

Net Neutrality Is Basically Internet Egalitarianism

PARMINDER JEET SINGH

Net neutrality is neither a technical principle nor something necessary to uphold free markets. It is an egalitarian principle as applied to a key building block of the new social system of the internet. But it is equally important to check the concurrent tendencies of rapid centralisation of power in so many areas that the networked social logic has caused. To be able to ensure this, the related principles of neutrality, non-discrimination and equity have to be applied consistently and meticulously across all layers of the internet.

Developing countries, including their otherwise politically conscious and active groups, have to date mostly engaged with issues of basic access to the internet, and the quality or bandwidth of connectivity. It is often considered premature to talk about internet-related architectural and governance issues when people do not have basic access. Taking advantage of such apathy, telcos and big internet companies (those providing content and applications) have chosen developing countries to begin fiddling with the basic egalitarian design of the internet. The purpose is to set up permanent rent-seeking positions over this most important technological infrastructure of the current times.

Facebook and Google have got into agreements with internet service providers (ISPs) to make available their services free of data charges. This tilts the playing field against competing services, including those provided by start-ups or by non-profit organisations who cannot afford to pay the ISPs to make their services similarly available with no data charges. Facebook has gone a step forward and pulled together a bouquet of different kinds of services called the Internet.org which is being provided free of data charges. The big telcos, who are the main ISPs, keep exploring business models involving priority channels—with faster and better transmission—for content providers who are willing to pay extra, at the expense of all other traffic. Often, they simply block communication services like Skype and Viber that compete with voice services provided by the telcos, or ask for higher data charges for using such services.

Such practices are becoming common in most developing countries. If this rot is not checked, the basic egalitarian model of the internet that ensures equal

status for all content and applications prided through it will be deformed forever. It is not just about equity regarding our communications and the media, which are no doubt important considerations. As most social sectors are undergoing fundamental transformations on the back of the networked digital paradigm, such fundamental distortions in the architecture of the internet have society-wide implications in terms of how egalitarian or otherwise our emerging social systems would be.

Net neutrality is a principle that the ISPs will treat all content, applications and services equally, and not prioritise or degrade any in relation to others. Telcos have the obvious incentive to build priority channels and charge more for them. Dominant internet companies have the incentive to rent such priority channels, thus employing their financial muscle to suppress competition which often comes from poorly-resourced start-ups. Such kinds of commercial deals, though *prima facie* unfair, are common in most economic areas. It is important then to understand why regulatory interventions are needed to ensure that no discrimination on commercial grounds takes place in relation to the internet. Meanwhile, there are many different views about net neutrality, even about what is meant by net neutrality. For instance, one can often find big telcos and big internet companies, who most people feel violate net neutrality, proclaiming full support for it. What they are actually saying is that they do not consider some kinds of discrimination, even if commercially motivated, as violations of net neutrality.

What Net Neutrality Is Not

It is therefore important to seek clarity about what net neutrality really is, and what is the basis of such a regulatory principle. One can start by pointing to what net neutrality is not. Although it is often understood and proposed as such, net neutrality is not a technical principle. Neither is it about a free market. It is true that the internet's initial architecture was built on the principle that the carrier pipe will be completely dumb, with no capacity

to discriminate among the bytes passing over it. All intelligence was at the periphery—in the end devices which collated the bytes into intelligible patterns. For a long time now, however, considerable intelligence has been built into the network, which is able to discriminate between bytes for many purposes, especially for traffic management, to ensure good internet experience for all users. As long as such discrimination is not done for commercial considerations, whether to favour an ISP's own offerings, or that of their commercial partners, it is not considered a violation of net neutrality. Net neutrality as any kind of technical principle is therefore long dead. The term is today used primarily in the meaning of a regulatory intervention.

A lot of people like to present net neutrality as upholding the free market. Their position is that the market should be allowed to choose which internet content/application/service will succeed and which will not. Telcos, they say, cannot be playing favourites in this regard, and thus interfering with a free market. Net neutrality also gets defined as the right of a user (or consumer) to access and use any content, application or service of her choice. But the question arises: does invoking the state's regulatory authority to disallow many possible business models to the telcos not amount to an interference with the free market and free choice? After all, most telcos today appear ready to provide a variety of models, including those observing net neutrality (no doubt as a result of the enormous pressure that successful net neutrality advocacy has brought upon them), as a set of "choices" for the customer. This does seem to be the best way to foster a free market and consumer choice! Real net neutrality is therefore difficult to defend in the name of the free market and consumer choice alone.

Much more than free choice, net neutrality is about equal opportunity. Just as the common school system is a way to ensure a certain equality of opportunity for all children, net neutrality can be understood basically as an attempt to provide equal opportunity to various social actors and activities that employ the internet for many different purposes.

