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Net Neutrality Discourses:
Comparing Advocacy and Regulatory Arguments
in the United States and the United Kingdom

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Abstract

Telecommunications policy issues rarely make news, much less mobilize thousands of people. Yet this has been occurring in the United States around efforts to introduce "net neutrality" regulation. But a similar grassroots mobilization has not developed in the United Kingdom or elsewhere in Europe. This paper develops a comparative analysis of US and UK net neutrality debates with an eye toward identifying the arguments for and against regulation, how those arguments differ between the countries, and what the implications of those differences are for the Internet. Drawing on mass media, advocacy, and regulatory discourses, we find that local regulatory precedents as well as cultural factors contribute to both agenda-setting and framing of net neutrality. The differences between national discourses provide a way to understand both the structural differences between regulatory cultures and the substantive differences between policy interpretations, both of which must be reconciled for the Internet to continue to thrive as a global medium.

1 Introduction

Who controls the internet? And how? These questions are becoming increasingly important for citizens, governments, and businesses across the world. In particular, the debate about "net neutrality" has been unfolding in news rooms, legislatures, and regulatory agencies for a number of years on both sides of the Altlantic. The coining of the term is usually attributed to the US legal scholar Tim Wu, who authored an article on the subject in 2003 in which he equated net neutrality to "an Internet that does not favor one application over others" (Wu, 2003, p. 145).

Beginning in 2005, net neutrality took on a normative and political meaning as well. Real and imagined efforts by telecommunications companies and governments to control the nature of the content available on the internet, the speed of its delivery, or the protocols of interconnection appeared to some as violations of fundamental speech rights. In the United States, advocates for net neutrality argued that without some regulatory intervention, too much control over communication would be ceded to telecommunication companies who would choose to favor their own services or content over competitors. On the other side of the debate, telecommunications operators and US business commentors expressed fears that regulation would curb the ability of networks to innovate, manage traffic, and invest.

What could have been viewed as an arcane telecom policy debate instead sparked a highly charged public discussion in the mainstream press. At a time when US commentators both feared the country falling behind on broadband

connectivity and raised concerns about the plurality of media voices in an era of vertically converged media (McChesney 2007), net neutrality struck a chord.

Largely as a result of grassroots advocacy campaigns begun on the Internet and distributed through blogs and other online platforms, the issue quickly gained mass media coverage and continues to capture the attention of national media outlets. The intensity of the debate, the mobilization of many different constituencies around the issue, and the substantial press coverage established net neutrality as an issue that touches on issues of speech rights, innovation, competition and consumer protection.

A grassroots mobilization of the same scale has only recently developed in Europe. In contrast to the broad-based debate in the US, which features involvement and investment by corporate entities of many kinds, European mobilizations have primarily responded to specific pieces of proposed legislation, particularly in terms of how this legislation aligns with existing consumer and civil rights protections. Until recently, these mobilizations were primarily country-specific. In the UK in particular, net neutrality debates have been especially muted in comparison to their counterparts in the US. Freedom of expression debates do not engage with a written constitution, and the broadband market is more competitive with less vertical integration. However, grassroots and mass media engagement with the neutrality issue may be in flux as governmental bodies in the European Union, including the UK, begin implementing the revised European Electronic Communications framework, which contains provisions that could arguably be construed to levy powers to enforce net neutrality.

In this highly dynamic context, research should contextualize the debate to clarify advocacy's impact on both sides of the Altlantic.
This paper develops a comparative analysis of net neutrality debates between the US and the UK, using a particular focus on advocacy as a means of framing the arguments. The focus on advocacy allows us to understand the relationship between regulatory decisions and the principles and values often associated with the Internet as a communication medium, such as free expression and equality of access. Furthermore, in the US context this approach allows us to model the role of the mass media as an amplifying force for specific arguments related to net neutrality. Our study seeks to understand the relationship between the advocates who have advanced arguments in favor or opposed to net neutrality, the representations of these arguments in mass media, and the results of this agenda-setting on the arguments supported by official regulatory policy documents. Of interest not only to scholars of policy and regulation, this analysis reveals that historical precedents in media regulation as well as the circulating power of mass media outlets combine to advance specific arguments about net neutrality that are sometimes paradoxical and frequently culturally grounded.

This paper addresses three core questions:

- What are the core arguments for and against net neutrality as presented by advocates, the mass media and regulators?
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- What do these arguments illustrate about the differences in communications regulatory culture in the two countries?
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- What are the broader implications of these differences for consumers, citizens, and the future of the Internet?

Our analysis surfaces two levels at which to compare the two countries and evaluate the broader impact of the policy discourses: structural and substantive. The structural comparison focuses on the shape of the discourse in each country, regulatory and cultural factors affecting each discourse, and the structure of the flow of ideas between each stakeholder group and each country. The substantive analysis reveals six topical themes across the two countries: definitional issues, free speech, innovation and investment, transparency, competition and market forces, and history and precedent.

Our findings reveal that local regulatory precedents as well as cultural factors contribute to both agenda-setting and framing of net neutrality issues by advocates, the media, and regulators. The extent to which advocates and the mass media have an opportunity to contribute to policy debates is highly dependent on both of these factors, yielding a broad spectrum of potential levels of influence on the ultimate regulatory outcomes. The differences between country-level discourses provide one way to understand the roots of different substantive policy interpretations of net neutrality. These differences and the flow of discourse between countries may not only affect national policy responses but also Internet experiences worldwide.

Section 2 below outlines our theoretical approach and discusses related work. Section 3 describes our methodology. Section 4 makes a structural comparison between the US and UK discourses, while Section 5 makes a substantive comparison. Section 6 provides a discussion of the structural and substantive findings, and Section 7 concludes.

2 Theoretical Approach

2.1 Advocacy

The paper addresses the structure and substance of the net neutrality debate by analyzing the social values attributed to net neutrality as they are expressed in advocacy material, by the mass media, and in telecommunications regulatory

literature. As Turner (2005) argues, tracking the shifts in discourses as they move between different groups is a means of understanding the flows of power attached to the ideas the discourse represents. These flows of power can be followed by examining how different discourses frame the salient issues.

