

Net Neutrality *Frequently Asked Questions*

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The American Library Association (ALA) is a strong supporter of net neutrality¹, and this has been an important issue in the library community for over a decade. This Frequently Asked Questions (FAQ) document reviews the background of net neutrality, why it is of interest to the library community, and its current legal status.

What is net neutrality?

Net neutrality² is a founding principle of the internet and can be defined as follows: individuals should have the ability to access the content and services of their choice without internet service providers (ISPs) being able to give preferential access to certain content or services; or conversely, without ISPs discriminating against certain content or services by blocking or degrading access. In other words, ISPs should not be able to act as “gatekeepers” controlling where individuals can go on the internet based on the nature or source of the content or service to be accessed. ISPs also should not be allowed to charge content providers just to access the network or establish exclusive deals with some content providers to create internet “fast lanes,” thus relegating everyone else—including libraries—to the internet’s “slow lanes.”

What is the background on net neutrality? Why is this an issue?

While it is beyond the scope of this FAQ to provide a comprehensive history of net neutrality—which includes various rulings by the Federal Communications Commission (FCC) and multiple court actions—some background provides essential context to understand the current situation and possible future directions. The following are several key points of interest.

- When net neutrality is discussed there often is reference to the terms “Title I” and “Title II.” These refer to sections in the federal Communications Act, which provide the statutory underpinnings of the FCC’s regulatory authority in the area of telecommunications and internet access. In brief, Title I does not have strong regulatory language. Title II has strong language that, for example, prohibits providers from discriminating against customers or content.
- In several critical decisions between 2002 and 2005, the FCC classified internet access provided by cable companies and DSL (digital subscriber line) internet access provided by the phone companies³ as “information services” regulated under the weak Title I language of the Communications Act. This

¹ ALA background and key documents can be found online at <http://www.ala.org/advocacy/telecom/netneutrality>.

² The term “network neutrality” is often attributed to Tim Wu, Professor of Law at Columbia University.

³ Of interest, neither the cable or phone companies were at the forefront of offering internet access in the mid-to-late 1990s. Rather, access was most often provided by independent ISPs offering dial-up access. Internet access via cable or DSL is far faster and more reliable than dial-up access. As a result of this technology change and various FCC actions, the over 7,000 dial-up access providers that existed in the late 1990s almost totally disappeared by 2005.

action alarmed net neutrality advocates, including then-FCC Commissioner Michael Copps, because it removed the underlying telecommunications circuits from the more stringent Title II regulations on non-discrimination and open access. The U.S. Supreme Court upheld the FCC’s authority to determine this classification of internet access as an “information service.”

- In December 2010 the FCC approved an order prohibiting ISPs from discriminating against content or services on the internet. In 2014 the U.S. Court of Appeals struck down this order saying that since the FCC already declared that the internet was an unregulated Title I “information service” it could not then apply the more stringent Title II non-discrimination regulations.
- In 2015 the FCC adopted a new pro-net neutrality Open Internet Order that reclassified internet access as a Title II telecommunications service. This meant the internet was now under stronger non-discrimination regulations. The order specified that fixed and mobile ISPs could not block, throttle or degrade access to lawful internet content or services. The order also prevented providers from giving priority to certain content in exchange for payment (i.e., creating internet “fast lanes”). The order was upheld by the Court of Appeals in 2016.
- In January 2017 President Trump appointed then FCC Commissioner Ajit Pai as FCC chairman. Chairman Pai, who as a commissioner vigorously opposed and voted against the 2015 Open Internet Order, initiated another proposed rulemaking to overturn the order. After receiving over 20 million comments, most in favor of net neutrality, the Commission voted on December 14, 2017, along party lines (3-2) to repeal net neutrality protections in the 2015 order.⁴

We need a watchful eye to ensure that network providers do not become Internet gatekeepers, with the ability to dictate who can use the Internet and for what purpose. —FCC Commissioner Michael Copps, 2005.

Why does net neutrality matter to libraries?

ALA is a strong advocate for intellectual freedom, which is the “right of every individual to both seek and receive information from all points of view without restriction.”⁵ The internet connects people of diverse geographical, political, or ideological origins, greatly enhancing everyone’s ability to share information and to inform both themselves and others. “In the 21st century, much of the speech in our society and the publications of the press are transmitted via the internet. Net neutrality ensures that the transmission of all ‘digital speech’ is treated equally, regardless of origin, content, or purpose.”⁶

Libraries are leaders in creating, fostering, using, extending, and maximizing the potential of the internet for research, education, and the public good. Giving ISPs the power to create “fast lanes” for some content relegates everyone else—including libraries—to the internet’s “slow lanes.” Without a neutral internet, libraries face increased fees and other constraints to online content, including:

- subscriptions or per search charges to online reference and periodical databases and millions of dollars’ worth of digital resources.
- libraries’ own digital content such as repositories in university libraries, which store faculty research and scholarship resources.

⁴ The party in charge of the executive branch appoints the chair of the FCC and two commissioners. The party out of office has two commissioners.

⁵ See the ALA *Intellectual Freedom and Censorship Q & A* at <http://www.ala.org/advocacy/intfreedom/censorship/faq>.

