

South Korea's Content Providers' Traffic Stabilization Law Taxes Heavily on Online Free Speech

[The Korean legislature passed this past May](#) a law that requires content providers to provide "service stabilization measures" which are not defined in the statute but have the risk of being interpreted as requiring content providers to ensure stable deliveries of the content to end-users as shown in the original bill's legislative intent section (Article 22-7 of Telecommunications Business Act). Content providers of certain minimum traffic and user number as defined by the forthcoming regulation will be subject to this obligation, the specifics of which will be also defined by the same regulation.

The new law will charge speakers money for delivery of speech and thereby threaten the scaled-up freedom of speech afforded to all by the Internet. Before the arrival of the Internet, freedom of speech meant only that you were allowed to speak but did not provide any resources for speakers to reach the mass. Often only those with power and influence had access to legacy media. Freedom of speech was not equal. However, online, powerless individuals could post messages with the reach of millions and billions as long as you obtain entry to the Internet at any location on the global network by paying a flat fee proportional to the data access speed.

Korea's new law brings the people back to the age of telephone when speakers (or sometimes listeners also) had to pay for the amount of time speaking or the volume of data sent, and thereby undermines the scaled-up freedom of speech that people are enjoying. Korea has already instituted a mandatory Sending Party Network Pays rule among Internet Service Providers since January 2016, which has made Korea's internet access fees the highest among developed countries, and this new law increases the cost even higher for content providers by holding them responsible for the last mile delivery.

Korea has been considered a model country with high internet penetration rate but we should not allow this violation of network neutrality to continue exactly because other countries may follow suit. Korea's 'innovative' regulation such as Internet real name law has found followers such as China, and its list of innovation-frustrating, oppressive laws and regulations is concerning: administrative censorship on online content, mandatory notice and takedown, game real name law, etc. At this point, depending on how the enforcement decrees are crafted, content providers may be held responsible for delivery of the packets to the telcos' customers, restricting the freedom of speech that the Internet has brought to us.

Please join us in this joint letter to demand that South Korea repeal the new CP's traffic stabilization law and the SPNP rule immediately. The text of the letter and the background information is available below.

Background Information:

Why does charging for data delivery violate Network Neutrality?

Internet was born free. Internet ingeniously allowed all people to communicate with one another directly without direct connection. Internet achieved that by forming a network of all routers bound by a global promise to pass all data packets to their immediate neighbors, where each data packet gets delivered to its destination after a sufficient number of pass-offs (or more popularly known as "hops") to next routers closer to the packet's destination according to routing tables. Now all computers could communicate with one another directly simply by obtaining access to that network through nearby routers.

It has been critical for this success that all routers 'pass messages to neighbors' for free and without any discrimination because they can be carrying all other people's messages and their messages are carried by other terminals. If routers charge money or impose conditions for passage of messages (data packets), the transaction cost alone of resolving the charges and the passage conditions would have destroyed the Internet. Internet depends on this promise to 'pass to neighbors' for free and without discrimination, and we call that promise 'network neutrality'.

Now, if content or payment cannot be the requirement for passage, it cannot be the reason for prioritization or throttling, either, and hence the more popular versions of network neutrality rules such as "no fast lanes".

The socio-economic significance has been great: It is thanks to the network neutrality rule that people speaking online (or platforms for such speech) can speak freely without worrying about the economic cost of delivering the messages to the potentially unlimited number of listeners. It is this feature of the Internet that strengthened

democracy: by providing poor and powerless people with nearly free mass communication tools when governments and big advertisers influence broadcasting and newspapers.

Does emergence of ISPs charging internet access fees make the "Internet" not free?

No. ISPs provide access to the Internet for a fee by providing that neighborhood router through which the local customer can enter into the Internet, the world of the routers bound together by the promise of network neutrality.

ISPs charge a fee because it does cost a little bit to maintain physical connection and also because ISP is itself not connected directly to all other terminals around the world and therefore must purchase connection from another ISP with better connection to the rest of the world (namely 'transit').

