Censorship and Snakeheads: 21st Century Bugaboos and the Net Neutrality Debate

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By Patrick Ross[*]

Good evening everyone. First of all, I want to thank America's Future Foundation for having me here today. I'd also like to direct your attention to a primer on net neutrality that The Progress & Freedom Foundation published just this morning. I've placed copies on the table outside the room.

We're here tonight, of course, to speak about network neutrality, and I honestly don't recall when there was so much hype over an alleged danger that has failed to surface despite years of opportunity.

While we're becoming hysterical over theoretically possible but highly unlikely nightmare scenarios, perhaps we should address a far more dangerous hypothetical. What have

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we done to prepare for the possibility of a gargantuan snakehead rising out of the Potomac River, walking down the Mall, and eating the US Capitol?

Now some folks might not object to that scenario, perhaps some right in this room, but we can't rule out this possibility. Snakeheads, after all, are known to eat out an entire pond; that's why they need to be able to travel on land, to find another place to eat. So it's not hard to imagine some alpha-male snakehead depopulating the Potomac, growing to the size of a Japanese horror film monster, and entering Washington looking for more food.

Okay. I'll concede that's a bit over the top. But that's not much more exaggerated than a lot of the rhetoric I've heard in the net neutrality debate. There are plenty of examples I can choose from, but out of courtesy to my fellow panelists I settled on one critic that I don't believe is directly affiliated with anyone here, namely former Senator John Edwards.

He's created a group called One America, essentially a fund-raising mechanism for his next presidential run. He recently sent out an e-mail on net neutrality and I'd like to read from it a bit.

"Today, everyone in the world can communicate through the Internet on an equal basis. A small-time programmer like Pierre Omidyar can start an auction site out of his home office and turn it into eBay. A blogger like Josh Marshall can post his opinions on Talking Points Memo and end up attracting more readers than the country's biggest newspapers.

"On the Internet, big corporations are on equal footing with everyday people. And it needs to stay that way.

"Right now, special interests are pushing bills through Congress that would divide the Internet in two. Corporate deals would determine which web sites would run incredibly fast and which ones would barely run at all. Some users might not be able to access sites operated by regular people.

"I don't want Internet service providers to decide which web sites I can look at. And I know you don't either."

You know, it's hard to know where to begin with that letter. But let me start is with his claim that "special interests" are pushing bills through Congress that would divide the Internet in two. There are "special interests" pushing legislation in Congress; they're the coalition of monstrously huge applications companies such as Google, Microsoft and Yahoo!, working with political activist groups like some of the ones you see at this table. They're pushing legislation that would regulate the Internet.

What happens if they fail to secure passage of their Internet regulation? Nothing. We'll be right where we are right now, and it's a good place.

Edwards says "corporate deals would determine which web sites would run incredibly fast and which ones would barely run at all." Well, there's nothing stopping corporate deals from occurring right now. That's called a market. But if net neutrality becomes law, then the Googles and the Microsofts of the world won't have to worry about ever negotiating deals in the market; they'll be guaranteed a perpetual free ride regardless of who owns the network. And competitors to Google or Microsoft who view purchasing a fast-lane trip as a way to overcome the incumbents' significant market advantages will be precluded from that possibility.

So the obvious question is, if there's nothing stopping this nightmare scenario Edwards describes from happening, why hasn't it happened? Let's think about that for a minute.

There's plenty of incentive for an ISP to create a fast lane for services like high-definition television or VoIP, services where it's important the bits stay together and move fast. But what incentive is there for an ISP to intentionally slow down, degrade or block content from its customers? What customer would want that?

The other day some broadband cable customers of Cox Communications found they were having difficulty accessing Craig's List. Naturally, they went nuts. Soon the

blogosphere was filled with angry accusations of blocking and censorship. It turns out it was a technical snafu with their security software and Cox is working to fix it. Now some bloggers continue to maintain there is a conspiracy afoot here. Okay. There's a simple remedy available right now. Bring a case before the Federal Trade Commission. Craig's List can do it, but third parties can bring cases before the FTC as well. If somebody tells you that Congress needs to pass new legislation to regulate the Internet because of a market failure, remember this Cox story. *That* is an example of a market at work.

