



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Access to Information, Privacy and Ethics

ETHI • NUMBER 092 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, February 15, 2018

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Chair

Mr. Bob Zimmer

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• (0845)

[English]

The Chair (Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC)): We'll call to order the meeting of the Standing Committee on Access to Information, Privacy and Ethics. Pursuant to Standing Order 108(3)(h)(vii), we are continuing our briefings on net neutrality.

Today we are with our Columbia Law School guest, Timothy Wu. I hear you have a statement. Please proceed.

Professor Timothy Wu (Professor, Columbia Law School): Thank you.

I'd first like to thank the committee for inviting me. It's an honour. As you may know, I grew up in Toronto and I used to attend question period on vacations. I'm also a Canadian citizen, so I'm very interested in this issue. I want to apologize for not being there in person. The reason is child care, but I would have enjoyed the opportunity to be there in person.

Let me say a few things about net neutrality policy, which is in a state of turmoil. My basic thesis is the following. In the United States, on which I can testify most accurately, net neutrality has arguably been the most successful of the tech policies put together in the early 2000s to oversee the development and industrial, economic, and social growth of the Internet. It has been a success from almost all quarters. Obviously, it has had some opposition for various reasons that we can talk about, but the track record is excellent. It's difficult to find a sector of the economy that has grown so well. I think some of the success of the American—and to some degree North American—Internet story relative to Europe and to some degree to Asia has to do with communication policy.

Let me make clear why I say these things. As you may know, the first glimmerings of net neutrality policy were in the early 2000s. They were in reaction to cable and phone companies in the United States starting to block or degrade applications that were competing with them, or putting conditions on applications or devices such as Wi-Fi.

In the United States, there's a long antitrust tradition centred on the phone companies. There is some suspicion that they have tended to want to own all the markets adjacent to communications. I think there was a receptivity in the United States to doing something. It was actually a Republican administration that began to enforce a version of net neutrality rules by fining phone companies for blocking voice over IP. They established a rule in 2003 that made it

clear that there would be no blocking or degradation, and users were free to attach whatever applications they liked. From 2003-04 to our present day, this rule has been more or less in effect, although it's about to disappear here.

The basic guarantee—and I think this is the most important thing about net neutrality—of being able to reach end-users was extremely important for a series of new companies that I'll now describe. One of the earliest was Skype, which was an innovator in voice over IP. They were trying to make phone calls cheaper for people. They got started when it was clear that they were going to be blocked by the incumbent cable or phone companies in a way that would hurt their ability to do business.

You had the launch—and this was a big deal—of streaming video and the revolutionization of television in the United States, which once again relied on this bedrock idea that they'd be able to reach consumers with streaming video. I don't think that would necessarily have happened without net neutrality rules. I think attracting investment in enterprise when you have some danger of being blocked would have been an uphill battle, and I think in the 1990s television in the United States had become very stagnant, and the quality of programming had also become questionable. There was a revitalization of television in the United States, and I think, very interestingly, a massive increase in the amount of money being spent on content.

• (0850)

The question from television's entire history is, are we going to have good stuff to watch and what do we do to make that happen? Canada obviously has the approach of the Canadian Broadcasting Corporation, modelled on the Reithian BBC, the best of everything. I think that's a good way of approaching things, too. The United States doesn't have that. It does have the Corporation for Public Broadcasting.

Nonetheless, during the last 10 years of Internet neutrality, with the excitement of a new business, enormous amounts of money was invested in the content, with billions of dollars being spent investing in documentaries, series, whatever. I think a lot of that has to do with the explosion of a whole new form of business, a whole new way of transmitting television.

I think net neutrality helped the Internet over the last 10 or 15 years be a place where new technologies could have their go and a lot of things that were experimental, non-profit, and smaller were able to have some success. Here I'll bring up the example of Wikipedia, which I think would have had a very challenging time if it had been in an environment where it was forced to account for its bottom line and justify to phone and cable companies what it could have done.

As I said, it has been a success story. I can explain in response to your questions why it's being abandoned in the United States, which is something I profoundly disagree with. It has a lot to do with jurisdictional battles.

I should also say that this has been a very profitable and successful period for the phone and cable companies. They have lived under the rules of net neutrality; they have prospered under them. Their margins are terrific. It's the most profitable line of their business. In some ways net neutrality saved them from themselves, in the sense that they ended up in the position of bringing all of this great stuff to people and not having that be particularly expensive for them, and it's become the most valuable part of their business.

The reason net neutrality rules have gone down centre on rate regulation, which has to do with complications implicit to the American structure of telecommunications law, which I can tell you about during your questions, if you want. I think what's happening in the United States is a terrible pity. I think it's bad policy. I think we'll look at it as a bad mistake. It's very possible that it will be reversed by one of various ways in the near future, anyway.

I don't want to go on forever. I realize I went over my last five minutes. I want to thank you once again for having me. I apologize for not putting any French in my comments, but I'm much better in English.

Thank you very much. I look forward to your questions.

●(0855)

The Chair: Thank you, Mr. Wu.

We'll go with the first line of questioning to Mr. Baylis. Seven minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): *Bonjour.* That's to get you going with some French.

The end of net neutrality is bad for society in general. Someone's going to win. Someone wants this. Who's pushing for this end of net neutrality in the United States? Who is perceived to be the winner if this is taken away?

Prof. Timothy Wu: I think there isn't a lot of mystery as to who's interested in killing net neutrality in the United States. It is not the Republican Party, but it is very narrowly the phone and cable companies. I think that even though they've prospered under net neutrality, they have a series of interests, the most basic of which is to try to take an extremely profitable service, which is already delivering over 95% margins, and making it more profitable—this is what companies do, obviously—but not in ways that I think are good for society.

