

S1:E6 - The Impact of Net Neutrality on the Esports and E-Gaming Industry

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In this episode of LAN Party Lawyers, Steve and Nick discuss the state of the law on net neutrality, and the cases for and against it. They also explore its rarely discussed impact on esports and the video game industry with professional streamer Kevin Murray (aka kmagic101), who offers valuable

insight and a unique perspective on this hot-button topic.

Transcript:

Nick: Welcome to the LAN Party Lawyers podcast, where we tackle issues at the intersection of gaming, law, and business. I'm Nick Brown, one of your hosts.

Steve: And I'm Steve Blickensderfer.

Nick: And together, we're going to be talking today about net neutrality. But before we get going, we need to remind everyone once again that nothing we say here is legal advice.

Steve: That's right. We are talking net neutrality today, and how it affects gaming and the video game space. And I'm really excited for our guest today, Kevin Murray, who's here to talk to us about the effects that net neutrality and the issues surrounding it have on content creators, event coordinators, and the like in the gaming space. Now, Kevin is a co-founder of GuardianCon, a large charity event that annually raises millions of dollars for St. Jude, a great cause. He's a broadcaster on Mixer for Microsoft and when he's not, when he's got so much extra spare time he's just, you know, creating extra companies on the side, entrepreneur by trade. So, very happy to have Kevin Murray on the podcast today, and quickly Nick, why don't you give us a roadmap of what we're going to talk about today?

Nick: Sure, so the topic of the day is net neutrality. We're going to talk about what it is and we're going to talk about how it affects people, and what are some of the arguments for and against it, and then we're going to talk to Kevin about what it's like for people who actually do this stuff on the ground every day.

Steve: So Nick, without further ado, what is net neutrality?

Nick: Basically it's the principle that internet service providers, abbreviated ISPs, treat all data on the internet equally. And what this means, most often, is that they won't discriminate or charge based on things like content, platform, equipment, user identity, or method of communication. So, what it is, it's the concept that prevents things like internet fast lanes, where one website is treated more favorably than another. One good example of this is that where net neutrality is in play, ISPs can't throttle or slow down content from certain websites like big bandwidth users like Netflix. It might make sense...

Steve: Or Twitch.

Nick: Or Twitch.

Steve: Or Mixer, yeah.

Nick: Any of these places that are using up a whole bunch of bandwidth, the ISPs might have an incentive to throttle them and slow them down and allow more bandwidth for other people. But, under net neutrality, they can't do that. They have to treat all data equally. It also prevents them from throttling content they disagree with, for example, advertisements for competitors. You can understand why an ISP would not want to have wonderful streaming access to advertisements that would make them lose money. So under net neutrality, all data has to be treated the same. For gamers, this means that ISPs can't introduce kinds of premium gaming plans, for example, that cost more just to get the full speed access we already enjoy to Steam, PlayStation Network, Xbox Live, and the like. And so it also prevents ISPs from selling packages based on content.

Steve: So, to put all this into perspective, we have a great example of what this means in Portugal. So Nick, take your luggage and let's go across the pond to Portugal and kind of see what happens there where there is no net neutrality.

Nick: My bags are packed.

Steve: ISPs offer packaging based on what websites or content customers anticipate consuming. So think of it like accessing websites the same way people currently do cable TV. Instead of access to all TV as a whole, they offer packages and you pick which package, extra package you want to buy. You don't get access to others without paying more. So, if you want that extra, you know, esports package where you get access to Twitch, Mixer, and the like, you have to pay, what, the five Euros or whatever extra a month. And that's just for access to the site where you have to pay for extra subscription in addition to that.

Nick: So alternatively, there will be a package for messaging, for example, where you could get Skype and certain messaging programs, there will be a different package you'd pay separately to get access to music sites like Spotify or iTunes, there would be a separate package for social media if you anticipate you want to use Facebook or Instagram or Twitter. Basically, it's broken up bit by bit, so you would buy access a-la-carte, instead of as you do now buying the internet, right, where you can just go to all these places and see what they have on your single plan.