Still, the free and no discrimination promise of network neutrality is preserved: All fees are charged for capacity of the connection, not for the amount of data that pass through the connection, and therefore charged once only by the ISP in the neighborhood that provide the gateway into the world of the Internet. Once a person obtains Internet access at a certain capacity (or equivalently, speed) and maintains it, the person is never charged for no matter how much or which data he or she sends or receives through that connection.

Tim Wu likened Internet access to water and electricity to emphasize the need for indiscriminate first-come, first-serve rule but the metaphor should stop right there. We pay for 'delivery' of water and electricity but we do not for online data delivery: Firstly, when it comes to data, delivery from one point to another is fragmented and crowd-sourced among different combinations of so many routers belonging to so many different combinations of ISPs that one can say, everybody is both a provider and a customer so there is no person to charge and no person to be charged. Secondly, once physical connection is established, the cost of data packets, which are essentially light signals, going through the connection is zero just as the cost of light being reflected on mirror surfaces is zero. This should not surprise you when you have seen hours and hours of HD TV either through free air or cable but only to be charged the same amount every month.

The reason we pay for data usage in wireless internet is only because wireless carriers do own their proprietary network of cell towers, separately from the Internet, so what you are paying usage-based is not for use of Internet but for use of these cell towers leading you to the routers. What is more, more and more wireless carriers are providing unlimited data plans as their basic plans.

So, what is Korea doing with SPNP rule?

Korea is different from the rest of the world. Since early 2016, Korean government has required the ISPs to charge one another for traffic that they send to other ISPs (sending party network pays rule or SPNP). Such rule creates financial burdens on those sending messages. The law itself is applicable only among ISPs but the burden can easily trickle down to the message originators, threatening the Internet's promise of allowing individuals to send their messages to all around the world without worrying about the cost.

This is how: The ISPs that provide connection to killer contents or platforms end up paying a lot to other ISPs because of the traffic from the hosting ISP to other ISP's users and therefore either prefer not to host them or charge high connection fees to push down the SPNP cost to them. Even before the SPNP rule kicked in, the competition in Korea dominated by 3 big ISPs was [lowest \(measured in HHI\)](#) among the big (more than 20 million in population) developed countries in mobile. The end result is alarming: [According to Telegeography](#), the weighted median cost of Internet connection of 1 Mbps in Seoul is 8.3 times Paris and 4.8 times New York. As consequences, Korean content providers could not handle the high 'online real estate' cost and moved overseas, bought into Amazon Cloud's volume discount, or crumbled under the competition of foreign content providers because they cannot provide speed-intensive contents such as 4K video. Korean consumers are suffering as Korean content providers are downgrading their video services, and end up resorting to foreign content providers.

But they are also in tumultuous fights with Korean telecoms. Unlike their customers, ISPs cannot push down the cost to foreign content providers. Hence the conflicts. Korea Telecom, having hosted Facebook's domestic cache server in order to save the cost of obtaining sufficient transit capacity with the higher tier overseas ISP, had to suffer from SPNP fees payable to other ISPs because of a lot of traffic sent from from the Facebook cache server to the customers of other ISPs. KT tried to push down the SPNP cost to Facebook, which responded by disabling the cache server and restoring the original route, slowing down other ISPs' customers' access to Facebook contents.

The government tried to fine Facebook but it was struck down [in court](#). SK Broadband, another big ISP, even demanded that Netflix, the increasingly popular contents served in California, pay for delivery to SK Broadband's customers and formally requested the government to compel Netflix to negotiate with SK Broadband. SK broadband sought the government's mediation and Netflix [sued to prove](#) that it is not liable.

Also, all three ISPs are arguing that they need to charge these foreign content providers what they call "network usage fee", either directly or for cache server connection fee, to avoid discriminating against Korean Internet companies paying the exorbitant Internet access fees. Of course, this does not make sense at all because (1) the foreign content buys its way into the Internet at foreign locations unrelated to the 3 Korean ISPs and therefore is not responsible for any Internet access fee or (2) when it is delivered to 3 ISPs through domestic cache servers, what ISPs give foreign contents is connection only to Korean users while what ISPs give domestic contents is connection to the whole world, and is therefore incomparable. If Korean ISPs are really concerned about Korean contents being discriminated, they can show it by first lowering Internet access fees for them.