One way is to start taxing all of the stuff on the Internet, adding some fee in order to reach people. The other, I think, is to find different ways of raising prices for consumers.

One thing that I think you will see, maybe not right away but eventually, is more and more fees being attached to Internet programs. Email is basic, so it will probably cost a little extra for streaming video instead, a bit in the way airlines have added fees for what were standard features before. I think that's the long-term business model. It used to be free to have baggage. It might in the future cost extra money if you want a video account and so on.

I would say it's very narrowly the phone and cable industries.

Mr. Frank Baylis: In Canada there are very few players; we call them an oligopoly. If they're profitable, why would the U.S. government want to make them more profitable to the detriment of everybody else? What's the thinking there?

Prof. Timothy Wu: It's not the U.S. government. It's one agency of the U.S. government with a chair who is a former employee of the phone companies, who has long agreed with them that they should get rid of net neutrality. I don't think it's government as a whole. I don't think even the White House necessarily bought into this. It's not very popular in Congress either, which is why it might get reversed. It's a narrow part of the government that's doing this. I can give you the argument why they're doing it, but it's not representative of the entire government. It's also very unpopular publicly; I think there are polls showing over 70%. Even republicans are opposed to it. It's a good example of what we call industry capture.

Mr. Frank Baylis: I'm not that familiar with the process in the United States of how that will actually become law. Has it been signed into law, or is it going through Congress?

Prof. Timothy Wu: Okay, maybe I should make this clear. It's not a bill, not a statute. It's a regulation. The agency has the independent power—I think the CRTC has this power as well—to pass rules without Congress.

The process will go like this. They've written the rule, they voted on it, and they're publishing the rule. There will be a court challenge, which I'm personally involved in as well. It will be about a year or maybe a year and a half, in which people figure out whether the rule is actually going to survive the challenge.

Mr. Frank Baylis: What will the court challenge be based on?

Prof. Timothy Wu: It will be based on two things. One is the idea that the agency, the FCC, doesn't have the authority to pass the law this way. The second is that their changing of the rule that was successful, without giving reasons for doing so, is arbitrary and capricious.

The rule in American administrative law is that you can't simply change long-standing administrative rules for purely political reasons. You have to have a change in circumstances; something has to have happened in order for you to change the rule that the industry was relying upon. The argument in court is that there was no change in circumstance; it was—

Mr. Frank Baylis: Just so I understand, your first argument is to say that the FCC does not have the jurisdiction to make the change. Is that what you mean?

● (0900)

Prof. Timothy Wu: No. It's actually that they're compelled by the statute to adopt some.... The nature of the broadband service is such that they have to classify it under the statute in a certain way. I guess that's the way I'm suggesting.

Mr. Frank Baylis: Thank you for that explanation.

I want to swing around now to the potential impacts it could have on Canada.

Prof. Timothy Wu: Yes, sure.

Mr. Frank Baylis: First of all, what do you see as the potential impacts, and what should be some of the mitigating steps that we should consider, if any?

Prof. Timothy Wu: The one thing I would imagine is that you will have the Canadian industry also demanding parity. That's a small thing. I don't think that would be good for consumers for reasons I've suggested or for the country, but it may be something that is demanded.

I think that's maybe the most important. Sometimes things become standard in the United States that aren't necessarily good and have a way of making their way up to Canada. You haven't quite had our problem with mortgage-backed securities, but I'm sure there's always pressure for things to become adopted in Canada that have become standard in the United States, like four-down football. They held on and resisted on that one.

More specifically, the degree to which Canadians have also benefited from an open and diverse Internet will become challenged. I'm thinking about Wikipedia. There's some statistic—I don't know what—that a disproportionate number of Wikipedia editors are Canadians. It sort of fits the personality of Canadians, I think, in some ways to be interested in truth and work hard behind the scenes. If Wikipedia begins to suffer because it doesn't have the money it needs to pay off the phone and cable companies, I think that could hurt something that a lot of Canadians are very vested in.

Mr. Frank Baylis: I understand that.

Do you have suggestions that we should be looking at to help mitigate that, or are we just to wait and see what actually plays out in the United States? Are there some proactive measures we should be considering?

Prof. Timothy Wu: I think it's very important to reaffirm Canada's commitment to net neutrality. I could think about it. I'm not sure if there's something at this point that I would specifically recommend, other than reaffirming the commitment, which I think the Prime Minister has done, if I'm not mistaken. I think that's very important. Let me think about that. Even during questioning I might have a better answer for you. Off the top of my head, I don't have

anything specific. Partially it's because this is a chess game. For one thing, we may handle it ourselves. We may stop it or reverse this rule. A Democratic administration would reverse this situation. There are a lot of things in motion, I want to say, and there's the court challenge. I think you should be watching this carefully.

Mr. Frank Baylis: Thank you.

The Chair: Thank you, Mr. Baylis.

I just want to welcome the chair of my former committee, Mr. May, this morning. Thank you for visiting. We're honoured.

We'll go next to Mr. Kent for seven minutes.

Hon. Peter Kent (Thornhill, CPC): Thank you, Chair.

Thank you, Professor, for being with us today. Anytime you are in the Ottawa region, we'd be glad to sit down and have a coffee, either formally or informally.

In the last couple of weeks, this committee has been assured by the Canadian regulator, the CRTC, and by the major providers that net neutrality is well protected in Canada because of our current statutory and regulatory regimes. I continue to hear voices, particularly from the United States, but some from Europe, who agree that, should the FCC remove net neutrality from the United States, consumers around the world would still be seriously protected. We're told in Canada that very little, or a rather small part of Canadian content moves through American providers, but I'm just wondering, if there isn't an immediate threat, do you see a longer term, serious erosion of the concept, should the United States go in a direction that you obviously oppose?

