

Net Neutrality—Issues of Freedom of Expression and Consumer Rights

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"Eternal vigilance is the price of liberty." -- Wendell Phillips.

We have only just won the fight over Sec. 66A of Information Technology Act that a new one has begun over net neutrality. If you look at the consultation paper of TRAI on Regulatory Framework for Over the Top (OTT) Services, it would appear that the term OTT itself is contrived for raising the debate.

TRAI is making unnecessary distinctions on services over the Internet for the sake of bringing in a regulatory frame work. They are proposed to be regulated more for financial reasons than social concerns.

As much has already been said about business aspects of net neutrality and other pros and cons, let me confine myself to issues related to freedom of expression and consumer rights especially freedom of choice.

Freedom of Expression may not be directly imperiled by absence of net neutrality if it is not used to censor content by Telecom/Internet Service Providers. Such censorship, however, is a possibility when net neutrality is not accepted as the norm.

Assuming that there would not be any selective black out of content, let us look at two possibilities of content getting prioritised. In one scenario, social media Web sites, which is already a source of news, will be pitted against Web presence of traditional media. With their financial muscle, the social media Web sites may be able to eclipse news sites run by traditional media houses. This will have its impact on freedom of expression in the following ways.

Plurality of opinion is the essence of democracy. However, to arrive at correct opinions, you need facts. In the absence of net neutrality, your access to data could become constrained. Opinion and debate on social media is often not balanced and could be based on rumours. Individuals lack systems like the traditional media for fact checking and 'gate keeping'. So, if social media gets predominance, the debate could go the wrong way. Social media cannot be expected to show much social responsibility given its character.

Social media is good at harvesting plurality of opinion; but news media are able to do a better job of dissemination of information and formation of public opinion. Absence of net neutrality could hamper news media.

The second scenario is that of a small number of large media houses being able to take advantage of a frame work that enables zero rating¹. They will be able to stifle competition and prevent emergence of new news sites. This will be a worse form of price wars than is already going on in the print media.

As news sites are struggling for want of a revenue model, zero rating could be a new threat that will ultimately lead to higher costs to reach the audience. The casualty will be the small media, and as a result, plurality of opinion and freedom of expression. To cite an analogy, if Maruti car owners are allowed toll-free access to highways, with the car makers bearing the costs, is it going to benefit the owners? Competition will be hit, and ultimately, it will be customers who would lose their choices.

When competition is weakened, consumers will have to pay higher prices for services. Consumer law is already against clubbing of services and creation of monopolies. Microsoft was forced to unbundle Internet Explorer from its operating system. What is the justification in bundling OTTS with Internet services?

Zero rating is not a free service. The service providers will be hoping to recoup their investment through advertisements or other means. Advertising is a

¹The practice of offering free access to certain popular online services for customers of particular mobile networks.

necessary evil. So, norms that would reduce dependence on advertising are better for society and freedom of expression. There is no free lunch: customers using zero rated applications may be subject to abuse and their freedoms to switch applications may be constrained.

Opponents of net neutrality say that absence of neutrality will help telecom service providers with their investments and returns. They say that net neutrality will be in the way of telecoms investing in broadband with funding from OTTS. Even when OTTS foot the bill, they would be eventually passing it on to the customers. As of now, India does not seem to suffer from lack of capital for broadband development.

If telecom service providers are losing on SMS or voice calls to OTT Services, they are gaining on broadband services. Outdated communication systems should give way for new ones and regulation should not be in the way.

Temporary regulations that reserve bandwidths for medical use or restrict bandwidth for online games in case of congestion might be acceptable. Besides, over-application of net neutrality should not prevent offering of tiered services that would help offices, hospitals and other institutions to function efficiently.

On the other hand, too much regulation will harm budding services. Regulation should be thought of only when there is a serious problem with emerging services. Let us not introduce a licence raj in telecommunication and Internet services.