



Written by [C. Mitchell Shaw](#) on November 18, 2015

Net Neutrality Puts Political Websites in the Crosshairs of Censorship

When Net Neutrality was sold to the American people, Federal Communications Commission (FCC) Chairman Tom Wheeler promised there would be no regulation of content. No censorship. The rules would allow the FCC to regulate content, but they would “forbear” and leave things alone. Now where have we heard that before? It sounds too much like, “If you like your Internet, you can keep your Internet.” Now, like with Obamacare, the truth is coming forward as lawmakers and experts warn of a coming political censorship of the Internet.



After having failed twice to enforce Net Neutrality, Wheeler’s most recent attempt began with an [op-ed piece](#) written for *Wired*. The February 4 article was his attempt to make the case for the necessity of government regulation of the Internet. In it he claimed that regulation of ISPs was needed to save the Internet. He also claimed that regulation of “edge providers” — companies that provide content to the Internet — would not be regulated, saying, “My proposal assures the rights of internet users to go where they want, when they want.”

In late May, just before the new rules went into effect, *The New American* published an article addressing the dangers of Net Neutrality. That article, which was first published in our print version and later on [our website](#), made the case that the greatest danger of so called “Net Neutrality” is that it is another step toward Big Government censorship of the Internet:

While Net Neutrality has been sold to the American people as a plan to protect the Internet, the truth is that it is a plan to strip us of our liberties in the digital age. The Internet has provided an amazing and irreplaceable platform for information and activism. It is truly a thorn in the flesh of Big Government when patriots use it to communicate and collaborate. In the digital age, there is no line of demarcation between digital freedom and other freedom. If the American people can be robbed of the Internet as we know it, Big Government can more easily become Bigger Government.

After making much of the evils of throttling, blocking, and paid prioritization (none of which has ever been shown to have caused any harm to anyone), Wheeler said his plan included “bright-line rules” that would prevent those practices. He then went on to say that *even that* would not be enough and a “general conduct rule” would be needed to address the things not covered in the bright-line rules. As this writer noted then:

[Wheeler] went on to say that his plan “includes a general conduct rule that can be used to stop new and novel threats to the internet. This means the action we take will be strong enough and flexible enough not only to deal with the realities of today, but also to establish ground rules for the as yet unimagined.” Just what those “new and novel threats to the Internet” are is left to be defined later. They are, after all, “as yet unimagined.”



Wheeler called the general conduct rule a “catch-all standard” and wrote that it is necessary because

The bright-line bans on blocking, throttling, and paid prioritization will go a long way to preserve the virtuous cycle. But not all the way. Gatekeeper power can be exercised through a variety of technical and economic means, and without a catch-all standard, it would be that, as Benjamin Franklin said, “A little neglect may breed great mischief.”

“Thus,” Wheeler noted, “the Order adopts the following standard”:

Any person engaged in the provision of broadband Internet access service, insofar as such person is so engaged, shall not unreasonably interfere with or unreasonably disadvantage (i) end users’ ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice, or (ii) edge providers’ ability to make lawful content, applications, services, or devices available to end users. Reasonable network management shall not be considered a violation of this rule.

At least Wheeler was being honest when he called it a “catch-all standard.” The “no-unreasonable interference/disadvantage standard” — the actual name of the general conduct rule — is indeed so vague and general that there is no part of the Internet that it would not allow the FCC to regulate.

Even the Electronic Frontier Foundation (EFF) — which had been a supporter of Net Neutrality from the beginning — found Wheeler’s “general conduct rule” too much to swallow. EFF — a staunch defender of digital liberties and tireless opponent of surveillance — has found itself in a tough spot over Net Neutrality. The organization, while wrong on this particular issue, at least has the integrity to call it like it is where the “general conduct rule” is concerned, saying it is “very easy to see [the general conduct rule] as a recipe for FCC overreach.”

Other supporters of Net Neutrality were much more accepting of Wheeler’s “catch-all standard.” The United Nations special rapporteur on freedom of opinion and expression, David Kaye, had nothing but glowing praise for the FCC’s scheme to regulate and censor the Internet. In another [article](#) this writer critiqued Kaye’s statements about Net Neutrality:

Even more disturbing is the hint of censorship in his statement, “The FCC’s rules will support a free and open Internet and ensure continued access to any lawful content individuals choose, without restriction or interference from Internet service providers (ISPs). The United States follows a small number of States, such as Brazil, Chile and the Netherlands, that have adopted net neutrality rules.”

