

Network Neutrality

BACKGROUND

Network Neutrality (net neutrality) is a principle that ensures that all Internet traffic is treated equally. Net neutrality has recently become endangered as the telecommunication companies try to create a tiered system of broadband access in which companies and Web sites would pay for premium access to faster data connections. If this happens, law libraries may not be able to pay the fees for preferred access, preventing users from having a consistent and reliable way of accessing important online legal information. This could also create a barrier for start-up companies and small businesses to enter the market which would inhibit competition. Companies such as Google, Microsoft, and Apple would not have been able to get started had they had to pay such a premium. AALL strongly supports net neutrality, which has kept the Internet open and non-discriminatory and allowed the Internet to thrive and flourish.

AALL is a member of the Save the Internet Coalition and the Open Internet Coalition, which bring together individuals, non-profit organizations, businesses and bloggers who strongly support net neutrality. The issue of net neutrality is very important for law libraries because law librarians are providers, creators and users of digital, legal information. It is up to law librarians to ensure that everyone has equal access to the information they need.

Currently, all that is needed to access the Internet is a computer and the ability to pay a telecommunication company a monthly service fee for use of their data lines. Once this fee is paid, everyone has access to the same speeds and content as everyone else, whether a Fortune 500 company or your next door neighbor. Net neutrality has allowed start-up companies the same opportunities as an established company with more resources. It promotes innovation, competition, and freedom of expression by maintaining an equal Internet superhighway.

In September 2005, the Federal Communications Commission (FCC) adopted Policy Statement FCC 05-151, which “ensure[s] that broadband networks are widely deployed, open, affordable, and accessible to all consumers.” Since then, the FCC has had a series of inquiries and comments on broadband deployment and internet management policies and practices. The AT&T/BellSouth merger (FCC 06-189) was stalled due to arguments over net neutrality. The merger was given the green light only after AT&T agreed to provisions that comply with FCC policy statement FCC 05-151. In October of 2007 Comcast was investigated on accusations that it was interfering with customers’ use of peer-to-peer applications. Formal complaints were filed by Free Press and Public Knowledge on the grounds that Comcast was violating the FCC’s Internet policy statement FCC 05-151.

In a Memorandum Opinion & Order (MO&O) FCC 08-183, the FCC found in favor of Free Press and Public Knowledge and ordered Comcast to reform and fully disclose the company’s network management practices. Other instances, such as when Verizon censored text messages

about abortion rights that it deemed controversial and AT&T censored political speech by Pearl Jam in a show broadcast online by AT&T, demonstrate the need for net neutrality regulation to ensure that telecommunications companies do not control the free flow of information by blocking access to certain content.

STATUS OF NET NEUTRALITY LEGISLATION IN THE 111TH CONGRESS (AS OF OCTOBER 2009)

Rep. Edward Markey (D-MA-7) and Rep. Anna Eshoo (D-CA-14), introduced the *Internet Freedom Preservation Act of 2009* ([H.R. 3458](#)) on July 31, 2009 to amend the *Communications Act of 1934* to establish a national broadband policy, safeguard consumer rights, and spur investment and innovation. On September 17, 2009, during an oversight hearing of the FCC, House Energy and Commerce Chairman Henry Waxman (D-CA-30) expressed his support for net neutrality and pledged to co-sponsor the *Internet Freedom Preservation Act of 2009*. AALL supports this bill, which will ensure net neutrality by guaranteeing that telecommunications companies cannot discriminate against certain types of Internet traffic.

President Obama and FCC Chairman Julius Genachowski recently reaffirmed their commitment to preserving net neutrality. On May 29, 2009, President Obama, in a [speech](#) about the nation's cyber-security, said, "Indeed, I remain firmly committed to net neutrality so we can keep the Internet as it should be -- open and free." On August 26, 2009 FCC Chairman Julius Genachowski told *The Hill* newspaper that the agency will support network neutrality and go after anyone who violates its tenets.

On September 21, 2009 FCC Chairman Genachowski introduced a proposal that would add two more principles to FCC policy statement FCC 05-151. The first would prevent Internet access providers from discriminating against particular Internet content or applications, and allow for reasonable network management. The second principle would ensure that Internet access providers are transparent about the network management practices they implement. The Chairman's proposal included a clarification that all six principles will apply to all platforms that access the Internet. The process of codifying the existing four open Internet principles along with the two new proposals through a [Notice of Proposed Rulemaking](#) (NPRM) began at the October 22 meeting.

In response to Chairman Genachowski's proposals, Sen. Kay Bailey Hutchison (R-TX) introduced an amendment to an appropriations bill that would prohibit the FCC from spending any funds "to develop and implement new regulatory mandates." The bill is co-sponsored by Sens. John Ensign (R-NV), Sam Brownback (R-KS), David Vitter (R-LA), Jim DeMint (R-SC) and John Thune (R-SD). These are the same senators that have received more than \$400,000 in campaign and political-action contributions from AT&T. The telecom giant, along with other large telecom and cable companies, has criticized the new FCC rules. On September 22, Chairman Genachowski placed a phone call to Senate Republicans to begin a dialogue. Due to the Chairman's openness and willingness to talk, the Senate Republicans agreed to stop their push to prevent funding for the FCC as a protest of proposed net neutrality rules.

On October 5, Free Press and five other organizations filed a legal brief with the U.S. Court of Appeals for the DC Circuit that backs the FCC's authority to protect Internet users' right to an open Internet. The brief defends the FCC's decision in 2008 to act on a complaint as described above, asking the FCC stop Comcast from violating the FCC's Internet policy statement FCC 05-151. Comcast appealed the order, and the appeal is currently in the D.C. Circuit Court and no argument date has yet been scheduled.

AALL is committed to making sure that net neutrality continues to allow an open environment in which competition, innovation, and ingenuity thrive. We will continue to track the progress of net neutrality legislation in the 111th Congress.

STATUS OF NET NEUTRALITY LEGISLATION IN THE 110TH CONGRESS (2007-2008)

Two important net neutrality bills were introduced in the Senate and House during the 110th Congress. The first, the *Internet Freedom Preservation Act* ([S. 215](#)), was introduced in January 2007 by Senator Byron Dorgan (D-ND). This bill would have amended the Communications Act of 1934 to prevent broadband service providers from discriminating against Internet content, applications or services or interfere with the ability of any person to lawfully use broadband service. The bill stalled in the Senate Commerce, Science, and Transportation Committee and never made it out of committee. We expected that when the 111th Congress convened in January, there would be new momentum behind efforts to ensure net neutrality because other newly-elected Senators support net neutrality, as does President-elect Barack Obama.

On the House side, Rep. Edward Markey (D-MA-7) introduced the *Internet Freedom Preservation Act of 2008* ([H.R. 5353](#)) in February 2008. This bill would have amended the Communications Act to ensure net neutrality as well as "enable the United States to preserve its global leadership in online commerce and technological innovation." The bill also directed the FCC to conduct a proceeding and public broadband summits to assess competition, consumer protection, and consumer choice issues relating to broadband Internet access services. It was referred to the House Energy and Commerce Committee's Subcommittee on Telecommunications and the Internet, which Rep. Markey chaired in the 110th Congress. The Subcommittee held a hearing on the bill in May 2008, but no further progress on the legislation was made.

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