



Net Neutrality - It's Not Just about the ".XXX" Domain

Identification and Mitigation of Risk Concerning Congressional Legislative Actions

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About Mark Dangelo

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Mark has provided hands-on leadership for nearly 100 clients over a period of 20 years encompassing members of the Fortune 50 and organizations within the Russell 3000. Mark also writes monthly for the Mortgage Bankers' Association MBA Tech NewsLink, hosts a weekly Podcast show "**Insights and Lessons from Business Leaders**," and is the frequently quoted author of the **Innovative Relevance®** series of management books.

The phrase “net neutrality” has been used by a host of special interest groups, advocacy individuals, and politicians during this last year to epitomize the evolving composition of the Internet as an ever-expanding channel of business and consumer commerce, video distribution, content accessibility, and freedom of expression. Hundreds of net neutrality articles have been written with each adding their own unique approach and “spin” to the raging deliberations. Of course, we have also witnessed significant press coverage surrounding net neutrality and the Internet Corporation for Assigned Names and Numbers (**ICANN**) concerning the adoption of new domain names for adult content (i.e., “.XXX”). However, we’ll leave this sorted discussion for another time and writer!

Nevertheless, there is a much larger and more important discussion that should be on the “watch list” for mortgage lenders, vendors, and customers - the **potential** blocking or **segregation** of traffic by broadband providers in favor of their own or partner solutions. You see, the debate solidifies around equal quality of service (**QoS**) for all internet traffic regardless of your association and alliances with ISP’s, cable companies, and telco’s (i.e., traditional telephone companies). Proponents argue for mandated government regulations and over-sight to ensure equal prioritization of traffic flow and access, whereas opponents argue it is precisely this legislation that has become a political issue with a “...lot of cock-and-bull...”¹ Regardless of the source, the essential issue appears to be all about “appropriate” fees for varying levels of service and usage.

A Brief Review of the Recent Legislative Landscape

So what does this mean and why all the concern? Let’s try to remove the spin and hype while making some sense out of this complex and now politically polarized dispute (including several bills and hundreds of proposed amendments debated in multiple government committees). Here’s a brief historical perspective of the recent legislative situation:

- According to a statement attributable to House Judiciary Chairman F. James Sensenbrenner, 98% of all broadband connectivity is controlled by “telephone and cable companies.”² Additionally it is asserted that unlike the dial-up internet of the past, consumers have only one or two choices for high-speed access thereby placing pricing control and connectivity capabilities at the discretion of monopolistic market providers.
- Two separate and apparently competing house committees, the Judiciary Committee and the Energy and Commerce Committee, reached radically different conclusions. The latter approved a bill ceding regulation to the **FCC** (Federal Communications Commission), while the former has turned the issue into one managed by anti-trust remedies.³
- In May 2006, equal QoS requirements were linked to the broadband carrier bill sponsorship of COPE (Communications Opportunity Promotion and Efficiency Act of 2006) and the Universal Service Fund reform (USF is the fee established in 1983 requiring telco’s to pay for expansion of telecommunication services to non-urban, low-profit regions of the country).⁴
- The full House of Representatives on June 8, 2006 rejected a “net neutrality” amendment to the COPE bill even after extensive lobbying by companies like **Amazon**, **eBay**, and **Google** almost solely along party lines. Additional net neutrality bills are still in House committees.
- On June 28th, the Senate’s Commerce, Science, and Transportation Committee generally removed net neutrality language from their newly renamed act of Advanced Telecommunications and Opportunity Reform Act (as a result of over 200 amendments

¹ “Verizon warns Financial Sector on Net Neutrality,” Reuters, May 8, 2006

² “House Judiciary Approves Net Neutrality,” InternetNewsBureau.com , May 25, 2006

³ *ibid*

⁴ “Juneau Something New ‘Bout Net Neutrality?” InternetNewsBureau.com, June 2, 2006

- introduced to the prior bill). However as of this writing, the bill is currently on hold and not set for a Senate vote due to the lack of net neutrality provisions.⁵
- Carriers and broadband providers continually and vocally advocate that consumers already have many avenues and remedies for pricing and accessibility issues (e.g., FCC and anti-trust laws). These providers point out that domestic and global networks cost billions to build and operate and as a consequence, free-market forces should decide on usage, costs, and functionality. Moreover, excessive and burdensome government regulation would deter needed future investments and result in “a cabinet post of Secretary of the Internet.”
 - Net neutrality advocacy groups argue that the FCC is materially influenced by political and business groups and that there is a lack of precisely drafted legislation explicitly protecting the internet from traffic segregation, content exclusion, or pricing discrimination. Still present but less popular is the issue surrounding control of the internet. Several groups argue that the internet is no longer just a US controlled market channel and that without more global protections and checks and balances, privacy, security, and even civil freedoms could be in peril.

The aforementioned is a very brief summary of nearly two (2) years of legislative and legal maneuvering. It is against this backdrop of on-going posturing and events that we assess the justification and implications of neutrality of the net and its impact to our operations.

Access versus Content

OK, so we know there is a lot of legislative activity around this loosely grouped topic called “net neutrality.” So why should I and my company care? Isn’t this more about retail purchases rather than financial services products?

