

## **Public Policy and Funding the News**

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## **Antitrust Policy and the United States News Media**

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### **Overview**

The production and distribution of news media is critical to the fabric of society; media and entertainment products feed modern culture, shape policy debate, foster education in schools, provide entertainment, and increasingly permeate every facet of daily life. Even in the age of the Internet, traditional news plays a critical role in feeding information out to consumers and to online news Web sites.<sup>i</sup> And while the media industry has long claimed to be an independent voice, monitoring and policing the actions of government agencies, this report highlights the longstanding intertwinement of government policy and media ownership.

Researchers and practitioners alike have debated the role of government in media for more than a century. This is an issue driven by both the political left and right, and has been the subject of countless tomes of opinions and scholarly work. Even in the realm of research, camps have evolved to advocate various perspectives. Political economists advocate free market empiricism, while many conservative free market advocates focus on research that advocates an open market approach.<sup>ii</sup> Media economists approach policy research from a quantitative focus, disregarding certain public interest arguments.<sup>iii</sup> Regardless of political orientation, the truth is that government has played a role in media since

the founding of the republic. From government published news briefs to direct subsidies for the industry, there is a longstanding precedent for government involvement. Today, however, the industry is in the midst of a period of marked upheaval. The big picture is relatively simple: New technology is enabling a transformation of the industry and consumers are increasingly turning online for news. In the online space, however, margins are significantly smaller and competition notably higher, resulting in decreased profits for the newspaper industry.

In the midst of ongoing research and commentary, this brief provides a comprehensive overview of the current role of media policy. First, the current state of the media and news media industries are briefly discussed. This provides a historical perspective on the state of policy today, and a frame through which current media policy can be examined. Second, the historical role of government in media policy is considered. This provides the reader with an understanding of previous interventions, and the resulting impact that such policy acts have had. Further, this provides a clear understanding of the longstanding relationships between the government and the newspaper industry. Today many policy makers balk at the notion of a government stake in the media industry, but the truth is that government has actively supported and subsidized the printed news business since its inception. Lastly, building on both the current state of the industry with the historical background of the industry, the third section of this brief examines current industry initiatives and the related policy implications. Many practitioners have proposed new models and new technologies as

solutions for the struggling newspaper industry; the conclusion examines these proposals from a policy perspective, and offers suggestions for future directions.

### **The Entertainment and Media Industries Today**

The entertainment and media industries today represent a vast and complex network of interlocking corporations spanning across industry sectors. This network is increasingly complicated, as Internet media companies have created a vast category of hybrid organizations. For example, as illustrated in Figure 1, the growth of diversified Internet corporations has created interlocking relationships amongst a swath of previously disconnected corporations.<sup>iv</sup> For instance, both Viacom and Time Warner now rely on Apple as a growing distribution channel (primarily through its online iTunes store). While Apple originated as a computer technology company, it is now the leading distributor of music in the country – online or offline.<sup>v</sup> Thus, there is a blurring of boundaries between digital business sectors. The news industry represents another instance of this. News production was once the domain of traditional newspaper companies, but news today is produced in a variety of forms including blogs, social media sites and online commentators. In fact, a composite tracking of online traffic found that the social news site Digg.com is the third most visited site for online news, after CNN.com and Yahoo! News, and just ahead of NewYorkTimes.com.<sup>1</sup>

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<sup>1</sup> <http://www.ebizmba.com/articles/news-websites>

It's often hard to gauge the size and scope of entertainment and media industries in the United States, given the increasing interconnectedness of various sectors. Advertising revenue is often considered to be a proxy for industry health. PricewaterhouseCoopers estimates advertising revenue for the United States entertainment and media industries at \$161.1 billion in 2009.<sup>2</sup> Although this represents a 15 percent decline from 2008, this is largely due to economic conditions paired with struggles in the newspaper industry.<sup>vi</sup> Despite declines in the past few years, the industry as a whole is expected to rebound, and spending will recover over the next few years, but challenges remain for the entertainment and media industries.

