

Is FCC Declaring ‘Open Season’ on Internet Freedom?

Undemocratic regimes will note FCC’s lack of legitimacy/justification and increase Net censorship

Why is the FCC effectively declaring “open season” on well-established Internet freedoms?

- The FCC, in proposing to change the definition of an “open Internet” from competition-driven to Government-driven, is setting a very dangerous precedent that it is acceptable for countries to preemptively regulate the Internet for what they claim *might* happen in the future, even if they lack the constitutional or legal authority to do so, or even if there is thinnest of justification to support it.
- How can we hope to influence China, Iran and other undemocratic regimes to provide more Internet access and freedom to their citizens and businesses when our FCC is proposing a radical take back of existing Internet freedoms in the U.S. without legitimate authority or justification?
- The grave mistake the U.S. FCC is making in the international context is claiming that private companies/entities are the primary threat to freedom and free speech, and not governments. History and common sense tell us only Governments have the effective coercive power to dictate real censorship.
- The FCC is effectively declaring “open season” on well-established Internet freedoms and is perversely providing legitimacy, justification and political cover for **undemocratic countries like China and Iran to hunt down dissidents online and censor free speech** while using the Orwellian doublespeak of regulating to “preserve the open Internet.”
- Undemocratic regimes are always looking for “openings” and excuses to further crack down on their people’s freedom of speech and assembly. The FCC must appreciate actions speak louder than words.

Why does U.S. have unique responsibility to not screw up Internet’s freedoms via regulation?

- As the country that invented, privatized and promoted a free, open and competitive Internet, the world has long taken its cue from America on the Internet. President Clinton whose administration oversaw the privatization of the Internet, stated: “*For electronic commerce to flourish, the private sector must continue to lead. Innovation, expanded services, broader participation, and lower prices will arise in a market-driven arena, not in an environment that operates as a regulated industry.*”

How are the proposed FCC “Open Internet” regulations illegitimate?

1. *Offend constitutional due process.* They assume companies are guilty of anticompetitive behavior until proven innocent, in that the FCC would regulate heavily roughly 2,000 companies for what one has admitted it did and for what the FCC alleges another has done – over a period of several years.
2. *Offend constitutional equal protection.* They treat similar companies very unequally.
3. *Offend constitutional protection against Government takings.* They ban competitive companies from pursuing business models and opportunities that are legal today.
4. *Offend constitutional protection of free speech.* The FCC implicitly disagrees with the Supreme Court that companies have constitutional protections of free speech.
5. *Overstep the FCC’s legal authority.* Without congressional authorization of net neutrality legislation, the FCC is granting itself near limitless jurisdiction over the Internet in the proposed regulations.
6. *Arbitrary and capricious.* They would arbitrarily reverse FCC precedent, and factual determinations, and move the competitive goalposts mid-game.

How are the proposed FCC “Open Internet” regulations unjustified?

1. The FCC’s Open Internet/net neutrality regulations are a solution in search of a problem.
2. Isolated incidents of a potential problem have been quickly resolved privately without regulation.
3. Near perfect voluntary industry compliance doesn’t warrant a permanent ban on legal business behavior.
4. No evidence of market failure has been offered to justify regulating this competitive marketplace.