Nos. 24-7000 (lead), 24-3449, 24-3450, 24-3497,
24-3508, 24-3510, 24-3511, 24-3519, 24-3538

In the United States Court of Appeals for the Sixth Circuit

IN RE: MCP NO. 185: FEDERAL COMMUNICATIONS COMMISSION, IN THE MATTER OF SAFEGUARDING AND SECURING THE OPEN INTERNET, DECLARATORY RULING, ORDER, REPORT AND ORDER, AND ORDER ON RECONSIDERATION, FCC 24-52, 89 FED. REG. 45404, PUBLISHED MAY 22, 2024

Brief of Amicus Curiae Leonid Goldstein

In support of Petitioners

pro se

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draft

DISCLOSURE STATEMENT

The Amicus Leonid Goldstein is a natural person. He is not affiliated with any publicly owned corporation.

No party's counsel authored any part of this brief. No one, apart from the Amicus, contributed money intended to fund the brief's preparation or submission.

INTEREST OF AMICI CURIAE

The Amicus has the following interests in the outcome of this case.

As a citizen and ordinary "BIAS" user, he is compelled by the challenged order to endorse and fund speech and other activities that are abhorrent to him. As an author and political commentator,[1] he is prohibited by the challenged order from purchasing bandwidth for his speech.

The Amicus was an Intervenor in support of Respondents in *Mozilla et al. v. FCC*, case #18-1051 (and consolidated cases) before the Court of Appeals for the DC Circuit, Brief Document #1756024, filed on 10/18/2018.

This amicus brief might help to quickly resolve this case and to save significant judicial resources.

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[1] His main website https://defyccc.com, multiple contributions to the American Thinker are listed at https://www.americanthinker.com/author/leo_goldstein/, and more.

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SUMMARY OF ARGUMENT

1. The challenged order regulates the citizens using the Internet rather than internet service providers. The order's language includes "[any service] *that provides the capability to transmit data to and receive data from all or substantially all internet endpoints [or] that the Commission finds to be providing a functional equivalent …* " (Order ¶¶ 189, 335, 651, Appendix A §8.1). Every individual using the Internet for any purpose — to speak or to listen to speech, to petition the government, or even to get medical advice — must do that only by this order.

2. The challenged order forces each internet user to pay for the dissemination of content that s/he finds objectionable. This is a compelled speech in violation of the First Amendment. This has likely been the main effect of the open internet orders since 2010.

3. The challenged order is a large-scale taking of users' internet access fees without compensation, violating the Fifth Amendment.

4. The challenged order regulates the "last mile" of the Internet, connecting the modem router in the user's home to its counterpart at the ISP premises. It does not regulate internet exchanges or other parts of the network. This contradicts standard FCC regulations regulating phone networks and stopping people's homes. The challenged order regulates us inside our homes. This is a violation of the Fourth Amendment.

5. The challenged order does nothing to protect customers from any potential misconduct by their ISPs. Such misconduct is against their interest, given the long-term relationships between ISPs and their users. Further, the users have multiple remedies against such misconduct, from switching to another ISP to suing in a court of law.

6. The currently challenged order has all the faults of its predecessors but also gives the FCC almost unlimited power to regulate ISPs, including by prescribing to them what content not to carry.

7. Besides being unconstitutional, the challenged order directly contradicts the Telecommunications Act Section 230, which sets policy to maximize the users' control over the content and services they receive, not to eliminate such control or to vest it in the FCC.

8. The challenged order and its predecessors from 2010 and 2015 are based on a hoax (or a delusion) called "open internet" or "net neutrality". The idea is to force the internet service providers to treat their paying customers the same way as any other entity on the Internet.

9. This hoax has succeeded for so long because the "open internet" regime benefited a few Big Tech companies, which used their power to silence its critics and elevate its supporters.

ARGUMENT

I. Definitions and Abbreviations

OI-24 means the currently challenged order

OI-15 means the *Protecting and Promoting the Open Internet* Order of 2015

OI-10 means the *Preserving the Open Internet* order of 2010-2011

OI means the *open internet*.