Prof. Timothy Wu: I do see a long-term threat for a lot of reasons. I think I suggested this earlier. I'm concerned that if the carriers, the phone and cable companies, are successful at doing this in the United States, and if they start imposing taxes on all American content providers, including small non-profit sites and everything like that, they will push very hard for that to become the global norm, that this is the way things need to be because the United States is the home of the Internet and so forth.

As I think I suggested earlier, I'm also concerned that the opportunities for Canadian speakers to reach Americans will be threatened. Canadians are often interested in reaching an American audience. Look, I'm a Canadian reaching an American audience all the time, and I think the opportunities for Canadian speakers to reach Americans are threatened. It's not like it's cut off at the border. In a narrow sense, it's tough delivering content, but anytime Canadians interact with things that are American, they end up being affected by the change and the shape.

I see a future where, in the United States, there's a very strong effort to make everything that really survives on the Internet—that lives there—to be highly commercially successful. This is an important point that I didn't make in my opening remarks, which is that you see more and more power going towards the biggest Internet companies, ironically, Google, Facebook, and Amazon. To the degree that you're concerned about the market power of those companies in Canada...I don't know if that's a big concern. It's certainly a concern here. If you're concerned about the market verging on monopoly power—frankly monopoly power for many of them—and its effects on the Canadian economy, the loss of net neutrality in the United States makes those entities more powerful. That's something I think you need to be concerned about.

I've thought of one thing that's important. I think it's important that you speak to the competition authorities and ask them if this will create more barriers to entry. Will this create more barriers to entry, more market power for some of the biggest companies? Do we need to be concerned about this problem?

● (0905)

Hon. Peter Kent: That leads to the point that we've heard that new ideas, smaller companies, and start-ups may in fact find it much more difficult to start up in the United States under a new regime, but the Canadian start-ups may well also be affected in a domino effect.

Prof. Timothy Wu: Absolutely. What's the market for Canadian start-ups? It is Canadians, but also Americans. This change disadvantages the little guy and Canadians because although Canadians are not quite outsiders, they're a little bit outside the mainstream.

I think Silicon Valley is in a bit of a crisis right now in the sense that the new companies are not attracting the same kind of investment they used to. People are concerned that if you're not Facebook, Google, Amazon, or Microsoft, you don't really have a chance and that those guys will copy you quickly.

That's the Silicon Valley start-ups. How are Canadian start-ups, which are another step removed, looking? If they start facing net neutrality concerns, this will actually be a really serious concern. Imagine you have a Canadian start-up in the Ottawa region or in Vancouver. To reach their customers, they have to start negotiating with American carriers, and they may have no idea who those people are: Verizon, Comcast, AT&T, and so on. It's a greater barrier of entry for Canadian entrepreneurs, even more than for Americans.

Hon. Peter Kent: I have a question about countering the December decision by the FCC commissioners. I've heard voices from Congress saying that there might in fact be a legislative offset that would be effective. Would that process be easily achieved or would it again become a partisan issue on the Hill?

Prof. Timothy Wu: Have you ever heard of anything in the United States Congress being easily achieved? There's a movement right now to undo the Trump administration proposal immediately. It has 50 votes in the Senate. It's going to be voted on. Unfortunately, it would have to be signed. It would have to pass the House. Actually, I have no idea what President Trump thinks about this. I don't think he has ever thought about the issue, frankly, and he has no stated views on it as far as I can tell. However, there is the Republican House. It is

possible that Congress will do something, but the idea that anything in Congress is easy or straightforward is not....

I have another point I want to make. Here's something that your committee should be looking at, the compatibility between the removal of net neutrality and some of the commitments that were made in NAFTA or the Canada-U.S. Free Trade Agreement, which I guess NAFTA superseded. I'm thinking now about a Canadian entrepreneur who comes up with a service and wants to sell it in the United States. That's called "trade in services" in trade terms, and if there's a possibility of its being blocked or action being taken to block it, I think that's potentially a violation of the trade agreement. I'm saying this without having done deep research, but I have done some research on the WTO versions of these laws. That may be worth thinking about as a proactive thing to do, for you to say, "Listen, we have some questions about the compatibility of what you're doing and NAFTA. If you're going to give the power to block Canadian companies, is that a violation of the telecommunication parts of NAFTA?"

● (0910)

Hon. Peter Kent: Thank you for the suggestion. We'll ponder it.

The Chair: Next up for seven minutes we have Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): It's wonderful to have you before our committee, Professor Wu, to discuss this issue.

It was interesting to hear the CRTC reassure us that everything is fine in Canada. The Prime Minister, as you pointed out, has noted his concern. However, we're talking about regulation. The FCC had decided in regulation to recognize and protect net neutrality. The CRTC's position in 2016 was that they were of the preliminary view that the act prohibited the blocking of access to end-to-end users.

Do you think, given the American experience, that we would be better off to define net neutrality in legislation, as opposed to having it interpreted by whichever CRTC commissioner we have at a given time?

Prof. Timothy Wu: I would support that. I think there's good reason at an early stage to do things in regulation—things are uncertain, and no one knows what's going on. It's been an about-15-year process, and I think the basic principles of net neutrality have proven to be very successful, as I said in my introduction. As long as you write them in a very basic way, with no blocking and no degrading allowed, and you have those principles, I think it's a good idea for legislation.

I didn't quite get to this in our last round of questions and should add that in the United States I suspect there is a sense that this will finally come to legislation there, probably after the next election. So, yes, I agree that the time has come.

Mr. Charlie Angus: Thank you.

