

The FCC's Worrisome Repeal of Net Neutrality Rules

I AM WORRIED. In fact, I am very worried. I'm worried because net neutrality, the policy that has allowed content providers—and thus consumers—to enjoy equal access to the Internet, is threatened by the FCC's recent ruling that broadband providers like AT&T, Comcast, and Verizon, be reclassified as lightly regulated information providers instead of closely regulated telecommunications companies.¹ This would allow the telecoms to favor or disfavor and control content delivered to consumers and at what download speeds. The telecoms will have the power to throttle, or slow down, content they disfavor or that is not paying for premium access. The implications of this frighten me on several levels. It threatens the way I practice law, run my businesses, and spend my leisure time. Most importantly, it threatens the futures of many of my clients.

During my career, I have been the lawyer for such acts as New Edition and Justine Skye, and the production partner of Machine Gun Kelly. But for every such musician, I have represented scores of other talented individuals whose opportunities for success were made possible through an open Internet. These are the folks who rely on the Internet's ability to allow start-up production companies to tout their wares, who bank on the World Wide Web to provide promotion and merchandising opportunities, and who count on an equal access system to sell concert tickets.

Yet, FCC Chairman Ajit Pai claims that by eliminating net neutrality, "[b]roadband providers will have stronger incentives to build networks, especially in unserved areas, and to upgrade networks to gigabit speeds and 5G."²

This may or may not be true, but it must be weighed against the fact that musicians without major recording contracts will no longer be able to share their talents with an enthusiastic audience. While proponents of the new approach claim that "competition" and antitrust laws will preempt the inclinations of Internet service providers (ISPs) to block or throttle content provided by smaller enterprises (in this case, musicians and production companies), the costs to get on the "fast lane" of Internet connectivity will prove an intolerable burden. For proof, one need only look to the payola schemes of radio networks that only play music the well-heeled can afford to finance. Ditto for paid prioritization and the high entry costs of starting a new cable station. In short, under the FCC's new ruling, the Verizons and AT&Ts of the world will be able to determine what we watch and what we do by charging fees based on the user, the application, the content, the platform.

Because of technology, producing music today costs less than ever. That will change with this ruling. Although I am an entertainment law attorney concerned about opportunities for musicians, I am also a consumer of Internet content who may not be able to keep the access I currently enjoy or will have to pay a premium to do so. As an entrepreneur, I worry about the opportunities I will have to locate and discover new talent and whether my intel-

lectual property will be given a fair chance to see the light of day in an open environment. But it goes even deeper than that.

Net neutrality allows organizations and movements with good intentions but perhaps limited resources to tell their story without censorship, to make a case for a meaningful cause, to demand fair treatment, and to awaken the masses when necessary. Should ISPs really have the right to determine who is heard?

Fortunately, the lawsuits are coming. U.S. Senate Minority Leader Chuck Schumer of New York is attempting to pass legislation that will undo the FCC's ruling. Major creative organizations such as the Writer's Guild of America, the Directors Guild of America, the Independent Film and Television Alliance, and the Internet Association (which claims powerful members such as Google, Facebook and Amazon) have voiced their concerns.

New York Attorney General Eric Schneiderman said he filed a lawsuit in December because the FCC "broke essentially all the rules of the administrative process. Agencies aren't just allowed to make any arbitrary decision. In fact, courts have held that if a decision is arbitrary and capricious...it has to be rejected."³

Indeed, questions have been raised as to whether the FCC based its decision to overturn Title II of the Telecommunications Act on a faulty premise—that ISPs were information providers (versus telecommunications companies) and thus not subject to regulations imposed by the FCC.

An open Internet is the natural evolution of the values we hold dear. Keeping it that way is about who we are as a people. As Chad Dahlstrom, CEO of Discogs, the online music marketplace, stated:

The idea that all information online aka data should be treated equally is one of the core principles in an open internet. Threats to that principle are threats to open dialogue, freedom of speech and the ability to choose what and how you get information online. We should not allow content to be throttled, blocked or removed based on a telecom or influential individuals' decisions. That is an open door to censorship and big corporations once again choosing what we can see, hear and learn about.⁴

This is why, as a lawyer, an entrepreneur, and a citizen, I am more than just a little worried about where we are heading. ■

¹ Restoring Internet Freedom, 83 Fed. Reg 7852 (Apr. 23, 2018).

² Jacob Kastrenakes, *Read FCC Chairman Ajit Pai's Statement on Killing Net Neutrality*, THE VERGE, Dec. 14, 2017, <https://www.theverge.com/2017/12/14/16777626/ajit-pai-net-neutrality-speech>.

³ Interview with Eric Schneiderman, *All In with Chris Hayes*, MSNBC, Dec. 14, 2017.

⁴ Colin Stutz, *Music & Tech Industries Say FCC's Net Neutrality Vote Will 'Negatively Affect Innovation'*, BILLBOARD, Dec. 14, 2017.

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