Public Interest Groups Across Spectrum Oppose Net Neutrality Regulation

by Berin Szoka (/people/berin-szoka) on October 7, 2011 · 0 Comments and 0 Reactions
(http://techfreedom.org/node/91#disqus_thread)

Yesterday's Wall Street Journal's story on the legal challenge to Net Neutrality regulation opens as follows:

Efforts by public interest groups to get a legal challenge to the Federal Communications Commission's new "net neutrality" rules heard somewhere other than the U.S. Court of Appeals for the D.C. Circuit belly-flopped Thursday when the D.C. Court won the case in a random lottery.

I've responded with the following comment:

The first sentence of this article reinforces the common misconception that "public interest" groups support net neutrality regulations while only corporations oppose them.

In fact, many large corporations have supported these regulations, while a wide array of public interest, non-profit groups oppose the FCC's net neutrality regulations. Those include a variety of free market groups such as TechFreedom (my own think tank), the Competitive Enterprise Institute, FreedomWorks and Americans for Tax Reform, but also left-leaning civil liberties groups such as the Electronic Frontier Foundation, which called the FCC's rules a "Trojan Horse" for other regulation because they set a dangerous precedent that would give the FCC broad powers in other areas, such as content regulation or copyright.

If a Democratic FCC can invent the authority to issue Net Neutrality rules, an FCC Chairman appointed by a socially conservative president could implement the agenda of censorship advocates such as the Parents Television Council's founder Brent Bozell—which might explain why those groups have supported the Net Neutrality regulation.

FCC Commissioner Robert McDowell demolished the idea that these Internet regulations would serve the "public interest" in a scathing dissent when the FCC issues these illegal rules. He emphasized that real net neutrality problems could be handled first through mediation processes and, if necessary, through consumer protection and antitrust laws.

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Copyright, Done Right: Warrantless Factory Searches Aren't the Right Way to Stop DVD Piracy
by Berin Szoka on October 4, 2011 - 4 Comments and 0 Reactions

California police will now be able to conduct warrantless searches of optical disc (DVD, CD, BluRay) factories to look for piracy and seize pirated discs, under a bill just signed by California Governor Jerry Brown [full text]. Even those who think copyright law has gone much too far, or cherish fair use, shouldn't defend such blatant, commercial piracy, which does nothing but deny creators the market for their artistic products. One need only look at China to see how such infringement can destroy creative industries.

The bill's sponsors justify this law as necessary to enforce existing laws that require manufacturers to label discs so their origin and validity can be established. That seems like a reasonable requirement and one worth enforcing. But like the Electronic Frontier Foundation, I'm highly skeptical the courts will uphold the constitutionality of this law. And I worry about the consequences of upholding warrantless searches. The debate centers on whether optical disc manufacturing qualifies as a "closely regulated industry" under New York v. Burgar, 482 U.S. 691, 701. (1987). The sponsors argued:

In determining whether a particular industry is closely regulated, the Court looks to a history of regulation in the industry as well as the hazardous nature of the industry. Examples of closely regulated industries that fall under this exception include auto dismantling yards and the mining industry. Here, the optical disc manufacturers are subject to the provisions of chapter 11.5 of the Business and Professions Code, as well as 653h and 653w of the Penal Code [California's anti-copyrighting laws]. These manufacturers are also subject to federal copyright restrictions. These provisions may be enough for a court to determine that this industry is closely regulated, and therefore, potentially subject to administrative searches.

That's a pretty weak argument—and one that could sweep in a wide variety of other industries, including media. That analysis goes on to allege that the searches and seizures authorized by the bill would be reasonable, which EFF also disputes on all points. As a subsequent California Senate committee counsel's official legal analysis noted, "It is unclear whether this bill, which allows law enforcement to search private property without a warrant, would stand up to a constitutional challenge." That official analysis, which covers both sides of the argument goes on to note (p. 7) the First Amendment problems raised by deeming any media business, including those that only manufacture physical media, as "closely regulated."

The bill's sponsors make a second argument that would set an even more dangerous precedent:

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Groups ask Feds to ban Facebook's 'frictionless sharing'
Berin Szoka quoted by Declan McCullagh in CNET News on September 29, 2011 - 0 Comments and 0 Reactions

TechFreedom president Berin Szoka, was quoted in an article by Declan McCullagh now online at CNET News.

A collection of advocacy groups including the Electronic Privacy Information Center (EPIC) asked the FTC to ban Facebook's new feature that allows automatic sharing of news and other information if users choose to enable it. Szoka responded by saying,

What this really reveals is that (EPIC and its allies) just don't understand why people want to share information. There are lots of users who want to broadcast what movies they're watching, what music they're listening to, or what articles they're reading. Once again they're presuming to dictate what's appropriate for everyone else.