

INTERNET CENSORSHIP – NEUTRALIZING FREEDOM OF
INFORMATION?

Jeevan S. HARI

Revue libre de Droit 

ISSN 2276-5328

Article disponible en ligne à l'adresse suivante :

<http://www.revue-libre-de-droit.fr>

Comment citer cet article - How to cite this article:

J.S.HARI: « Internet Censorship – Neutralizing Freedom of Information ? », *Revue libre de Droit*, 2018, p.1-14.

© Revue libre de Droit

INTERNET CENSORSHIP – NEUTRALIZING FREEDOM OF INFORMATION?

Jeevan S. Hari¹

Abstract : *The concept of net neutrality has become increasingly trending as a hot topic of discussion since its inception nearly a decade ago. The contours of the paper deal with the role played by net neutrality on an international level, distributing its impact uniformly among all nations. This research paper seeks to provide an in-depth understanding on the idea of net neutrality, and to judge the caliber of its opponent's feasibility in an advanced, technology-driven society. It also tries to follow the route of adoption of net regulation using the design of a Linchpin theory. The paper also provides a comparative analysis on the merits and demerits of net neutrality faced by its primary and most direct party, the general public. The paper also contains a dedicated section which tries to recreate the idea of a virtual interface that will come into effect upon the eradication of net neutrality which seeks to provide a lifelike idea of the internet that will be available post net regulation. The focal point of the paper emphasizes on the need to withhold net neutrality and to forestall its implementation by critically analyzing the impact of its ideologies on the component of freedom of information and the right to expression on a digital platform. It seeks to further identify the factors that can behave as an obstruction to the freedom of information in the internet. It also substantiates on the factor of restriction by providing real-life, working examples of net neutrality by setting a comparison between the functioning of the media in China to other developed nations of the world. The latent objective of the paper is to create a platform of thinking in order to assist in the formulation of a less extreme and more plausible method to govern the internet, without curbing the basic rights of the people.*

Keywords : *Intellectual Property, International Law, Comparative Law, Fundamental Rights, Internet Law.*

¹ Mr. Jeevan Hari is an Indian student of law currently pursuing his degree at Christ University, Bangalore, India. He is currently acquiring specialization in the field of Intellectual Property Rights. The author can be contacted at jeevanhari9@gmail.com.

TABLE OF CONTENTS

Introduction 4

History of the Internet 4

Chapter I..... 6

The Concept of Net Neutrality..... 6

Challenges to Net Neutrality 7

Chapter II..... 8

Internet Censorship 8

Internet Without Net Neutrality..... 9

Chapter III 11

Feasibility of the System..... 11

Freedom of Information & Expression 11

Conclusion..... 13

Bibliography..... 14

RESEARCH DESIGN

Aims and Objectives:

The primary aim of this research paper is to test the feasibility of the working of internet censorship in this modern, technology-driven era and to assess the viability of its functioning upon implementation. It also seeks to derive its correlation with the basic human right of the freedom of speech and expression and to test its compatibility with the same. The objectives of the paper deal with assessing the various merits and demerits of the idea of internet censorship, and whether it acts as an impediment or an expedite to freedom of information and expression. It also seeks to study the various provisions of the concept of internet censorship and to provide amicable solutions in order to develop a much more efficient system of control and governance.

Scope and Limitations:

The scope of this paper extends to the study of the provisions of various statutes of the United States' Constitution regarding cyber laws and internet governance and the laws in the Indian constitution dealing with cyber laws in the country. It also makes use of various provisions of certain international treaties and conferences to further aid the arguments cited.

RESEARCH QUESTION(S):

1. Will internet censorship act in a manner that is detrimental to the freedom of information enjoyed by the people?
2. Is it possible to create a much more user-friendly and efficiently designed control structure for the governance of activity in the electronic domain?

Research Methodology:

The contents and findings of the paper are primarily based on and derived from doctrinal research. The use of empirical data has been severely restricted in the formulation of the findings laid down in this research paper. The paper seeks to establish a comparative analysis of the policies governing the internet in the Indian legal domain and the legal domain of the United States. It also seeks to lay down the course of events that will take place once the United States repeal their laws on net neutrality.