Steve: So Nick, why don't you bring it home? Why don't we come back, from Portugal, back to the United States and tell me what is the current state of net neutrality here? Because I've heard a lot of stuff in the news recently about that.

Nick: Yeah, sure. So, for a while, there were rules that had been put in place, but they hadn't taken effect yet, so they didn't control anyone. But they were coming. They were scheduled to take effect

in the future. And these rules prohibited three main things: one, they prohibited blocking, so there was no blocking of any legal websites, two...

Steve: They blocked blocking?

Nick: They blocked blocking, exactly.

Steve: Alright.

Nick: They prohibited throttling, so no reducing speeds for certain content, like we mentioned for competitors or any other content they found a bother. And three, no paid prioritization, so that means no fast lanes that make some sites work faster than others. Now as I said, those rules had not taken effect yet, but they were put in place and everyone knew they were coming. So they were set to come into force in the future. There were some challenges to the constitutionality of those regulations by various entities in the telecom business, but those challenges failed. The courts ruled that these regulations were in fact constitutional, and when that was appealed up to the United States Supreme Court, the Supreme Court declined to take the case. And so there is binding precedent that these regulations are in fact constitutional, and so the ISPs had to prepare as though they were coming to take effect as scheduled.

Steve: But you know Nick, if you can't beat 'em, join 'em.

Nick: Yeah, exactly. And so what ended up happening is there was an administration change and the FCC ultimately killed these regulations in 2017, before they ever came into effect. So, although there was no change to the existing rules that applied on that day, they got rid of various requirements, the ones that I mentioned, that were officially set to take effect later. We don't know what's going to happen here. There are currently court challenges that are making their way through the system that challenge the repeal of those regulations, but those haven't been resolved yet so the future in this regard is really uncertain. We don't know what's going to happen.

But now what we're going to do is we're going to lay out a little bit about the pros and the cons of net neutrality. We're not going to do the traditional 1v1, but we are doing to layout some of the arguments on each side so, our listeners have context before we get into the issues with Kevin.

Steve: Okay. So Nick, I'm going to start us off by talking about the pros in favor of regulations involving net neutrality. So basically...

Nick: Alright, what do people say?

Steve: Net neutrality regulations are reasonable regulations that preserve the principles that make the Internet what it is today—free access. It promotes the free flow of information by preventing ISPs from determining what information you can see or putting some content behind an additional paywall. It also promotes competition in the marketplace by giving new startups the same opportunities as everyone else. Had these regulations not been in place, we may not have what is now Twitch, what was Justin.tv, back then. So, for example, you know, an additional example, I mean ISPs can't censor or slow walk a website or of a new competitor in a space to give themselves a competitive edge. And also it keeps costs down for the consumers by promoting competition, kind of like what we have with antitrust laws.

Nick: That's right. And so on the other side what people have said against the restrictions and against net neutrality is that at bottom they claim that the Internet got to where it is today, remember, without these restrictions actually being in effect, which they argue shows that the restrictions themselves are not needed. Other people say that as our society becomes more and more dependent on the Internet, we have to make sure that ISPs retain their ability to control their own businesses, and people have said that the restrictions that were in place, nice as they sound, were heavy-handed and would handcuff ISPs that were just trying to do their jobs and run their business.

Another argument against the restrictions is that, from a capitalism perspective, the marketplace should determine what packages can be offered and what services the ISPs provide instead of political regulators making those choices. And some people say that allowing these ISPs to offer packages like cable, like the a-la-carte system that we mentioned a minute ago, it just puts more choice in the hands of consumers about how much they want to pay and what services are right for them. Maybe some people don't care about access to the entire Internet, so long as they can use the services they like. In that regard I'll note my grandfather is not a big Spotify user, he just likes his e-mail, and maybe it will be attractive to him to pay less money to just have e-mail service without all the other stuff that he doesn't ever take advantage of.

Steve: If you told him our podcast is on Spotify maybe he would be a member.

Nick: That's a great point. He would have to buy that package under this scenario. And then, you know, the last argument against the restrictions, this is specifically for gamers, ISPs say that without the restrictions that equalize services, they would be able to create super-fast lanes that are faster than the current speeds that would allow for better services, especially for esports and online gamers, that would be interested and take advantage of those fast speeds.

