Web's Fate May Hinge on ISPs' Neutrality

Virtually since the Internet's creation, its most devoted protectors have been wondering how long it would take for the forces of unrestrained commerce to throttle its freedom and innovation.

Now they have a date: Some people believe the breakpoint will come as early as Jan. 6, 2008.

That's when the telecommunications marriage of Verizon Communications and MCI marks its second anniversary and sheds an important restriction imposed by the Federal Communications Commission when it approved the deal in November: a requirement that Verizon comply with the principle known as "network neutrality" for two years following the completion of its acquisition. (The FCC imposed the same provision on SBC Communications and AT&T. But their deal closed in December, so the restriction expires a couple of weeks sooner.)

Absent network neutrality, network operators could dictate to customers which Internet services they could access, and at what quality. Customers of Apple's iTunes music store, say, might find their downloads slowed down, or blocked completely, if Apple refuses to pay a transaction fee to their ISP. Users of the Vonage Internet phone service might lose their dial tones if their Internet provider wants to sell its own brand of phone service. The Internet might become more profitable for network providers, and less useful for everybody else.

Under the traditional network model, it's none of your ISP's business whether you're using your connection to view video streams, buy music or make phone calls. There are only a handful of exceptions, such as actions aimed at containing spam, blocking illegal activity or maintaining the network's integrity.

Many in the Web community argue that keeping the network open has been the key to the development of new services.

"When you introduce discrimination of any kind, it's anti-innovative," says David Isenberg, a networking pioneer who is currently a fellow at the Berkman Center for Internet and Society at Harvard University. If service providers are charged for preferential transmission, new services that can't afford the fee might be kept out of the marketplace.

The old model, however, is threatened by some recent developments.

One is the consolidation of broadband Internet providers. Almost all U.S. customers with high-speed Web access get it via high-speed cable TV connections or DSLs offered by phone companies. But the two largest cable firms, Comcast and Time Warner, control nearly 60% of their market, and the two largest phone companies, AT&T and Verizon, boast a combined market share of more than 60% before the recent acquisitions increased their size, according to figures from the consulting firm Kagan Research. Eventually, customers unhappy with their high-speed service may find themselves without alternatives.

Courts and regulators, meanwhile, are taking a powder. The Supreme Court last year cleared the way for liberalized regulation of cable Internet service, and the FCC responded by taking the same position on DSL. Consequently, the battle has shifted to Congress, where critics of the phone and cable companies are trying to prevent a provision protecting network neutrality from being deleted from a revision of telecommunication law currently under consideration.

"Two years ago, everybody called this a solution in search of a problem," says Chris Murray, a Washington-based lobbyist for Vonage. "Now everybody sees it as a predicate for allowing deregulation."

As it happens, Vonage customers were the victims of the only case of interference yet to draw FCC action — the blocking of its phone service last year by Madison River
Communications, a small North Carolina ISP. The FCC fined Madison River $15,000.

Neutrality supporters were also unnerved when SBC Chairman Edward Whitacre complained that popular Web services were essentially freeloading on his network. "For a Google or a Yahoo or a Vonage or anybody to expect to use these pipes for free is nuts!" he groused to BusinessWeek in November. Whitacre, who is chairman of AT&T, evidently overlooked the charges paid by Web services for the bandwidth they consume, as well as connection fees paid by consumers.

An AT&T spokesman says Whitacre was simply arguing that AT&T is spending so heavily to build a high-capacity network that it needs new sources of revenue to help cover the cost. "AT&T is not going to block access to any service or degrade customer service in any way, shape, or form," James Cicconi, the company's executive vice president for external affairs, told me. But he says AT&T shouldn't be barred from selling premium treatment to any service wishing to get digital bits to customers faster than its rivals.

Critics of this viewpoint say that allowing network providers to offer such preferential treatment leaves the system open to abuse: What would stop AT&T, which owns the broadband phone service CallVantage, from degrading Vonage's service to make its own seem better? Vonage customers whose calls suddenly sounded lousy would be inclined to blame Vonage and move their business to AT&T instead. (To be sure, AT&T hasn't been accused of such activity.)

It's by no means clear that the phone and cable companies will win the coming battle on Capitol Hill, as well-equipped with lobbyists and war chests as they are. Vonage, eBay, Google, Amazon.com and other online companies have launched their own joint lobbying effort to oppose them. The Internet's very future may hang in the balance.

"Now that the e-commerce companies have weighed in, Congress will have to take a look," says Mark Cooper, director of research for the Consumer Federation of America and a firm believer in the value of network neutrality. "These are the brand names of the 21st century."

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