Examining and comparing substantive arguments that focus on particular policy and technical issues across stakeholder communities is an effective means of understanding different regulatory cultures and their influence on the shared communication resource that is the Internet. In media policy scholarship, Sawnhey has examined the points of conflict between the values of system developers and the real-life function of communication systems (2003). He argues that new technologies often represent significant discontinuities with old ones; yet despite this, analogies to older technologies often result in transfers of legal frameworks from old to new technologies (2010). Thus, in the United States, legal frameworks relating to railroads were used to apply to telecommunications, but a "metaphor vacuum" surrounding broadcasting meant that legal frameworks for broadcasting were initially couched in ambiguity. Mosco (2004) has also examined how metaphoric language lauding the democratizing potential of new media has accompanied not only the Internet but previous media technologies including the telegraph, the telephone and the radio.

This analytical strand of literature makes a strong contribution to the existing literature of advocacy's role in media governance and policy debates, which includes McChesney's (1990) analysis of the public interest involvement in the regulation of radio, and Sandvig's (2006) discussion of the role of telephone cooperatives in forcing the expansion of a national telephone system in the United States. In the UK the role of advocacy has been more restrained, but pirate radio has been linked with the opening of commercial broadcasting and advocacy for increased diversity of radio stations. However, Bryan et al (1998) note that in the context of community networking in the UK, advocates established citizens' charters that used the language of consumer rights rather than emphasizing democratic values of citizenship.

Mueller et al (2004) note that there has been relatively little analysis of the structures of participation in advocacy about communications and Internet policy. Some work, like Falaschetti's (2003) economic analysis of the role of latent institutions in telecommunications policymaking, concentrates on how voters respond to proposed policies. The limited literature about advocacy during the policy-making process includes Aufderheide's (1999) discussion of public interest lobbying around the 1996 Telecommunications Act, which charts the issues that public interest advocates introduced into the debate in advance of the legislation. Similarly, Mueller et al's (2004; 2007) review of advocacy argues that public interest demand can increase the number of hearings related to a telecommunications issue, but the arguments used to justify specific

telecommunications policies, particularly those perceived to be in the public interest, are also a key part of this process.

2.2 Net neutrality and advocacy

Scholarly work on net neutrality has primarily concerned itself with normative legal and economic suggestions about regulatory responses. Noting the risks associated with the deregulation of broadband in the U.S. in the early 2000's, Wu's (2003) proposal for a regulatory regime that would guarantee nondiscriminatory broadband service received substantial support within the legal academic community (Lessig 2006; Crawford 2007). Legal-economic analyses have been primarily skeptical of regulatory proposals, finding that the U.S. broadband market was sufficiently competitive to ensure nondiscrimination, (Baumol et al. 2007; Sidak 2006), that regulation would reduce incentives for network operators to invest in their networks (Yoo 2004), or that discrimination could lead to differentiated services that would benefit consumer welfare (Yoo 2005). However, others emphasized the positive externalities of nondiscrimination, disputed claims about the competitiveness of the U.S. broadband market, and explained network operators' incentives to discriminate under existing market conditions (Frischmann & van Schewick 2006; van Schewick 2006; van Schewick 2010).

European studies of nondiscrimination regulation have likewise tended to focus somewhat strictly on the normative legal and economic aspects of the debate. Several analyses of Europe's competition and regulatory frameworks have concluded that, due to market structure and legal differences from the U.S., further regulation is unnecessary to guard against discrimination in the EU (Cave & Crocioni 2007; Chirico et al. 2007). Marsden (2010), on the other hand, makes an explicit attempt to problematize net neutrality outside the bounds of economic theory, and concludes that a regulatory solution involving industry self-regulation backed up by state enforcement (co-regulation) is in order.

Recent literature is just beginning to examine the role of advocates and civil society in framing and advancing net neutrality debates. Meinrath and Pickard (2008) discuss the advocacy contribution to the net neutrality debate in the United States, and Michalis (2010) provides an initial comparative examination of net neutrality policies in the European Union in terms of economic growth, citizenship and regulation. Thus far, this literature has not examined the nature of the relationship between advocacy and regulation, particularly not the way that arguments flow between advocates and regulators. We argue that identifying how net neutrality arguments are advanced not just by advocates and regulators but also by the media provides a more robust understanding of the differences between advocacy and regulatory cultures.

2.3 Agenda-Setting and Framing

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In communications research, the agenda-setting and framing literatures both address the role of the mass media in advancing certain arguments. Agenda-setting research, as exemplified by the classic research of McCombs and Shaw (1972), examines how the media advances arguments that shape public thinking. In contrast, frame analysis focuses on how arguments are presented by a variety of stakeholders, and assesses how some frames become and remain more influential.

McCombs (2005) identifies four distinctive phases in the evolution of agenda-setting research in terms of its focal areas of exploration:

(1) the influence of a media issue agenda on public's issue agenda,
(2) the contingent conditions that intervene with media agenda-setting effects,
(3) the effects of attribute agendas (i.e., the second-level agenda-setting), and
(4) the origins of media agendas (see also McCombs and Shaw 1993).

This is supplemented by the fifth phase—the consequences of agenda-setting (McCombs 2005).

Frame analysis addresses some of the perceived weaknesses of agenda-setting. It is more focused on media power and is interested in how issues are constructed, how discourse is structured, and how meanings are developed (Gamson and Mogdiliani 1989; Gamson 1992). It departs from a primary concern about the salience of issues, as expressed by their topics, and instead examines the nature of media power. By focusing on how issues are defined, frame analysis can better strike a balance between the different actors participating in policy debates, determining how power operates between and within the most significant shared frames.

In this paper, our analysis considers how advocates, the mass media, and regulators advance arguments in favor of net neutrality. As such, we consider the media to be only one of the means by which media policy arguments are advanced, contested or adopted. We are thus also concerned with the broader frames which advocates, the media, and regulators use to shape their responses to policy issues. This provides us with a way of understanding media and communication power as it circulates.

The net neutrality debate has some characteristics that are shared with the communications and information policy debates that are currently circulating and influencing the shape of current and future media (Mansell 2007). First, the debate is global, although the concept of net neutrality emerged in the United States. The impact of local regulatory conditions on the global communications resource represented by the Internet is a unique reconfiguration of the decentralized way in which this networked resource has evolved. Second, the

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debate has spanned a relatively short period of time during which the arguments advanced for or against neutrality principles and regulation have fundamentally shifted. As Michalis (2010) notes, jurisdictional responses to net neutrality have varied depending on the existing regulatory environments. More detailed analysis of these environments and the relationship between advocacy and regulatory arguments becomes important as the actions of nation-based companies and regulators have increasingly global influence.