Steve: Now the audience can't appreciate this, but Nick is making these statements and taking this position with a big Reese's coffee mug to his side.

Nick: The biggest.

Steve: So he's just, you know, full on right now. So, I think that was a pretty good job laying out the pros and the cons, and so I think we've laid out the groundwork to now talk to Kevin about this. And so Kevin is, as I said in the beginning, a streamer, content producer, broadcaster, he's co-founder of GuardianCon. Welcome, Kevin, to the podcast. We are very excited to have you with us.

Kevin: Hello gents, how are you?

Steve: We are doing well, thank you.

Nick: Thanks for coming.

Kevin: My pleasure.

Steve: I wanted to start it off by just going straight for it. So have net neutrality issues affected you or have they affected anyone that you've, you're aware of, I don't know if maybe internationally or whatever? Is this something that strikes home to you?

Kevin: I mean it directly affects almost every facet of everything I touch and every business I'm a part of. So, yeah, this is something that I'm passionate about. It's, I haven't seen a direct effect internationally. I don't have a lot of friends that are international broadcasters, most of them are domestic. But a lot of the people in the country are very worried about what the future is without net neutrality of our industry.

Nick: In what way?

Kevin: Like you guys were saying earlier, there is the idea that you could charge for a Twitch package. Well, not everyone can afford that, so what does that do to my viewership and my audience?

Steve: Right.

Nick: Yeah.

Kevin: And you know, how does that affect me? People already, as it is, the big thing that I always push when we talk about net neutrality is the companies don't take care of the current infrastructure that they're controlling and that they're operating, so why would we trust them in a private enterprise situation where they have no one to answer to?

Steve: Are you talking about the wonderful customer service I receive from my cable provider?

Kevin: I probably have a similar situation to you. Good thing I pay extra for business services that I never get. I actually have a viewer that works for my ISP, and he is the only one that can get my service back up and running within a reasonable amount of time.

Nick: That's a good viewer to have.

Steve: Heck, I want a viewer like that.

Kevin: Well, if we have the same ISP, we can chat later.

Nick: If anyone's listening to the podcast that wants to help us out with this, just give us a call.

Steve: That's right, we could use the help.

Kevin: There you go. So, that's how I currently fix my issues with my ISP, which I might add are quite often. Or I take to social media and get the pitchforks and the flames out and rally the mob to, you know, say terrible stuff about them.

Nick: Now, do you get a lot of responses when you do that?

Kevin: I always get a response, and I think it has something to do with because I have a decent follower count on the social media where I call them out.

Nick: And what do they say? Do they agree with you?

Kevin: Oh, they contact me. I have, still have a billing issue for going on three months now that I've been going back and forth. I have a private social media, I don't know what you'd call them, associate, that's been dealing with me via e-mail and telephone and she keeps apologizing to me that I can't get my bill fixed for the past three months.

Getting back to the topic, forgive me if I can't trust them to not, to operate in a non-regulated fashion. Now, you know, obviously government backdoor deals can be made, but from a legal sense, which is the reason we're here, I think it's better for most—like you mentioned your grandfather, Nick.

Steve: Right.

Kevin: Not the best scenario there if you're just trying to check your e-mail, but even with net neutrality, I think packages can be created. I think it's just not capping those packages. People have mentioned Netflix and they've mentioned, you know, Netflix slowing down the entire Internet.

Steve: Right.

Kevin: Well, why aren't the ISPs investing in the infrastructure in the country that hasn't been touched in many years, aside from Google Fiber, which that is even rapidly slowed down in development in places that it was going to be up and running. There are people that are still living off ... HughesNet Gen5 or whatever it is, the satellite "high-speed" Internet.

Nick: Right.

Kevin: I feel like at this point Internet should be considered a utility in a country like the United States of America.

Nick: I think Finland did that a few years ago. They declared it a basic right or, you know, some equivalent standard.

Kevin: Yeah, and I agree with that, because at the base it's information sharing and connectivity at its most basic form, obviously plenty of people love Reddit and love to look at cat pictures, but I actually...