Internet access services and ***broadband access services*** are used here as a shorthand for "broadband internet access services."

ISP is an abbreviation of the "internet service provider," which is the same as the "broadband service provider".

All internet access services available in the US fall under the definition of Broadband Internet Access Services ("BIAS"), as defined in the challenged order. Dial-up Internet access does not exist anymore. The same was true in 2015 for OI-15. Less than 5% of US internet users had dial-up in 2010.

FCC-D means the FCC under a Democrat majority.

II. Compelled Speech and other First Amendment Violations

A. This Order Reaches too far

1. The "BIAS" definition is extremely broad

The definition of the service that the FCC attempts to regulate (broadband Internet access service, self-consciously called "BIAS") is far broader than what is usually considered Internet access. It includes services and speech far outside the FCC's jurisdiction. The challenged order defines "BIAS" as:

> *"A mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a* ***functional equivalent of the service described in the previous sentence or*** *that is* ***used to evade the protections set forth in this part****."* (the emphasis is added here and in all other quotes) (Order Appendix A §8.1)

There are potential services that fall under this "BIAS" definition but are not provided through wires and radio. For example, a business, mailing consumers a USB drive with updates from substantially all websites that matter (what is available at Common Crawl https://commoncrawl.org) falls

under the core "BIAS" definition although it involves neither wire nor radio. Even if it does not, the FCC can *find* "BIAS" under this order.

The final subclause, including services that the FCC finds to be "*used to evade the protections set forth in this part*" expands the definition of "BIAS" indefinitely. To some people, libraries and brick-and-mortar bookstores are a functional equivalent of "BIAS". Is the FCC going to regulate them, too?

2. The order regulates citizens, not internet access providers

Even a narrow interpretation of "BIAS" covers all internet access by ordinary citizens, not any industry.

3. The order claims power to regulate speech

Each of the "three bright rules" starts with "*Any person engaged in the provision of broadband internet access service, insofar as such person is so engaged, shall not …*", so they explicitly cover publishers and media resellers who provide Internet access just for the delivery of content products which they produce or distribute.

The difference between a broadband internet service provider and a "*person engaging in provision of broadband internet service*" is the difference between a paper maker and a paper product maker. The latter category covers publishers of books and newspapers. Thus, the current order regulates speech in violation of the First Amendment. This violation

of the rights of "BIAS" and publishers is outside this argument and only mentioned to the necessary extent.

The challenged order shares these violations with its predecessors, OI-10 and OI-15.

B. This Order Compels Speech

1. The Economics of Broadband Internet Access

The amount of internet access spending by US customers is a staggering $237 Billion annually.[2] All or almost all of it is spent with "BIAS". These fees pay for all the data traffic between Internet users and content / interactive services providers. "BIAS", who do not own part of the internet backbone, pay fees to upstream providers to connect to it. Some fees pay off

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[2]

Mobile Broadband: **$142 Billion** (the US, 2024)

https://www.statista.com/outlook/tmo/communication-services/mobile-data/united-states | https://archive.is/WV2pr

Fixed Broadband **$95 Billion** (the US, 2024)

https://www.statista.com/outlook/tmo/communication-services/fixed-data/united-states | https://archive.is/lmsxn

These amounts include enterprise spending, which is or is not subject to OI-24. Anyway, it is a small part of the total amount.

the Internet infrastructure, but most are being redistributed to the dominant content / interactive services providers under the OI regime.[3]

Most of this traffic is generated by just a few Big Tech companies. The largest originators of this traffic were:[4]

Fixed broadband, 2014:[5] Netflix – 35%, Google YouTube – 14%

Mobile broadband, 2015:[6] Google (including YouTube) > 24%, Facebook (including Instagram) > 20%.

If not for the OI regime, each of these large companies would have had to pay > $20B for the delivery of its traffic; most likely, neither of them would have become a monopoly. However, since the beginning of the OI regime, all internet users have been forced to pay for the traffic generated by these large companies, even if the consumers do not use these large companies

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[3] The OI regime has existed since 2009 in all but name, despite OI-10 struck by a court order and OI-15 reversed by a later FCC order.