3 Methodology

To analyze the frames used by advocates, mass media and regulators, we conducted a discourse analysis of three corpuses of material from each of the UK and US contexts. The material we collected from all three corpuses spanned the time period between January 2006 and June 2010, roughly capturing the bulk the debate from its inception in the US to the launch of the most substantive net neutrality regulatory proceedings in both countries. This time frame does not include the US discussion about the classification of broadband Internet service following the D.C. Circuit Court decision in *FCC v. Comcast*, the FCC's adoption of rules in its *Open Internet* proceeding, or Ofcom's conclusions from its inquiry into "Traffic management and 'net neutrality.'"

The corpus of advocacy materials was composed of regulatory filings, blog posts, white papers and web pages created by organizations supporting net neutrality regulation (referred to hereafter as "proponents") and organizations advocating against it ("opponents"). Our loose definition of "advocacy" included non-profit organizations with a diversity of funding and operational structures. These included Free Press (including material from the Save the Internet campaign), the Center for Democracy and Technology, Public Knowledge, the Hands Off the Internet campaign, the Information Technology & Innovation Foundation, and the Progress and Freedom Foundation and the UK's Open Rights Group and the Ofcom Consumer Panel. Because of the smaller number of active advocacy organizations in the UK, our UK advocacy corpus also included blog posts and consultation responses of individual advocates and academics who made similar types of contributions to the debate as organized advocacy groups.

The regulatory corpus included regulatory pronouncements from the Federal Communications Commission (Notices of Inquiry, Orders, and Notices of Proposed Rulemaking, including the Open Internet NPRM) and Ofcom (speeches, topic briefings, board meeting minutes, and consultation documents). Although both countries have seen some level of legislative activity or interest in net neutrality, we chose to focus on regulatory activity because it provides a more structured public comment process, providing a straightforward basis for analysis of the flow of discourse.

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The mass media corpuses were significantly different in the two jurisdictions, with many fewer news articles published on the topic in the UK. Press articles were selected from the Lexis-Nexis major national newspaper database, which was used to gauge the debate in the major mainstream press. While technology debates are now increasingly discussed in online media sources in both countries, we did not include online media in this initial study as we were interested in how the debates circulated among ordinary citizens, not necessarily merely the technologically savvy. In the US, we also selected articles from the ProQuest Ethnic and Minority Media index, which was used to determine the extent of the debate across diverse media outlets. We took a sequential sample from the 495 press articles from the US indexed for our period of study, eliminating articles from wire services. This resulted in a sample of 50 articles. In the UK, we used all 32 articles on the topic that were indexed in the Lexis-Nexis database.

The corpuses were read and coded sequentially by both authors. Coding and analysis occurred at two primary levels, structural and substantive. The structural analysis was aimed at understanding the shape of the discourse within each jurisdiction and the ways in which arguments flowed between the three corpuses and two countries. The substantive analysis focused on the content of the arguments being made and the similarities and differences between the substantive themes that emerged in each corpus and each country.

4 Structural Comparison of US and UK Discourses

Part of our motivation for analyzing a diversity of sources was to gain a fuller understanding of the impact of each kind of discourse on the others, and ultimately on the policy and regulatory outcomes associated with net neutrality. Significant political and journalistic attention to the issue in the US signaled the importance of net neutrality from the early days of the debate, but merely observing the debate in the media would not have provided a complete picture of the flows of discourse between advocates, the press, and regulators. Given that the Internet is a global medium, comparing the flow of arguments between the US and the UK provides further insights into how domestic regulatory debate can have transnational impact. Sections 4.1 and 4.2 explain and compare the structure of the neutrality debates in the US and the UK, respectively.

4.1 Structure of US Discourse

The regulatory status of Internet service (and its predecessor, data transmission service over telephone lines) has been a subject of legal debate in the US for decades. Much of this debate has concerned the appropriate role of the Federal Communications Commission (FCC) in regulating such services. The FCC, established by the Communications Act of 1934, regulates communication by

radio, television, wire, satellite and cable, often establishing separate regulatory silos for each medium. As the Internet has become a mainstream communications medium, the agency has been tasked to "promot[e] competition, innovation, and investment in broadband services and facilities" (FCC, 2010). The net neutrality debate is merely the latest issue to reveal the tensions between the FCC's role in arbiting freedom of speech, promoting innovation in communication markets, and operating within the bounds of each silo of its authority.

The "net neutrality" framing of the debate crystallized in the summer of 2005 when, after years of litigation, the Supreme Court availed cable broadband providers of nondiscrimination requirements (in the *Brand X* case) and the FCC did likewise for DSL in classifying it as an "information service." These two decisions sowed the seeds for an intense policy debate that continues to play out both in the press and in regulatory proceedings.

The FCC's approach was piecemeal at first, with neutrality provisions included in a number of telecom mergers, a major airwave auction, and a generic inquiry into broadband providers' practices. It gained significance in issuing an order against Comcast as a result of accusations that the ISP was engaging in discriminatory network management practices. While the Comcast order was being challenged in court, the agency proposed to codify net neutrality regulations in its proposed Open Internet rules. In the midst of that proceeding, the D.C. Circuit Court overturned the FCC's order, causing the agency to consider reclassifying broadband Internet service as a "telecommunications service." It chose not to do so, instead adopting revised Open Internet rules within its existing legal framework. Net neutrality thus became a defining telecommunications policy issue of the first decade of the 21st century while revealing just how intricate the web of the FCC's legal authority has become.

The political salience of this debate hinges on the importance of speech rights in American history and politics. As Stein (2007) notes, legal tools derived from the US Constitution's First Amendment have often created a battleground around communication regulation. Stein and others have identified how corporate actors such as media companies have claimed a stake in First Amendment debates; as the net neutrality debate gained vigor, technology companies such as Google and eBay became associated with lobbies for speech rights that also called for net neutrality regulation widely perceived to benefit providers of online services, while network operators and equipment vendors, including AT&T and Cisco, lobbied against net neutrality regulation, in company with other organizations calling for deregulation of all types of communications systems.

