

CDT Urges Lawmakers to Return to Core Internet Principles

January 31, 2007

Policy Posts are in-depth analyses on current tech policy issues from CDT experts. Sign up to receive the latest Policy Posts [here](#):

As a new Congress begins work, CDT is urging Capitol lawmakers to take a step back from the individual issues already drawing attention and rethink how they approach policymaking for the Internet.

[\(1\) CDT Urges Lawmakers to Return to Core Internet Principles](#)

[\(2\) What Every Policymaker Needs to Know About the Internet](#)

[\(3\) CDT Recommendations for 110th Congress](#)

(1) CDT Urges Lawmakers to Return to Core Internet Principles

As a new Congress begins work, CDT is urging Capitol lawmakers to take a step back from the individual issues already drawing attention and rethink how they approach policymaking for the Internet.

In the coming months, Congress will face choices -- on issues ranging from surveillance, to online censorship, to consumer privacy -- that will have a lasting impact on the Internet. Already, bills have been introduced that are fundamentally inconsistent with the policy framework that enabled the Internet's remarkable growth. Instead, lawmakers should reaffirm a legislative approach to the Internet that preserves civil liberties and paves the way for continued expansion of access.

The Internet today is a technology of freedom and innovation. In only about two decades, it has become a powerful, global platform for commerce, human development and democratic participation. This growth did not happen in a legal vacuum. From the outset, the Internet has been enabled by a policy framework designed specifically for its unique technical architecture. Without that framework, the extraordinary developments we've witnessed in the past two decades may never have come to pass. Increasingly, however, despite the Internet's success, the policy principles that supported its growth are being challenged.

The successful policy framework for the Internet emphasized openness, competition, innovation, consumer choice, and freedom of expression. For example, while ISPs themselves were relatively unregulated, they benefited from an open platform that was based on telecommunications policies ensuring interconnection and non-discrimination. The Supreme Court early on ruled that the Internet was entitled to the strongest form of First Amendment free speech protection. Congress expressly decided that web hosting services and ISPs should not be liable for the content created by others. Recognizing the importance of privacy, in 1986 Congress updated laws on government surveillance to require court orders for access to data communications, just as they had been required for telephone taps.

In recent years, debates over objectionable content online, protecting intellectual property, government surveillance or restructuring telecommunications policy seem to have lost sight of the Internet's history and its architecture. Policymakers seem to view the Internet as a problem to be solved rather than a valuable resource that must be supported.

[CDT 2007 Legislative Agenda](#) [1]

(2) What Every Policymaker Needs to Know About the Internet

As the 110th Congress gets underway, with a host of Internet-related issues on the agenda, it is necessary to recall what makes the Internet different from earlier media platforms:

User empowerment: The Internet is uniquely user-controlled. To a far greater extent than users of any other electronic medium, Internet users have the power to choose where they will go online, and what they will see or hear. Users can configure their browsers and their search engines to avoid content they consider objectionable. They can install filters to block unwanted content and email. Assuming users are provided with notice and genuine choices, they can decide what software to download. They can install security software to protect against many forms of fraudulent behavior.

Historically, Congress understood the need to preserve user control. For example, it rejected government controls on encryption because, on a uniquely user-controlled medium, such controls would have diminished, not enhanced security.

Today, lawmakers addressing Internet challenges should focus first on policies that empower users rather than empowering the government or requiring intermediaries to exert control. For example, empowering parents, librarians and educators to use technology tools to shield children from inappropriate content is far more effective than any government censorship regime.

Open, decentralized, interoperable, no gatekeepers: The Internet was, by design, decentralized. Its power is at the edges of the network. Unlike previous mass media, the Internet was designed with very little "intelligence" or functionality at its core. The brilliance of the TCP/IP suite of protocols is that any device could be attached to the edges of the network and interoperate with other devices at the far reaches of the network. This decentralized architecture means that censorship is difficult at the core. Network operators' emphasis is on speed, on getting packets to their intended destinations, without pausing to examine each packet for compliance with one or more non-technical standards of acceptability.

The Internet's lack of gatekeepers was legally reinforced by the policy adopted by Congress that service providers were not liable for the content created by their customers. This protection from liability is a crucial underpinning that has allowed the Internet to flourish. If ISPs, Web hosts, and Web site creators become liable for content posted by others, the Internet would be stifled by gatekeepers and it would cease to be a medium where everyone has an equal voice. Increasingly, however, policymakers have been seeking to turn service providers into policemen, forcing ISPs to filter undesirable content and refuse access to undesirable users.

Non-discrimination: Early policy choices confirmed and enforced the open platform principle. In the dial-up world of the Internet's emergence, telephone companies were required to allow any equipment to be attached to their networks and to carry all traffic on a non-discriminatory basis. Innovators did not need to negotiate with network operators to connect a modem to the network or to make their content and services available to a wide audience. Translating the core elements of these open and non-discriminatory principles to the converged broadband Internet, without adopting a full common carriage regime, poses difficult challenges but must be achieved.

Innovation, not technology mandates: The Internet's simple core supports a remarkable degree of innovation. It does so on the basis of voluntary technical standards. >From the outset, Internet policy was based on the notion that the government should not design technology; in order to ensure innovation, that function was best left to the marketplace.