INTRODUCTION

Ever since its inception, the internet has been one of the most game-changing phenomena in the modern world. With new features and aspects being incorporated into its embodiment every day, the internet is inarguably evolving at a rapid pace. The functioning of the modern world is heavily dependent on the internet, with some factions of the society being driven by the internet itself. One of the primary features of the internet is its free and unrestricted usage, opening a number of avenues for its users. This primary feature, however, is now being threatened. Various amendments to cyber laws are calling for a makeover of the usage of the world wide web, subjecting it to regulation by the government. This threatens the age-old feature of the internet, which is one of the most vital reasons for its emergence and success. Thus, a need arises to evaluate the need for such a move and to measure the extent of the regulations imposed by various governing authorities. Whether the new policies of regulation can be misused as an instrument to curb the element of free speech as in the case of China also needs to be considered. The use of money to access premium features is another element that is to be studied, as it can lay down the roots for a dominative e-society, bestowing power in the hands of the influential. The new laws emerging from amendments to legislations and their impact on the day-to-day functioning of society needs to be ascertained in order to fully comprehend the working of the new framework of the world wide web service.

HISTORY OF THE INTERNET

The principal recorded depiction of the social interactions that could be empowered through systems administration was a progression of reminders composed by J.C.R. Licklider of MIT in August 1962 examining his "Galactic Network" idea.² He imagined an all-around, interconnected arrangement of PCs through which everybody could rapidly access information and projects from any site. In theory, the idea was particularly similar to the Internet of today. Licklider was the principal leader of the PC investigate program at DARPA,⁴ beginning in October 1962. While at DARPA, he persuaded his successors at DARPA, Ivan Sutherland, Bob Taylor, and MIT specialist Lawrence G. Roberts, of the significance of this systems administration idea. Kleinrock persuaded Roberts regarding the hypothetical plausibility of correspondences utilizing bundles as opposed to circuits³, which was a noteworthy advance

² Kim, Byung-Keun (2005). *Internationalizing the Internet, the Co-evolution of Influence and Technology*. Edward Elgar. pp. 51–55.

³ Ibid.

along the way towards PC organizing. The other key advance was to influence the PCs to talk together. Kleinrock's conviction of the requirement for parcel exchanging was later affirmed upon intensive testing. In late 1966 Roberts went to DARPA to build up the PC organize idea and rapidly set up together his arrangement for the "ARPANET", distributing it in 1967. At the gathering where he exhibited the paper, there was likewise a paper on a parcel organize idea from the UK by Donald Davies and Roger Scantlebury of NPL.⁴ Scantlebury educated Roberts concerning the NPL fill in and additionally that of Paul Baron and others at RAND. The RAND assemble had composed a paper on parcel exchanging systems for secure voice in the military in 1964. In August 1968, after Roberts and the DARPA subsidized group had refined the general structure and details for the ARPANET, a RFQ was discharged by DARPA for the improvement of one of the key segments, the bundle switches called Interface Message Processors (IMP's). The first ever system evolved from this period of transmitting and after one month, when SRI was associated with the ARPANET, the principal have to-have message was sent from Kleinrock's lab to SRI. Two more hubs were included at UC Santa Barbara and University of Utah. These last two hubs consolidated application perception ventures, with Glen Culler and Burton Fried at UCSB examining techniques for show of numerical capacities utilizing capacity presentations to manage the issue of revive over the net, and Robert Taylor and Ivan Sutherland at Utah researching strategies for 3-D portrayals over the net. In this manner, before the finish of 1969, four host PCs were associated together into the underlying ARPANET, and the sprouting Internet was off the ground. PCs were added rapidly to the ARPANET amid the next years, and work continued on finishing a practically total Host-to-Host convention and other system programming. In December 1970, S. Crocker completed the underlying ARPANET Host-to-Host convention, called the Network Control Protocol (NCP), which later evolved as the very first develop module for internet communication. As the ARPANET locales finished executing NCP amid the period 1971-1972, the system clients at last could start to create applications. The internet has grown considerably, handling 1% of the data flow of the world to currently supervising and transmitting 97% of all information transmitted throughout the world⁵.

⁴ "Turing's Legacy: A History of Computing at the National Physical Laboratory 1945–1995", David M. Yates, National Museum of Science and Industry, 1997, pages 126–146.