This certainly includes start-up internet companies, and since they certainly are not among the most oppressed classes of people, their case for equal opportunity is promoted in the name of ensuring innovation. Unfortunately, it is the language of the market that is somewhat exclusively employed in net neutrality discussions. In order to get to the real significance of the net neutrality principle, the internet must be claimed for its larger social moorings. The internet can be seen as providing a general "playing field" for shaping and supporting a very broad range of social activities and institutions, the market being just one of them. Maintaining an "evenness" or neutrality of this playing field—meaning the internet—is important for the consumers, producers and innovators—the market actors. But before that, it is important to us in terms of our identity as social beings and citizens. It is becoming a key infrastructure for our social relationships, practising culture, and vitalising democracy.

Building a Case for Net Neutrality

A much better basis for net neutrality than free market ideals is the "common carriage" principle which comes from the telecom regulation. It has precedence in many areas of transport, roads and bridges, and postal services. As per this principle, a carrier service represents a public utility, and has to be equally available to all possible "traffic" over it, in a non-discriminatory manner. Recently, the us regulator had to reclassify the internet as a telecommunication service from its earlier status of an information service, to be able to apply the common carriage principle to it. This provided the basis for net neutrality regulation. However, traditional common carriage thinking does often allow some kinds of paid prioritisation, as we well know in the case of the postal/courier services. It is also common to offer different models whereby either the receiving or the sending party could pay for transit—for both postal and telephony services. Such an "alternative" payment model is the basis of the very controversial practice of "zero rating" of internet services. Here, select applications/services are offered with no data charges for the consumers. Instead, the service provider pays the telco for the data.

All other services remain available at regular data charges.

It was a zero rating offering from Airtel, the biggest telco in India which has caused a great uproar in defence of net neutrality. Around 1,00,000 emails are currently being sent daily to the telecom regulator on this matter, with the total number already around 1.2 million! Responding to the charges against it, Airtel has claimed that it does not and never will prioritise or throttle any traffic. What it is doing is merely reversing the role of the payer for some data traffic, from the consumer to the provider. This, the telco claims, does not distort the basic net neutrality principle, in that no traffic gets prioritised or de-prioritised. It is still not clear if the new net neutrality regulation in the us prohibits such zero rating practices. Apparently, something more than the common carriage principle, applied in the communication and transport sectors, is required to keep the internet really non-discriminatory.

Indeed, the internet today is quite more than just a channel of communication. To start with, it is universally recognised as a new form of media. Apart from the "common carriage" principle, application of some media regulatory principles to this new media of the internet can provide a good basis for protecting and promoting its non-discriminatory, public nature. The media is recognised as a sector of such exceptional social importance that it is customary not only to prohibit various kinds of discriminations, which may be commonplace in regular commercial services, but also to ensure things like checks on vertical integration (for instance, between carrier and content layers), limits on cross-media or cross-platform ownership, clear separation between editorial and commercial content, positive discrimination to protect diversities of various kinds, and so on. It may be pertinent to extrapolate some such regulatory principles from the media space to the internet and see what kind of regulation best serves the public interest. And how the internet can really be neutral and egalitarian, ensuring equity for all.

To attempt a partial analogy, providing some internet services for free in

violation of what is otherwise a fundamental principle of the internet's architecture and its social potential, that is, net neutrality, is similar to a media company offering to provide some forms or channels of media for free, as long as these forms or channels are made exempt from regulatory "burdens" like a banning of paid news, clear separation of editorial and commercial content, checks on cross-media ownership and vertical integration, etc. And then justify such practices in the name of making access to media affordable to people in poverty!

False Binary

Looking at the internet as media takes us to the question of its "neutrality" and public nature in layers beyond the infrastructure or the telecom one. It is argued by many internet enthusiasts that regulation is needed in the telecom layer, but not in the higher layers of the internet—in applications and content. The "unique monopoly tendencies" of the telecom layer is cited as the primary reason. There is some truth in this assertion, since the telco business involves huge upfront costs as well as a steeply declining revenue/cost ratio as more competition moves in. Telcos certainly occupy a very significant "controlling" or "gate-keeping" position. They have shown a propensity to act in an oligarchic manner towards systematic net neutrality violations, and market forces alone have been unable to check such distortions. Net neutrality is therefore important to enforce by regulation. Without net neutrality, much of the egalitarian potential of the internet will be lost and the emergent digitally-underpinned social structures will be inherently more unequal than even the current ones, which are bad enough.

Rather than treating regulation in this area as a telcos versus the internet sector issue, it would be useful to base regulatory decisions on a clear principle: any part or layer of the internet that exhibits significant monopoly tendencies may require regulation to ensure appropriate neutrality for and across actors and activities that use that layer. The internet is of such a foundational importance to the emerging social structures that it cannot be left entirely to market forces. Significant monopoly tendencies in parts of the

internet other than the telecom layer are now increasingly evident, parts or layers that are basic to maintaining an equitable or even digital playing field. Accordingly, such higher layers of the internet may also require appropriate regulation, in order to keep them sufficiently open and to foreclose rent-providing positions.