[4] Years of the use are by the ease of data access. The customers' fees corresponding to that time were ~ $130 Billion annually (~ $50B in fixed and ~ $80B in mobile segments); https://www.statista.com/statistics/280435/fixed-broadband-access-revenues-in-the-united-states/ | https://archive.is/98rq7

[5] https://www.statista.com/chart/1620/top-10-traffic-hogs/ | https://archive.is/a2j4B

[6] https://www.statista.com/chart/4124/mobile-traffic-by-application/ | https://archive.is/Pt1HZ

and find their politics and speech objectionable. This shift in traffic costs is compelled speech on an unprecedented scale and is a taking of users' property without compensation, violating the First and Fifth Amendments, respectively.

SCOTUS has ruled many times that compelled speech – when the government forces individuals to pay for speech they do not support – is one of the worst violations of the First Amendment.

West Virginia State Board of Education v. Barnette (1943): "*no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion* ***or force citizens to confess by word or act their faith therein***."

Also, *Wooley v. Maynard (1977), Abood v. Detroit Board of Education (1977), Knox v. SEIU (2012), Janus v. AFSCME (2018),* and so on.

The redistribution of fees is only a fraction of the economic benefits Big Tech receives from the OI regime. The ability to monopolize markets is probably worth even more than that. The value of the private information users are forced to give to Google, Facebook, Microsoft, etc., might be even higher.

2. Netflix Example

Order ¶ 123 n.472 (ellipses in the original):

> *"It is also clear from the record that the third-party services themselves rely on the neutral-conduit property of BIAS to reach their customers.* ***Netflix emphasizes that '[its] members . . . depend on an open internet that ensures that they can access our content*** *and the content of many other companies through their ISP's networks without interruption.'"*

Netflix is a massive burden on the Internet. At one time, its traffic consumed more than a third of the Internet's peak bandwidth. Instead of paying or having its customers ("members") pay for this traffic, Netflix uses the OI regime to spread the costs among everybody.

The prior OI orders also took and redistributed users' fees.

3. Threats to non-"BIAS"

Unlike previous OI orders, the challenged order knows that not everybody wants the OI regime. This awareness is expressed in unprecedented threats to service providers who exercise or allow their consumers to exercise their First Amendment rights (Order ¶ 191):

> "*[Such service providers]* ***may find that this exercise could have non-trivial commercial and regulatory consequences. That decision also may carry other important consequences***."

Such language one expects from the mafia, not from a regulatory agency. However, the regulatory consequences alone are sufficient to put any provider out of business.

III. The Challenged Order Has Illegal Goals

A. Understanding the phrase "open internet"

The phrase "*open internet*" (sometimes capitalized) is used 556 times in the challenged order. Yet it is not defined in this or any other FCC regulations, including prior OI orders. It does not appear anywhere in federal laws outside of FCC regulations.[7] This phrase has no established meaning. The same is true about "*net neutrality*".[8]

Deducing the meaning of this phrase from the order, the "open internet" is a regime under which an individual can only use the Internet by becoming a node connected to the Internet. His/her ISP must act as a neutral party ("net neutrality"), treating the paying customer the same as all other internet nodes worldwide.

B. Establishing "open internet" is unconstitutional

The goal of establishing "open internet" is against the Constitution, violating the I, IV, and V Amendments, at least.

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[7] Checked by a google search *site:www.law.cornell.edu/cfr "open internet"*

[8] Checked by a google search *site:www.law.cornell.edu/cfr "net neutrality"*

It forces citizens to pay for the delivery of speech that they abhor.

It forces citizens to allow speech and conduct against their religious views inside their homes.

It violates the privacy of our homes.

C. The challenged order only benefits third parties

The challenged order benefits not consumers but "edge providers" and "the Internet Community" at the expense of the consumer.