Indeed, it seems as though the US's particular regulatory context – characterized by litigious and contentious debate among a wide variety of corporate and public interest actors – has succeeded in establishing net neutrality as an issue to be discussed in political terms, as opposed to a technical problem to be solved in the shadows by policy experts. Even the name "net neutrality" belies its technical complexity, yet by focusing on the core concept of "neutrality" -- with its egalitarian connotations -- the issue has remained within the grasp of the mass media, regulators, and the general public.

This is not to say that the substance of the US neutrality debate has lacked nuance. A significant number of distinct substantive themes emerged from our analysis of the US discourse, several of which are discussed in Section 5:

Problems of definition – discussion of the difficulty of precisely defining net neutrality and disagreements about the extent of the problem to be solved.

Free speech and democracy – discussion of the impact of neutrality on free speech and democracy.

Innovation and investment – arguments addressing the balance of innovation and investment at the core and edges of the network.

Competition and market forces – discussion of the role of competition and market forces in determining the necessity of regulation.

History and precedent – arguments pointing to the Internet's technical or regulatory foundations as justification in favor of or against neutrality.

For each of these themes, the flow of discourse tended to begin with advocates in 2006, move through the press throughout the 2006-2010 period, and eventually be incorporated into regulatory material, often with the first substantial regulatory discussions occurring in 2009's Open Internet Notice of Proposed Rulemaking (Federal Communications Commission, 2009). Advocates raised the broadest range of issues and provided arguments with the greatest nuance. Many of these initial arguments would then move through the press, and subsets of both those that appeared in the media and those that did not would make their way into the regulatory discourse. Thus advocates often played the role of establishing or proposing frames for the debate. The media would then take on an agenda-setting function in selecting specific arguments to surface in the popular press. This surfacing varied depending on the substance of each particular argument. Finally, regulators would incorporate ideas from among the established advocacy frames and arguments reflected in the media into their own regulatory work. We explore this and other flows of the debate in the theme-specific discussions in Section 5.

4.2 Structure of UK Discourse

The structure of the UK neutrality discourse differs substantially from that of the US. Compared to the mass of organized grassroots, public interest, and stakeholder-funded advocacy groups involved in the US neutrality debate, neutrality advocacy in the UK has been minimal. Furthermore, the phrase "net neutrality" has until very recently been less used in the UK, where discussions have instead favoured framing the concepts as "open internet" (Tambini, 2010) or broadened the debated to include freedom of expression, as has occurred within the European Union following Commissoner Kroes' comments on the subject. Nevertheless, the population of advocates that have taken up the issue has been limited to a handful of public interest groups, consumer rights organizations, and individual academics. This is not necessarily unusual in the UK context, where digital rights issues in general have received little attention from traditional consumer advocacy organizations, and where the style of national regulators tends to be more cooperative with industry and less litigious than in the US (Wilson 1991).

The lack of UK advocacy has had a profound impact on the flow of discourse. In the US, we saw that advocates would often take the lead in raising particular issues or facets of the debate, and that these would later get picked up by the press, and, eventually, elicit a response from regulators. In the UK, regulators appear to have a much stronger role in framing the debate, setting up the arguments to which the small cadre of neutrality advocates then respond. Within such a structure, advocates often (but not always) employ not only the terms but also the arguments put forth by Ofcom.

The most startling example of this pertains to the impact of competitive forces on discrimination. Ofcom's often-repeated view is that the combination of competition and transparency will keep discrimination in check and give consumers the ability to switch ISPs if discrimination gets out of control. The Open Rights Group (ORG), the most active advocacy organization on the neutrality issue, has essentially parroted Ofcom's argument:

> Thankfully in the UK there is currently a healthy amount of competition and choice this is currently preventing any company from trying to drop Net Neutrality. . . There is a small amount of traffic shaping happening in relation to ports used by P2P software by some network providers, this should be made more explicate to the customers when they sign up. (Open Rights Group, 2010)

ORG not only accepts Ofcom's framing of the issue in competition terms, but it also agrees with Ofcom that instances of discrimination against particular applications can be rectified through transparency. While this view was certainly not universal in the UK advocacy community (or even among ORG members), it

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is revealing of the influence that Ofcom's framing has had on the debate. It would be difficult to imagine any of the pro-neutrality groups in the US similarly conceding their acceptance of P2P-specific traffic shaping (notwithstanding the lack of competition in the US).

Ofcom's regulatory context

Given Ofcom's dominance of the UK debate, it is important to understand its regulatory paradigm and how it compares to that of the FCC. Ofcom was established in 2003 as a converged regulator with authority over TV, radio, fixed and wireless telecommunications, and spectrum. Its goals include promoting a competitive communications and media market and ensuring universal access to a diversity of communications services. The agency is deregulatory in character but still charged with significant citizen and consumer protection duties. In comparison to the siloed approach of the FCC, Ofcom's approach takes place on various layers: in addition to the regulatory powers it was given by the 2003 Communications Act, it is responsible for enforcing UK and European competition law. It enacts these responsibilities across the sectors for which it is responsible, which include the TV and radio sectors, fixed line telecoms and mobiles, plus the airwaves over which wireless devices operate .While Britain's 2003 Communications Act contains no mention of the internet, Ofcom considers the aspects of the internet that fall under its other responsibilities, most often electing to limit its own regulatory activity and encouraging self-regulation.

This converged regulatory paradigm -- the paring down and judicious exercise of authorities used by previous regulators -- distinguishes Ofcom from the FCC, which has traditionally regulated telecommunications by classifying services into distinct regulatory categories (for cable television, voice, and Internet service, for example). The prominence of the convergence paradigm in Ofcom's charter creates the possibility for the UK regulator to take a narrow view of its role in regulating the Internet and to conceive of the Internet in strict reference to the existing media for which it is also responsible (broadcasting, for example). While US telecom regulation has traditionally relied on regulatory precedents from previously existing media (Pool, 1983), the particular focus on convergence may mean that the UK regulator is more apt to draw on past experiences with non-telecommunications media.