⁶ *Net Neutrality: An Intellectual Freedom Issue*. Adopted February 13, 2018, by the ALA Council and endorsed by several ALA organizations including the Committee on Legislation and the Intellectual Freedom Round Table. (<http://www.ala.org/advocacy/intfreedom/netneutrality>).

- patrons' original digital content, often created in library innovation centers and makerspaces that fuel entrepreneurship and creativity.
- high-bandwidth applications that support distance learning and other online collaboration.

What will be the impact of the FCC's 2017 decision?

The FCC's December 2017 Restoring Internet Freedom Order reclassifies the internet as a Title I "information service," thus removing the strong Title II protections that prevent providers from discriminating against online content and services. Concerns about this latest FCC action are graphically stated by Commissioner Rosenworcel, a strong advocate for net neutrality. In her opposition to the December Order, she said:

As a result of today's misguided action, our broadband providers will get extraordinary new power from this agency. They will have the power to block websites, throttle services, and censor online content. They will have the right to discriminate and favor the internet traffic of those companies with whom they have pay-for-play arrangements and the right to consign all others to a slow and bumpy road. Now our broadband providers will tell you they will never do these things. They say just trust us. But know this: they have the technical ability and business incentive to discriminate and manipulate your internet traffic. And now this agency gives them the legal green light to go ahead and do so.⁷

Commissioner Clyburn's comments were also critical of the December 2017 Order. She said: "Providers blocking or throttling content? Some say this will never happen. But after today's vote who is the cop on the beat that can stop them?"

While the December Order repeals the 2015 net neutrality rules, supporters of the repeal note that the order requires enhanced transparency of network management practices. This provision, however, only requires ISPs to tell you when they are discriminating against certain content—it does not prevent them from doing so. The enforcement of this provision is given to the Federal Trade Commission (FTC), an agency that is not expert in the technological aspects of telecommunications or the internet because these services have been under the purview of the FCC for the past decades.

Will providers soon start taking actions limiting access to content or creating internet "fast lanes"?

The current visibility of the issue makes it unlikely providers will immediately start limiting access to content or taking other discriminatory actions. But the key question is: How long will providers resist the financial incentive to charge content providers to give their content priority access or prioritize their own affiliated content?⁸ In a worst-case scenario, the internet could degrade into something similar to cable TV where you get priority access via the more expensive "gold" subscriber plan vs. a lower level of access from the less expensive "bronze" plan.

⁷ See Commissioner Rosenworcel's comments at

https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0105/FCC-17-166A6.pdf.

⁸ Comcast, for instance, is the nation's largest cable and internet provider, and could give preferential access to the considerable content it now controls as a result of its merger with NBC. Similar concerns have been raised with regard to AT&T's proposed merger with Time Warner giving it access to the latter's extensive library of content which includes CNN, HBO and Warner Brothers.

Will there be law suits or legislation addressing the 2017 FCC order?

Yes. Several net neutrality advocates⁹ already have initiated legal actions to overturn the FCC's December decision. ALA plans to file an amicus brief to support these legal challenges. Action also will proceed in Congress, although passing new legislation supporting net neutrality will be difficult. In addition, many states are considering state legislation and/or Executive Orders to protect net neutrality in some way.¹⁰ The fate of these state-level bills and actions are uncertain because the FCC's December order preempts state action in this area. Also, state action does not prevent content from coming into a state being subject to discrimination because it originates from outside the state.

Conclusion

ALA has been on the front lines of advocating for net neutrality with the FCC, Congress, and the federal courts for more than a decade. Much of this work is done in cooperation with other library and higher education organizations, as well as broader coalitions of net neutrality advocates. In addition to the comments of ALA, thousands of librarians and library staff from across the country filed comments to the FCC on their own or via ALA's action alerts as part of coordinated days of action. This action has spread to Congress, as the library community has used ALA's action alert center to contact their members of Congress to urge action. ALA seeks strong, enforceable policies that prohibit blocking, throttling, degrading or paid prioritization of internet traffic.

Where can I find more information?

- [The Net Neutrality Debate: Access to Broadband Networks](#). From the Congressional Research Service, December 2017.
- [Comments of the American Association of Law Libraries, American Library Association, and Chief Officers of State Library Agencies](#). Net neutrality comments filed with the FCC, July 2017.
- [Reply Comments of the American Library Association](#). Net neutrality reply comments filed with the FCC, August 2017.
- [Internet Association debunks claims that strong Net Neutrality protections hurt internet investment](#). From the ALA District Dispatch, May 2017.
- [Net Neutrality Principles](#). ALA and other library and higher education groups released these principles in July 2014.
- [ALA Washington District Dispatch site on Net Neutrality – ongoing](#).

⁹ For example, Free Press has filed a petition in U.S. Circuit Court asking the court to set aside the FCC's December Order (<https://www.freepress.net/press-release/108596/free-press-among-first-take-fcc-court-unpopular-and-unjustified-net-neutrality>). The Internet Association, a trade group representing companies like Amazon and Google, also has initiated legal action. (<https://internetassociation.org/internet-association-files-motion-intervene-net-neutrality-repeal-case/>).

¹⁰ The National Regulatory Research Institute tracks state activity here: <http://nrri.org/net-neutrality-tracker/>