> *"we reinstate … a general conduct standard that prohibits practices that cause unreasonable interference or unreasonable disadvantage to consumers or* ***edge providers****"* (Order ¶¶ 27, 77)

Thus, the challenged order demands ISPs treat their paying customers the same way they treat all third parties, foreign and domestic. The "edge provider" is defined as:

> *"Any individual or entity that provides any content, application, or service over the internet, and any individual or entity that provides a device used for accessing any content, application, or service over the internet."* (Order ¶ 516, Appendix A § 8.1)

The phrase "edge provider" is misleading because entities to which it applies are typically central to the internet, not on the edge. The edge providers are Google, Facebook, Netflix, other familiar names, and the federal government. The definition also includes all porn sites, phishing

sites, and endpoints under the control of foreign governments and foreign international terrorist organizations. All of them are privileged as follows:

> "*We find that* ***this rule is necessary to protect the ability of consumers and edge providers to use the open internet*** *for several reasons.*" (Order ¶ 516)

> "*… to* ***protect consumers and edge providers*** *from BIAS provider misconduct. … we find that: (1) BIAS providers may have the incentive to engage in* ***conduct that harms edge providers and the open internet even where they lack market power over end users****;*" (Order ¶ 485 n.1925)

This is another admission that the order is not intended to protect users or to maximize user control. Further,

> *"[BIAS] … shall not unreasonably interfere with or unreasonably disadvantage … (ii)* ***Edge providers'*** *ability to make lawful content, applications, services, or devices available to end users."* (Order ¶ 516, Appendix A § 8.3 (d))

There are lawful things that citizens do not want to make available to end users in their homes. The term 'e*nd users*' includes children of all ages: "*End user. Any individual or entity that uses a broadband internet access service."*

Order Appendix B ¶ 7:

> *"... we also reinstate a no-unreasonable interference/disadvantage standard, under which* ***the Commission can prohibit practices that unreasonably interfere with the ability of consumers or edge providers to select, access, and use broadband internet access service to reach one another****, thus causing harm to the* ***open internet****. [This is] a necessary backstop to ensure that BIAS providers do not find technical or economic ways to evade our bright-line rules."*

Here, FCC-D threatens ISPs against providing their consumers with parental control filters that protect children from predators, Facebook, YouTube, etc. This order requires "BIAS" to enable "edge providers" to reach consumers without consumers' consent for the sake of the "open internet."

Order ¶ 7, 443:

> *We establish "rules of the road" that are straightforward and clear,* ***prohibiting specific practices harmful to an open internet****—blocking, throttling, and paid prioritization—as well as a strong standard of conduct designed* ***to prevent deployment of new practices that would harm internet openness*** *..."*

D. Establishing "open internet" is against the law

The OI orders and the whole push for "internet openness" are precisely opposite to the Telecommunications Act 1996 Section 230 intent and text.

Section 230 sets the policy of maximizing user control, not the FCC control. The policy spelled in Section 230 encourages the deployment of blocking and filtering technologies, which the challenged order tries to ban.

Section 230(b), the US policy:

> *"**(2)** to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, **unfettered by Federal or State regulation**;*
>
> ***(3)** to encourage the development of technologies which **maximize user control** …*
>
> ***(4)** to remove disincentives for the **development and utilization of blocking and filtering technologies that empower parents** to restrict their children's access to objectionable or inappropriate online material;"*

Section 230(a), the Congress findings:

> ***"(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation**."*
>
> ***"(2)** These services **offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future** as technology develops."*

The challenged order shares these violations with its predecessors, OI-10 and OI-15.

IV. Personal Safety and National Security Considerations

A. Danger to Children

Although the OI orders qualify the demand to allow all edge providers' **lawful** content, "BIAS" cannot typically distinguish lawful and unlawful content (which is usually encrypted), so "BIAS" must make all content (and conduct) from almost anywhere in the world available in each home at the expense of the consumers.

Also, there are mountains of materials that are legal but dangerous or harmful to children. In the past, it was theoretically possible for parents to use third-party parental control software to protect children from unsafe content. Today, it is impossible because social media platforms and smartphones defeat these parental controls.