I was interested in this whole issue, when we're talking about parity. Our telecom folks will start to push for parity. We have an oligarchy here. We have three or four giants, who also are content providers. They are very competitive with each other but not very competitive with consumers. It seems to me we are not all that different from the United States except that we probably do a much greater job of keeping the start-ups out of a very closed market.

Given the Canadian experience, you'd think we would be very susceptible to pressure. This is how it happens. They'll say, "Well, the Americans have it. We can't compete." I mean, God, they come and cry on our shoulders all the time to get more and more protection for their protected market. Do we have to protect the consumer and people who use the Internet by having this very clearly defined?

Prof. Timothy Wu: I couldn't agree more. I think today these kinds of campaigns tend to be global in scope. In other words, the carriers are in a similar situation in that they succeed in the United States, and then they say, "Well, this is the new normal. Everyone needs to do what America is doing. Look how great it is. Look how much we have to invest." I'm sure you're going to hear over and over again, "We're investing billions, and now we're going to invest more billions. Some of it, of course, is money you gave us, but that's fine." I think it's very important to resist those arguments.

I think we have to be really serious—and I think you are taking this issue seriously—about how much consumers are paying for their bandwidth. When you add up home connection and the phone all together, it's become a major part of the consumer budget. I don't know what the numbers are like in Canada, but in the United States, even poor people are paying hundreds and hundreds of dollars of their monthly budget for these things. It operates like a tax on the economy. It keeps people in poverty in poor parts of the United States, and I'm sure that's a problem in Canada as well. It does need to be resisted. This is an incredibly profitable industry that doesn't need to make more money.

• (0915)

Mr. Charlie Angus: Thank you.

In another life I was a musician. We saw how much the Internet turned over the traditional music model. Certainly there are many factors besides the Internet for what happened to the recording industry in the early 2000s. I came to Parliament, and the Internet was the biggest menace stalking the halls of Parliament. We had to constrain it. We had to define it. We had to stop all the pirates. We came up with these big, giant bibles on how to save television by really committing to that 1970s vision of television. The market is changing and new things are happening. Certainly you mentioned this golden age of television. Now on Netflix I watch Icelandic television and Swedish television and New Zealand television.

What is the track record of having an open Internet, where things do get upset, where traditional models are overturned, and new start-up punk operations actually turn the world upside down? How do you see the importance of what the Internet has done and its potential to create new forms of communication?

Prof. Timothy Wu: I think the track record is strong. I think it involves a lot of disruption that shouldn't be completely glossed over. People losing their jobs is a sensitive thing. Sometimes, as in television, the fear that everything that we hoped for, all good

content, would be gone doesn't materialize. You always have to be conscious of, in what is arising, what sense of opportunity there is. I say that with one caveat. There is always this danger, and I think the Canadian Parliament should be thinking about it, which is that one thing that happened with open competition, which people didn't expect, is the excessive rise of monopolies in various areas. I think that has been a little unexpected. Everyone thought that there would be 10 Googles, or something like that. That has not happened. But otherwise, I think the track record has been stronger than people had expected and unexpectedly good things have happened along with a lot of disruption.

Mr. Charlie Angus: On the issue of the effect of Canada, we've been talking a lot about start-ups and companies, but let's talk about experimental, intellectual, and medical non-profits, for example. If I'm making connections, trying to create some new form of database of information, and I'm talking from Edmonton to Vancouver, it's a pretty straight line. If I'm talking from Edmonton and San Bernardino and Vancouver, it becomes a little more complicated.

Given the ability of the major carriers in the U.S. to throttle content, slow it down, degrade it, and given the fact that so much of the architecture of the Internet is in the United States, is there a spinoff effect degrading the ability of Canadian users of the Internet to get the full benefit of the use of the open Internet?

Prof. Timothy Wu: Yes. I think that Canada should be seeking assurances from the United States that this continent-wide community is able to communicate among themselves without interference.

The phone and cable companies in the United States have been empowered—it is quite shocking—to block anything they want to. It's frankly a censorial power. If there is a Canadian site that is criticizing the excessive imperial attitudes of the United States, they can just block it so that no Americans see it. We had thought of this as an open continent, that in North America we can talk to each other, but they can block, they can intercept, they can block all your email communications. If they don't like what you have to say, because Charlie disagrees with Verizon's hegemony in this area, they can block it.

I think that if I were in the Canadian position—I wish I had said this in my opening remarks—I would seek assurances, maybe working with the trade treaties, maybe in terms of a question about free speech, that there will not be blocking of Canadians who want to speak with Americans.

• (0920)

The Chair: Thank you, Mr. Angus.

Next up now, for seven minutes, Mr. Saini.

Mr. Raj Saini (Kitchener Centre, Lib.): Good morning, Professor Wu. Thank you very much for being here—well not actually here, but via the technology we have today.

I want to ask you two philosophical questions because I think my colleagues have done a very good job getting down to the limitations or implications of net neutrality. Since you're living in the United States—and I lived in Boston for three years when I was a student—the two principles I don't understand, particularly why there has not been a larger backlash to this, are the elements of free enterprise and free speech.

If we look at net neutrality, for the last 15 or 20 years there has been a constant effort to try to diminish that concept, indirectly or directly. If you look at the way the Internet was designed, the end-to-end principle of network design—you mentioned the Madison River case, and if you look at AOL, with their walled garden strategy, and AT&T not having Skype on the iPhone, or Verizon not having a Google wallet—there have been attempts for the last 15 or 20 years to circumvent the rule of net neutrality.

I go back to the debate that you had with Professor Yoo many years ago. One of the things he talked about in that debate was access tiering, which you were against, but the other thing he brought up was Schumpeter's thesis, wherein only large companies could innovate.