No, it is definitely about financial services and the mortgage industry. For us, the critical concern today is about risk identification and subsequent mitigation. In today’s global and digital markets, risks involve the free flow of not just physical goods and services, but of intellectual thought, computerized exchanges, electronic closings, and digital mortgages. The future of mortgage processing involves not just e-Notes, but electronic settlements (including “digital county recordings”), software as a service, and the comprehensive or end-to-end electronic delivery and servicing of the mortgage instrument (s).

For originators and servicers, risk management now includes how this content (i.e., mortgage documents and instruments) are routed, stored, and sold securely around a globe. If pro-net neutrality advocates are correct, there is a potential for abuse by carriers to limit traffic and delivery of content unless they are paid greater access fees for preferred service including the consumer, the enterprise, and any associated net linked partner. Recently, a telco lobbyist hired by a large carrier put it more bluntly as he addressed the financial services community in a letter dealing with potential passage of net neutrality legislation -- “...better not start moaning in the future about a lack of sophisticated data links they need...”⁶ if this bill passes.

So what are the hidden implications of net neutrality for business?

1. **“It’s About Innovation,...”** - Symbolically the net has stood for innovation and invention. The adoption of a multi-tiered pricing and access policy has the capability to further well-financed organizations, while potentially discriminating against new, minimally funded business models that could have far reaching process and efficiency benefits. One discipline gaining increasing popularity is the use of Software as a Service (**SaaS**) which relies heavily on ubiquitous access to push and pull content and functionality over the net

⁵ “Net Neutrality Debate Lingers in Senate,” eWeek, July 10, 2006

⁶ “Verizon warns Financial Sector on Net Neutrality,” Reuters, May 8, 2006

releasing organizations from traditional software cost of ownership, integration, and maintenance. Also impacted would be collaborative models or search functions that utilize remote third-party databases, hosted models, and secure service functions (e.g., validation, retrievals, and data synchronization). If abused by the carriers and telco's, industry innovation will be driven by those who can pay for access and sponsorship along preferred electronic paths (who remembers how little telco innovation there was prior to 1983?). A competitive landscape must remain with proper controls and recourses if we are to avoid a repeat of history.

2. **Pricing:** The key implication is that with telco's losing more and more revenue on traditional landline services, they are seeking new revenue and distribution opportunities. Cable companies are trying to expand their offerings but they are meeting nimble services from "upstarts" like **Vonage** and **Skype**. In their defense, these brand-name industry stalwarts have invested billions over many years building infrastructure and operational software capable of handling rapidly increasing data, encapsulated voice / VoIP, and video traffic. The compromise may lie with recently introduced Congressional proposals offering tiered pricing for varying levels of service and security, while providing safeguards for both consumers and electronic commerce. If a compromise on pricing for accessibility cannot be reached, it should be anticipated that there will be a distinct separation of the net for those who want unlimited "free" access and those who want priority routing, services, and functionality (i.e., a "slow lane and a fast lane").
3. **Control:** Discussing this topic is analogous to getting a root canal - necessary but full of pain. Opponents of net neutrality discuss reducing government regulation, pay for usage, and investment choices. Proponents counter with "double billings," restricting content to privileged groups, and withholding of knowledge resulting in discrimination. For mortgage customers and businesses it is about getting access to changing customer niches, use of nearly final electronic document and financial instrument standards, and the free flow of informational sources and uses with trading partners, service providers and alliance members. Given the ever-growing number of information feeds within our organizations, the restriction of information anywhere in the networks (public and/or private) could have momentous process and profit consequences. Can you tell me today how this would affect compliance and regulatory issues in our heavily regulated state-by-state environments? How would it impact your organization directly? What are your contingency plans?

Last but not least is a potential severe impact on the growing web-based software that could break **Microsoft's** desktop lock on business and productivity software. Companies like Google have recently introduced new alternative products that remove the burden of software ownership and corporate desktop management by relying on a robust internet connection for anytime and anywhere application and data access. If these services experience rapid adoption and consume "an unfair amount of bandwidth and network resources," net neutrality proponent's state there is a potential that you and your organization will experience increased costs.

Without rules governing net neutrality coupled with increasingly robust SaaS offerings, you should anticipate increased expenses in your local broadband access rates and corporate connection charges. Moreover, expect increased outlays for software "accessibility" as telco's and cable providers seek to increase revenue from the originators of these growing virtual desktop applications. The net neutrality issue is an issue for all lenders, vendors, and processors within the mortgage industry. The risks surrounding its precise impact to your business sustainability and profitability must be assessed and projected.

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As you can imagine, millions of dollars (and hours) have been invested by both sides of the debate enlisting expensive lobbyist, studies, legal opinions, CEO's, academics, and political contributions. Consumers and users of popular services like eBay have been encouraged to write

letters to Congress stating their concerns in an attempt to gain favor for the politically unpopular net neutrality regulations. It appears that legislatively, no quick answer is forthcoming as even if the Senate votes on their legislation and passes it, the final bill would have to be reconciled between the House and Senate versions. Finally, there is a little known fact that until 2005 transmissions over the net were government regulated - until the FCC removed the rules.

I've just skimmed the surface of the many debates surrounding net neutrality. My recommendation is to take hands-on involvement in researching what net neutrality might mean for you and your customers. Form an internal group within your organization comprising, at a minimum, members from your risk management group, legal, audit, and IT. While Congress is unlikely to act until after mid-term elections, you need to proactively and holistically determine the impact before others decide for you. After all, you know what they say about an Act of Congress...