

Daily Journal

www.dailyjournal.com

FRIDAY, MARCH 25, 2016

PERSPECTIVE

Net neutrality's next big battle: ad blocking

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Internet Service Providers in Europe and the Caribbean have begun incorporating software into their networks that will block all advertisements from displaying on their customers' mobile devices. Not surprisingly, this effort has drawn the ire of edge providers who fear that ISP ad blocking will cut into their advertising revenues.

While network ad blocking has not taken hold in the U.S. to the same extent elsewhere, consumers here and abroad increasingly object to receiving unwanted advertisements. Consumers view ad blocking as an important tool to improve their web browsing experience and safeguard their privacy. For example, Apple recently modified its iPhone operating system to accommodate ad-blocking applications, which have since become some of the most popular applications in Apple's App Store. In response to consumers blocking advertisements, some edge providers prevent users from accessing their content and services unless they disable ad-blocking capabilities or pay subscription fees.

Given the popularity of ad-blocking applications, industry observers predict that ISPs in the U.S. will follow the example in Europe and elsewhere by incorporating ad-blocking software at the network level. If this prediction is accurate, a debate is likely to ensue over whether network ad blocking complies with the Open Internet rules adopted by the Federal Communications Commission, which currently are being challenged in federal court. Indeed, network ad blocking could follow the same path as data caps and sponsored data (also known as zero rating), the lawfulness of which the FCC is currently investigating.

Although regulators inevitably like to regulate, the FCC should refrain from taking sides in the development of ad-blocking technologies. Instead, the FCC should allow the market to evolve and permit consumers to decide whether they want ad-blocking technology and, if so, from whom — edge providers or ISPs. Indeed, regulatory efforts to prevent ISPs from deploying the same capabilities that are available from edge providers would suggest that the FCC is more interested in insulating edge providers than protecting consumers.



New York Times

Tom Wheeler, chairman of the Federal Communications Commission, speaks at a press conference about Internet regulation in 2014. Given the rising popularity of ad-blocking software in Europe and elsewhere, some think a debate is looming over whether certain ad-blocking practices comply with the FCC's "Open Internet" rules adopted last year.

The Open Internet rules are intended to protect consumers. Ad blocking benefits consumers in numerous ways, by preventing unwanted traffic from reaching an end user's device and improving network performance by alleviating congestion on a provider's network. Indeed, ad blocking targets some of the most unwanted Internet traffic, which can consume large amounts of mobile data that result in significant data charges, slow down web browsing, and drain battery life. Thus, ad blocking can improve a consumer's broadband experience and make broadband usage more affordable.

Ad blocking at the network level also protects consumer privacy. Online advertisers seek out and store information about consumers to improve the demographic targeting of their advertising. A recent study of millennials found that even consumers who have grown up with the Internet are concerned about the privacy implications of targeted advertising practices. Implementing network ad blocking would enable ISPs to safeguard consumer privacy by limiting the number of companies with access to their data.

Although some may complain that blocking advertisements at the network level would allow an ISP to function as a "gatekeeper," such complaints would be misguided. Most — if not all — ad-blocking models require consumers to

consent to the ISP's ad-blocking service before it is activated. Thus, rather than functioning as a "gatekeeper," an ISP implementing network ad blocking would be empowering consumers to decide whether to accept unwanted and annoying ads at their discretion. If consumers are unable to access content or must pay for such access from edge providers that object to the use of ad-blocking capabilities, consumers may decide to accept ads, even though doing so may result in a corresponding diminution in their broadband experience and privacy protections. However, these are precisely the types of tradeoffs that consumers face in making decisions in a functioning marketplace.

The issue of ad blocking highlights an ongoing tension in the FCC's regulatory regime. First, the FCC crafted its Open Internet rules under the mantra of "innovation without permission." If this slogan is to have real meaning, ISPs should not be required to seek the government's blessing in order to innovate, including by deploying network ad-blocking capabilities. Unfortunately, the FCC has forsaken this approach by requiring ISPs to justify their zero rating programs — an innovative approach to mitigating the effect of data caps that plainly benefits consumers. Second, the FCC should avoid holding ISPs to different standards than edge providers. For example, in the context of ad-blocking software, there is no public policy justification for holding an ISP to heightened government oversight when an edge provider avoids entirely government scrutiny when deploying the same capability.

Absent government interference in this nascent market, both ISPs and edge providers have incentives to respond to consumer demand, including by developing more innovative ad-blocking solutions. They also have incentives to look for new ways to generate revenues. The Internet is a disruptive technology, but the FCC would not be doing consumers any favors by purporting to pick market winners and losers under the guise of an Open Internet.

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