

## The Broadband Internet: The End of the Equal Voice?

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Tags: Array

### Supporting Documents

As the fast-moving and hard-fought “open access to cable” debate continues – in both the United States and Canada – and perhaps moves toward resolution, it is vital to recognize that there are significant “openness” and free speech issues concerning broadband Internet access that have little or nothing to do with the cable debate. This essay looks at one such issue – an issue that is only now beginning to take shape. As described below, the emerging content distribution model on the Internet could diminish or eliminate the rough “equality of voice” between small and large speakers that is a key characteristic of the narrowband Internet. Unless those involved in creating and shaping the Internet – from network engineers to corporate leaders to public policy advocates – take steps to address this issue, we risk seeing changes in the Internet that could threaten the legal conclusion that speech on the Internet deserves the highest level of protection that the United States Constitution can afford.

When the United States District Court for the Eastern District of Pennsylvania undertook in 1996 the first comprehensive assessment of the narrowband Internet by an American court, it found what it termed “a unique and wholly new medium of worldwide human communication.” One key characteristic of the Internet that led the court to its conclusion was the rough “equality of voice” that exists in the narrowband Internet between small speakers and large corporate or government-controlled speakers. As Judge Stewart Dalzell of the Eastern District phrased it, “the Internet provides significant access to all who wish to speak in the medium, and even creates a relative parity among speakers.”

The broadband Internet, as it is now evolving, may undermine this equality of voice between small and large speakers on the Internet, and that may in turn chip away at the foundation of the sweeping First Amendment protections that speech on the Internet has been afforded by courts in the United States. The World Wide Web of the future may be one in which only large and wealthy speakers can afford to offer broadband, bandwidth-intensive, speech, while smaller speakers and publishers are relegated to offering more static and passive speech.

This essay looks at the narrowband Internet and its legal context, reviews the development of the distributed broadband content delivery model, and assesses its potential impact on the ability of small speakers to speak and be heard. The essay raises questions that both policy advocates and network engineers must address, and urges the development of a consultative process to ensure that the unique characteristics of the Internet are protected.

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