It is more difficult today for people to shift out of their default applications for social media (Facebook), instant media (Twitter), messaging (WhatsApp) and knowledge work ("the Google environment") than it is to change one's telcom service provider! (This is especially true for places where number portability has been enforced through regulation, like in India.) This fact bespeaks a very interesting blind spot, if not deliberate obfuscation, in the current debates on net neutrality, where it can be presented as some kind of a stand-off between the bad, exploitative telco sector and the liberating, entrepreneurial internet sector. (Was the same private telco sector not the hero of the "mobile revolution" in developing countries, till just a few years ago?!) It is necessary to sidestep the simplistic meme of "hate telcos, love internet companies" which often underlies popular perceptions of the net neutrality issue. Considerable propaganda by multinational internet companies has no doubt gone into feeding this meme. It also has some ideological as well as geopolitical basis which is not possible to go into in this article.

People's Rights and Egalitarianism

It is important to keep the internet neutral, as it becomes not just the infrastructure but the matrix of so much social activity, and of society's organisations and institutions. It would not be hyperbolic to say that we are moving towards an internet-mediated society. It is a society's political decision what it treats as the "playing field" issues, sectors or conditions, whereby a certain degree of equity is enforced in such areas through policy or regulation. And, what are considered as the "play" areas in which regard people can compete and accordingly "win" (or "lose") access to resources. Traditionally, governance, justice and basic security are considered such playing field areas, as also basic education, health, and an increasing number of what are understood

as people's rights. Whether or not some basic internet services are to be provided equitably to all—not only as consumers of services, but also as producers, sharers, innovators, citizens, and so on—is therefore a sociopolitical decision depending on what kind of society we want. It is on such larger sociopolitical considerations that the regulatory principle of net neutrality is premised. In fact, it will be appropriate to locate the internet in a rights-based framework, not only of negative rights like freedom of expression and privacy, but also positive rights like universal access and a certain degree of basic neutrality and egalitarianism of the internet.

As all major social systems—from media, business, politics and governance to education, health, agriculture and transport—transform via their digitalisation, datafication and networking, there are strong tendencies for centralised controls and dominations being built into them. Numerous instances of such a process exist, and it will be useful to extrapolate current early developments into likely future mature scenarios to understand the required role of policy and regulation in the respective sectors. The public internet is the all-important connector of all these systems to people. If net neutrality is enforced, the public internet at least remains a layer that can protect a basic level of openness in the digitally-mediated world and keep available avenues for possible structural reforms if the new systems are seen going too askew on the equity front. However, if this open and public layer too is deprived of its egalitarian qualities and dominant players are able to rent exclusive favoured channels to people, the end-to-end, tightly-controlled systems that will get developed are likely to be extremely unfair and exploitative. It will then also be difficult to bring pressure for changes on them from outside. A non-neutral internet will enable a tight lock-in of people into monopoly systems in different areas that portend a rather worrisome development. A net neutral internet provides the fluidity (although not the guarantee) to be able to keep working around such lock-ins, and thus systemic exploitation.

In sum, net neutrality is neither a technical principle nor something necessary to uphold free markets. It is an egalitarian

principle as applied to a key building block and determinant of our new social systems, which the internet is. Enforcing this principle is necessary if we want to ensure greater egalitarianism of our societies as we go ahead. It is necessary to preserve and promote the logic of horizontality and equality that made the internet such a disruptive force, not only in the economic but also the political, social and cultural spheres. It is as important to check the concurrent tendencies of rapid centralisation of power in so many areas that the networked social logic has caused. But to be able to ensure all this, the related principles of neutrality, non-discrimination and equity have to be applied consistently and meticulously across all layers of the internet.

Today, the key struggle is about the neutrality of the infrastructure or telecom layer vis-à-vis the higher layers of applications, content and services. Similar struggles will however be required for addressing monopolies, lock-ins and rent-structures in the higher layers. Therefore,

while it is important to rally, and rally hard, for net neutrality, one must beware of doing so under the banners of Googles and Facebooks of this world (while tactical alliances may certainly be considered). We need to keep our powder dry for the day when we will be rallying for opening up the Googles and the Facebooks, and ensuring neutrality in the layers that they currently monopolise!

Treating net neutrality foremost as a social egalitarian principle also helps us avoid extreme “technical” positions—like seeking strict neutralities of some kinds even when they manifestly go against public interest. It is possible that upholding public interest may at times call for positive discrimination in favour of some applications, content and services. This may not amount to a violation of net neutrality, in the same way as reservations for women in jobs is not considered gender discrimination. As internet-connected mobile phones become near ubiquitous even in developing countries, it is entirely possible

that governments enable and promote a “zero data charge” channel for some essential citizen services, which could include obtaining their participation in key public discussions and policy decisions. Similarly, with the internet likely to become a key if not the main platform for community media, it could be useful to explore committed channels for community radio/TV, possibly with zero data charges. These can be enforced by the regulator on the telcos through licence conditions. Such measures indeed contribute to a greater non-discrimination or neutrality of the internet, in that they merely mitigate inequalities and discriminations in the overall social structures.

Positive discrimination on the internet in public interest, as determined by duly legitimate means, fits with the definition of net neutrality that bars any discrimination “by infrastructure providers” on any kind of “commercial grounds” among different applications, content and services.