Edwards also says that on the Internet, "big corporations are on equal footing with everyday people." Okay. This is a very common Utopian vision of the Internet, but it's misguided and worthy of a closer look.

What's the biggest Internet company you can think of? Can someone name it? That's right, Google. Google has a current market cap of $117.82 billion. Its price-earnings ratio is an eye-opening 68.2, which tells you how bullish Wall Street is on this company.

Now I've been thinking of starting my own web search company. Here's my business plan: I find some college student who is good at algorithms and programming, she designs a better search engine, I market it, we both get rich enough to buy a plane that's bigger and faster than the Google founders' jumbo jet. In fact, we'll challenge them to a race. Edwards says I'm on equal footing with Google, right?

Well, there's one other thing I'll need; money, and lots of it. Google, according to an article in this week's *New York Times*, has 450,000 servers worldwide. They're building a massive server farm in northern Oregon, taking advantage of the cheap hydroelectricity up there, and the complex will be the size of multiple football fields with two four-story cooling towers. Google is connecting all of its servers worldwide with something called the Googleplex, a network of fiber-optic cables. Put it all together and you've got the most powerful computer in the world. That computer can run blindingly fast searches, combing through terabytes of cached web site pages.

Google's capital expenditures in this area will be $1.5 billion this year. Microsoft is spending $2 billion in this area, and Microsoft and Yahoo! are building new server farms

in Washington state, again going for the cheap electricity. *The Wall Street Journal* noted that after the dot-com bust, many independent server farms sat unused, but the major Internet applications companies have now filled those to capacity and are forced to build their own.

So if I want my search engine to compete with Google, Yahoo! or MSN, I'm going to need several billion dollars, a lot of manpower to run the servers, and access to dark fiber. Or maybe I won't. John Edwards says I'm on equal footing with big corporations.

Now I want it made clear here that what these companies are doing isn't bad. It should be celebrated. It's a sign of the market at work. It wouldn't be right for me to say "Hey, Google's server farms are anticompetitive. It has a de facto search-engine monopoly, and it's conspiring with its infrastructure purchases to freeze out competition. We want upstarts to compete in this market, so let's adopt common carrier regulations and force Google to open up its servers to competitors. Let's force Google to allow competitors access to the fiber Googleplex."

That would be absurd. But how is that any different from what net neutrality proponents are demanding for network providers? Why do we want competition in the application layer of the Internet, but we don't want competition in the network layer?

Net neutrality regulations remove major elements of competition. By regulating every operator down to a "dumb" pipe, the only way broadband providers can compete is on price. That is a disincentive for new competitors to enter the market, because profits will be eroded to almost nothing in that environment.

But if a network provider, either an incumbent or a new entrant, can compete by offering special services or features, then we might see more choice for consumers in the broadband market. Yet look at the net neutrality bill that passed the House Judiciary Committee. I'll quote Sec. 28 (b):

"If a broadband network provider prioritizes or offers enhanced quality of service to data of a particular type, it must prioritize or offer enhanced quality of service to all data of

that type (regardless of the origin or ownership of such data) without imposing a surcharge or other consideration for such prioritization or enhanced quality of service."

So let me put that in non-legal terms. If one bit is treated as special, all bits must be treated as special. If one bit is given priority, every bit must be given priority. You can't give priority to everyone; the very definition of priority is that it comes "prior" to everyone else.

So what we're left with here is a Lake Wobegon world. In Lake Wobegon, "all the women are strong, all the men are good-looking, and all the children are above average." In a net-neutrality world, every bit is treated "above average."

Here's what I'd like you to walk away with today. Congress is *not* trying to create a closed Internet; rather, net neutrality proponents are promoting legislation that would regulate the Internet. ISPs have had an opportunity to discriminate against content for years but have declined to, for obvious market reasons. And it's a myth that the Internet is currently neutral, because the Internet applications companies are spending billions to make sure it's very much not. Bottom line, the status quo seems to be working, so it's hard to see why Congress needs to legislate against a problem that doesn't exist.