If you go back over the last 15 or 20 years, with the advent of the Internet and the technology we have, it's smaller companies that are innovating. You mentioned that very clearly. You said that Bell was great at developing the infrastructure for telephone but wasn't so good at, or came late to, the Internet.

What I fundamentally don't understand, when we look at the American system, is why there has not been a larger outcry, especially when the heart of the American system is being attacked, which is free enterprise. I don't understand that, because the country and its systems of government and the economy have been built on the concept of free enterprise, yet there has been no large outcry.

We are discussing this issue in Canada, although it has happened in another country. Can you explain what's happening in the United States? Is it that people don't know, that they don't understand the implications? Even for business people—small, large, medium—it's going to have an implication.

Prof. Timothy Wu: Thank you for that question. I think it's a good one. Let me say two things.

First, on how this could even come out of the United States given that it's a free enterprise country that is interested in entrepreneurship, I think there's a very big difference between being pro-market and being pro-business. There are a lot of members of both parties, let's say, particularly the Republican Party, who claim to be pro-market but actually are pro-business: in other words, they're pro the businesses that are there already and against their disruption by newer businesses.

It is telling, as I said. In its original form, this was pushed by the early Bush administration, in the sense that they could see what was going on, and I think it is really breaking.... It's not just this loony, left-wing thing. It is a pretty important principle that businesses, to get their start, need to be able to reach their consumers, and if they get blocked by bigger businesses, that's a bad thing.

Why is there not more backlash? I wouldn't say there's none. There is an effort in Congress to reverse this. Maybe I'm in the

middle of it; I hear it all the time. It has a bit to do with our current political situation, where there are so many daily acts of outrage that I think people find it challenging. I think in a quieter environment.... This is a big one. Speaking as a resident of the United States, we have this prospect of nuclear war with North Korea, and we have an investigation into the President's lawyer paying off a porn star, and these things are a little hard to compete with when you're talking about telecom policy. It has rarely been as sexy as that—

• (0925)

Mr. Raj Saini: That's true.

Prof. Timothy Wu: —not to mention the idea of Russia trying to throw the election. These are big issues, all the way from salacious to nuclear war, and it's like it's impossible to compete with them.

Mr. Raj Saini: Continuing on that line, the fact is that there is now this issue that is going to affect certain businesses, but indirectly, if you look at the global aspect of what's happening, the United States is the largest economy in the world. It does do business around the world. If its internal networks are not going to adhere to the principle of net neutrality, if they have trade deals or trade arrangements with other countries, how is it going to stop at the border, then change, and then get to the border, then go to...? How is that...? It's almost like a self-limiting principle. Whether you're pro-business or pro-market, irrespective of that, at the end of the day, you have to make a profit, right?

Prof. Timothy Wu: Right.

Mr. Raj Saini: How are they going to prevent or control what they want to do when other parts of the world are not going to do it? With the Internet, you have no borders.

Prof. Timothy Wu: This is rare for me, but I think this is how they'd see it. I don't echo this, but they would say that most of net neutrality—the speeding up, the blocking, and all of that—is actually quite local.

The way they usually do it today is at the exchange point. It would happen somewhere in Ottawa. I don't know where. There is some point where all the Internet traffic reaches Ottawa and is exchanged to all the local Ottawans. That's where the blocking or degrading would happen, or inside the local office nearer to your house.

I guess that is the idea. It's that the backbone is more or less untouched but it's the stuff nearer, near consumers. Does that make sense?

Mr. Raj Saini: Do I have time for one more question, Mr. Chair?

The Chair: Yes, one more.

Mr. Raj Saini: I have a final question for you on the second point that I wanted to bring up.

We talked about free enterprise, but the other very basic and very strong principle in the United States is free speech. When you look at free enterprise, you look at free speech.

You have companies now, such as Comcast, for example, which owns NBC, and other broadband carriers that have other news elements. Here's my question. If that happens, then even in the concept of free speech, which is so clearly defined in the constitution, you're limiting free speech because, depending on which program you get, which package you get, and whatever is being steered toward you, that's the only stream of information you're going to get. Even that principle nobody has cried out over, whether it be free enterprise or free speech.

Prof. Timothy Wu: May I say that there is a blind spot in the American constitutional understanding? In my view, it's a blind spot when it comes to private power. The slightest thing the government does is examined and struck down. Some of the First Amendment decisions in the United States—even though I'm a firm believer in free speech—are absurd in their overprotectiveness. For example, some of the states tried to ban pharmacies from selling patient data as a privacy issue. I'm sorry: that is free speech to sell patient data.

On the other hand, a company like Comcast has complete domination over who speaks to who and who hears somebody. They can block people altogether. They have a censorial power, but you know, they say that it's just their property rights.... That is, I think, a constitutional blind spot that is maintained for obvious reasons and is a big challenge for the United States as a country.

Mr. Raj Saini: Thank you very much.

The Chair: Thank you, Mr. Saini.

Next up we have Mr. Gourde for five minutes.

[*Translation*]

Mr. Jacques Gourde (Lévis—Lotbinière, CPC): Thank you, Mr. Chair.

Mr. Wu, net neutrality seems to be assured in Canada, more so than in the United States. The federal and provincial governments invested in infrastructure when they decided to give all Canadians greater access to the Internet. That gives us a certain right to require that companies maintain this neutrality.

In the United States, was it only the private sector that invested in infrastructure, or were investments made by the U.S. government to increase access to the Internet for all Americans?

[*English*]

Prof. Timothy Wu: This may surprise you to hear, but the United States has invested almost nothing in Internet infrastructure. There was initial funding for the research that led to the invention of the Internet. That was very generous research funding given to scientists. However, in terms of infrastructure programs, the answer has been almost zero. That's one of the reasons the phone companies and cable companies say, "Why should we listen to these rules? This is our network." On the other hand, even when the United States does subsidize things, companies still say that they have the right to do what they like, so I'm not sure. However, there has been almost no investment in infrastructure in the United States by the government.

