Network Neutrality and Unfair Behavior

Network neutrality is one of the most important issues facing the internet community today. How this debate is resolved will determine both how and what information is available on the internet. Since the internet is an essential part of society, the ability of an ISP to limit access to certain types or sources of data has wide harmful repercussions. The purpose of an ISP is to provide users access to the internet. Once an ISP starts monitoring what the data is and treating specific types of data differently it is overstepping its purpose. The reason is that this ability allows a provider to engage in unfair behavior. Unfair behavior is any instance in which a provider uses the medium to differentiate between which data is transferred and how in ways to gain a competitive advantage or eliminate competition. This behavior is attractive to business because it is beneficial to revenue but at the same time it is harmful to consumers because it limits their options. For example, a telecom company that limits access to a VoIP service in order to preserve its hold on the phone communications market is unjustly eliminating competition. Many other similar scenarios of data discrimination are viable and inline with business revenue interests. Thus, if the internet service provider market is not regulated it will logically violate its purpose as an ISP and create negative externalities for consumers.

Currently Michael Powell of the FCC has put certain standards in place in order to secure certain aspects of network neutrality. The standard most applicable to the internet is that “Consumers are entitled to access the lawful Internet content of their choice”. In order to
preserve the fairness of the internet this standard needs to be enforceable. Congress must give the FCC the ability act and enforce these standards with fines. This would remove the incentive for businesses to discriminate between data and thus prevent unfair behavior.

Network neutrality is an internet principle that states in essence that “(1) to maximize human welfare, information networks ought to be as neutral as possible between competing content, applications and services; and (2) if necessary, government ought to intervene to promote or preserve the neutrality of the network.” ¹ The use of the word “competing” accurately depicts the reality of the internet today. There are thousands of businesses that either depend on the internet or make use of it. They use the internet as a medium to transmit information and the data that sent or received is competing with other data on many different levels. At the most fundamental level data is competing with other data to go from point a to point b. Network neutrality asserts that all data should be equal on this level. All data must be allowed, and it must be delivered without discrimination to a user.

There are many ways in which Internet Service Providers could violate the principles of neutrality. One option that BellSouth is considering is whether to charge a server for the ability to get a certain level of priority when data is sent from one place to another. Though at first glance this seems like a fair option for businesses that would like their customers to receive data faster, it is a dangerous precedent. The reason is that what a company is paying for is not for their consumers to get the data as fast as possible, but instead they are paying for their data to get to consumers before other data. In other words a company can pay for a business advantage on the internet. Once this fundamental difference is established, the problems with this policy become clear. An ISP is now making the internet a different playing field for all its users. It unfairly favors businesses with more money because they can pay for this advantage. By doing
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this an ISP engages in unfair behavior by having other businesses pay it to discriminate between data.

Another instance in which an ISP can discriminate between data is by blocking or slowing down data which it determines to be bad for any reason. There are examples of this with providers restricting bittorrent traffic or other forms of video and bandwidth intensive services. ISPs determine that a certain type of traffic is taxing on their network and they decide to limit it. From a business standpoint it makes sense to try to restrict data that is clogging the network. However this ability can be abused because the ISP has the sole authority to determine which data is clogging the network and which data is not.

Many instances can arise in which data is discriminated by an ISP. Such actions constitute an infringement of network neutrality and are grounds for some sort of government intervention to protect the public good. There are plenty of methods that regulation could be implemented by the government. A law could be made and or commissions could be created. However, since the FCC is already in place and has set up the appropriate standards all this commission needs is the ability to enforce its standards. The FCC currently is the regulatory commission that has “is charged with regulating all non-Federal Government use of the radio spectrum (including radio and television broadcasting), and all interstate telecommunications (wire, satellite and cable) as well as all international communications that originate or terminate in the United States.”² If given the proper enforcement ability, most effective would be the ability to fine internet service providers, this government commission could control whether every consumer is fairly able to access all internet content of their choice.

The FCC currently is predominantly involved in controlling the content on what is broadcast on television. Whenever it determines that data discrimination is occurring it would
impose a fine on the ISP until it stopped. A simple law that allows the FCC to fine ISPs would go a long way in the fight to preserve network neutrality. It is important for the government to be a player in this tussle, see Clark et al “Tussles in Cyberspace”, in order to preserve the integrity of competition on the internet. At the same time it is crucial that the FCC regulate as little as possible because too much action is counterproductive. The distinction must be made that TV broadcasting is different from internet content. The FCC will only be given the ability to fine if network neutrality is breached. In addition, to further limit the amount of regulation that is necessary an act similar to or an extension of the Telecommunications Act of 1996 could be passed that would provide opportunities for businesses to rise up and compete with the large telecommunication and cable oligarchy that currently exist in the broadband market. These solutions will prevent the ISPs from acting outside of their primary purpose and make the internet a free marketplace of equal opportunity and eliminate unfair behavior.
Bibliography