⁵ "The World's Technological Capacity to Store, Communicate, and Compute Information", Martin Hilbert and Priscila López (2011), *Science*, 332(6025), 60–65.

CHAPTER I

The Concept of Net Neutrality

“the idea, principle, or requirement that Internet service providers should or must treat all Internet data as the same regardless of its kind, source, or destination”. The concept of net neutrality was propounded and accepted in the year 2003 by a professor of Media law in the University of Columbia, Tim Wu.⁶ The ideology seeks to provide an equal footing to all users of the internet, thus promoting a sense of equal opportunity and resource-sharing on an online platform. It ensures that no data is influenced unduly by any host or associated party and that data tampering or favoring does not take place at any point of transmission. Under an "open Internet" schema, the full resources of the Internet and means to operate on it should be easily accessible to all individuals, companies, and organizations.⁷ It also opens the features of the internet to all those who can access it, and cannot impose any restriction on a person based on frivolous grounds. Under these principles, internet service providers are not allowed to intentionally block, slow down or charge money for specific websites and online content. However, specific rights and permissions are available at the disposal of service providers to bar certain data from streamers or to charge them for it, based on certain parameters. The base for such provisions is however, frivolous and subject to abuse. These provisions have been misused by some service providers time and again, leading to immense public scrutiny. A widely cited example of a violation of net neutrality principles was the Internet service provider Comcast's secret slowing ("throttling") of uploads from peer-to-peer file sharing (P2P) applications by using forged packets.⁸

⁶ Tim Wu (2003). "Network Neutrality, Broadband Discrimination" (PDF). *Journal on telecom and high tech law*.

⁷ Wheeler, Tom (15 September 2017). "What is the Open Internet Rule?". *Brookings*.

⁸ Peter Svensson (19 October 2007). "Comcast Blocks some Subscriber Internet Traffic, AP Testing shows". *MSNBC. Associated Press*.

Challenges to Net Neutrality

The provisions of the concept of net neutrality has been hugely debated by many factions that play a key role in shaping the internet. While beneficial to users and other forms of consumers, the same cannot be said when applied to the functioning of the service providers. Many service providers have expressed their dissent towards this principle of governance, as it poses as a barrier to their means of maximizing profits. It also bars them from easily setting aside prime features to those who can pay for it⁹, bringing about a market of ‘exclusive’ products for these paid users. While conventional methods in the present era allow them to differentiate users based on plans they use, both paid and free, the provider is obligated to provide the key features of his service to everyone irrespective of the nature of their usage. Only luxury features can be set aside for premium users. This sharply restricts the ability of these service providers to increase their earnings. Many government agencies have also challenged the spirit of this step and constantly battled to strike down its provisions of freedom. They claim that the lack of regulation on the world wide web is hazardous and can potentially create damage of catastrophic echelons. The nature of the internet being primarily open and free-for-all, it is subject to minimal interference from political bodies. There exists only a passive control imposed by the government by way of monitoring data on the internet and taking action against illegal actions. However, agencies monitoring internet traffic cannot undo the damage caused, as the material spreads from the source to various different ports which can often be traced. Thus, the challenges continue today, as network neutrality (net neutrality) remains at the forefront of the policy debate after President Obama specifically included provisions in his stimulus package requiring the Commission to formulate a national broadband plan.¹⁰ The new plans of the FCC also include to eradicate net neutrality and to impose heavy regulations on the use of internet and privacy.¹¹

⁹ Lohr, Steve (29 February 2012). "Impatient Web Users Flee Slow-Loading Sites". *The New York Times*. ISSN 0362-4331.

¹⁰ Ericson, B. (2010). "MÖBIUS-STRIP REASONING": THE EVOLUTION OF THE FCC'S NET NEUTRALITY NONDISCRIMINATION PRINCIPLE FOR BROADBAND INTERNET SERVICES AND ITS NECESSARY DEMISE. *Administrative Law Review*, 62(4), 1217-1260.

