

Net Neutrality Special Issue: Law, Social Welfare, and Net Neutrality

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Proponents argue that net neutrality enhances societal welfare, guards against anticompetitive behavior, and protects free speech. [Keith Hylton](#), Boston University William Fairfield Warren Distinguished Professor of Law, explains why he believes net neutrality regulations are unlikely to achieve those goals.

This post is the second in a series highlighting pieces from the most recent special issue of the [Review of Industrial Organization](#). Devoted entirely to net neutrality and organized by the Technology Policy Institute and the University of Pennsylvania's Center for Technology, Innovation, and Competition, the issue brings together a variety of opinions on the current state of communications policy in the United States.

Hylton argues in his contribution, [Law, Social Welfare, and Net Neutrality](#), [1] that four commonly touted benefits of net neutrality rules—improved social welfare via positive externalities, distributional efficiency, checks on anticompetitive behavior, and protection of free speech—either do not follow from net neutrality or could be attained in other, simpler, ways.

At its core, net neutrality holds that ISPs cannot charge content providers different prices. This means an ISP must charge, say, an independent blogger and a major video streaming service the same price to distribute their content and consumers the same price to receive the content. Given that networks, as they should be, are built and rebuilt to handle peak loads of data-intensive content, the result is that light users subsidize heavy users.

Cross-subsidies can benefit society if, for example, they address a situation in which society will produce too little of some good, say, health care or education, without those subsidies. Similarly, cross-subsidies could lead to what some might view as positive redistributive outcomes if wealthier users subsidize less-wealthy users.

Unfortunately, the cross-subsidies inherent in net neutrality do not facilitate production of any underprovided goods and disproportionately benefit bandwidth-intensive content companies and their customers, who tend to be wealthier than the typical American. These cross-subsidies, therefore, are regressive and likely to lead to less optimal societal outcomes.

Another popular argument for net neutrality regulation is that it protects against anticompetitive behavior of ISPs, particularly in instances of vertical integration where content owned by an ISP competes with content provided by others. This is true, but it does so at the potentially high cost of disallowing beneficial vertical arrangements. While vertical arrangements can be anticompetitive, research has demonstrated time and again that they generally are not. Even arrangements that benefit one's own content are not necessarily anticompetitive, although those require special attention.

Fortunately, antitrust laws exist precisely to police anticompetitive behavior. Antitrust recognizes and attempts to balance the benefits of differential pricing with the potential for anticompetitive behavior through a far more nuanced, context-specific approach than net neutrality regulation.

Hylton argues that the question of whether net neutrality protects free speech is thornier. On one hand, "the neutrality principle would arguably promote free expression...by preventing the network firm from imposing discriminatory viewpoint-based charges." On the other hand, the rules would not block only viewpoint-based charges, but also those that follow from beneficial vertical arrangements. Moreover, little evidence suggests ISPs have an incentive to engage in such behavior.

In an argument that turns some groups' position on their heads, Hylton notes that net neutrality rules can benefit ISPs by helping to remove liability they might face for copyright and trademark infringement. However, while he does not believe they should generally be held strictly liable, "the remaining question is whether the owners of broadband networks have an obligation to monitor the theft of intellectual property and just how much effort such an

obligation would entail on their parts.” That question should be addressed specifically, rather than as an unintended consequence of net neutrality rules.

In sum, Hylton does not reject that net neutrality rules could yield some social benefits. He notes, though, that even where it might yield benefits, it is not the best way to attain them: “For every potential social gain that might be provided by the neutrality policy, an alternative, narrower policy exists that would be at least as effective and less likely to have harmful side effects. Efficiency and equity considerations provide no support for the net neutrality norm.”

[1] The link is to the working paper. Please contact Scott Wallsten or Keith Hylton for the published paper

Note: Our intent is to summarize Hylton’s paper, but mistakes are ours alone, not his.