

GOVERNMENT

What Trump's anti-net neutrality agenda means for marketers

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Image courtesy of Bloomingdale's

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Under a Trump administration, the new FCC head's hostility towards net neutrality could be a blow to marketers, concentrating more power in the hands of ISPs and leading to an uneven digital playing field.

Donald Trump's newly appointed FCC chairman Ajit Pai has not wasted any time going after any laws or regulations that would protect net neutrality in the few weeks since he has been appointed. That could spell danger for digital marketers who will more often find themselves and their content at the mercy of the ISPs who will control bandwidth levels for all Internet traffic.

"At its core, net neutrality is meant to provide a level playing field for all content providers on the web," said Andrew Lustigman, a lawyer Olshan Frome Lowosky specializing in advertising and regulatory law. "If net neutrality is curtailed, marketers will be increasingly subject to ISP's in terms of restricting bandwidth for their sites.

"As a result, the power to have full access to Internet traffic will be eliminated in favor of an ISP's discretion," he said. "For example, a marketer may not be able to obtain the level of traffic it has generated because of a bandwidth restriction that slows site load time if the ISP is not in favor of that marketer, or if the marketer has not paid for additional access."

Net neutrality

Net neutrality is a concept that has existed for a while, but the term was coined by a media law professor in 2003.

Essentially, the idea behind net neutrality is that all content and data should be treated exactly the same by Internet service providers and the government, without discrimination as to what kind of data is being broadcast.

That means that ISPs would not be able to throttle access to certain content, or charge extra for access to other content.

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The new FCC Chairman, Ajit Pai, is against net neutrality

Proponents of net neutrality say that without it, ISPs would have an unfair advantage over not just commercial media, but over all media communications in general.

This presents a problem for marketers, who rely on the ability to quickly upload and spread content, without having to bow to arcane ISP demands or find themselves cut off from access to their consumers.

Consumers stand to lose by this as well, making it harder for them to access certain kinds of content and being left at the mercy of the ISPs to receive the content or data that they want.

"It is likely that the ISPs will charge greater fees for certain access," Mr. Lustigman said. "The companies that will be able to more readily afford such fees will be larger companies."

"This is unfortunate because the Internet has allowed innovation to flourish outside of just very large companies."

Bandwidth fast lane

The question of net neutrality is a sobering reminder to brands and marketers that they need to be paying attention to issues outside of their respective industries, because other parts of the world can affect them strongly.

Business has always been political and political actions can have positive or negative effects on a brand or entire industry.

Just compare how Uber badly misjudged a political moment in time a few weeks ago during the protests of Donald Trump's Muslim ban and suffered the consequences for it during the #deleteuber campaign ([see story](#)).

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Mr. Pai being sworn in

Similarly, ad blocking could turn those in the advertising world against each other, as mobile carriers that allow for mobile ad blocking could meet backlash from advertisers and publishers ([see story](#)).

The lesson here is that while brands may see the appeal in remaining apolitical on some issues, others affect them directly. It may be in their best interests to speak out when something threatens not only them, but the consumers as well.

"Many think that the FTC will no longer be the significant enforcement power it has been since the Reagan administration," Mr. Lustigman said. "I think this is an incorrect assumption."

"The FTC will remain a very powerful and thoughtful consumer protection agency focused on protecting consumers from harm," he said. "What constitutes consumer harm may change, however, under the current administration."

"From reading FTC Commissioner Ohlhausen's recent presentations it seems that there will be a greater focus on bringing enforcement actions that have caused significant consumer injury, but not necessarily actions that have more of a theoretical harm. "Moreover, the Commissioner believes that innovation and consumer benefit should be factored into an FTC action and resolution but, time will tell."