¹¹ Restoring Internet Freedom, Declaratory Ruling, Report and Order, and Order -WC Docket No. 17-108

CHAPTER II

Internet Censorship

Internet censorship is the control or suppression of what can be accessed, published, or viewed on the Internet enacted by regulators, or on their own initiative. Individuals and organizations may engage in self-censorship for moral, religious, or business reasons, to conform to societal norms, due to intimidation, or out of fear of legal or other consequences.¹² The degree of Internet control differs on a nation to-nation premise. While most popularity based nations have direct Internet oversight, different nations venture to restrain the entrance of data, for example, news and smother dialog among citizens. Internet control additionally happens in light of or in suspicion of occasions, for example, decisions, dissents, and mobs. A case is the expanded restriction because of the occasions of the Arab Spring. Different regions of control incorporate copyrights, maligning, badgering, and disgusting material. Support for and restriction to Internet oversight additionally fluctuates. In a 2012 Internet Society overview 71% of respondents concurred that "control should exist in some shape on the Internet". In a similar overview 83% concurred that "entrance to the Internet ought to be viewed as a fundamental human right" and 86% concurred that "flexibility of articulation ought to be ensured on the Internet". As indicated by 'GlobalWebIndex', more than 400 million individuals utilize virtual private systems to go around restriction or for expanded level of privacy. The functioning of internet censorship works on a similar basis to offline censorship as in the case of books, movies and so on. The content posted online is submitted for review and is checked by the concerned authority to test it on various parameters. Certain parameters can include sexual content, gore, anti-government texts, terrorism links and so on. The content is then edited in case of any discrepancies, and the new content is posted on various online forums. Internet content is subject to technical censorship methods¹³, including IP bans, DNS filtering, URL filtering, portal censorship¹⁴ and packet filtering.

¹² Schmidt, Eric E.; Cohen, Jared (11 March 2014). "The Future of Internet Freedom". *New York Times*.

¹³Dutton, March 2003, *Freedom of connection, freedom of expression: the changing legal and regulatory ecology shaping the Internet*.

¹⁴ Declan McCullagh, CNET News, Google excluding controversial sites, 23 October 2002.

Internet Without Net Neutrality

One of the most fundamental ideologies which the internet is founded on is that of net neutrality. Its free, open and unrestricted nature has been one of the most crucial elements of its success. This feature will be stripped off upon incorporating censorship techniques in the framework of the internet. The world wide web will no longer be free to use as per the wishes of the user. Periodic checks at every step will be implemented in order to effectively monitor the streaming of data on online platforms. The status quo prevalent will also be challenged.¹⁵ Various broadband providers like Verizon and AT&T have already moved to charge popular websites for preferential access.¹⁶ Charges will also be incurred in order to enjoy features which are free to use at the present moment. Various differential aspects like preferential access, early access and other luxury aspects will work to create a ‘tiered service’ system.¹⁷ Telecommunication corporations can undisputedly work on price fixation. They can also enter into agreements and mergers with other service providers to raise their position in the market. Both the broadband provider as well as the service provider benefit mutually from this association. For example, Verizon can enter into an agreement with Netflix which makes streaming videos on the site much faster and efficient in the servers of Verizon. This, while benefitting the users of Verizon by giving them preferential access, puts the users obtaining services from other broadband providers at a significant disadvantage. Users dependent on Netflix or known to frequently use it will be indirectly forced to succumb to the market conditions, leaving shifting to the other provider as the only viable solution. Another aspect that will dominate the practices of telecommunications industrial captains is the split up of the service speed into two – the fast lane and the regular lane.¹⁸ They can also charge extra for high speeds at their own liberty. Thus, more money can be extracted from consumers as they prefer faster transmission speeds.

¹⁵ Cheng, H., Bandyopadhyay, S., & Guo, H. (2011). The Debate on Net Neutrality: A Policy Perspective. *Information Systems Research*, 22(1), 60-82.

¹⁶ Ibid.

¹⁷ Keep the Net Neutral. (2006). *Scientific American*, 295(2).

¹⁸ Ibid.

