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Articles

This Article presents some specific ways that U.S. policymakers should use teachings from the latest thinking in economics to create a conceptual framework in order to grapple with current controversies in communications law and regulation. First, it provides a brief overview of Emergence Economics, with an emphasis on the "rough formula" of emergence and the unique role of technological change in creating and furthering innovation and economic growth. Second, this paper explicates the general concept of "Adaptive Policymaking" by governments and includes some proposed guiding principles, an outline of the public policy design space, and an adaptive toolkit to be used by policymakers. Third, this Article discusses devising a policy design space specifically for communications policy, with an emphasis on the institutional and organizational challenges facing the FCC as it seeks to fulfill the suggested goal of furthering More Good Ideas. Finally, this paper explores the conceptual framework for the fitness landscape, including a searching critique of the notion of "enabling without dictating" evolutionary forces in the marketplace.

The policy debate over how to govern access to broadband networks has largely ignored the objective of network trustworthiness—a set of properties (including security, survivability, and safety) that guarantee expected behavior. Instead, the terms of the network access debate have focused on whether imposing a nondiscrimination or "network neutrality" obligation on network providers is justified by the condition of competition among last-mile providers. Rules proposed by scholars and policymakers would allow network providers to deviate from network neutrality to protect network trustworthiness, but none of these proposals has explored the implications of such exceptions for either neutrality or trustworthiness.

This Article examines the relationship between network trustworthiness and network neutrality and finds that providing a trustworthiness exception is a viable way to accommodate trustworthiness within a network neutrality rule. Network providers need leeway to block or degrade traffic within their own

the specific critiques of our Article and the general across-the-board indictment of positive scholarship and empirical legal studies, we respond.

Notes

Facing resistance to the use of its Voice-over-Internet Protocol application on mobile phones, in February 2007, Skype Communications filed a petition with the FCC asking for application of the *Carterfone* standards to the wireless phone industry. This Note discusses *Carterfone* and the merits of Skype's petition in light of the recent auction of the C Block, which carries open network requirements, and developments in wireless technology. This Note argues that the FCC should require carriers to provide technical standards for access to their networks, whereby individuals will be able to connect any approved device and application of their choosing.

The Internet has dramatically changed the methods by which people purchase tickets to events. In the past decade, the secondary ticket market has grown exponentially, and today the online ticket resale industry is valued at approximately $4 billion. Although there are consumer benefits to this industry growth, some of the industry practices have precipitated a consumer backlash. This was typified in 2007 when many parents, hoping to purchase tickets to the Hannah Montana "Best of Both Worlds Tour," watched as tickets sold out online in only a few minutes or less. Coupled with this episode was the *Ticketmaster v. RMG Technologies* case, which dealt with brokers who were using software to aid in purchasing large quantities of tickets to high-profile events. Congress has finally started to pay attention in 2009. This Note argues that the time for national regulation of this growing market is now.

In 2006, the U.S. District Court for the Eastern District of Texas extended civil liability to Yahoo! under § 230 of the Communications Decency Act so that it could not be sued for knowingly profiting from a Web site where members exchanged sexually explicit pictures of minors. The court found that the reasoning of the seminal § 230 case, Zeran v. AOL, was analogous and that policy considerations mandated its holding.

This Note argues that a multifaceted approach is needed to prevent future courts from following that decision, including an amendment to § 230 that would impose civil liability upon ISPs that knowingly allow the sexual exploitation of children on their Web sites. In the meantime, however, future courts should distinguish Zeran and refuse to apply its defamation rationale to child sexual exploitation claims. Future courts should also refuse to extend the immunity to child sexual exploitation claims because doing so does not further the congressional intent behind § 230. Courts should recognize an exception to immunity under § 230(e)(1) in order to protect minors on the Internet.