• (0930)

[*Translation*]

Mr. Jacques Gourde: These same U.S. companies indirectly benefit from other countries' infrastructure given that we now have a

global market. Do these companies have the same philosophy? In Canada, we have invested 35%, 40% and even 50% or more in certain regions to provide Canadians with Internet access.

[*English*]

Prof. Timothy Wu: That's true. I think the American companies do benefit from the Canadian investments. I have to say that's true.

One consequence of the non-investment in American infrastructure is that the rich parts of America have extremely high-quality access and have faster speeds than anywhere other than maybe parts of Asia. However, the poor parts of America are back in the 1990s. They're in terrible shape. The companies are all out of business or are providing very marginal service. The Internet infrastructure in the United States is echoing inequality and making it worse right now due to failures of investment. In fact, it's gotten so extreme that the Trump White House is now talking about not only building a wall.... I don't know if you've heard this in Canada, but President Trump wants to build a wall on the Mexican border. I haven't heard about a Canadian wall yet.

Mr. Charlie Angus: We're building it.

[*Translation*]

Mr. Jacques Gourde: I have one last question for you.

Would it be fair and equitable for U.S. Internet service providers to at least charge Canadian consumers the Canadian taxes on the services that are currently exempt?

[*English*]

Prof. Timothy Wu: I don't know the specifics of how those are being offered. There was a policy in the nineties or early 2000s of not taxing the Internet because it was new and needed to get started. I think those days are over and I think the Internet companies should be subject to normal taxation with no special breaks.

[*Translation*]

Mr. Jacques Gourde: Thank you.

[*English*]

The Chair: Next up we have Mr. Erskine-Smith for five minutes.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks very much.

I want to pick up on some of the questions by Mr. Angus, specifically as they relate to the difference between regulation and legislation. Of course, in the United States it was regulation, and in Canada we have legislation through the Telecommunications Act. Specifically, the latter states that “a Canadian carrier shall not control...or influence the meaning or purpose of telecommunications...by it for the public.” I think it has been reasonably interpreted by the CRTC that companies can't block websites and can't control or influence the content. Do you think that's a fair and reasonable interpretation?

Prof. Timothy Wu: I'm not a Canadian administrative law expert, but that sounds okay to me.

Mr. Nathaniel Erskine-Smith: Yes, the language of net neutrality specifically is not in the act. We've talked about enshrining the principle, perhaps, although it seems more symbolic than anything because when you look at section 36 of the act, you see that “a Canadian carrier shall not control...or influence the meaning or purpose of telecommunications carried by it for the public”. That's one important component of it.

The second important component is subsection 27(2), which is that a Canadian carrier cannot “unjustly discriminate or give an undue or unreasonable preference toward any person, including itself, or subject any person to an undue or unreasonable disadvantage”.

Those twin provisions in the Telecommunications Act seem to, based on all the testimony we've heard, cover all the ground necessary to protect net neutrality, and all we would be doing is enshrining this general principle as a preamble of sorts. How effective do you think that is?

• (0935)

Prof. Timothy Wu: Let me explain what I think the challenge would be. The American telecommunication law also has non-discrimination provisions. If you've read it as well, you'd say that would seem to bar any blocking or things like that. What the current FCC has done is to say, well, those are great rules, but they just don't apply at all. I think you used the word “telecommunications”.

Mr. Nathaniel Erskine-Smith: We have a Telecommunications Act with those two provisions interpreted in our law to say it protects net neutrality.

Prof. Timothy Wu: Right.

Mr. Nathaniel Erskine-Smith: I guess my curiosity is piqued when we say that we should put it in legislation, and I agree with that, absolutely; but in Canada, we do have it in legislation. I recognize you're not so familiar with the Canadian law, but it seems to me and based on the testimony we've heard that there might not be anything else for us to put in the law other than perhaps enshrining the general principle.

I'll go to American law, which you're more comfortable with. A few of us met with the FTC in Washington in early October. It was incredible to me how much they've pushed this idea of unfair or deceptive acts or practices in protecting against privacy breaches, as an example. It's an incredible extension and interpretation of the law, a good one to get where they want to get to, but I understand that section 5 has limits with respect to net neutrality because there's an exclusion for common carriers. Perhaps you can explain. The ninth

circuit in 2015 had a decision that expands that notion of common carriers. Is that something that lawyers and academics are looking at addressing?

Prof. Timothy Wu: It's a very good question.

Can I say one thing on your previous comment before I get away from it?

Mr. Nathaniel Erskine-Smith: Sure.

Prof. Timothy Wu: I think the reason to do it by means of legislation in Canada is not that you don't cover it, but that someone or a future CRTC would say, “This is all fine, but broadband is not telecommunications”. Do you see what I'm saying? That was the approach taken in the United States, to say we have all these non-discrimination rules, but broadband is completely different and it has nothing to do with telecommunications. Telecommunications is telephones, and broadband....

It's a different legal manoeuvre. You don't say, oh, this is not about...; you just pull it out of the statute all together and say the statute doesn't apply at all.

Mr. Nathaniel Erskine-Smith: That may well be impossible to do in Canada, but I appreciate that with the Americans, you can.

Prof. Timothy Wu: It could be. That's the American legal manoeuvre that was used in this one. That's what's been challenged in the court.

As for this question of the FTC's authority. There's a lot to say about that. I worked at the FTC myself. I spent a lot of time thinking about the statute's section 5. There, the FTC would answer what you just said by saying that the broadband is no longer a common carrier because of this reclassification; because of what the FTC is doing, it's no longer a common carrier and therefore we do have jurisdiction over it.

