Where is Internet Policy Really Headed?

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It’s hardly news that the Internet looms as a catalyst of political, economic and social change in the contemporary world. Small wonder, then, that Federal Communications Commission Chairman Julius Genachowski recently delivered a major address examining government’s role in shaping the Internet’s future. A critical unanswered question is where Internet policy is actually headed.

The most striking aspect of Mr. Genachowski’s speech from the perspective of economists was not what he said, but what he didn’t say. In proposing regulation to counter what he called “emerging and substantial challenges” to a free and open net, he did not attempt to justify the initiatives as a means to make consumers better off. Nor did he highlight the growing consensus among economists that policies fostering innovation on platforms like the web are critical for consumer well-being. This consensus could give rise to a new appreciation for how best to regulate the Internet.

The FCC Chair’s proposal

The chairman proposed to build on two ideas endorsed by his predecessors: that Internet users should be free to access any lawful applications and services, and should be allowed to attach any devices to the network that don’t impair its value to others. He added two of his own, one related to non-discrimination and the other to transparency.

The non-discrimination principle says that broadband service providers should not be permitted to “block or degrade lawful traffic over their networks or pick winners by favoring some content or applications over others in the connection to subscriber’s homes, nor can they disfavor an internet service just because it competes with a similar service offered by that broadband provider.”

This sounds good, but should make economists uneasy. Consider, for example, how the principle would apply in wireless telephony where it is expected to be used next. The principle could lead to a requirement that all wireless companies support voice applications like Skype and Google Talk over their networks. But by guaranteeing competitors the right to share in the
benefits of the vast investments in wireless networks, this policy would blunt incentives to ante up the tens of billions needed to implement next-generation technologies. Thus, the non-discrimination principle risks slowing the spectacular pace of innovation the world has witnessed in the wireless space. Consumers now enjoy more services, better call quality, and lower prices than ever before. The same dangers and truths apply to the Internet.

To put it another way, the non-discrimination principle is problematic because it is not an economic principle. In some situations, requiring firms to offer competing services on a non-discriminatory basis makes sense because it prevents the abuse of market power and thereby increases productivity-enhancing, price-paring competition. But in others, non-discrimination threatens harm to the source of the proverbial golden eggs.

The chairman’s policy on transparency is less disturbing: it’s hard to quibble with the idea that making more information available to consumers is virtually always a good thing. But that may be beside the point. In the example cited by Mr. Genachowski, he quite reasonably argued that a broadband provider should be obliged to notify customers that it is blocking peer-to-peer transmissions. However, he glossed over the fact that in this real-world case the broadband provider quickly made amends—perhaps because of regulatory pressure, but also because it viewed reputation as its most important asset in a rapidly changing marketplace. The challenge for the FCC, then, is to design regulation that yields transparency where it is lacking without putting requirements on business that stunt innovation.

**Regulatory design to foster innovation**

Fortunately, economists can help with the regulatory design problem. A new academic consensus is emerging that innovation is the key to promoting consumer welfare, and regulatory and antitrust rules need to be updated to reflect this reality. As a result, there will likely be pressure on agencies, such as the FCC, to take better account of innovation in deciding whether and how to regulate. In all likelihood, less attention will be paid to whether a small number of companies currently dominate a market; and more attention will be paid to the positive effect that innovation and potential competition can have on producing game-changing technologies and products.
Ultimately, economists will likely find that there is less reason for intervening in markets subject to rapid technological change than the current regulatory approach suggests. In particular, traditional rate-of-return regulation and incentive regulation, both of which typically involve periodic rulemaking, are poorly suited for encouraging appropriate levels of investment by firms. In contrast, antitrust interventions that are specifically geared toward fostering innovation can be useful.

So, where is Internet policy going? In the short term, there may be occasional backsliding. Every twist and turn in the marketplace yields losers eager to roll back the clock. And as Chairman Genachowski’s speech suggests, the temptation to view information technology through an obsolete lens remains strong. Over the longer term, it is the ideas of economists that are likely to matter more. The application of these ideas should lead to less intrusive regulation and more Internet innovation, both of which will be good for society.

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References and further Reading


