From Net Neutrality to Net Feudality

BY LUCA BELLI ON APRIL 20, 2015

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The Internet is a quasi-feudal environment. In order to access the Internet you have to accept the contractual provisions unilaterally defined by your telecom operator. In order to use online applications and services, you have to accept the term of service unilaterally defined by the service providers. Besides unilaterally defining the rules that govern their cyberspaces, telecom operators and services providers have also the possibility to enforce them through technical measures.

Nevertheless, Internet users are not (yet) peasants 2.0 because they enjoy some freedom to choose amongst different cyberspaces, contrary to peasants that were bonded to the land. Indeed, Internet users can freely choose the cyberspace they want to live in, using the applications and services they prefer and, theoretically, creating and freely sharing new apps and services. This is the quintessence of the human right to freely seek, impart and receive information and ideas regardless of frontiers. Such freedom is enabled by the net neutrality principle, which mandates non-discriminatory Internet traffic management, so that your telecom operator may not interfere in your freedom to access and share legal content, applications and services. Net neutrality is instrumental to protect Internet users’ freedom of expression allowing them to freely innovate and compete with tech giant on a level playing field. This is why several countries protect net neutrality in their national laws.

Zero Rating: Last Threat to Neutrality or First Step to Feudality?

Zero-rating is the practices of sponsoring access to specific applications and services, whose data consumption will not count against mobile users’ data caps. Zero-rating supporters usually portray this practice as ‘price discrimination’ rather than technical discrimination. However, it is obvious that when the data-cap is reached only zero-rated services may be accessed. As Norwegian Communications Authority’s Frode Sørensen explains “the fact is that once you have used your quota, the traffic that is [zero-rated] will be allowed to continue, while all other traffic will be throttled or blocked. This is a clear case of discrimination between different types of traffic (and) this is exactly the kind of situation net neutrality aims to avoid.”

This means that zero-rating is not compatible with the net neutrality principle and for this reason several countries having net neutrality legislation, such as Canada, Slovenia and The Netherlands have already decided to ban zero-rating. What is particularly interesting about the Dutch example is that one week after the decision of banning zero-rating, the main telecom operator in the Netherlands, KPN, decided to double the data cap volume of its mobile tariff plans, to foster greater use of mobile Internet. And the same trend can be remarked in Brazil, where telecom operator Claro has just decided to expand data caps while banning zero-rating. This is empirical evidence that banning zero-rating incentivises operators to expand data caps and reduce the price of mobile Internet connection.

Facebook Friends?

The most debated and controversial example of zero-rated services is Facebook-led Internet.org project, consisting in a group of selected services that are provided “for free” in several developing countries. Internet.org may soon be offered in Brazil according to last Friday’s statements by Brazilian President Dilma Rousseff and Facebook CEO Mark Zuckerberg.
In fact, the goal of the suggested Facebook-Brazil partnership would be to foster access to Internet.org which is not the same thing as access to the Internet. It is important to stress that Internet.org is not the Internet; it’s only a tiny subset of Internet applications, provided by few dominant players. Furthermore, this offering is marketed as being provided for ‘free’, but is it really free? One may, on the contrary, argue that when users decide to utilise zero-rated service, they pay them and they pay them twice.

First, they pay these ‘free’ services with their personal data and their most intimate information, which are utilised to build very precise user profiles. Such profiles are very dear to advertisers. Hence it seems incorrect to argue that access to Internet.org is ‘free’. Au contraire, the difference is that personal data, rather than cash, is the currency.

Second, users pay their access to zero-rated services by waiving their freedom to establish a business that may compete with the zero-rated service and, more importantly, by waiving their freedom to seek, impart and receive information and ideas that are not conveyed through the zero-rated services. Indeed, zero-rated services incentivise users to seek, impart and receive information and ideas only within the zero-rated cyberspaces, which would be the only walled-garden where information and ideas may be sought, imparted and received “for free”. Needless to stress that such a scenario would create an enormous power concentration in the hands of those market players that, besides being already dominant, would acquire the capability to control what information and ideas may (or may not) be exchanged by users.

The real price that users pay for offerings such as Internet.org seems to be an authorisation to unlimited access to their private life and a competition-waiver pertaining to seeking, imparting and receiving information and ideas. However, these are fundamental rights of the individual and states have a positive obligation to protect individuals’ fundamental rights. In this historical moment it is essential that states play a leading role in avoiding the rise of feudalism 2.0 by competing with the zero-rated service and, more importantly, by waiving their freedom to seek, impart and receive information and ideas only within the zero-rated cyberspaces. Indeed, zero-rated services incentivise users to seek, impart and receive information and ideas only within the zero-rated cyberspaces, which would be the only walled-garden where information and ideas may be sought, imparted and received “for free”. Needless to stress that such a scenario would create an enormous power concentration in the hands of those market players that, besides being already dominant, would acquire the capability to control what information and ideas may (or may not) be exchanged by users.

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