B. Dangers from Malware, Hackers, and Data Mining

The challenged order leaves every home and small business Internet user unprotected against malware, phishing, and hacking. Many individuals unknowingly download malware, which takes control of the computer and can perform various harmful actions, from exfiltrating confidential information to demanding ransom. At any time, millions of computers in

the US are controlled by malware and hackers. In addition to harming the affected individual or business, this is a national security threat.

The assumption that an adult user directs all actions performed by his/her computer on the Internet is incorrect. If it were true, no malware would exist.

The challenged order bans "BIAS" from providing security services to consumers, even when other parties cannot offer such services for technical reasons. Instead of protecting consumers, this order protects "edge providers" and "open internet", opening our homes and businesses to surveillance and hacking.

V. Challenged Order Gives Nothing to Customers

A. OI orders are not needed to protect customers

1. Consumers are protected by agreements with "BIAS"

Unusually for such regulations, this order gives practically nothing to the consumers, even superficially. In the absence of FCC regulations, ISPs are bound by the agreements, contracts, and promises they have given to their customers. Customers can sue their ISPs in federal, state, and local courts. ISPs of all sizes, even as small as one person working part-time, are covered by this order. Most ISPs are not big; AT&T, Verizon, and Comcast are exceptions. The challenged order makes it harder for consumers to defend

their rights in court because the ISPs can use this order as a defense for many types of conduct.

2. Consumers can select and switch.

BIAS are not monopolies, even as the OI regime has reduced competition between ISPs and favored big cable companies. If unsatisfied, an ISP customer can switch to another provider – something no Facebook customer can do.

3. "BIAS" have all incentives to provide the best service

The business model of ISPs ("BIAS") is long-term relationships with their customers. A fixed broadband ISP invests heavily in building or buying the network infrastructure and acquiring each customer. After that, it charges the customer monthly fees, typically $50 - $100. The incremental costs per customer are a small fraction of these fees.

Customers stay with their ISPs for years. If a customer feels mistreated by his/her ISP and switches away, the ISP loses thousands of dollars. Furthermore, this customer would tell other customers so that the loss would compound. In the long term, the customer will likely discover undesirable ISP blocking, throttling, prioritization, or other conduct.

There are very few services with such effective provider accountability to the consumer as broadband ISPs. Compare that with the relationships between Facebook and its customers, who are not customers but products to sell to advertisers and unwitting donors of private data and free labor.

B. OI orders do not protect customers' interests

OI-24 requires "BIAS" to explain its traffic congestion policy in detail, which is hardly of concern to most customers. However, the order does not require the ISP to commit to a minimum bandwidth or quality of service that the consumer would receive. Due to the OI regime, broadband internet access is probably the only service where the provider commits neither quantity nor quality of its service, although such obligations are possible. Instead, large ISPs sell the service by **maximum** bandwidth.

The challenged order allows all kinds of abusive and negligent practices. For example, ISPs may oversubscribe their networks and cause consumers to crawl faster, making their Internet unusable. ISPs may also fail to maintain networks and cause failures in critical moments such as natural disasters. Protecting the customer against big cable corporations is just a propaganda slogan.

C. OI orders allow big corporations to cross its bright lines

All OI orders provide exemptions, allowing "BIAS" to cross the alleged "bright lines," subject to individualized FCC assessment. Order ¶ 195:

> "*We continue to exclude non-BIAS data services (formerly "specialized services") from the scope of broadband internet access service. As the Commission explained in the 2015 Open Internet Order, non-BIAS data services are certain services offered by BIAS providers that share*

capacity with broadband internet access service over BIAS providers' last-mile facilities but are not broadband internet access service…"

This phrase makes neither literal nor contextual sense. Other parts of the challenged order show that this gives the FCC unlimited discretion to remove supposed "bright lines" for "BIAS" and "edge providers" selected by the FCC "*based on the facts of each individual case*".

