COMMENT: Internet providers must not dictate content
By Lawrence Lessig
Financial Times; Feb 20, 2004

American markets were rocked last week by the news that the nation's largest cable company is chasing a mouse. Comcast has set its sights on Walt Disney, which has already rejected a $54bn offer from the cable group. But if Comcast does catch its prize, it will become the largest media company in the world.

What that will mean was the subject of another important announcement last week. It received less attention than the Disney offer but may ultimately prove more significant.

Comcast intends to become the core network of the digital age. It is already among the largest broadband internet providers in the world and it intends to grow much bigger.

But what market power does a broadband provider have? Can it influence the content of the internet to benefit favoured sites? Can it make it more difficult to access content that does not pay? Can it select the applications that will be able to run on its network? Can it force consumers to view the content that it selects?

Technically, the answer to all these questions is Yes. But the difficult policy question is whether it should. Is the internet better off if the owners of the pipes control the content and applications? Or is it more vibrant and powerful if control is left with consumers and innovators?

As a company with valuable content, Disney's interest has been in a network that makes it easy to spread its content widely. It has therefore been eager to avoid tollbooths on the information superhighway.

A network with taxing power, it has argued, would be less vibrant than one built on competition among applications and content alone.

Disney's view is right, and not just for Disney. The extraordinary growth in services and content on the internet has come precisely from the neutrality of its "end-to-end" design. Leaving choices about innovation and content to the "ends" or "edge" of the network - the consumers and companies that produce content and applications - maximises the competition for new content and better applications. Better content and applications will of course win in this competition - but they will win because they are superior, not because they benefit (or do not threaten) network owners.

The danger in a marriage between Disney and Comcast is that this right-thinking company will be bent in the way other right-thinking companies have been bent before. Disney's views today are the same as AOL's before it bought a content and cable company (Time Warner). They are the same as AT&T's before it started buying cable companies.
But both AOL and AT&T quickly changed their views of network neutrality once their marriages were announced. And the fear of many is that the same fate could befall the mouse.

Enter the second important announcement made last week. In a speech in Boulder, Colorado, Michael Powell, chairman of the Federal Communications Commission, at last signalled his position in the network neutrality debate. While Mr Powell did not go as far as some had hoped, he certainly removed the uncertainty that has clouded the debate so far.

He found the claims that networks were being biased when it came to providing content unconvincing, but made it clear that strong evidence would force the government to respond. He offered "the private sector a clear road map by which it can avoid future regulation".

Under his plan, networks would guarantee consumers access to the content and applications of their choice, allow consumers to connect devices to the network that do no harm, and provide meaningful information about the service plans that they offer.

Put differently, if the network owners preserve "internet freedom" they can avoid FCC regulation. The chairman likes the neutral internet and intends to ensure it survives.

This clear statement of regulatory intent has been a long time coming. But it is important that it has come now. It has never been clear whether Comcast likes Mr Powell's vision and it would be better if the mouse could remain free of the trap of content mixed with conduit.

But if internet freedom is going to lose a powerful ally, it is important that it has won the heart of America's chief network regulator. Build a network that is neutral and remain free of regulation, the chairman has promised, or bias the network and face life with a regulator.

*The writer is professor of law at Stanford Law School*

---

Find this article at:
http://search.ft.com/s03/search/article.html?id=040220000101