One further structural difference concerns external influence. The flow of arguments related to net neutrality in the UK relies much more heavily on regulatory activity in other countries. Ofcom's discourse is obviously shaped by European regulatory discourse, concerns, and priorities – a phenomenon that has no equivalent in the US context.

Embedding neutrality in a broader context

UK mass media discourse, meanwhile, is shaped by reference to US culture and, to a lesser extent, US policy. Media representations of neutrality were thus oriented towards defining similarities and differences with the US.

Many fewer mass media articles were published in the UK than in the US. However, while many US news articles were limited to describing the debate and conflicting definitions of the "net neutrality" term, a selection of the UK articles offered more substantive discussion of digital media policy. These substantive explorations were framed first of all as a question about whether neutrality was important for the UK, and subsequently about how to ensure consumer protection through regulatory means such as operator transparency about blocking or filtering Internet content, for example.

This tendency towards detailed discussion of neutrality's policy relevance in the UK was not limited to the mass media discourse. On several occasions, Ofcom noted how traffic management may intersect with the protection of intellectual property online, whether through the deployment of deep packet inspection (DPI) devices that can both manage congestion and flag transmissions of copyrighted content or in the more general sense of ISPs exerting increased control over content for either purpose. Ofcom also made mention of the relationship between traffic management and privacy, noting that the use of DPI for traffic management may raise privacy concerns or lead to its use for other purposes such as targeted advertising (Ofcom, 2010a; Woolard, 2010).

Advocates have likewise tended to group neutrality into a broader set of issues concerning the role of ISPs. Whether discussing obligations to combat copyright infringement or filtering child pornography, advocates have on numerous occasions included the ability to shape and throttle bandwidth among their list of concerns related to ISPs' gatekeeping abilities. Indeed, given that measures to deter both copyright infringement and child pornography have been propelled by significant industry or legislative action – the passage of the Digital Economy Act and the voluntary steps by BT to filter against the Internet Watch Foundation's list of objectionable images, respectively – in many cases net neutrality has emerged as a side issue in discussions of these more central topics.

5 Substantive Comparison of US and UK Discourse

As noted in section 4, a number of substantive themes emerged from our analysis of the US discourse: definitional issues, free speech, innovation and investment, competition, and historical precedents. Broadly speaking, nearly all arguments that we observed in the US discourse, made either in favor of or against neutrality regulation, can be classified into one or more of these categories. Of these themes, the UK discourse was most intensely focused on

competition and definitional issues. Historical Internet regulatory precedents were less prominent, and discussion of free speech and innovation were both extremely limited. The UK debate had an additional focus on transparency which existed but was less prominent in the US.

This section compares and contrasts how each of these substantive themes emerged in each jurisdiction, the influence of arguments from each country on the other, and the relative impact of different lines of argument on policy outcomes. Free speech and innovation have been grouped together as they were both much more prominent in the US discourse than in the UK.

5.1 Problems of Definition

Since the inception of the "net neutrality" term, its meaning from both a technical and practical perspective has been widely debated. But even among parties who may agree on the semantics of the term, debate has raged about whether specific practices – including those existent in the marketplace, foreshadowed by telecom executives, or hypothesized by advocates and regulators – constitute violations of the principle of net neutrality. In this subsection we explore both the semantic and evidentiary aspects of how neutrality has been defined by advocates, journalists, and regulators.

Definitional confusion

Confusion about the definition of "net neutrality" was a central feature in both the US and UK discourses. Stakeholders offered widely different definitions of the term, focusing variously on preferential treatment or discrimination, equality of access, or payment for traffic prioritization. The mass media took particular note of the definitional issues, using terms like "complicated" (Ruskin, 2006), "vague" (Abate, 2007) or "nebulous" (Williams, 2007) to describe the neutrality concept.

In the US, the definitional issue was one of the few themes that was more prominent in the mass media discourse than in the other two corpuses, likely because of the need for the popular press to explain a term largely unfamiliar to the public. However, the topic did not surface in the US regulatory discourse other than in statements made by individual FCC commissioners (McDowell, 2007; Taylor Tate, 2007). Conversely, Ofcom has repeatedly emphasized the definitional difficulty throughout the entirety of the UK debate.

Solution in search of a problem

In the US, the idea that neutrality violations are hypothetical – or that existing instances of discrimination are not sufficient to justify regulation – was a prominent feature in all three corpuses. Opponents of regulation characterized the neutrality problem as "speculative," (McCurry & Wolf, 2007, p. 4) "hogwash," (Vuong, 2006) a mere "theory," (McDowell, 2007) a "solution in search of a problem," (Federal Communications Commission, 2009, p. 25) and in numerous other ways to indicate the lack of evidence to motivate regulation. Proponents of regulation countered by citing existing instances of discrimination or blocking of content and statements made by telecom executives indicating their future plans to charge for prioritized traffic delivery.

The way that this topic emerged in the UK discourse exemplifies an important difference in how discrimination is understood between the two countries. From the beginning of the net neutrality debate in the UK, Ofcom has been forthright in acknowledging the existence of traffic management practices that discriminate

against particular applications or types of applications. For example, in 2006, Ofcom noted that "traffic management and prioritization is already undertaken by ISPs, with some ISPs routinely degrading specific traffic e.g. peer-to-peer services" (Ofcom, 2006, p. 16). Such acknowledgements have continued to appear in the years since then, both in speeches made by Ofcom personnel and in official Ofcom documents.

At the same time, Ofcom has also made the argument that net neutrality violations are hypothetical – the same meme that has had a constant presence in the US debate. In 2006, for example, Ofcom maintained that net neutrality issues "may or may not emerge in the future" (Ofcom, 2006, p. 4). Four years later, Ofcom expressed the need to "be wary of rushing to judgment" about potential discriminatory behavior (Richards, 2010) and to guard against "premature conclusions about the nature and extent of the 'net neutrality' problem" (Ofcom, 2010a, p. 23).

These two lines of argument present something of a paradox. Ofcom is clearly cognizant that discriminatory practices are taking place. Furthermore, the practices Ofcom cites – including degradation and prioritization of specific applications and protocols – are precisely the kinds of practices that stoked massive neutrality uproars in the US, particularly in the time since the Comcast/BitTorrent incident was revealed in 2007. Yet despite acknowledging the presence of the kinds of discriminatory practices that have attracted attention elsewhere, Ofcom also maintains that neutrality violations have yet to emerge. The notion that neutrality regulation is a "solution in search of problem" has played a central role in the US debate, but unlike Ofcom, those who put forth that notion in the US have not typically also simultaneously acknowledged that discrimination is taking place. Ofcom's position – that discrimination exists but discrimination problems do not – seems contradictory.

