

Teaching Notes

NET NEUTRALITY: FCC VS. FTC

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Opponents of net neutrality argue that it prevents competition among ISPs. Moreover, ISPs argue a net neutrality regulatory rule is preemptive and aims to solve a problem that doesn't exist. Proponents of net neutrality argue that it will keep the Internet open and free among users and content providers. Without net neutrality, ISPs could block content or charge for delivery speeds, which could give advantages to certain content providers and prevent new providers from entering and attracting consumers. This case will discuss the arguments for and against net neutrality, and the different regulatory solutions to ISPs potentially blocking content.

This case study was completed under the direction of Dr. Amber Díaz Pearson, The Kenan Institute for Ethics.

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Ethical Frameworks¹

In discussing these regulatory issues, it helps to ground our thoughts in the ethical frameworks of utilitarianism and Rawlsianism. These frameworks are useful because they deal with questions of efficiency and fairness – factors regulators must themselves evaluate. A utilitarian approach would favor maximizing efficiency: profits for private companies and utility for consumers. A Rawlsian approach would emphasize fairness, which may place greater consideration of social concerns, above efficiency.

Utilitarianism defines moral actions as those providing the greatest good for the greatest number. Utilitarianism states that feelings of pleasure and pain govern humans, so moral actions are those that maximize societal utility: that is, whatever maximizes pleasure and prevents pain. Utilitarianism treats each individual societal member's utility equally in maximizing utility, so no one person's utility is weighted more than another's.²

John Rawls' theory to govern the society is “justice as fairness”: citizens are free and equal and the society governing those citizens ought to be fair. Within Rawlsian theory, Rawls' difference principle is most applicable to our discussion of regulation. The difference principle mandates both economic and educational opportunities for those with the same level of natural talent and willingness to employ such talent so that the resulting socio-economic differences give the greatest advantage to the least advantaged. The difference principle ensures that inequalities benefit all citizens, specifically whoever would be most disadvantaged by the inequalities.³

In discussing regulatory approaches to net neutrality, you, like regulators, must balance potential regulations between efficiency and fairness.⁴

¹ Adapted from Alexandra Zrenner's Sharing Economy Teaching Notes. <http://kenan.ethics.duke.edu/wp-content/uploads/2012/08/Sharing-EconomyTN2015.pdf>

² Driver, Julia, “The History of Utilitarianism”, The Stanford Encyclopedia of Philosophy (Winter 2014 Edition), Edward N. Zalta (ed.). John Stuart Mill, a follower of Bentham, does qualitatively distinguish among types of pleasure – such as the difference between intellectual and sensual pleasures. However, Mill does not distinguish between utility based upon the individual.

³ Wenar, Leif, “John Rawls”, The Stanford Encyclopedia of Philosophy (Winter 2013 Edition), Edward N. Zalta (ed.)

⁴ You may also consider a libertarian challenge to utilitarianism and Rawlsianism. Libertarianism calls only for the individual rights and liberties of all citizens in the society. A Libertarian approach to regulations will question whether individual and property rights are established. You may consider whether taking a libertarian approach may result in more, less, or no regulation for ISPs.

Discussion Questions

1. *When are discriminatory (content) policies justified, if ever?*
2. *How does the regulation of information service differ from utilities?*
3. *Does the content matter? Why is the regulation of electricity (controlled monopolies and rate regulation), different than regulation of the Internet? Is information important enough to necessitate more restrictive regulation?*
4. *Would a utilitarian be more supportive of regulating after observing anticompetitive or consumer harming practices or before? Why?*
5. *How would a Rawlsian balance the economic and social concerns of regulating ISPs?*
6. *Would the FTC use a utilitarian or Rawlsian justification FOR ITS POSITION? The FCC?*