

# The future of TV isn't TV, it's broadband.

As government strives to keep up with the broadband age, the [Senate's Commerce Committee](#) held a hearing today covering the future of television, but midway through the hearing I realized that the Senate has it all wrong. The future of TV isn't to be found in deregulation — it's on the Internet. We just have to let it happen. And to do that, Congress needs to look at how broadband providers control access to content, through caps, specialized offerings and deals.

Unfortunately, Congress didn't do all of that. It danced around the problems of pipe owners also owning content providers and pay TV distribution businesses. It didn't [ask about caps on broadband](#) and how that serves the interests of the pay TV business, and despite the fact that network neutrality was brought up several times and was cited by Barry Diller, the chairman of IAC, and Amazon's public policy lead Paul Misener, the way that [Comcast is sidestepping network neutrality](#) by not counting content streamed over the Xbox against its data cap was never mentioned.

## **So what was the Senate's tangent today?**

Netflix is 27.6 percent of broadband traffic in the U.S. according to a new report from Sandvine.

Instead the call during the hearing was for a rewrite of the 1996 Telecoms Act, which deregulated the telecommunications agency, helped establish the rules that let the Internet grow and brought about the rise of competitive local exchange carriers. But in an election year, such a rewrite seems unlikely, and frankly, worrisome given the power that ISPs and content companies

have in Washington at the moment. Instead, the law that might make headway is the [The Next Generation Television Marketplace Act](#), which was proposed in December, and was the basis for the hearing today.

The proposed act deals primarily with deregulating the broadcast industry to eliminate some required coverage mandates and to allow broadcasters to negotiate retransmission rates with pay TV providers just like cable programmers such as ESPN or AMC do. As a consumer this would likely lead to higher cable costs and the loss of public interest programming. **The fundamental question** that should be asked with regard to this legislation is whether or not the [broadcasters' access to public airwaves](#) means they should have limits set upon them to serve the public interest? (The FCC gives them their airwaves in exchange for following certain rules and carrying certain types of programming.)

But that wasn't really the focus of the hearing, despite a few questions asked of Diller, who is an investor in Aero, one of the most interesting startups to come out of the convergence of the web and television. Aereo, [provides access via the web to over the air content for a fee](#). Consumers pay a set amount each month and then can get access to over the air television from any device. The value-add is that consumers who can't receive the over-the-air signals from their broadcaster can still get access to the programming, can record it for later consumption and can get it on any device. Of course, [it's being sued](#).

### **So what is the real issue?**

The hearing did clarify a fundamental issue about both television and broadband. The two are now intertwined, so from a regulatory perspective the fight will now be about who holds the power in terms of relationships with consumers and in terms of their relationships with content companies. On one side, we have the broadcast industry and the ISPs, which also own broadband and in many cases pay TV service access. On the other are the

startups and online behemoths that want to deliver TV to the consumer when and where they want it using a variety of business models. In the middle are content creators trying to walk the line between finding an audience today and finding one tomorrow. And consumers just want to pay for exactly what they want, when they want it without spending money on superfluous channels or content.

As Barry Diller testified, the Internet is ready to provide a new platform for content distribution but the interests of pay TV providers and content companies that are linked to distribution companies also want to interfere with how content is accessed. He said eliminating the distribution companies as middlemen given content creators more creative freedom and they wouldn't have to sign away as many of their rights, adding, "How can that not be in the public interest?"

When Blair Westlake, Corporate VP, Media & Entertainment Group at Microsoft explained that he saw TV changing more in the past 18 months than it had in the last five years, he focused on some of the cool things Microsoft is doing with the Children's Workshop, the producers of Sesame Street. He described children of the future [interacting with the characters using the Kinect](#) and even seeing themselves onscreen. This is cool, but sidesteps some of the issues the hearing didn't really delve into.

### **Where Congress, and regulators must focus.**

The Internet has become a platform for services and TV is just one of those services. We need to start thinking about TV in terms of who can deliver it at a transport layer (the pipes), how it gets delivered (via a pay TV subscription, YouTube channels, Netflix subscriptions) and where the value is and who gets to charge for that.

There is no question that the content is valuable. There is also no question that consumers find value in access that content online

from any device whenever they want as Susan Whiting, vice chairman of Nielsen, testified.

So Congress should focus on who will capture the value of the new means of delivering TV, and whether or not certain players have an advantage that Congress or the FCC should investigate. Many of the Senators asking questions have come pretty far by recognizing the importance of broadband access when thinking about the future of TV.

### **Some questions Washington should be asking**

Here are a few questions they can — and should — ask to take the conversation further:

If broadband is a platform for TV, should broadband providers also be TV distribution providers and content companies? How can they **use that horizontal integration to their advantage?** (Broadband The Cable Industry Isn't Stupid Right <http://gigaom.com/broadband/the-cable-industry-isnt-stupid-right/>) Are monthly data caps a method for them to stymie competition?

Do deals to provide services to specific devices without counting against a cap **sidestep network neutrality?** (FCC Will Probe Managed Services As Part of Net Neutrality Push <http://gigaom.com/2009/10/21/fcc-will-probe-managed-services-as-part-of-net-neutrality-push/>)

Should the dearth of independent broadband providers (those **providing the platform only without a pay TV business**) concern Congress? (Drilling Through The Caps <http://corp.sonic.net/ceo/2011/03/23/drilling-through-the-caps/>)

What rules and regulations does a horizontally integrated broadband/distribution/content player need to follow to preserve access to real competition and innovation? Are the **merger conditions associated with**

Comcast buying NBCU enough? (Comcast versus Common Sense: New Frontiers for Net Neutrality

<http://dwmw.wordpress.com/2012/03/28/comcast-versus-common-sense-new-frontiers-for-net-neutrality/>)

Where is the value in the new TV business? Is it content? Access? Distribution?

What are the most promising new business models that can support the industry?

How many of those business models will require the end consumer to give up their privacy?

I can think of several more questions, including those related to protecting the rights of content creators in a completely digital world, ensuring that children's programming meets certain standards or even mandating accessibility for all on the Internet. However, to ask these questions requires Congress to view the Internet as not just a new way to communicate and share ideas, but as a new platform that will subsume the older industries of TV, voice communications and publishing and transform them into even richer mediums to share ideas, consume entertainment and even change how we work.

It's not an adjunct, it's a replacement. Or it can be, if we prevent the old-line industries that will see some of their lines of businesses replaced by IP technologies from walling up the promise of the web with data caps, friendly deals with certain hardware makers and over-inflated concerns about piracy and content theft.

Congress could help by asking tough questions or doing a real overhaul of the Telecommunications Act with this framework in mind, but I don't think it's viewing the web yet through the right lens. It needs to think of the Internet at two levels — the transport mechanism for the bits and the services that ride on top of them. We need a regulatory conversation that recognizes this divide and encourages it.