This apparent contradiction may be explained by differences in which behaviors are considered discriminatory or problematic. Whether one considers neutrality violations to be hypothetical or not depends on what one considers to be a true violation. For example, in the US discourse, different parties had very different conceptions of what might count as a violation. To some, a collection of incidents involving Madison River/Vonage, Comcast/BitTorrent, and Verizon/NARAL (see generally (Esbin, 2009)) were a small handful of inconsequential problems that were resolved quickly enough to prove that no new neutrality regulations were necessary. To others, they constituted significant evidence of harmful discrimination that warranted immediate regulatory attention. It may be the case that given Ofcom's narrow mandate to enforce against anti-competitive practices, neutrality violations will remain hypothetical as long as it determines that no broadband provider has enough market power to act anti-competitively (as Ofcom believes today (Ofcom, 2010a)). Thus, discriminatory traffic management of the sort noted by Ofcom over the last several years might not rise to the level

of being viewed as problematic so long as it is conducted by ISPs selling services within a market viewed as being competitive.

5.2 Free Speech and Innovation

The First Amendment to the US Constitution is well understood to provide some of the world's strongest protections for freedom of speech. It is thus unsurprising that free speech emerged as a prominent theme across all three US discourses. Many stakeholders went to great lengths to emphasize the importance of the Internet for speech, as FCC Commissioner Michael Copps did in 2009:

> We must start from the premise that we are dealing with something very precious here—a technology leap as great as the printing press that was invented 570 years ago. This is perhaps the greatest small "d" democratic platform ever devised. In its capacity to facilitate communications—indeed, to manage almost the totality of the communications that take place among us—the potential power of this technology is awesome. It can do so much good. (Copps, 2009)

The salience of the issue was further illustrated by the fact that both proponents and opponents of neutrality regulation leveraged free speech arguments. As might be expected, proponents emphasized the threat to free expression posed by network operators picking and choosing which content and services would be available and at what quality. But opponents did not hesitate to turn that argument on its head, claiming that the very content providers arguing for FCC intervention were already censoring content on their own platforms, or that FCC intervention amounted to "the fairness doctrine for the Internet" (Hart, 2009, p. 24).

This kind of nuance, with both sides crafting detailed arguments around a single concept, was equally prevalent in debates about the impact of neutrality on innovation. Innovation was by far the most frequently raised topic in the US discourse. It gave rise to a number of different lines of argument, each of which were addressed in detail by advocates and regulators. For example, the notion of "innovation without permission" – that the Internet allows innovators to create and deploy new applications, services, and content without needing to seek permission from network operators – stimulated a substantial debate all of its own. Similarly, the question of whether innovation belongs at the edge or in the core of the network sparked lengthy discussions in all three corpuses, culminating (for the time period that we studied), with the FCC declaring the edge versus core question to be "a false choice" (Federal Communications Commission, 2009, p. 92). Within our data set, the richness of the innovation discourse was unmatched.

Free speech and innovation in the UK discourse -- or lack thereof

While Ofcom at times referenced the US debate, particularly when discussing competition, these references did not extend to the wider public policy issues relating to free expression, openness, and end-user innovation that were at the core of the US discourse. When Ofcom did raise issues about the value of the Internet for speech or innovation, it was nearly always in the context of explaining another stakeholder's argument, and nearly never in the context of Ofcom stating its own belief in or support for the expressive, political, or social value of the Internet. For example, Ofcom noted that "some observers fear that traffic management could unduly restrict [personal expression, creativity, political participation and social activism], which are recognised to be of high social value" (Ofcom, 2010a, p. 7). In discussing discriminatory traffic management, Ofcom stated that "it is sometimes argued" that discrimination "may hinder investment 'at the edge of the network' where, it is further argued, most value to consumers is generated" (Ofcom, 2010a, p. 24). Such language gives the impression that Ofcom was exceedingly careful to acknowledge the importance that other stakeholders attach to the values of speech and innovation without expressing its own support for them.

One reason why Ofcom may be able to toe this line is the lack of public interest advocacy around neutrality and other communications issues in the UK. Few UK advocates have taken up the issues of free speech and innovation at all, and while some have drawn connections between neutrality and upholding those values, others seem cautious or undecided about the wider benefits of the Internet. For example, the Ofcom Consumer Panel (an independent advisory body to Ofcom), explained in 2007 that it had no information about the value that consumers and citizens place on super-fast next-generation networks, nor could it foresee what the public benefits of such networks would be (Ridley, 2007). Other advocates have eschewed the moral dimension of the debate in favor of economic arguments, or they have conceded Ofcom's limited authority as a competition regulator. Without strong advocacy in favor of a broader view of the Internet's benefits, it is no wonder that Ofcom refrains from addressing them.

This gap in Ofcom's attention was not limited to instances where Ofcom was comparing the UK and the US – it also existed in comparisons with the EU. Ofcom most often cited the EU when discussing the regulatory powers established by the EU telecommunications regulatory framework. Ofcom repeatedly expressed its belief that the tools provided under the framework – primarily the ability to take action against anti-competitive actors and to impose transparency obligations – should be sufficient to handle any neutrality problems that may arise.

But beyond these mentions of regulatory authority, Ofcom steered clear of any wider policy implications that may have been raised elsewhere in the EU, again strictly reflecting these implications as the concerns of others. For example,

Ofcom CEO Ed Richards questioned how Ofcom might act to maintain "the open character of the internet to which the [EU] legislators attached so much weight" (Richards, 2010, para. 5). While it appeared eager to emphasize the procedural aspect of its relationship with the EU (embodied in the authority granted to it by the UK's implementation of the EU regulatory framework), Ofcom relegated discussion of the wider implications of Internet regulation to articulating the arguments and values of others.