So, rather than ISPs deciding content — which, with the exception of demands from government agencies, most of them have not done to any large extent — Big Government will decide content. Just what is meant by “lawful content” is left to be decided. Considering that Kaye’s statement puts the United States on the same list as countries such as Brazil, Chile, and the Netherlands, the future of the Internet does not look bright.

Two of the countries that Kaye praises for adopting a Net Neutrality standard are also guilty of using that standard to enforce some of the worst censorship imaginable. While the Dutch failed to keep censorship in place, it was not for lack of trying. If those are the praiseworthy paragons of Net Neutrality, censorship is a foregone conclusion.

The Net Neutrality rules went into effect in June and the Internet began fighting back. Several lawsuits



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were filed by companies and organizations within the broadband industry. On December 4, The U.S. Court of Appeals for the D.C. Circuit will begin hearing one of those cases. As the [Washington Examiner](#) reported:

The rules, which went into effect in June, require that broadband providers — such as Verizon or Comcast — offer access to all legal online content. It did not place such a requirement on “edge providers,” such as Netflix and Google. The FCC defines edge providers as “any individual or entity that provides any content, application, or service over the Internet, and any individual or entity that provides a device used for accessing any content, application, or service over the Internet.”

The Center for Boundless Innovation in Technology has filed a brief with the court that says:

If rules such as these are not reviewed under the most rigorous scrutiny possible, government favoritism and censorship masquerading as “neutrality” will soon cascade to other forms of mass communication.

Even more damning to Wheeler’s argument that Net Neutrality will not regulate content is a brief filed by former FCC Commissioner Harold Furchtgott-Roth. He wrote:

In addition to compelling speech, the order impermissibly singles out broadband providers without imposing similar requirements on the speech of other Internet entities who also act as gatekeepers.

This is where Wheeler’s “catch-all standard” general conduct rule comes into play. By allowing the FCC to decide “on a case-by-case basis” whether something not covered in the bright-line rules is still a violation, there is nothing to prevent the regulatory regime from imposing political censorship on “edge providers” since they, too, could be considered “gatekeepers.”

In a statement to the *Washington Examiner*, Fred Campbell, president of the Center for Boundless Innovation in Technology, said, “If the court upholds the FCC’s rules, the agency’s authority over the Internet would extend from one end to the other. Because the same theories the FCC relied on to impose its new regulations on Internet service providers are also applicable to companies such as Apple and Netflix, the FCC could extend its regulatory reach much further in the future.”

It would be bad enough to see censorship in the content provided by those companies, but the situation is even more dire than that. Campbell went on to warn:

This possibility raises the risk that Congress or the FCC could impose restrictions on Internet video and other services that have traditionally been imposed on over the air broadcasting and cable television, including the fairness doctrine that once put the government in charge of determining whether broadcasters were fairly representing both sides of an issue.

At least one federal lawmaker agrees. Representative Marsha Blackburn (R-Tenn.), who [introduced legislation to block Net Neutrality](#), told the *Washington Examiner*:

When it comes to the content side, I have the sense that this is the very beginning of the net neutrality debate. I’ve been very concerned about net neutrality turning out to be the Fairness Doctrine of the Internet, and having that applied to websites.

FCC Commissioner Ajit Pai has been an outspoken critic of the rules since they were first announced. He has warned that certain websites, because of their political nature and their criticism of big government, could run afoul of Net Neutrality and find themselves censored. In one statement, Pai said, “It is conceivable to me to see the government saying, ‘We think the Drudge Report is having a disproportionate effect on our political discourse.’” He then asked the \$64 million question. “Is it



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unthinkable that some government agency would say the marketplace of ideas is too fraught with dissonance? That everything from the Drudge Report to Fox News ... is playing unfairly in the online political speech sandbox?," answering, "I don't think so."

If Net Neutrality is allowed to stand, it would not be only the Drudge Report to Fox News that find themselves in the crosshairs of censorship. *The New American* and its parent organization, The John Birch Society, would almost certainly face the same fate. For a free and open Internet to survive, Net Neutrality must die. There is simply no way for the two to coexist.



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