

Net Neutrality, Uniformity, Equality, Constitutionality

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ABSTRACT

The United States Constitution sets forth a set of limited powers for the federal government that have a limited, definite purpose. Net neutrality can be argued to fall under the Commerce Clause and the 1st Amendment to the Constitution, but doing so undermines their meaning and fundamental principles. Furthermore, the separation of powers and branches of government outlined do not include the regulatory agencies that are threatening to implement Net Neutrality as seen in today's United States government.

Categories and Subject Descriptors

H.1.1 [Information Systems]: Systems and Information Theory.

General Terms

Legal Aspects.

Keywords

Net Neutrality, United States Constitution, Constitutionality.

1. INTRODUCTION

Net Neutrality is a clever name. It rhymes with constitutionality and sounds like equality. Because it is neutral, everyone should agree on it, right? Like any legislation, regulation or political debate, the proponents will give the topic a friendly name, while the opponents will call it something else to draw attention to another aspect. For this paper, it will be referred to as Net Uniformity.

The legal basis for Net Uniformity in the United States of America must come from its constitution. This is because the Constitution of the United States allows for laws to be passed and executed, only as they match its structure and the will of the People of the United States, as evident by its first lines, "We the People."

2. WHAT IS NET UNIFORMITY?

As a law, or a set of mandated regulations, Net Uniformity has a goal declared to make all data equal. The Net Uniformity website of the White House, in addition to praising President Obama, claims that "Most Internet providers have treated Internet traffic equally." Adding to that, they define Net Uniformity in several more ways. [1]

By example, they claim it means that a new entrepreneur, big business, and high school student would have equal opportunity and quality of speed websites. They make the claim that this can occur no matter what money is involved with any party. Finally, they make references to notions such as a free Internet, open

Internet, and an Internet where the speed is the same for everything.

3. FOUNDATIONS AND PRINCIPLES

Sometimes, it goes without saying, but the foundation for understanding the Constitution and subsequent amendments, aside from historical context, is the Declaration of Independence. Contained within it are the principles that would eventually bring forth the type of government represented by the Constitution. Among the principles are that mankind was created equal, created and granted natural rights by a Supreme Creator (not by a government), and that man grants power to the government to secure those rights, as opposed to power to enforce or create those rights. The rights are listed as "among these are", or some of them being, "Life, Liberty and the pursuit of Happiness."

Understanding the source of rights and where they originate is essential to understanding the context of the Constitution and its intent. Net Uniformity, if a right, would be a right granted by God and could be, but not necessarily, a right the people grant government the power to secure. In that context, Net Uniformity would need to not be a situation where one person is elevated by a set of government infringements on the natural rights of another person.

4. THE CONSTITUTIONAL PROCESS

4.1 Three Separate Branches and Powers

Articles I through III define a set of enumerated (defined specifically) powers for three branches of government, legislative, executive and judicial. Assuming Net Uniformity did not exceed the enumerated powers for a moment, for Net Uniformity to become a law, the legislative branch should need to pass it in both houses of Congress, it would be enforced by the executive branch, and cases of people breaking the law would receive a trial and judgment by the judicial branch.

4.2 Unconstitutional Regulatory Bodies

Unfortunately, many of the proposals for Net Uniformity come from outside of Congress and are primarily proposed by the Federal Communications Commission (FCC). Instead of being subject to the will of the people, this fourth branch of government that has developed, referred to by some as the "administrative state," have little restraint to their powers [2]. This is not limited to the Net Uniformity debate and FCC. These administrative organizations write regulations without Congress, enforce them without executive order and in many cases, they enforce it without the judgment of the judicial branch nor by a trial for the accused, as required by the Sixth Amendment of the Constitution.

The Constitution clearly provides for a separation of powers among the three branches of government, and the tenth

amendment states that any powers not prohibited and not given to the separate branches belong to the people and the states where they reside. This means that whatever other legal powers not mentioned in the Constitution cannot be performed by the federal government, meaning if Net Uniformity is a power granted in the Constitution, it must be explicitly given to one of the three branches.

4.3 The Powers in Question

One of the seemingly best Constitutional arguments for Net Uniformity, concerning Congress's powers to make laws, would be the Commerce Clause and the Necessary and Proper Clause [3]. The Necessary and Proper Clause provides that Congress make laws to carry out their enumerated powers. Then, the Commerce Clause declares that Congress may regulate commerce between states, foreign nations and Indian tribes. As Internet communication crosses between state and foreign boundaries, the argument would be that Congress may regulate it, however, this interpretation ignores the qualifier "between" and the definition of "commerce."

When an Internet Service Provider installs equipment at someone's house, is that commerce between states? What about cables installed within a state's boundary? Is that commerce between states? Even if that was considered between states, when information is transmitted, is that commerce?

Commerce is defined at Dictionary.com as the "interchange of goods or commodities." [4] Net Uniformity, however, does not involve the interchange of goods and commodities. The Internet is communication, information or in constitutional terms "speech" and "press."

Arguably, aside from being speech, what is more relevant to governmental powers concerning Internet communication is the authority of Congress "To establish Post Offices and roads." Under a modern interpretation of that power, Congress reasonably could establish a government Internet service, but not outlaw the private, commercial Internet services that exist today.

4.4 Freedoms Created or Secured

They cannot outlaw private communication networks, because data is speech, and speech is protected by 1st Amendment of the Constitution. [5] The 1st Amendment strictly prohibits Congress from making laws "abridging the freedom of speech, or press."

Movies, music, books, speeches, religious sermons, and many more types of speech are the data transmitted over the Internet. Faster Internet "speech" or higher bandwidth does mean the speech will be higher quality, but with Net Uniformity enforced, it would require that all speech be equal speed and bandwidth, so if someone wants higher quality Internet, or "fast lanes", they cannot have it. By doing that, the government would abridge their natural right of speech, which is forbidden by the 1st Amendment of the Constitution.

The Constitution does not permit Congress to prevent someone from communicating in a more expensive way than another person. If someone wishes to print a hundred flyers or one flyer, sing in a single megaphone or pay for a stage concert stereo system, give a free sermon on a street or a paid speech to hundreds, or produce a community theatrical show or Broadway hit, the Constitution does not demand their different speech and press be equal in quality.

Obviously then, a differentiator of the quality of speech, besides content, is money. Someone may use more or less money to communicate their speech. A book discussing paint drying on a wall may be published and sell one copy. Another book may be published and sell one million copies, and rightfully so, because the public chose to purchase that book. Yet in another case, a church may decide to donate a book to every willing hotel. If Net Uniformity were applied in this analogy, as Book Uniformity, an equal number of books would need to be produced of every book, since the argument is that all data is equal. The Constitution does not guarantee a right to be equally heard as much as everyone else, but an equal opportunity to speak in whatever manner unabridged by the law.

5. CONCLUSION

What Americans can hope to find by uniting under the principles of the Constitution is freedom. Forcing people to have all Internet data travel the same way by Net Uniformity suppresses the opportunity to send Internet "speech" how and how much they choose. By doing so would prevent the People of the United States from choosing what they want to hear from the Internet. It was rightly stated by Frederick Douglass that "To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker."

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