5.3 Transparency

While Ofcom may not have shared the EU's focus on openness, it did place a strong emphasis on transparency and service migration, both of which have also been the subject of EU support. From the early days of the neutrality debate, Ofcom has "wholeheartedly" agreed with transparency commitments expressed in Brussels (Kiedrowski, 2007, sec. 6). Transparency has figured prominently across the range of Ofcom activities, including consultations, research activities, and even board meetings, where the Ofcom board has on more than one occasion affirmed the importance of ensuring that consumers are informed about the speed limitations of their broadband connections. Ofcom likewise cited a range of existing and potential policy responses to induce greater transparency, including industry- or Ofcom-led self-regulation, co-regulation, and imposition of transparency requirements.

All of this attention to transparency stands somewhat in contrast to the US neutrality debate, where transparency has been a topic of discussion but not so central as in the UK. One demonstration of the relative importance of transparency between the two countries lies in actual regulatory action – while Ofcom has worked to incorporate disclosures about traffic management into its Voluntary Code of Practice for broadband ISPs (Ofcom, 2010b), the FCC has yet to take industry-wide action on the issue of transparency of traffic management practices.

The limited amount of neutrality advocacy in the UK also focused on the issue of transparency. While the Consumer Panel may have had few opinions about the benefits of super-fast broadband, it was more than willing to take Ofcom to task about improving ISPs' disclosures about the services they provide, including disclosures about traffic management policies and service migration procedures.

Ofcom supplemented its focus on transparency with discussions about the ease with which consumers may or may not be able to switch broadband service providers (otherwise known as service migration), which is a natural course to take for a regulator that relies primarily on market mechanisms to resolve neutrality issues. Notably, service migration was largely absent from the US neutrality debate. Service migration may well be less relevant in the US because the prospect of switching ISPs is far lower (given less ISP competition).

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5.4 Competition and Market Forces

Competition and the role of market forces are some of the most frequent topics of debate in neutrality circles. Opponents of regulation have claimed that network operator competition is sufficient to discipline operator behavior. Some opponents have further claimed that even without substantial ISP competition, regulation may still be unwarranted in absence of demonstrable market failure. Proponents, meanwhile, have argued that ISP competition is insufficient to discipline ISP behavior. In the US, some have argued that there could never realistically be enough ISP competition under the current market structure (because there will only ever be a handful of facilities-based providers). The same arguments were not generally put forth about the much more competitive UK ISP market.

United States

The debate about competition was a central focal point from the beginning of the US neutrality discussion. Opponents' arguments on the competition topic appeared substantially more frequently in the press than proponents' arguments. Although individual FCC commissioners addressed competition in their individual regulatory statements, the FCC as a whole did not substantively comment on the relationship between competition and neutrality until the Open Internet NPRM was published in November 2009. The FCC came out largely in support of neutrality proponents' notion that competition has not and would not be enough to ensure nondiscrimination on the network:

> . . . it is unlikely that competitive forces are sufficient to eliminate the incentive to charge a fee, particularly where the imposition of such a fee will not cause the access provider to lose many customers. Thus, allowing broadband Internet access service providers to impose access or prioritization fees may inefficiently reduce innovation and investment in content, applications, and services, generating a suboptimal economic outcome. (Federal Communications Commission, 2009, p. 29)

The FCC adopted this position in 2009 despite the greater press attention over the prior four years on the idea that market forces can solve the neutrality problem. This speaks to the limits of the agenda-setting function that the media can play. When other factors intervene – in this case, a major change in administration and corresponding change in the makeup of the FCC leadership – even the most prominent ideas put forth in the media may have decreased influence. With a new FCC chair less ideologically inclined to rely solely on market forces, the impact of the media's emphasis on the market became less visible in regulatory discourse.

United Kingdom

Competition dominated the UK regulatory discourse and was a frequent topic in the UK mass media – perhaps unsurprisingly given that requirements for intramodal competition have been the primary regulatory tool in the UK broadband sector, yielding a broadband marketplace that is among the most competitive in Europe, if not the world. Nowhere was Ofcom's power in framing the debate more evident than on this topic. The majority of the Ofcom documents we analyzed contained competition arguments, with the regulator consistently asserting that competition (together with transparency) should suffice to discipline operator behavior, and that Ofcom need not hesitate to intervene in cases where an operator with significant market power begins to abuse its dominant position. As noted in Section 4, where advocates addressed the competition issue, they accepted Ofcom's framing. The same phenomenon appeared in the UK mass media, with a selection of articles emphasizing that in the UK, unlike in the US, competition and the regulator's ability to enforce against anti-competitive actors obviated the need for regulation.

Ofcom often argued that the cause of the rise of the net neutrality debate in the US was a lack of competition between US ISPs (Ingram, 2006; Ofcom, 2007; Scott, 2007). Moreover, Ofcom's frequent emphasis on the importance of letting market forces shape future Internet infrastructure and services echoed the arguments made by opponents of neutrality regulation in the US. But, as noted in our discussion of competition arguments in the US context, the argument that ISP competition is sufficient to discipline network operator behavior was widely reported in the US press, but not often cited by the FCC. Thus, while Ofcom shared competition arguments that appeared in the US discourse, it did not necessarily stay in step with its regulatory counterpart, the FCC.

5.5 History and Precedent

The history of the Internet has been a touch point of the US neutrality debate from the very beginning. Arguments focused on both technical precedent (how the Internet has or has not traditionally operated) and on regulatory history (the extent to which the Internet has or has not been regulated).

Technical precedent

The majority of the arguments about the Internet's technical foundation were made by those who are pro-neutrality. They argued that the Internet has historically had a neutral architecture, as the Save the Internet campaign did in 2006:

Net Neutrality has been part of the Internet since its inception. Pioneers like Vint Cerf and Sir Tim Berners-Lee, the inventor of the World Wide Web, always intended the Internet to be a neutral network. (Save the Internet, n.d., pt. 4)

Compared to some of the other substantive arguments put forth by neutrality proponents, this argument did not consistently draw rebuttals from the opponents of neutrality regulation. However, at the very beginning of the debate, and again in 2010, some opponents voiced their disagreement with this premise, pointing out that Internet protocols and infrastructure have always had biases toward or against certain kinds of network traffic.

The way that this topic emerged in the UK discourse shares similarities and differences with the US that are indicative of several broader trends that we found. The historic technical neutrality of the Internet emerged at similar points in time in both debates – at the very beginning and again more recently, but not substantially in the intervening years. This proximity in time may be an indicator of the cross-jurisdictional flow of discourse.