Steve: What about, no, I'm sorry to cut you off there, but I was thinking. Kevin, you made a comment about your viewers and it might impact their ability to gain access to you, and I think that that's a huge issue and it just...

Kevin: Gain access and quality. I stream, I try and run a very professional stream and the platform I'm on allows me to stream at a very high bitrate and a 1080p resolution. Facebook allows 4K, but most people can't watch it in 4K, obviously, so 1080p feels like a happy medium. I also stream on Mixer, which is owned by Microsoft, which is available on your Xbox.

Steve: Right.

Kevin: So, a lot of my viewers watch from Xbox on their television, 1080p looks great. Twitch has a cap of roughly, some people can access a 7, 8K, I believe, bitrate.

Nick: Wow.

Kevin: And the best resolution stream on Twitch, in my opinion, is 900p. So people want to watch at these good qualities, especially like Anthem just came out last week, brand new game from Bioware. Gorgeous game. Wouldn't you want to see it the way the developers meant it to be seen if you're checking it out before you buy it?

Steve: Well, that gets into my next question is, how do you suppose net neutrality's going to affect the other side of the industry, the game developers? And I think that that point is well taken. It's going to affect the way in which their creation is consumed, right, through a very big medium, which is through the streamers, through maybe gaming competitions seen online. And if you're watching it, you know, in 720 or 480 or whatever, much lower than what it should be seen at, that's obviously going to affect your ability to say, you know, that game, it looks okay, I'm not wowed by it, because you're not really appreciating the depth of the game. And perhaps that answers that question, but do you see any other impacts?

Kevin: Roughly 60% of viewers watch on mobile anyways, so 480p is a good thing on mobile. But once you start to dip below that, you know, it gets worse and worse. Also, a lot of people don't want to use data when they're watching. They wait for WiFi.

Steve: Right.

Kevin: And a lot of WiFi connections can't even handle 480, so people are watching at low resolutions. I have people that watch on audio-only. As far as the devs go, I think it plays more to them and their ability to create online environments and multiplayer, especially with battle royales being the thing now. What is that going to do if the ISPs start jacking up prices and creating these packages that are, you know, you can have this high speed, at 500/500 let's say, but it's going to cost you \$400 a month.

Nick: Not to mention, right, that games are getting bigger, right? The download sizes are bigger, again, they got more and more, they've got to support more resolutions and they need high resolution textures, and so the sizes are going up so you'll need to actually download a bunch more just to get the game in hand, let alone then to play it and then stream it on to others. So it seems like it would only just be exponential, right?

Kevin: I have people come in and say, you know, a new release is the next day, and they're like, I'm going to start my download now, it's a 50 gig download. I should be done by the time I wake up.

Steve: Yeah.

Nick: Right.

Kevin: So I feel like we don't even have the infrastructure that we should as, you know, the country that we are and now we're talking about throttling that and offering packages? It gets really muddy and messy.

Steve: How would that affect something that you do that's near and dear to your heart, like an event? Specifically GuardianCon, because I think that you stream that live, and so how would that affect that event?

Kevin: Well, our main fundraising is through Twitch, so if you didn't have the Twitch package, you couldn't watch it. If you couldn't watch it, why would you bother wanting to donate to St. Jude? And it would directly affect, you know, our ability to fundraise for St. Jude. Not to mention plenty of other events like Games Done Quick, which is done twice a year, benefits a few different charities. Extra Life is another one. There's all of these charitable things going on in our space, and it's growing and it's getting bigger and the dollars are increasing, and something like this comes along, you're really going to cut the legs out of the fundraising that can be done. And not to mention the positivity, because gaming has such a negative connotation in the news now, people are, especially people that love gaming, want to connect to something positive.

Nick: Right.

Kevin: And if you cut the legs out from underneath that and, you know, diminish that via caps and without net neutrality, any ISP can just be like, well, you have to now pay extra to access Twitch because we know how many people are going to Twitch every month, so you have to pay extra.