Increasingly, policymakers have been asserting control over the Internet's technology and imposing design mandates on Internet services and applications. In 2005, the FCC held that certain Internet services had to be designed and built to make them easier to wiretap. The same FCC sought to impose design mandates on device manufacturers with the goal of better protecting intellectual property. Congress is now considering a similar mandate.

Abundance and low barriers to entry: Traditional radio and television technology was bound by a limited technical capacity to exploit the electromagnetic spectrum. Consequently, regulation of the

airwaves was deemed necessary in order to allocate what was seen as a scarce resource. The Internet by contrast can accommodate an essentially unlimited number of points of entry and an essentially unlimited number of speakers.

Very low barriers to entry and participation have led to a relative equality of voice -- a democratization of expression. In terms of free speech, an environmental activist can reach the same people as an oil company. A blogger can impact an election as much as a major newspaper. And a new content or application provider can emerge from nowhere to become an extraordinary success with relatively low investment and without having to obtain a government license or negotiate with an incumbent to offer new services.

Global: While the digital divide in the developing world poses serious challenges, the Internet from its inception was a global medium. This greatly limits the reach and effectiveness of many national regulatory efforts, especially those directed at controlling content. Given the global nature of markets, burdensome regulation in the U.S. could send innovation overseas.

(3) CDT Recommendations for 110th Congress

CDT's legislative agenda covers national security, consumer privacy, free expression, Internet neutrality, digital democracy, and electronic copyright issues. Here are some highlights:

Congress Should Enact Comprehensive Consumer Privacy Legislation: In 2006, key technology companies joined privacy advocates in calling for a comprehensive consumer privacy law. Based on hearings and dialogue among all stakeholders, the 110th Congress should develop and enact a technology-neutral, workable privacy law that establishes meaningful safeguards for the personally identifiable information that companies collect from consumers.

CDT/CAP Report, "[Protecting Consumers Online](#) [2]"(July 2006)

Congress Should Not Prevent Minors from Using Blogs and Social Networking Sites: The Deleting Online Predators Act (DOPA), included as part of S. 49, seeks to prevent children from using or viewing blogs and social networking sites in schools and libraries. CDT urges the 110th Congress to reject this and similar proposals, which are both unconstitutional and ineffective. Teenagers and other children need to be taught about how to comport themselves online, and about where not to go and whom not to talk with. Children should not be deprived of access to online community sites, which can offer valuable information and networking.

[CDT Analysis of Legislation Regulating Social Networking Sites](#) [3](August 2006)

Congress Should Take Steps to Revitalize the Fourth Amendment: As detailed last year in the CDT Report "Digital Search and Seizure: Updating Privacy Protections to Keep Pace with Technology," the privacy protections afforded by the courts under the Fourth Amendment and in relevant statutes such as the Electronic Communications Privacy Act (ECPA) have grown weaker with the advance of technology. Congress should hold hearings to begin the process of strengthening ECPA, examining the implications of networked storage of email and other fundamental changes.

"[Digital Search and Seizure: Updating Privacy Protections to Keep Pace with Technology](#) [4]" (February 2006)

Congress Should Preserve the Essential Openness of the Internet: Congress should work to craft specific and targeted legislation to preserve the core elements of the neutral Internet platform. Legislative efforts should focus on the portion of broadband networks dedicated to the Internet and should leave the non-Internet portion alone. Congress should not create a bureaucratic, time-consuming, or otherwise heavy-handed or over-inclusive regulatory scheme. However, it would be inadequate, as was proposed last year, to merely prevent network operators from blocking access entirely to selected sites, services, applications, or devices.



CDT Paper, "[Preserving the Essential Internet](#) [5]" (June 2006)

Congress Should Adopt a Balanced Approach to Digital Copyright: In both hearings and legislation, lawmakers should recognize that there are multiple important interests at stake. Scrutiny and debate about piracy and the issues facing copyright holders is appropriate, but should be accompanied by scrutiny and debate about issues such as "fair use" and the impact of copyright policy on technology innovation and free expression. CDT urges Congress to facilitate dialogue aimed at developing a shared understanding and reconciliation of the competing interests at stake.

Congress Should Enact the Open Government Provisions in the Ethics Reform Package: The Senate has already begun to address digital democracy, by passing two important transparency rules that CDT strongly supports. In the Senate ethics reform package, lawmakers amended the Lobbying Disclosure Act of 1995 (LDA) to require electronic filing of disclosures and mandatory free availability to the public over the Internet. Also included in the package was an amendment offered by Sen. Salazar that requires Senate committees and subcommittees to make available by the Internet a video recording, audio recording, or transcript of any meeting not later than 14 business days after the meeting occurs.

Copyright © 2006 by Center for Democracy & Technology. CDT can be freely copied and used as long as you make no substantive changes and clearly give us credit. [Details](#).

Source URL: <https://www.cdt.org/policy/cdt-urges-lawmakers-return-core-internet-principles>

Links:

- [1] <http://www.cdt.org/legislation/110th/2007agenda.php>
- [2] <http://www.cdt.org/privacy/20060724consumer.pdf>
- [3] <http://www.cdt.org/speech/20060811dopa.pdf>
- [4] <http://www.cdt.org/publications/digital-search-and-seizure.pdf>
- [5] <http://www.cdt.org/speech/20060620neutrality.pdf>