In the US, arguments about technical foundations originated in the advocacy community and were later picked up by the mass media. They did not substantially permeate the regulatory discourse. The UK exhibited the opposite pattern, with the only references to technical or architectural history existing in Ofcom's regulatory documents. As explained in Section 4, this pattern was typical for many of the themes of the UK discourse, with Ofcom taking the lead in establishing topics for discussion, in some cases with little response from the press or from advocates.

Regulatory history

Unlike the case of technical precedents, both neutrality proponents and opponents thoroughly emphasized regulatory history and precedent throughout the duration of the US debate. This is unsurprising given that the decision to impose any new regulation generally needs to draw on existing regulatory action or authority.

Neutrality proponents focused their arguments in this area on the common carriage telephone regime on which the Internet grew, arguing that nondiscrimination protections should continue to be extended to Internet service. Neutrality opponents emphasized that the Internet has been largely unregulated throughout its history, with some pointing to FCC actions that have explicitly deregulated cable and DSL. Where this topic emerged in the media, it was most often cast as the opponents' argument. A 2006 article provides an example:

> Without government interference, the Internet has proved to be fertile ground for American entrepreneurs, making countless fortunes for investors and private citizens. (Zeisloft & Mankameyer, 2006, p. A09)

As with the topic of competition, opponents' arguments on this topic – particularly

those that emphasized the virtues of letting an uninhibited free market do its work without regulatory intervention – appeared more often or more directly in the media than proponents' arguments.

Discussions of Internet-specific regulatory precedent were largely absent from the UK discourse, other than mentions of existing competition authority. This is somewhat unsurprising given Ofcom's relatively short seven-year lifetime, as compared to nearly 75 years of history at the FCC.

6 Discussion

Discourses of net neutrality from the US and the UK provided a rich platform from which to understand the roles of advocates, the media, and regulators in shaping Internet policy. Our analysis reveals, in line with Turner's (2005) notion of following the power of an idea via its discourse, that the structure of discourse is a central determinant of policy outcomes and regulatory posture, in combination with structural factors which the discourse in turn addresses. In the US, advocates established a broad range of arguments, some of which were amplified by the media. Regulators drew from both sources, however, giving advocates the chance to impact regulatory discourse regardless of the media exposure of a particular topical argument, such as in the case of competition.

In the UK, meanwhile, the regulator both defined the debate and set it against a backdrop of influences from the US and the EU, yielding a perspective that is at once both narrow and broad. In some cases, Ofcom's narrow focus limited the debate in ways inconceivable in the US, with discussion about free speech and innovation largely absent. In other cases, though, the UK discourse delved more expansively into the interaction between net neutrality and other digital policy issues, taking a more holistic perspective than was often put forth in the US.

The way that substantive themes emerged in the two countries reflected each country's respective structural paradigm and the interaction between them. With respect to the problem of defining net neutrality, Ofcom's tendency toward external influence yielded a paradoxical outcome where the regulator observed discrimination but insisted that discrimination issues remain hypothetical. Thus it seems that an argument can cross borders and retain its salience even where its application is not clear or logical.

This cross-border flow was not exhibited by all arguments, however, and certainly not of those pertaining to free speech and innovation. While it may be argued that the lack of a First Amendment equivalent in the UK was the cause of the void in debate about neutrality's impact on free speech, the same phenomenon was observed with regards to innovation – an issue that was even more prominent than speech in the US discourse. The fact that these two issues were at the

heart of advocacy agendas in the US begs the question of whether their absence in the UK was tied to a general lack of UK advocacy.

For all the energy that has not been spent on speech and innovation in the UK debate, transparency and service migration have taken up the slack. Perhaps because of its narrow focus and powerful ability to frame the issue, Ofcom has inspired advocates to engage on these issues even where they have not otherwise contributed to substantive neutrality debates.

The competition arguments provide perhaps the greatest proof that, in some cases, regulators will do what they do regardless of external influence. In the US, despite support for free market idealism in the mass media, the FCC's most recent statements have acknowledged the limits of the current market structure and the potential need for regulatory action. And despite drawing on US influences, the UK regulator has taken the opposite view and seemingly framed the argument in a way to limit advocates' terms of debate.

Finally, the topic of history and precedent may provide one additional indicator of the cross-border flow of policy discourse. The fact that an issue of rather technical nuance – the question of whether the Internet's technical architecture has historically been "neutral" – appeared, disappeared, and reappeared roughly synchronously in the two countries may indicate the sharing of discourse across borders.

7 Conclusion

Our analysis reveals that net neutrality policy is a product of both local culture and regulatory precedent. The extent to which advocates and the mass media have an opportunity to contribute to framing and agenda-setting within policy debates is highly dependent on both of these factors, yielding a broad spectrum of potential levels of influence on the ultimate regulatory outcomes. The differences between national discourses provide a way to understand both the structural differences between regulatory cultures and the substantive differences between policy interpretations.

The underlying tensions between fundamental values and regulatory responsibilities that have fuelled the net neutrality debates are unlikely to disappear. The status of the FCC's Open Internet rules is uncertain – given the resources thus far invested in the net neutrality debate and its import for the future of communications, legal challenges and case adjudications are inevitable. Recent transnational proposals supporting a regulated future internet have likewise begun to ignite civil society engagement with net neutrality issues in

Europe, from advocacy organizations committed to both freedom of expression and protection of civil and consumer rights. The structural distinctions identified in this paper will certainly influence the future of this particular strand of the debate, with the influence of local advocates, journalists, and regulators spanning far beyond national borders. The extent to which policy debates within individual countries can have a far-reaching effects for global communications regulation is becoming increasingly evident.

Future research could examine the relationship between online media and framings of these debates, particularly in Europe where civil society organizations have less funding and fewer institutional relationships with corporate actors. The pressure on European policymakers and individual regulators to intervene to regulate the Internet remains strong and more work is necessary to understand the dynamics of the debate in different jurisdictions as they juggle responses from civil society, demands from operators with small markets and high competition, and rulings from European decision makers. Finally, as use of networked services moves increasingly to mobile devices, more work needs to be done to examine how similar debates are unfolding related to these platforms.

Acknowledgments

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