This step can also crucially affect online businesses.¹⁹ Start-ups and small-scale businesses are prone to failure and losses due to increasing charges to maintain their web portal. Large-scale and prominent businesses possess an upper hand in purchasing higher bandwidth for their sites, thus prioritizing their websites more than others. This provides an unfair advantage to these sites over other small businesses, as it greatly increases the difficulty in consumers accessing other sites with lower bandwidth. Due to slow loading speeds and increased response time, customers are forced to visit other sites to satisfy their needs. It also makes it difficult for various start-ups to flourish online²⁰, as most of these emerging businesses are based on a very low capital. Their incorporation expenses are also set at a low margin, which is why they turn to the free services of the internet. Due to regulation and control measures, these businesses will have to incur charges in order to set up their websites which will also be subject to review and modifications. Moreover, they will also have to pay additional amounts to ‘prioritize’ their website in order to make it easier for customers to find and use their services. These costs are slowly shifted onto the consumer, thus ultimately burdening them with price rises.²¹

First, two sided pricing will be introduced by the last mile ISP to charge end consumers on one side and content providers on the other side of the network²². Second, the packets from the content providers paying the ISP will receive priority over those from nonpaying firms²³. Third, the ISP can engage in identity-based discrimination. For example, the search engine firm with the highest bid receives priority delivery of its search results to consumers, resulting in great distortion of the search engine market.²⁴ Fourth, new start-up firms will not likely win the prioritization auction, leading to less innovation.²⁵ Fifth, ISPs can impose preferential treatment for their own content and applications over those of other providers.²⁶

¹⁹ Cheng, H., Bandyopadhyay, S., & Guo, H. (2011). The Debate on Net Neutrality: A Policy Perspective. *Information Systems Research*, 22(1), 60-82

²⁰ Cheng, H., Bandyopadhyay, S., & Guo, H. (2011). The Debate on Net Neutrality: A Policy Perspective. *Information Systems Research*, 22(1), 60-82

²¹ Keep the Net Neutral. (2006). *Scientific American*, 295(2).

²² Cheng, H., Bandyopadhyay, S., & Guo, H. (2011). The Debate on Net Neutrality: A Policy Perspective. *Information Systems Research*, 22(1), 60-82

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

CHAPTER III

Feasibility of the System

The new system which is planned to be introduced brings about a sharper degree of control, allowing the government to intervene much more easily. It also allows them to monitor data flow in a much easier manner. The system primarily focuses on empowering the government and service providers at the cost of the power of consumers. This greatly increases the dependency of consumers on their service providers, as opposed to the favourable existence of *caveat venditor*. It also expands the scope for abuse of the powers vested in the hands of the authorities. It also opens up various avenues of consumer exploitation with respect to provision of online services. Users can be extorted i.e. charged higher prices in order to be given preference over usual traffic. The usual traffic would also be made significantly congested, forcing the user to pay extra in order to avail services in a proper manner.

Freedom of Information & Expression

One of the boons that the internet provides to us is the freedom of information accessible along with the freedom to express our views, thoughts and ideas. The internet has served as the apex institution striving towards fostering these rights of society, and safeguarding them. However, this fundamental feature is now at stake due to the rise of censorship and the move to revoke net neutrality. The rights and privacy of online denizens are thus effectively compromised. The attempt to introduce censorship, if successful, can severely curb the basic rights of speech and expression available to the netizens. Imposition of control by broadband providers and government authorities will ensure that no data against their interests can surface. Criticizing the policies of the government on online platforms, seeking opinions on government actions and other related queries would be intercepted and modified, and in some cases even deleted or removed. Extreme steps such as placing these users under a watch list can also be initiated, as they possess the power to do so. From the view- point of freedom of speech, the internet should not be controlled by ISPs as a common carrier for telecommunication. People are entitled to freedom of expression even on the privately owned information networks, because these usually function as part of the national infrastructure.²⁷ The privacy of online users are also subject risk. Their details, including personal and sensitive information can be accessed by external

²⁷ Dawn C. Nunziato, *Virtual Freedom: Net Neutrality and Free Speech in the Internet Age* (Stanford, CA: Stanford Law Books, 2009).

parties.²⁸ Service providers can acquire permission to these details for security and customer relation purposes in exchange for rendering these services. Private details can also be obtained from consumers at both terminals, with each party requiring it for its own purpose.

