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The spirit of the 'net

By Luca Belli

In 1748, Charles-Louis de Secondat, Baron de Montesquieu, published his masterpiece, **The Spirit of the Laws.** The French intellectual argued that the state's political authority should be separated into three independent powers: the legislative, the executive and the judicial. As history has shown, the attribution of distinct functions to distinct bodies is instrumental to prevent concentration of power, as well as the possibility that public authorities take arbitrary decisions that may have a negative impact on individuals' freedom. Although the Catholic Church inserted Montesquieu's work into its *Index Librorum Prohibitorum* (the official list of banned books) right after its publication, the philosopher's message overpowered censorship and, over the past two centuries, the separation of powers has been enshrined in the majority of existing constitutions, becoming a cornerstone of modern democracies.

Fast-forward two centuries, one of the greatest innovations of human history, the Internet, was born. In a couple of decades, this globally accessible network of networks has allowed billions to communicate, innovate, learn and trade in a transnational fashion. The revolutionary character of the Internet stems from its unprecedented mix of openness and decentralisation, breaking any barriers that may hinder user participation, communication and innovation. Thanks to its original distributed design, the Internet was built to avoid centralisation of control, in order to create a resistant and reliable system in which transmission of information could not be easily hampered, thus pursuing the ultimate goal of global connectivity through an open inter-network.

Few realize that the success of this open network was based on the separation of functions. For the first time, network operators merely managed the transport of data-packets (transport function) whilst the end-user had the power to autonomously decide how to utilise the network, by creating and running whatever applications they wanted (application function).

To safeguard such an open structure, several legislatures around the world, including the **EU Parliament**, the **Brazilian Congress** and the **Israeli Knesset**, have already expressed their will to enshrine net neutrality within clear, predictable law. In this respect, it is interesting that, given the importance of an open Internet for the U.S. citizens and companies, the Congress has not felt the need to enshrine net neutrality within solid legislation, so far.

Indeed, over the past 15 years the Internet ecosystem has been visibly changing, posing some tangible threats to the original openness. Traditional media and communications systems have been converging into one single Internet ecosystem and, simultaneously, what was a quintessentially open and decentralised environment has been gradually centralising. The Net has been smoothly evolving from an end-to-end structure to a control-to-control one, where average users delegate to application and service providers the task of exercising the intelligence of the network, while such providers vertically integrate with the network operators.

Economists may argue that vertical integration may be beneficial because it increases efficiency, coordination and control while saving costs though the entire value chain. Yet, the Internet is a particular environment and the data-packets conveyed through the networks that compose the Net are different from packets of cookies or packets of chips. In the current permanently interconnected society, Internet data-packets convey the essential information to form one's own opinion regarding who to vote for, whom to trust, what to believe, what to purchase and so on. When network operators enjoy the possibility to manage Internet traffic in order to potentially favour the content, applications or service provided by their commercial partners or disfavour the competing ones, it becomes hard to believe that private entities – whose natural behaviour is profit maximisation – will resist the succulent temptation of discriminatory traffic management. And this is why net neutrality policies are needed.

The possibility to favour specific kinds of information has the potential not only to distort the market but also to affect media pluralism, in the total unawareness of end-users. Therefore, it is no coincidence that countries with deeply-rooted liberal cultures, or that have recently suffered regime propaganda, have decided to enshrine into their legal and regulatory systems the principle of net neutrality. Net neutrality plays an instrumental role in preserving Internet openness and its end-to-end nature, thus fostering the enjoyment of Internet users' human rights and promoting competition on a level playing field.

Net neutrality laws adopted **in Chile** and **the Netherlands**, for instance, are direct responses to operators' misbehaviour and are explicitly aimed at ensuring that Internet traffic is treated in a non-discriminatory fashion. Chilean and Dutch citizens didn't want to lose the unprecedented opportunities and empowerment offered by the Internet and they democratically conveyed their will through their parliamentary assemblies. Likewise, the open and participatory processes that led to the adoption of the **Brazilian Civil Rights Framework for the Internet** and the U.S. Federal Communications Commission's **Open Internet Order** clearly exemplify how public inputs and inclusive debates can inform regulators and policymakers to protect the Internet in a truly democratic fashion.

Net neutrality laws do not simply protect a decentralised and user-empowering network, but also foster legal certainty, which is essential to protect users from arbitrary behaviours but also to allow entrepreneurs to plan businesses. In this regard, non-Americans may be puzzled when learning that all the efforts lavished into the notice-and-comment procedure that led to the recent FCC Open Internet Order **risks being overturned**, depending on the outcome of the various lawsuits challenging the rules.

The FCC approach, now having its third time in court, looks dangerously ephemeral. Lasting net neutrality requires an informed debate and subsequent consecration of the will of the people into a sustainable framework. Many Americans have shown great interest for net neutrality over the past year and will likely be disappointed to see their efforts be for naught if the rules are overturned, if not disqualified because of botched FCC procedure. The key net neutrality provisions from the FCC rules should be enshrined once and for all in law. When so many demand that their Internet be protected, legislatures, including Congress, have the responsibility to step up and defend the Spirit of the Net.

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