

While it would be optimal if no regulation of ISPs were necessary to ensure that customers' network traffic is treated fairly and without prejudice based on its destination to services (e.g. internet telephone service) with which the ISP may compete, it has been made clear recently that many ISPs are not as ethical as we might hope.

Unfortunately most consumers do not have sufficient technical knowledge to choose ISPs which do not discriminate in this way, and will merely find that the ISP's own competing services "just work better" even though this result could merely be an illusion. If the service truly is better, then the ISP will not have to resort to any tricks to make it succeed in the market.

Also, broadband service is frequently a duopoly at best, and often it is a monopoly in a given region. In this case consumers will not even have the choice to make, and the ISP will automatically be able to virtually force its customers to use its own services rather than those of competitors on the internet.

Another subject of concern is whether ISPs may attempt to charge well-known destinations on the internet for preferential treatment of traffic destined for them, effectively threatening adverse treatment if they do not agree. ISPs are paid by their customers to forward traffic to all destinations on the internet equally, not preferentially only to those destinations which have paid the ISP.

In short, just as consumers are able to choose long distance telephone services independently from the (generally single) local exchange carrier in their area, they should be guaranteed that ISPs will not treat their data unfairly based on its destination or the network protocols being employed. A carefully worded regulation, which enforces this spirit without impeding ISPs' abilities to protect their own networks from illegitimate or attack traffic, may be called for to provide this guarantee.