the 1960s through a Cold War alliance of academia and government, the Internet was conceived as a "network of networks" relying on common standards rather than central authority or control.

Today, we read, write, chat and talk on the Internet. We blog, we meet up, we match ourselves with harmonious mates. We bid for airline seats, hotel rooms and collectible kitsch. We link. We post. We network.

But we don't *own* the network, and neither do those Internet companies or entrepreneurs. Not Craig Newmark of Craigslist.com. Not Sergey Brin of Google. Not even Microsoft's Bill Gates. The cable and phone companies own large chunks of it, including most of the intercity fiber-optic "backbone" and virtually all of the "last-mile" pipes to our homes.

Neutrality fans say the Internet became such a powerful driver of invention and economic growth thanks in part to the essential neutrality of the U.S. telephone network.

Now, they say, the United States is falling increasingly behind other developed countries in the race to provide affordable broadband service essential for the latest high-tech innovations.

Countries such as Japan nurtured high-speed broadband with subsidies for network builders, and required them to allow competitors to use their networks. Some Asian consumers pay about $40 for 100-megabit service - a breathtaking speed by U.S. standards, and enough to support services such as real-time video teleconferencing or a Netflix true to its name.

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But the United States has never treated cable companies as traditional, regulated utilities. And after *Brand X*, the Federal Communications Commission exempted phone companies' "advanced services" from some traditional obligations.

That brings us to where we are today, and to two unassailable facts, and one reasonable probability:

Network owners can do it. They have the technological ability to allow some Internet bits and block others, or speed some up and slow others down.

They face a real threat. Broadband speeds are now swift enough to permit Internet phone service from companies such as Vonage. Companies that create movies and TV shows can now deliver these via the Web. So the companies that dominate the broadband market face a new and direct threat to their core businesses. That gives them a motive to extract a toll for using the "fast lane" - or to keep competing companies like Vonage in the slow lane.

They will be tempted to use whatever leverage they legally have - as, to be fair, any business would be.

Last fall, AT&T chief executive officer Edward Whitacre reminded a Business Week interviewer that only two kinds of companies have the "broadband pipes" necessary for video and other high-tech services.

"Cable companies have them. We have them," he said, adding that "there's going to have to be some mechanism for these people who use these pipes to pay for the portion they're using.

"The Internet can't be free in that sense, because we and the cable companies have made an investment, and for a Google or Yahoo or Vonage or anybody to expect to use these pipes free is nuts!"

Network owners insist they'd have no reason to block anybody else's Internet sites or services. But they don't promise not to favor one site, or service over others. If forced to remain neutral, they say, they couldn't manage their networks, which would become clogged, hurting customers.

Neutrality proponents challenge both those claims.

Google, Vonage and other Internet companies, they point out, already pay millions of dollars for high-bandwidth pipelines into the Internet. So do consumers, who pay for the bandwidth they need.

Nor is neutrality a bar to all network management. It wouldn't prevent a network owner from giving priority, say, to audio or video packets whose prompt delivery would be crucial. But the network owner couldn't favor its own audio packets over Vonage's.

That's not to say network owners would lose all proprietary rights. There are nuanced neutrality proposals, such as one put forward last week by the Center for Democracy and Technology, that seek to target the kind of harm neutrality proponents fear most, such as a strategy that Microsoft's critics once labeled "embrace, extend and extinguish."

Harold Feld, a lawyer with the Media Access Project, says Microsoft embraced and extended the best ideas, such as the Netscape Web browser. When Microsoft developed Internet Explorer and bundled it with Windows, it pretty much extinguished its upstart competitor.

Feld said the findings in the antitrust case against Microsoft proved the effectiveness of a strategy network owners could adopt today: "When you used another company's program, it didn't work as well." Feld says that to discourage a computer user from preferring, say, Google's movie-download service over Comcast's, intermittent failure would work better than blocking.

"All you have to do is block it one time out of five, or make a service less reliable or harder to use, and people will quit using it," he said. "In the network world, the user never knows where the problem is."

With the ability to legally degrade or disfavor a competitor's content, a Comcast or Verizon could mimic and then overwhelm any new product or service an Internet company invents.

True competition, the best protection against such behavior, could eventually come from Wi-Max wireless service or broadband over power lines. But competition for true, high-speed broadband is almost certainly years away.

Meanwhile, without neutrality requirements, today's free and open Internet could become a thing of the past.

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