Google YouTube[9] was one of these select "edge providers." Among the select ISPs were the largest cable companies, including AT&T, Verizon,[10] and Comcast, which provide content programming. These large companies exercise editorial selection over cable programming content and own other media properties. The bright lines exemption has been widely used by colossal cable ISPs from the beginning of the OI regime.[11]

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[9] https://www.brookings.edu/articles/zero-rating-a-boon-to-consumers-or-a-net-neutrality-nightmare/ | https://archive.is/2YuGN

[10] https://www.fool.com/investing/general/2016/01/21/verizon-joins-att-in-this-controversial-net-neutra.aspx | https://archive.is/pTdZj

[11] https://corporate.comcast.com/comcast-voices/xfinity-on-demand-on-xbox-and-your-xfinity-internet-service | https://archive.is/Kl6Vv , https://www.freepress.net/news/press-releases/comcasts-data-cap-exemption-xbox-360-streaming-points-toward-glaring-loopholes | https://archive.is/PisnI

The OI regime gave the FCC influence over cable TV news coverage by allowing them to handpick cable companies whose "BIAS" arm would be granted exceptions and privileges.

Other "edge providers" that received special treatment were Apple (Apple TV), Microsoft (Microsoft Xbox), and Amazon (Amazon Kindle). Market capitalizations: Apple - $3.8 Trillion, Microsoft - $3.2 Trillion, Amazon - $2.4 Trillion; Google (Alphabet) - $2.3 Trillion, Facebook - $1.5 Trillion, as of December 20, 2024.

VI. How this became possible

A. Possible roots of the "open internet" delusion

1) "Open Internet" is how university faculty and students used the internet since the beginning. Internet access was free (paid for by the university or government), so the issue of compelled speech did not arise. As sophisticated workplaces, universities could deal with security and privacy issues. There were no minors to protect. It is not surprising that many in academia thought that this model was suitable for everyone.

2) In 2009, the Obama administration brought on board radical socialists. For them, heavy-handed Internet regulation was a dream come true. The Intervenor Free Press was the most influential one. Its co-founder

Robert McChesney wrote in 2008:[12] *"No one thinks any longer that media reform is an issue to solve 'after the revolution.' Everyone understands that without media reform, there will be no revolution."* In 2011, after the passage of OI-10, he triumphantly admitted:[13] *"[Internet] must be as an institution operated on public interest values, at bare minimum as a public utility*."

These influences have contributed to the "open internet" delusion.

B. The History of OI orders

The OI-10 order, which was much more moderate than the current one, was vehemently opposed by Congress and the press. The right of the center media correctly said, "*Internet freedom challenged by President Obama's FCC,*"[14] and called it a *Net Neutrality Coup*.[15] House Minority Leader John

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[12] https://monthlyreview.org/2008/09/01/the-u-s-media-reform-movement-going-forward/ | https://archive.is/tufTK

[13] https://monthlyreview.org/2011/03/01/the-internets-unholy-marriage-to-capitalism/ | https://archive.is/wRdss

[14] https://www.nj.com/hudson/voices/2010/05/columnists_internet_freedom_ch.html | https://archive.is/tRrYD

[15] https://www.wsj.com/amp/articles/SB10001424052748703886904576031512110086694 | https://archive.is/DFsY3

Boehner accurately described it as a *"government takeover of the Internet."* The House passed a resolution *H.J.Res.37* to nullify that order.[16] It failed in the Senate only by 5 votes.

2009 – 2014. The death of news and other publishers.

FCC-D issued a Notice of Proposed Rulemaking (NPRM) titled "*Preserving the Open Internet*" for the OI-10 order in 2009. It published the order in December 2010. Verizon challenged OI-10 before the DC Court of Appeals. The court denied Verizon's request to stay the order, so it went into effect in 2011. The court struck down most of the order in 2014 (*Verizon v. FCC, 740 F. 3d 623, Court of Appeals, DC Circuit 2014*), but it was too late. From 2009 to 2014, this order produced enormous damage. The damage was aggravated by the Obama administration's policy to allow Google to steal the text-based intellectual property of web publishers.

In this period, most newspaper publishers that attempted to transition from paper to web went out of business. This happened despite enormous savings in web publishing compared to printed paper (printing and delivery cost newspapers about 50% of their revenues,[17] and editorial costs were

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[16] https://www.congress.gov/congressional-report/112th-congress/house-report/51/1

[17] https://web.archive.org/web/20110718203027/http://www.jour.unr.edu/donica/Desktop/ahlers.pdf

about 15%[18]). Their web readers were paying tens of billions of dollars annually in internet fees.

