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Net neutrality and the disruption of television distribution

By David Post
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David Carr at NYTimes.com had a very interesting piece yesterday about the disruption occasioned by recent announcements by CBS and HBO that they will distribute more of their programming directly to consumers over the Internet (now that an early disruptor – Netflix – has established proof of concept – it can be done, and it can be done profitably). The moves may (finally) occasion an avalanche of change about to hit the TV and cable industries - big bang disruption, as Larry Downes and Paul Nunes might call it. The economics of all this is going to be very challenging for all players.

When I worked on the Aereo case last spring, I was struck by how anxious the TV networks are to keep consumers hooked to their cable systems. It didn't make sense to me, at first – why were the networks so determined to shut Aereo down, when all it was doing was making the networks' content, which is given away for free over the public airwaves, available to more consumers on more devices? Why weren't they happy about that (since it would give them more eyeballs, and more eyeballs should translate into more advertising dollars)? The answer, I discovered, were the cable retransmission fees – cable systems, through a very complex series of provisions in the Copyright Act, have to pay the broadcasters when they re-transmit local network over-the-air broadcast content to their subscribers (as they are, by a very complex series of provisions in the Communications Act, required to do). So the networks don't want to see consumers abandoning their cable subscriptions and obtaining their content elsewhere, because that will threaten their retransmission revenues (which amount to several billion dollars annually).

But CBS has now gone over to the other side. It's a risky gamble, though everyone knew it was just a matter of time before one of the networks went rogue like this. As Carr put it:

For any legacy business under threat of disruption, the challenge is to get from one room — the one with the tried and true profitable approach — to another, where consumers are headed and innovators are setting up shop. To get there, you have to enter a long, dark hallway, a scary place.

But I was struck by a different point that Carr makes at the very end of his article:

If, in a few years, cable and broadcast programmers — many will follow the examples of CBS and HBO — are still thriving in a vastly changed entertainment landscape, they may have to *send Netflix a thank-you note. In addition to funneling cash to legacy media providers by paying close to $3 billion for their programming, Netflix has schooled them on the way forward by challenging their business model without tipping it over.*

It makes sense; after all, Netflix famously disrupted itself by moving away from DVD rentals and tackling streaming with a vengeance. *There's an upside for Netflix as well. As older media companies invest in streaming, they may begin to see net neutrality and better Internet infrastructure as more than just something Netflix should worry about.*

That's an interesting observation indeed – one that may well alter the already complicated landscape of the net neutrality debates.

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