



A comparative analysis of net neutrality: Insights gained by juxtaposing the U.S. and Korea



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ABSTRACT

This study compares and contrasts the U.S. and Korea in the context of network neutrality, focusing on debates among stakeholders and regulatory approaches. Similarities and differences are highlighted by comparisons within the broadband ecosystem framework: government functions, histories, people's perceptions, regulatory approaches, legislative initiatives, and implementation. In Korea, a regulatory framework with suggested guidelines exists, and it can be used to address net neutrality in a case-by-case fashion. The U.S. follows a regulatory approach by creating enforceable non-discrimination rules. The findings in this study suggest that the issue is not only complicated because it is embedded contextually, but also because the respective parties' diverse interests are multifaceted and vague. It is concluded, therefore, that a coherent and consistent approach is an effective way to govern neutrality.

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1. Introduction

A debate over net neutrality (NN) has emerged over the last several years, and it has sparked heated discussions about telecommunications policy in the U.S. and South Korea (hereafter Korea). Although NN is a global issue, developmental typology differs between countries. From its origins in the U.S., NN has evolved differently based on the specific context. Although NN has numerous facets, the basis is that all content and every service throughout a network should be treated without discrimination (Hart, 2011). This principle supports no restrictions by Internet service providers (ISPs) or governments on content, sites, platforms, equipment that may be attached, or modes of communication used (Shin & Han, 2012). Although NN seems ideal, it is actually very complicated because it involves complex and contextual matters. Therefore, research can be enhanced by contextualizing the NN debate to clarify the issues involved (Shin & Han, 2012). In this regard, Kim, Kelly, and Raja (2010) analyzed broadband from an ecological perspective, examining the dynamic relationships between stakeholders with multiple levels of social and environmental perspectives. For this study, the ecological perspective was combined with a comparative analysis to investigate relationships among stakeholders; thus, essential insights have been provided into the ways that NN has been perceived, discussed, framed, and implemented (Cheng, Fleischmann, Wang, Ishita, & Oard, 2012).

For contextualizing the NN issue, this study selected the U.S. and Korea for the comparative case study, as these nations have taken the lead in broadband development. Further, they have debated the issue of NN intensely. As NN is a concept that

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is embedded contextually, analyses through comparative frames tend to produce important insights that single studies ordinarily miss. Given the paucity of comparative research on socio-political dimensions of NN, the findings may provide policymakers with ideas for improving practices related to nationwide network implementation and development. Differences between the strategic initiatives of the U.S. and Korea are instructive heuristically for discussions of next generation Internet environments. The U.S. position on NN has garnered the most attention, as the country spearheaded the NN agenda (Kraemer, Wiewiorra, & Weinhardt, 2013). At the same time, Korea's initiative is worth noting, because, historically and consistently, the country has adopted U.S. initiatives and imposed them on a very different economic and social system, which is reinforced by a dissimilar legal structure (Kim, 2009). It may be true that other countries such as those in the EU would be better counterparts than the U.S. (with better insight). Yet, given the special relationship between the two countries and the political influence of the U.S. toward Korea, it is worthwhile to examine how the NN concept has been applied and contextualized in Korea. Comparing two countries that are not linked historically or politically can be less meaningful than comparing those that are contextually tied. The U.S. and Korea have collaborated and connected in terms of Information, Communication & Technology (ICT) development. Comparing the countries may promote understanding regarding how NN can be framed ideologically, discussed locally, and embedded contextually. As both countries commonly face setbacks, it is important that they clarify issues and resolve possible conflicts. In this light, three core questions are presented:

RQ1: How do policy initiatives at the national level address the development of NN?

RQ2: How have the different goals and objectives of countries contributed to patterns of development in industry and society?

RQ3: How do people perceive NN in different countries, and what are the implications of these differences for users and for the future of the Internet?

While there are many ways to perceive NN, perspectives regarding *ex-ante* and *ex-post* regulations form an interesting frame that has been rarely employed in NN arguments. The frame provides important insight into the values, philosophy, and political structures behind NN. In this study, two approaches to the study of NN were observed: (1) comparative analyses that seek to determine the bounds of permissible conduct in markets *ex-ante* and (2) case-by-case examinations that eschew direct interventions. Although there have been a variety of related policies in the U.S., regulators have imposed rules in *ex-ante* fashion, under the assumption that judicial review and damages awarded in this process are too time-consuming to stop abusive practices before considerable damage occurs (the FCC and state regulation is traditionally *ex-ante*, for example, the FCC has regulated the broadband industry on the ground that competition in broadband markets operates differently from competition in other markets). Whether there are patterns in Korea's policies is not clear, and a case-by-case approach enables regulators to address problems as they develop so that they can respond to specific instances of abuse. These strategies are examples of indirect coordination in an effort to avoid direct intervention.

These two approaches contrast sharply with Korea's previous broadband developmental typology. The Korean government has taken a highly interventionist and proactive role, whereas the U.S. government has acted as a facilitator to influence broadband growth indirectly.¹ While these differences within and between nations may lead to the impression that NN is primarily about *ex-ante* and *ex-post* regulations, the most compelling question is how to address the universal service provision of public policy while promoting competition in industry—that is, how to use networks as tools to benefit the market economy and promote democracy. For this challenging task, there is no “one-size-fits-all” solution, as the level of complexity of the problem continues to escalate with cutting-edge technologies. As Marsden (2010) argued, NN has potentially profound consequences that cannot be left entirely to market stakeholders. This point raises the need for a new approach, namely contextual regulation, which broadly refers to smart governance that is based on context. This idea is similar to co-regulation (Marsden, 2010) in that it directs the state toward questions regarding legitimacy, governance, and human rights, thereby opening up more interesting conversations than the one regarding the binary choice of no regulations versus state regulations. Beyond the dichotomy of self- or co-regulation, governance reform is needed to address an increasing gap between constitutional legitimacy and people's perceptions, highlighting the process by which states, firms, and citizens are developing a new type of power to negotiate over regulatory issues.

Co-regulation does not refer to a market failure in the Internet ecosystem that necessitates government oversight and possible intervention. While not perfect, the concept of co-regulation represents a new perspective on NN governance. It does not justify government intervention; rather, it highlights effective and carefully planned governance in which the government supports an environment for the Internet ecosystem, and a cycle of interaction plays autonomously within it. Thus, it presents a new regulatory paradigm. Because it encourages the government to take a proactive role and industry to take a responsive role regarding sanctions for oversight and omission, co-regulation is a balanced concept between state regulation and industry self-regulation. As Watal (2011) argued, co-regulation may represent smarter governance since it

¹ The U.S. government has taken a flexible approach, at times quite active; at other times, it has taken a hands-off or wait-and-see approach. Generally, however, the government has been very active and even aggressive. Similarly, Korea's approach has changed slightly since the government played an indirect role as facilitator, particularly in the late 2000s. Overall though, the Korean case reflects strong intervention from the government. This study does not focus on particular points or specific one-off behaviors; instead we have identified the pattern that has emerged historically and contextually. Throughout history, the U.S. approach to broadband can be seen as that of a facilitator that has influenced broadband growth indirectly.

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