

WHY MINORITIES AND LOW-INCOME AMERICANS HAVE A BIG STAKE IN A FREE AND OPEN INTERNET

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Advanced technologies spread unevenly to different groups of Americans, with low-income people and minorities lagging behind whites on most measures of access and usage. But recently African Americans and Latinos have been narrowing the digital divide. A 2010 study from the Pew Research Center's Internet and American Life Project showed that minorities are increasingly active purchasers of Internet enabled phones; two years later, another Pew report documented that minorities are outpacing whites not just in mundane activities like talking on the phone and texting, but also in more sophisticated applications like Internet-banking.

But progress toward closing America's digital divides could be stalled or reversed by adverse federal government regulations or restrictive interpretations by the Federal Communications Commission. The regulatory details at issue are quite specific, but they have potentially momentous social consequences.

Property Rights and Internet Flexibility

The Digital Millennium Copyright Act of 1996 protects the intellectual property rights of inventors and entrepreneurs who create new computer hardware and software programs and content. Producers typically use embedded codes to prevent the copying or modifying of their products, and federal law makes it a crime for users to get around – or “circumvent” – such codes to make modifications beyond those allowed by the original producer.

Of course, software creators and people who create new content need this legal protection. The Internet cannot grow without legal property rights. But there is also a downside, because people who purchase and use mobile Internet phones, for example, need to be able to make adaptations. Prohibiting all anti-circumvention technologies would make the digital environment too rigid. That is why, every three years, the Librarian of Congress authorizes some exceptions – most notably, as of 2012, making it legal to “jailbreak” and “unlock” cell phones.

- *Jailbreaking* happens when a user modifies the current operating system on a phone he or she owns (such as an iPhone) in order to use applications designed for another system (such as Android). The original system may be removed and replaced altogether.
- *Unlocking* a phone occurs when a user modifies a phone purchased, say, from one carrier, such as Verizon, so that it can be used with another carrier.

Legal exemptions for both of these widespread actions help users repurpose their phones or find the most cost-effective combinations of cell phones, operating systems and applications, and data usage plans. For millions of Americans, such flexibility is welcome and economically beneficial.

Keeping the Internet Free and Open to All

As traffic has increased over networks, broadband service providers have been experimenting with ways to handle increased usage without compromising quality. Innovative kinds of network management experiments include charging higher subscription fees to consumers who use more data or slowing the speeds of certain kinds of applications. Such practices might make economic good sense, if they prod consumers to be more cost-conscious and allow service providers to keep basic rates low for most people. But there is also a danger that varied pricing will tempt network managers to play favorites – giving better prices and service to users willing to pay higher fees, while leaving ordinary users with steadily deteriorating access and service.

A non-discriminatory, neutral network is at the heart of the tremendous growth of the Internet. Acknowledging this, in 2010 the Federal Communications Commission issued a set of rules for “Preserving the Free and Open Internet.” Users get vital protections. Service providers must be forthright with their customers about network management practices, any slowing of data speeds must be “reasonable,” and no data can be blocked on landline services. But there are also weaknesses and gaps in the rules.

- Current rules permit tiered pricing plans for both landline and wireless service providers – which amounts to allowing Internet users to track consumers into low-end versus high-end experiences.
- Wireless broadband providers have too much leeway under a loose standard for “reasonable” network management practices. For example, in late 2012, American Telephone & Telegraph announced that it would no longer allow consumers to use a particular data-intensive video telephoning application, Apple's FaceTime, unless they upgraded their data plans. Arguing that management of this application is subject to corporate discretion, the company summarily blocked it on all phones except those with the most expensive data plans. Clearly discriminatory, this type of management action is allowed under current federal regulations.

Important Next Steps

If Americans value a flexible and neutral Internet increasingly open to all, there are some obvious steps they should urge policymakers to take. Consumer rights to modify mobile devices need to be made permanently lawful, not subject to temporary exemptions renewed each year by the Librarian of Congress. The bipartisan Unlocking Technology Act of 2013 is currently pending in the U.S. House of Representatives, and a similar bill could be drafted to protect rights to perform “jailbreaking” modifications.

Regulators also need to apply stringent neutrality principles to wireless Internet service providers – pushing these very profitable companies to develop infrastructure that can handle increased traffic, rather than seeking to profit from scarcity by degrading services for ordinary consumers.

Reforms along these lines would help all Americans who use mobile Internet-enabled devices. But the rapidly growing ranks of minority and low-income users have the most to gain from Internet flexibility, openness, and fair pricing. Unless U.S. laws enshrine and promote these essential goals, America's digital divide will soon widen once again.

Research and data for this brief were drawn from Aaron Smith, “Technology Trends among People of Color.” *Pew Internet and American Life Project* (September 2010) and Maeve Duggan and Lee Rainie, “Cell Phone Activities 2012.” *Pew Internet and American Life Project* (November 2012).