Now someone could challenge that, relying on the ninth circuit, and say it's still kind of a common carrier, but they are taking it out of the common carrier category in order to give the FTC jurisdiction.

You're right that the idea of unfair acts and practices has been used in a lot of different ways. I think it has its limits. It's one of those things. It's like this tiny bit of authority that's been stretched pretty far. The main problem it has is that it basically creates regimes that are like click-through regimes. You just have to give notice of things. You can do anything you want; you just have to have a lot of fine print. I think that has not been good in privacy, frankly. You've probably heard this. I think the Canadian approach of privacy by design is better, if I can call that a Canadian approach, as opposed to...and I think most American academics think that the approach of just giving notice has failed. I mean, nobody reads the stuff. They never negotiate. I mean are you going to negotiate with Facebook when you have to see your grandkids? I know you don't have grandkids, but you know what I mean. It's an absurd fiction. That's how I feel about that.

Mr. Nathaniel Erskine-Smith: Thanks very much.

The Chair: Thank you, Mr. Erskine-Smith.

Next up, we have Ms. Vandenbeld for five minutes.

Ms. Anita Vandenbeld (Ottawa West—Nepean, Lib.): Thank you very much.

We very much appreciate your expertise in this area.

I'd like to go to something you said about the censorial power. This is quite alarming, I think, to most Canadian citizens. When we talk about this issue, a lot of the discussion is more around the free market as opposed to free speech—the idea of antitrust, anti-monopolies, and making sure that new players have access to the market—but for most of the public, this is about free speech. This is about being able to have open access for ideas and the flow and exchange of communication.

You talked about Wikipedia. The ISPs here who came to see us talked about the fact that they are just the channel. If they were to block content, they said they'd wait for a court order. They don't block what goes through, and it sounded as if they were being quite strict in when and if they would do that. My understanding, from what you just said, is that's not the case in the United States.

● (0940)

Prof. Timothy Wu: Assuming that this new Trump administration policy goes through, they could block any website they wanted to. It gives them the power that the Chinese government has over speech, frankly. If you ever spend time in China, you'll notice that the Internet's very different. You can't visit any Tibetan independence sites; you can't visit Taiwanese sites; Wikipedia is blocked; Facebook is blocked. It's a completely different.

After this there's nothing stopping an American carrier from doing the same thing based on their idiosyncratic preferences, or maybe based on what the government tells them to do. Because the Americans have this blind spot toward private censorship, let's say the Trump administration says it wants you blocking all these sites that are saying nice things about North Korea, and everyone says, yes, why should we hear good things about North Korea, let's block all of those sites. They say that they agree that these sites are irresponsible; they're helping the enemy.

I'm not sympathetic, obviously, to the North Korean position, but I am sympathetic to free speech. They have the power. What you're

hearing from the ISPs is basically some version of “Trust us”. As the last member suggested, I think Canadian ISPs are still bound by the telecom act, but for the United States, after this rule there are no holds barred, and it's open season for private censorship.

Ms. Anita Vandenbeld: What is the exact legal change that is causing this particular change?

Prof. Timothy Wu: It's the elimination of net neutrality, of the rule that said no blocking. In other words, the old rule said that when a customer asked for something, you had to deliver it; there was no blocking of websites, IP addresses, or anything like that.

I worked in the industry. It's not hard to block sites. Some sites are blocked already. They tend to be by court order, of child pornography sites usually and things like that, so there is some blocking already. It creates an open season.

The American ISPs come to us and to the U.S. government and say, “Trust us, we're not censors, we're not interested in that”. However, my grave concern is what happens when they are encouraged by, let's say, the Trump White House to start blocking or slowing down all the anti-Trump sites or CNN or MSNBC or something like that. They might then think, why do we not just make sure they're a little more annoying to use than other sources of information? The capacity is very powerful for some real manipulation of the system.

The United States has a serious speech problem already, which is to say there are increasing numbers of new challenges to free speech. We're not very well meaning. For example, I'm talking about the harassment of journalists by online trolls, propaganda, fake news.... We have all these problems. The end of net neutrality in some ways makes them worse.

Ms. Anita Vandenbeld: Do you know any other democratic jurisdictions that have anything close to this kind of system?

Prof. Timothy Wu: No.

Ms. Anita Vandenbeld: Wow.

Prof. Timothy Wu: I think everyone has some kind of no blocking rule. I'm not 100% sure, but no. It's a big step backwards for the United States, which used to be in the forefront of these policies.

Ms. Anita Vandenbeld: Some of the testimony we've heard has indicated that because of this there might be apps that will actually come to Canada and develop in Canada, so we may actually see more innovation on this side of the border. Do you think that may happen, or is that outweighed by the fact that Canadian companies, content producers, would lose access to the American market potentially?

Prof. Timothy Wu: I think that most apps or start-ups are still trying to reach a North American market. There might be some who decide, "Okay, we can get our start in the Canadian market; maybe that's a good place to get started." I notice that a lot of start-ups come from Scandinavia, and they start with the Scandinavian markets and move on. So maybe there's some effect. Still, in the longer run I would think that most start-ups in North America want to reach the American audience as well as the Canadian audience. It could have some effect. Often Canada is the beneficiary of very stupid American policies, and there's the short-term moment where things move to Canada and new opportunities come to Canada. This might be one. I wouldn't expect a big boom, but sometimes it happens that way.

• (0945)

Ms. Anita Vandenberg: Thank you.

The Chair: Thank you, Ms. Vandenberg.

Next up, for three minutes, is Mr. Angus.

Mr. Charlie Angus: Thank you.