Nick: Would you as the event coordinator need, it would end up costing you more to put on the event? So not just would you not get as much advertisement via, you know, Twitch, but also then the people that do see it, you know, some of that money would have to go to the infrastructure costs rather than the charity?

Kevin: Well, our fundraising, all of the money goes directly to the charity. The event is paid for by the attendees through ticket sales and things like that.

Nick: Would the ticket prices go up then, if you had to pay extra for higher connections?

Kevin: I would say yes, because our package usually demands, because we do esports events and things at the physical event, so our package usually for internet, for us to create is usually very expensive. I could see the IT companies in these spaces that we work in not absorbing the cost and passing it off to the customer.

Steve: Right.

Kevin: So I would say yes. And the price increases in internet when it comes to events is, people don't believe me when I show them the bill after the event. Last year we processed it and one of the people who work for me was like, this is just for what we got in Internet? I said yeah, that's it. That's it.

Steve: I'd probably balk at paying that bill.

Kevin: Yeah, we would end up biting the bullet. There's no way that the company that provides Internet, and usually it's contracted within a venue so you only have one choice and one place to go and that's it.

Steve: Well, I can imagine these same problems are going to exist for any esports competition. It's just going to raise the cost of doing business and so...

Kevin: Yep, same exact thing.

Steve: ...that cost, instead of going to a free sporting event, I imagine most of them are free now, I don't know for sure but then you're going to start to have a ticket that you have to pay to go in for, you know, menial ones that are not that big of a deal.

Kevin: Yep.

Steve: But they are for a particular game. And you know, the community that's trying to establish a growing, enthusiastic base is going to take a hit, you know? You're going to have kind of a trickle-down effect in that regard, I would imagine.

Kevin: Yeah, I feel like the gaming industry as a whole is heavily dependent on something like net neutrality to stop ISPs from taking advantage of such a technologically advanced society, for lack of a better way of putting it.

Nick: Right. So what do you say to the people who say, you know, without net neutrality we can open up superfast lanes that would allow even better services for esports and online gaming? I mean, what do you think about that?

Kevin: I say, at what cost? That is the first thing out of my mouth, because not everyone can afford what they're proposing. And the second thing is you can't manage what you're doing right now, so now you're going to create packages for superfast lanes and then when you can't meet those speeds, because I'll tell you right now, I ain't getting the speeds that I paid for...

Nick: I know what that's like.

Kevin: ...and I paid extra to have my house built with hard-wired lines in it. So you're going to tell me and sell me a package when you can't even meet what you're saying now? So I think it's very important for those people to understand that we are dissatisfied with what they're doing now and that to ask them to trust us, trust them further is ridiculous in my opinion.

Steve: So Kevin, if I were to take, every now and then I whip out my crystal ball and I hand it to who we're talking to, and I'm handing it to you right now. So if you were to look into your crystal ball and ask, where is the industry going with or without net neutrality with respect to connections and things like that? Do you have any predictions?

Kevin: I think there's two scenarios that play out there. One would be with. I think it can thrive, it can grow. I think it will grow beyond gaming as it's already doing. Plenty of other industries are starting to use the live streaming space to do other things.

Steve: That's true.

Nick: Yeah, you see it everywhere now.

Kevin: One example, and it's a little ridiculous, but one fun example is professional wrestling is really utilizing streaming right now.

Nick: Really?

Kevin: And it's having a positive impact on that industry. I know it's a weird example, but I feel like it's a good one.

Nick: That's cool, I didn't know that.

Steve: It's actually a success story about how it's just reinjected new life into this sport and engages this community through live streaming.

Nick: Probably in no small part because it's, you know, it's cheap and easy if you have internet to be able to just turn on the stream instead of having to go to an event or find out, you know, watch pay-per-view or something like that.

Steve: Right.

Kevin: The NFL's doing it with Thursday Night Football on Twitch, because it's owned by Amazon. MLB's doing it on Facebook. They're testing live. So there's success stories to be said outside of the gaming world, that live-streaming is the future. I feel like if you impose packages and fast packages, you're not catering to the broader audience if you are the NFL, or you are professional wrestling promotion, or you are a game dev. That's going to hurt how you are reaching people. Now, the real nitty gritty of that is that there's money being lost in the TV world, so how is, you know, if NFL starts shifting games over to the Internet live streaming 'cause it's fun to watch a game with a chat room, what does that do for the NFL Network or CBS that usually carried Thursday Night Football?

