

EXECUTIVE SUMMARY

Network Neutrality And The Economics Of Congestion
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The Supreme Court's Brand X decision has reignited the debate over "network neutrality," which would limit broadband networks' authority to impose restrictions on end users' ability to access content, run applications, and attach devices and to charge content and application providers higher prices for higher levels of quality of service. In this Article, Professor Christopher Yoo draws on the economics of congestion to propose a new analytical framework for assessing such restrictions.

He concludes that when transaction costs render metering network-usage uneconomical, imposing restrictions on bandwidth-intensive activities may well enhance economic welfare by preventing high-volume users from imposing uncompensated costs on low-volume users. Usage of bandwidth-intensive services can thus serve as a useful proxy for congestion externalities just as port usage served as a proxy for consumption of lighthouse services in Coase's classic critique of the economic parable of the lighthouse. In addition, content delivery networks and other commercial caching systems represent still another innovative way to manage the problems associated with congestion and latency that would be foreclosed by network neutrality.

Furthermore, allowing network owners to differentiate their services can serve as a form of price discrimination that can mitigate the sources of market failure that require regulatory intervention in the first place. This framework suggests that broadband policy would be better served by embracing a network diversity principle that would eschew a one-size-fits-all approach and would allow network providers to experiment with different institutional forms until it can be shown that a particular practice is harming competition. At most, concerns that telephone companies may prevent end users from using their digital subscriber line (DSL) connections to access Voice over Internet Protocol (VoIP) provide support for targeted regulatory intervention. They do not justify a blanket prohibition of end user restrictions that network neutrality proponents envision.