Internet publishing is not that different from physical newspapers and books. When newspapers were printed, the publishers had to buy printing paper, run printing presses, and then deliver the copies to their subscribers. The same principle worked for music (CDs and vinyl records), video (DVDs and VHS tapes), printed books, etc. A publisher buys the physical medium, pays for the production and delivery, and then charges the buyer for the whole product. The consumer pays for what s/he reads, watches, or listens to. For an Internet publisher, Internet bandwidth (or data delivery) is both medium and delivery.[19]

The OI regime destroyed the centuries-old publishing industries. The independence was gone. The business model changed from relying on the readers and advertisers seeking to contact those readers to receiving money and advertising from Big Tech. Most of the money came from Google, the

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[18] https://www.pewresearch.org/journalism/2006/07/24/challenges-to-the-newspaper-industry/ | https://archive.is/4EWLJ

[19] Internet delivery plays the same role for electronic content as physical delivery for physical goods. The comparison of the internet delivery with paper is accurate, too. To render content correctly to the user, a browser needs it to arrive from a network. Storing the webpage as a file would not be sufficient for a browser to render it correctly, in general case.

ally of the ruling party and the biggest beneficiary of the "open internet". Google CEO Sundar Pichai admitted in the Congressional Testimony in March 2021: "*Over the past 20 years, we have collaborated closely with the news industry and provided billions of dollars to support the creation of quality journalism in the digital age.*"[20] It is not hard to guess what position on the open internet regime was in Google's definition of "quality journalism". Amazon was another huge beneficiary of this order. Its owner purchased the Washington Post for about $250 million, a fraction of its value just a few years before.

Many civil society organizations used to finance themselves from circulation revenues of their magazines, which were frequently included in membership fees. They lost this source of funding, too.

, too, were defunded by the double whammy of the OI and IP theft. The open internet regime also allowed FCC-D to regulate cable companies and other media properties they owned, as described above.

2014 – now

In the period 2009 – 2014, the OI regime became part of the internet landscape, and the business model of Big Tech. Big Cable also benefitted

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20 https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Witness%20Testimony_Pichai_CAT_CPC_2021.03.25.pdf

from certain exemptions. Thus, the OI-15 was challenged only half-heartedly and was upheld by the majority of the DC Court of Appeals.

In 2016, President-elect Trump declared intent to repeal the unconstitutional OI regime. Google management was very upset.[21] It started fighting Trump and his supporters, including among its employees and contractors. Other tech corporations benefiting from the OI regime acted similarly. It became dangerous for technical experts to express views supporting the Trump agenda. Dissent on the "open internet" was silenced entirely.

When the FCC issued the *Restoring Internet Freedom* Order, repealing the OI regime in 2017, FCC Chairman Ajit Pai was viciously attacked. He was receiving threats at the level which is *"'routine for presidents and vice presidents' but highly unusual for heads of government agencies like the FCC*".[22]

The FCC was sued, and the court injuncted the new order, preserving the OI regime until October 2019. By then, six states had passed OI legislation,

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[21] https://www.breitbart.com/tech/2018/09/14/group-hug-google-employees-become-emotional-following-trump-election/ | https://archive.is/sDZli

[22] https://legalinsurrection.com/2018/01/fcc-chairman-ajit-pai-family-still-facing-harassment/ | https://archive.is/3DP5g

and eighteen states had such legislation pending.[23] That included New York and California, the most important media markets. Also, congressional democrats threatened to re-establish the OI regime as soon as they regained power. Thus, the OI regime has been effectively uninterrupted since 2009 until now.

The currently challenged order goes far beyond the old OI regime, so the current stay is fully justified.

CONCLUSION

For these reasons, the Court should maintain the stay against the challenged order and to hold it unlawful.

[23] https://ballotpedia.org/Net_neutrality_responses_by_state | https://archive.is/w8tu4