



OUR INTERNET, OUR RIGHTS

How the Law & the Courts ALREADY Protect The Open Internet

Internet users today enjoy significant legal protections that guarantee access to our choice of websites at competitive speeds of service. What follows are a few examples of federal laws, court rulings and regulations that protect our open Internet:

The Communications Act of 1934 (Title 1) gives the federal government power to protect consumers from online discrimination.

This law created the Federal Communications Commission and gave it authority to “regulat[e] interstate and foreign commerce in communication by wire and radio.”ⁱ **The Act specifically grants the FCC the power to “perform any and all acts, make such rules and regulations, and issue such orders”ⁱⁱ to fulfill its mission.** In short, the law gives the federal government clear authority to intervene should there be a future case of online discrimination.

In 2005, the U.S. Supreme Court explicitly recognized federal authority to protect consumers’ online rights.

“Congress has delegated to the [FCC] the authority to ‘execute and enforce’ the Communications Act, §151, and to ‘prescribe such rules and regulations as may be necessary... to carry out the provisions’ of the Act. **These provisions give the Commission the authority to promulgate binding legal rules....** [Also,] the Commission has jurisdiction to **impose additional regulatory obligations** [on Internet Service Providers under its authority] ... to regulate interstate and foreign communications....”

Source: U.S. Supreme Court “Brand X” decision, July 27, 2005

The FCC Chairman has testified that his agency will protect consumers' online rights.

“The Commission does have authority under Title 1 of the Communications Act, and indeed last summer the Supreme Court... stated that the Commission has ancillary authority to adopt additional rules over the infrastructure providers of broadband access.... So I think we do have that authority.”

FCC Chairman Kevin Martin, asked if he had authority to stop an Internet provider from blocking or degrading access

Source: Senate Commerce testimony, September 12, 2006.

The FCC has a track record of enforcing consumers' online rights.

The only example of an Internet service provider ever interfering with consumers' rights involved a small North Carolina provider that degraded some Internet phone calls placed through an unaffiliated service in February 2005. Within three days of the first informal complaint, the FCC launched an investigation. Two weeks later, facing a \$15,000 fine and growing FCC pressure, the company capitulated. As the FCC chairman said in announcing the successful resolution:

The industry must adhere to certain consumer protection norms if the Internet is to remain an open platform for innovation. **In my view, the surest way to preserve “Net Freedom” is to handle these issues in an enforcement context where hypothetical worriers give way to concrete facts and—as we have shown today—real solutions.**

Source: FCC Chairman Michael Powell statement, March 3, 2005.

The Federal Trade Commission has broad authority to protect Internet users.

The Federal Trade Commission Act of 1914 (Section 5) gives the FTC clear authority to prohibit unfair methods of competition and unfair or deceptive trade practices. A broadband provider that unfairly limits consumers' legal online access would be subject to FTC enforcement action. As FTC Chairman Deborah Platt Majoras said regarding consumers online rights:

We should not forget that we already have in place an existing law enforcement and regulatory structure.... The FTC has devoted, and will continue to devote, substantial resources to monitoring market conditions in cyberspace and being alert to any potential harms to competition and consumers.

Source: Aspen Summit Speech, August 21, 2006

Existing antitrust laws also protect consumers' online rights.

The FTC's Bureau of Competition and the Antitrust Division of the U.S. Department of Justice (DOJ) share responsibility for enforcing antitrust laws that promote competition in the marketplace. There are at least three ways this protects the open Internet:

- **The Sherman Antitrust Act of 1890** (Section 2) gives the FTC and Justice the authority to bring actions if a single broadband provider ever has sufficient market power to use its network unreasonably to obtain or maintain a monopoly position.ⁱⁱⁱ
- **The Clayton Antitrust Act of 1914** (Section 2) gives these two agencies the power to bring enforcement actions should a broadband provider discriminate in pricing in a way that lessens competition.
- **The Sherman Antitrust Act** (Section 1) would protect consumers against broadband providers that collectively act to unreasonably restrain trade.

The authority the FCC, FTC and DOJ have under all of these laws are ample to allow appropriate response and intervention if a problem ever develops. But, as FTC Chairman Majoris so aptly put it: "I have to say, thus far, proponents of net neutrality regulation have not come to us to explain where the market is failing or what anticompetitive conduct we should challenge."

ⁱ Source: 47 U.S.C. § 151.

ⁱⁱ Source: *Id.* at 47 U.S.C. § 154(i).

ⁱⁱⁱ FTC authority to attack Sherman Act violations technically derives from the FTC Act's ban on "unfair methods of competition" which courts have held includes Sherman Act violations.