The Republic of China is currently engaged in various practices of censorship techniques, both online and offline. For the purpose of analyzing the current scenario, the paper shall focus more on the restrictions imposed online. The Chinese government has imposed heavy restrictions on the flow of data in Chinese servers.²⁹ They have also blocked access of Chinese citizens to many prominent websites, including YouTube, Twitter and Facebook, While some share a ban only in certain areas of the Chinese mainland, Twitter has been blocked effectively throughout the nation³⁰ as it is seen as a tool to communicate, share and organize ideas with each other. As a result, the degree of freedom available to the citizens of China is acutely lower compared to their western counterparts.³¹ A similar environment will be created if net neutrality is repealed uniformly across all nations. The situation will slowly escalate, accommodating bans on applications and websites which hinder the interests on the presiding government. This can also lead to a huge disparity in power, rendering the internet available only to the rich who can pay for full features of the world wide web.

It can also significantly alter the day-to-day functioning of society. The modern world is heavily dependent on smart gadgets and the internet to support it. Imposing unreasonable restrictions on the people can often invite unprecedented outcomes and reactions. Curbing the freedom of expression and speech of citizens is also in violation of human rights. In India, such steps would be deemed unconstitutional as it goes against the interests of Article 19(1) of the Indian Constitution.

²⁸ Matt Schafer (August 2, 2010). "Privacy, Privacy, Where for Art Thou Privacy?".

²⁹ Hu, H. (2011). The Political Economy of Governing ISPs in China: Perspectives of Net Neutrality and Vertical Integration. *The China Quarterly*, (207), 523-540.

³⁰ Wauters, Robin (2009-07-07). "China Blocks Access To Twitter, Facebook After Riots". *washingtonspost.com*.

³¹ Ibid.

CONCLUSION

The internet has promised a sanctuary for the thoughts, ideas and emotions of the citizens of the world from time immemorial, and has constantly delivered the same. The internet has developed and been accepted by the people due to its functioning based on this elementary feature. A sudden change in the framework, altering the very spirit of freedom that the world wide web offers would greatly impact the interests of all its users. The current global marketing ethics focus on the needs and security of the consumer, which has been developed since the emergence of marketing. Introducing censorship would severely affect the interests of the consumer, curbing their rights in the process. Although in good interests, the ideologies on which net neutrality is being repealed is seriously flawed. Core areas have been left unanalyzed, and merely the outer shell of benefits have been considered without looking into the shortcomings latent in the plan. A new and evolved system which effectively combats these shortcomings needs to be developed which keeps the interests of the consumers in mind. Imposition of regulation should also be minimized, and a certain degree of freedom must be given to the users of the internet. While it is true that cyber bullying and other crimes are being committed, effective policing on the internet needs to be implemented rather than curbing the rights of the people in exchange for safety. Radical steps should be avoided, and the overall intention of the government's policies should focus more on safeguarding the rights and interests of the people.

Sources:

The data is sourced from various legal papers and books authored by competent authorities which have been obtained from knowledge centers. The prominent sources of information that assisted in the drafting of this paper have been categorized into Primary and Secondary, which have been laid down as follows:

1. Cheng, H., Bandyopadhyay, S., & Guo, H. (2011). The Debate on Net Neutrality: A Policy Perspective. *Information Systems Research*, 22(1), 60-82.
2. Ericson, B. (2010). "MÖBIUS-STRIP REASONING": THE EVOLUTION OF THE FCC'S NET NEUTRALITY NONDISCRIMINATION PRINCIPLE FOR BROADBAND INTERNET SERVICES AND ITS NECESSARY DEMISE. *Administrative Law Review*, 62(4), 1217-1260.
3. Hu, H. (2011). The Political Economy of Governing ISPs in China: Perspectives of Net Neutrality and Vertical Integration. *The China Quarterly*, (207), 523-540.
4. Keep the Net Neutral. (2006). *Scientific American*, 295(2), 8-10.
5. Kim, Byung-Keun (2005). *Internationalizing the Internet, the Co-evolution of Influence and Technology*. Edward Elgar. pp. 51–55.
6. "Turing's Legacy: A History of Computing at the National Physical Laboratory 1945–1995", David M. Yates, National Museum of Science and Industry, 1997, pages 126–146.
7. "The World's Technological Capacity to Store, Communicate, and Compute Information", Martin Hilbert and Priscila López (2011), *Science*, 332(6025), 60–65.
8. Elvy, S. (2017). PAYING FOR PRIVACY AND THE PERSONAL DATA ECONOMY. *Columbia Law Review*, 117(6), 1369-1459.