Steve: Right.

Kevin: I feel like there's an exchange there and there's some people that are not happy with how that would play out. So looking into the future, I feel like there's a battle there.

Steve: Yeah.

Nick: Clash of the titans.

Steve: Well, you may have some powerful allies. So we definitely don't know where this is going, but there are certainly going to be problems for gamers. Do you know of any organizations that are gamer-centric around the net neutrality issue?

Kevin: None specifically. There's been a lot of petitions floating around. I don't think anyone's really going to go for it until one of the ISPs tries to do something, and I think the ISPs are way too scared to do anything right now. You're talking about companies that have, you look at their ratings online of customer satisfaction and most don't even push a three, maybe a two.

Steve: Scale of 100, right?

Kevin: Yeah, yeah. To start introducing like Nick was saying before, you could have protests at this point, like, it's bad.

Steve: I will literally take my pitchfork out of my closet. And my closet's small, but I've got a pitchfork in there.

Kevin: You wanna see a group of people learn to tether through their cellphone on unlimited data plans quickly?

Steve: Right, exactly.

Kevin: Introduce a fast plan and throttle the rest of your customers and see how that works out. So I think they're too scared to make a move and introduce something like that, but we'll see. Two years, you know, society is very forgetful and someone may try and slide it under the rug when no one's looking. And I think that's when you'll see activism, groups of people, you know, Internet is a right and so and so forth.

Nick: Well, that is fascinating. It's really interesting to hear from someone who's on the ground and knows all about this because you're wading through the business every day. So thanks so much for

taking the time to sit and talk with us about this, Kevin. It's really fascinating issues and we appreciate your perspective.

Steve: So Kevin, why don't you give us your handle? Where can people connect to you if they wanna connect to you?

Kevin: I'm @kevinxvision on Twitter, kmagic101 everywhere else. Mixer is where I broadcast Monday through Friday around 9 am Eastern every day. That's where you can find me.

Steve: And if they're kind of low on the caffeine level, where can they find your delicious coffee?

Kevin: I do own a coffee company. It's called King's Coast Coffee. You can go to kingscoastcoffee.com.

Nick: I did a little bit of research on that and I can assure you that it is delicious.

Steve: Well, Kevin, thank you so much for joining us today. We really appreciate it and you have a good one.

Kevin: Thank you, guys, it's a pleasure.

Nick: Appreciate it. We're looking forward to GuardianCon.

Kevin: I'll see you there.

Steve: Nick, I feel like that was a successful and informative interview, and I don't have anything else, unless you do.

Nick: That's all I've got, but keep a look out for other podcasts. We've got more episodes coming up on other issues that affect gamers in the legal and business arena.

Steve: Until next time.

Nick: Game on.

Steve: Game on.

...

Steve: And we're back!

Nick: One more thing before we go. We're here with a special segment that we like to call The Extra Life.

Sometimes after we record an episode, there are other developments on the issue, and we wanted to make sure to bring them to your attention. And so here we just told you in the episode that the future of net neutrality is uncertain and that's absolutely the truth here, because after we recorded the episode, the United States House of Representatives actually passed net neutrality legislation.

Steve: It's called the "Save the Internet Act," and it basically would prohibit blocking and throttling web traffic and would characterize broadband as a service open to regulation. But it's expected to die in the Senate, which we all know is controlled by a different party. The Senate leader actually called it "dead on arrival."

Nick: And even if it somehow passes the Senate, we understand it faces another hurdle from the executive in the form of a veto, so it may not go anywhere. But we wanted to let you know that there's been action on this issue.

The other thing we wanted to tell you is we talked about some litigation that's challenging the repeal. That litigation is still ongoing, but we hear we may be able to see a decision in that case as early as summer 2019. That's The Extra Life, but keep an eye out for how these net neutrality issues develop over time in the future, and in the meantime...

Steve: Game on.

Nick: Game on.

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