

Are the Courts Messing Up the Internet?

As I sit down to write this column, there is so much going on in the news—I barely know where to start. Suffice it to say: The courts are messing up the internet.

Let's start with the most high-profile decision that may be affecting you and your content before you know it. It started earlier this year when a U.S. District Court struck down the Federal Communications Commission's (FCC) Open Internet rules from 2010. Basically, the U.S. District Court of Appeals in Washington, D.C., said the FCC was overstepping its authority, but it could, in fact, come up with some rules regarding the subject.

And it was about that time the uproar started. The implications of the court ruling could theoretically lead to fast lanes on the internet, in which big companies can pay for faster delivery of their content while smaller companies have to deal with traffic jams in the slow lanes. (No word yet on the car pool lane!) The consequences could be immense for consumers, entrepreneurs, and even the Googles of the world.

Content companies and ISPs went to battle. Internet pundits typed untold numbers of opinion pieces about Net Neutrality. Meanwhile, the FCC vowed not to fight the ruling and went back to work writing new rules that conform to communication laws. Those new rules, unveiled in May, proposed that ISPs still could not block any sites (unless they were illegal) or slow down traffic, but they could charge companies for faster, smoother delivery. Predictably, this did not make Net Neutrality advocates happy.

Also in May, an appeals court ruled that Oracle could copyright APIs for Java. Google is the actual loser in this case—as it used the APIs in question for Android—but the ruling has more far-reaching implications. APIs allow computer programs to speak to each other and are usually considered outside the realm of copyright.

Perhaps Gigaom's Jeff John Roberts explained it best: "The ruling is significant because it goes against traditional understandings of the 'idea/expression dichotomy' under copyright law, which holds that a form or concept

can't be protected, but that a specific expression of it can be; for instance, the structure of a sonnet is not copyrightable but a specific poem is. In the case of the Java APIs, the appeals court has given Oracle a monopoly over what appears to be a functional concept."

In many ways, these two cases don't have much to do with each other, except that they both show just how out of touch much of the judiciary—and even the larger government—is when it comes to issues regarding technology. Across the country—and probably the globe—judges and lawmakers who still need assistants to check their email and who are confused by Twitter are making important decisions about the future of technology and the internet.

Do you think I'm exaggerating? Lawrence Hurley wrote, on Reuters, in regard to a case concerning Aereo, a company that provides consumers with the ability to stream their favorite TV shows live or record them without a cable subscription: "One U.S. Supreme Court justice referred to Netflix as 'Netflix.' Another seemed not to know that HBO is a cable channel. A third appeared to think most software coding could be tossed off in a mere weekend."

This isn't cutting-edge technology we're talking about. Premium cable channels, such as HBO, are old news. I am a grown woman who owns her own home, and I don't even remember life before HBO, so how the hell does a Supreme Court justice not even know what it is? No one is saying you've got to be a *Girls* fan—or even *The Wire* (which President Barack Obama totally loves)—but come on ... you don't even know what it is? That's just ridiculous.

Once you get past the chuckle-worthy idea of a befuddled judge asking about this newfangled HBO, it's kind of terrifying to think these are the people holding the fate of many technologies in their hands. The internet has long benefited from its Wild West spirit—the entrepreneurial, open nature of which has led to the creation of some of the biggest companies in our economy.

Sadly, I can't even propose a fix. Are we supposed to set up a technology court or screen all potential new appointments for web-savviness? For now, I suppose the best we can hope for is that we don't end up with too many of these cases in the courts before the Digital Natives can get their law degrees. ■

**This isn't
cutting-edge
technology
we're talking
about.**

Copyright of EContent is the property of Information Today Inc. and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.