I want to just talk about the larger picture beyond the issue of net neutrality. In terms of questions of antitrust, which Americans tend to have been better at than Canadians in some areas, I was thinking of the Microsoft antitrust case and the issue of the bundling of services with Microsoft Office and Windows and all that. You'd mentioned the rise of very strong monopolies, which was certainly unexpected in the development of the Internet. Are we now also reaching that point with mobile devices and the enforced lack of compatibility, like the Apple Store, Google Play, and Amazon tablets? We're dealing with really dominant control of the market, and they're giving us all the great toys we can use, but we have to use them on their terms. In light of the net neutrality ruling, is there some question as to whether there will be less of a desire to go on antitrust after them, or do we need to start breaking apart some of these monopolies?

Prof. Timothy Wu: I think in the United States there has been an impressive revival of antitrust thinking. I don't know if this has reached Canada. I think the pressure and the drumbeat to do something, to take seriously the market power expressed in some of the ways you described, has definitely built. I don't know quite what the target will be, but I think there's been a shift.

This is not a party thing. The Trump administration's Department of Justice has an aggressive lawsuit against AT&T right now, one of the biggest lawsuits in a long time, to try to prevent a big merger. At the end of the Obama administration, when I was in the White House, I didn't do these cases but there was a series of blocked mergers. I

I think antitrust is on the march again. I think people are saying, why not break up Facebook or something? What would be the downside? Instagram has managed to buy up all their rivals. Wouldn't it be better to have some competition in that space? Yes, I think that drumbeat is very strong right now.

Mr. Charlie Angus: Thank you.

I'm interested because we have similar issues in Canada, but we just take them from a different point of view, which is, again, that of protecting our basic industries and how we have to save them.

I remember that when I was first elected there was still a discussion about media monopoly. There was still a discussion about limiting the power of one or two or three players from owning all of the newspapers in a given area or owning all of the media markets. Then we were told time and time again that if they were given more and more of that monopolistic control, they would reinvest locally and we would have a much broader field of voices. What they ended up doing, of course, was firing all the local editors and local journalists, and then they pumped in the editorial content from Sun Media or Torstar. Now, once again, they're coming back and saying that we need to help them.

I'm looking at this in terms of the telecoms, because in Canada they are controlling more and more of the market in terms of the app services and the online devices. They pretty much run all the big sports networks and you can get them on your phones. We have dealt with them throttling and cutting off competition because they brought forward this issue.

Therefore, I want to go back to the issue of needing to actually put in legislation on net neutrality, because there is an interpretation that we're okay here, but there's always pressure in Canada to say that these giants are now too big to fail in our Canadian market. We can't get Americans to come in and take over. We have to protect them. We've created oligopolies. We have not based it on consumer competition. I think we are susceptible.

Given your experience in the United States with the power of the oligarchies there, do you feel that we do need to have some kind of written definition to protect consumers?

• (0950)

Prof. Timothy Wu: I said earlier that I am in favour of the statutory law, for the reasons I suggested earlier. I share exactly the same concerns you do. Canada needs to take a careful look at the United States and learn from some of the errors. The inequality problems in the United States are really serious and each of them is earned by us. It has to do with policy and each of the things you're talking about contributes to these problems.

One thing I'll say about antitrust is that a predictable consequence of allowing an extreme concentration of industries is that they have increased political power of the kind you are talking about. These are small groups, which are very organized, that understand the payoffs from investing in legislation. In the United States, for example, the pharmaceutical industry invested \$117 million in lobbying to prevent drug prices from going down. That has benefited them to the tune of \$70 billion a year. The concentrated groups understand this. Failing to enforce the antitrust laws and allowing industries to over-concentrate will lead to stronger political pressure on people like the people in this room.

The Chair: Thank you, Mr. Angus.

Yes, go ahead, Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: Because Mr. Angus and I were going down this line of questioning, it might be helpful if the analysts sent Professor Wu subsections 27(2) and 36 of the Telecommunications Act, some information about that and how we protect.... We don't necessarily have the same distinction between telephone carriers and broadband in our law. If Professor Wu comes back in writing and says that this is insufficient and here's how we might want to protect it further, that might be helpful to us, rather than our putting questions to him orally now when he doesn't have the context in front of him. I don't know if that's possible, but it would be helpful to us.

The Chair: I'm sure we could make that happen.

Are you okay with that, Mr. Wu?

Prof. Timothy Wu: Sure. I'm open to my national duty.

By the way, when are you guys going to hold a hearing on the NHL and the Olympics? I want to know about that.

Some hon. members: Oh, oh!

Prof. Timothy Wu: That's what I'm upset about. I have an editorial in today's *New York Times* asking the Canadian Parliament to allow Canadian athletes to play if they want to, and proposing a law for the Canadian Parliament.

I know that's aside from net neutrality, but it's an issue that concerns me very deeply.

Mr. Charlie Angus: I prefer women's hockey.

The Chair: Thanks again.

Are there any further questions for Mr. Wu?

I want to thank you, Mr. Wu, for appearing today before our committee—and we appreciate your opinions on Canadian hockey. We'll talk—

Prof. Timothy Wu: Can I make one quick closing statement?

Mr. Charlie Angus: I thought three-down football was where we were going to go on this.

Prof. Timothy Wu: Three-down football—

I do encourage you all to read that. I really enjoyed this experience. It's a pleasure and I am open to coming to Ottawa. I would like to engage on these issues from the Canadian perspective. I really enjoyed this. I appreciate the tenor and intelligence and research that was reflected in these questions. It was an honour to be here.

Thank you very much.

The Chair: Thank you, Mr. Wu.

We're going to suspend for about five minutes until we go in camera for some committee business.

[Proceedings continue in camera]

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