

Blogging's Relationship with the Broader Cyber World

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Issue: Network Architecture

- The combination of the Internet and blogging technology has eliminated the need for intermediaries (traditional media) who decide which ideas enter the marketplace.
- Maintaining the Internet as an open neutral environment is necessary for bloggers to retain the ability to communicate without content based discrimination
- The outcome of current debates over spectrum policy and network neutrality will determine whether bloggers will continue to flourish as independent pamphleteers, or will be censored by the owners of the network's architecture

Network Neutrality

- Network neutrality is a principle of network design. It asserts that, in order to promote innovation, network service providers such as telephone and cable internet companies should not be permitted to dictate how those networks are used (i.e., not permitted to ban certain types of programs, to ban certain types of devices connecting to the network, or to favor carriage of traffic to certain web sites over others).
- It is closely related to the end to end principle. Under this principle, a dumb network merely connects devices, and is insensitive to the needs of applications running on those devices.
- -Wikipedia

Four Principles of "Network Freedom"

- Announced by FCC Chairman Michael Powell in 2004:
 1. Consumers are entitled to access the lawful Internet content of their choice;
 2. Consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement;
 3. Consumers are entitled to connect their choice of legal devices that do not harm the network; and
 4. Consumers are entitled to competition among network providers, application and service providers, and content providers.
 5. And the Fifth- "Access Tiering"- conditioning content flow on payment of a fee.

Revisions to the Telecommunications Act of 1996

- Currently a live policy debate.
- Language that would generally require internet providers to allow consumers access to any application, content, or service. However, important exceptions allow providers to discriminate for security purposes, or to offer specialized services like "broadband video" service.

Understanding the Spectrum Debate

- Why care about spectrum?
- Cable and Telephone companies are the only ones who have wires going into your house. It is not economical for a third provider to lay cable
- It is economical for a third provider to provide wireless access.
- The government licenses spectrum in auctions to the highest bidder. Small patches of "less desirable spectrum" are left "unlicensed" for anyone to use, ie. 802.11 was built on unlicensed spectrum.
- Unlicensed spectrum allows for competition with low "entry fees" into the market because you don't have to buy the spectrum in an auction first.
- Unlicensed Spectrum is a vehicle for facilitating competition in the market and preventing telephone and cable companies from deciding Internet policy because they own the architecture.

First Amendment and the Listener/Speaker Dichotomy

- Blogging tools have finally realized the potential of the web to be a read-write medium.
- Individuals have reacquired the ability to participate in the conversation-- donate to the marketplace of ideas.
- Current broadcast regulation treats users as “couch potatoes,” protecting their rights as listeners, not speakers.
- Does the evolution of blogging tools require a reevaluation of the legal balance between protections for listeners and for speakers?
- Does this require a re-examination of the legal basis for FCC spectrum auctions? (beyond lobbying the FCC to make more unlicensed spectrum available).

NBC v. United States

- When the government auctions spectrum, it picks speech winners and losers-- why is this allowed?
- The Court held in 1943 that the First Amendment does not constrain government action in broadcast the same way as it does for print. NBC v. United States.
- “Unlike other modes of expression, radio inherently is not available to all,” the Court explained. “That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation.”
- It noted that “[t]he right of free speech does not include ... the right to use the facilities of radio without a license,” and that “[t]he licensing system established by Congress in the Communications Act of 1934 was a proper exercise of its power over commerce.”

Red Lion Broadcasting Co. v. FCC

- The Supreme Court upheld the government's authority to auction spectrum to the highest bidder in 1969 in Red Lion Broadcasting Co. v. FCC, a case involving the FCC's Fairness Doctrine.
- Pointing to spectrum scarcity and noting that broadcast licensees are "public trustees," the Court found that "it is idle to posit an unbridgable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish." Instead, it concluded that, under the public interest standard, "it is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." The Court expanded on the conclusion reached in NBC, that the First Amendment does not prevent the government from regulating broadcast content in ways that would be impermissible for more traditional media.

ACLU v. Reno

- The Supreme Court has recognized that "differences in the characteristics of new media justify differences in the First Amendment standards applied to them." Red Lion Broadcasting Co. v. FCC, 1969.
- In 1997, the Supreme Court found "no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium." Reno v. ACLU.
- However, no court has examined the First Amendment's applicability to broadcast regulation since the "read/write internet" has evolved.

Why should Bloggers Care

- Internet has eliminated intermediaries (traditional media) who decide which ideas enter the marketplace.
- Unlicensed Spectrum allows innovation in architecture and services that displace traditional intermediaries so that all ideas (bloggers ideas) can flow.
- Network Neutrality prevents discrimination against ideas in currently existing (and future) architectures.

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