### **Challenges in the Newspaper Industry**

While the past two years have been particularly painful for the United States economy, the numbers for the news media industry are particularly troubling. The industry, overall, is struggling, but for newspapers in particular the numbers are bleak. Total newspaper advertising is expected to fall by a cumulative 32.7 percent over the next three years, through 2012. Furthermore, print advertising is predicted to fall from \$36.7 billion in 2008 to \$24.3 billion in 2013. Thus, despite the general stability of the media and entertainment industries, traditional news is facing a bleak business outlook.

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<sup>2</sup> Entertainment and media industries: newspapers, consumer magazines, filmed entertainment, television, business-to-business publishing, radio, video games, television subscriptions, Internet access, Internet advertising

While many had hoped that online advertising would prove to be a saving grace, this has not proved to be the case. Online advertising for newspaper companies is predicted to decline in the short term, but increase overall to \$3.7 billion in 2013. This, however, is a meager amount compared to other digital sectors; online gaming, for instance, is expected to generate \$73.5 billion in advertising revenue in 2013. While the newspaper industry is often the poster child of the clash between traditional and new media, other media have suffered similarly. Over the next half decade, magazines, business-to-business publishing, radio and recorded music sectors are all expected to face challenges including declining advertising revenue.

In all, United States newspaper companies are expected to have lost \$25 billion in revenue by 2013 from the industry's peak in 2005. The traditional mainstay of the newspaper industry, print advertising, is in a veritable downward spiral further emphasizing the industry's decline. By 2013, print advertising revenue for US newspapers is expected to drop \$13 billion, accounting for a majority of the continued industry decline.

Digging deeper, classified advertising has declined markedly and will continue to tumble. According to PricewaterhouseCoopers, recruitment advertising will be down another 50 percent by the end of 2009. Real estate advertising is expected to drop 45 percent and automotive advertising is expected to decline another 28 percent. With regards to retail advertising, revenue is expected to drop 10 percent over the next year (by 2010). This money has bled away from traditional print, with portions accounted for in the growth of

online advertising (as illustrated in Figure 3). There is a clear parallel between the decline in newspaper revenue, and the rapid increase in online classified income. In addition to trouble with print revenue, the Interactive Advertising Bureau (IAB) and PricewaterhouseCoopers report that online ad revenue in the U.S. market sank to \$5.5 billion in the first quarter of 2009, down 10 percent from \$6.1 billion in the fourth quarter of last year – and down 5 percent from the first quarter of 2008. It is the first major slump of its kind since the burst of the dot.com bubble in 2002; revenue levels dipped – although not this drastically – in 2008.

While the outlook may look bleak, newspaper production is a storied industry and despite current challenges there is hope that new business models will help to bolster the industry. As newspaper companies to develop new revenue streams, significant challenges abound. In the online arena, the development of multiple technological platforms and standards creates a muddled market for publishers. In addition, as newspaper companies seek to protect existing revenue, they are seeking relief from current competitive threats of other media companies including online publishers and aggregators. It is here that the government has the greatest potential to offer legislative relief. Whether in the form of antitrust exemptions, tax relief or fiscal subsidies, there is the potential for government intervention to assist the news industry through this period of transition. This type of intervention is not without precedent.

## **Historical Context**

Looking back, there is a clear precedent for government intervention on the behalf of struggling industries. At the same time, the U.S. government continues to be wary of antitrust violations. Dating back to the late-19th century, federal acts protecting open-market competition were established and most have remained in place to this day. From time to time, exemptions have been made in order to protect public interests, but these initial legislative acts provide the foundations for current antitrust regulation.

### *Sherman and Clayton Antitrust Acts*

The Sherman and Clayton Antitrust Acts are the core legislative acts governing business competition in the United States. The Sherman Antitrust Act was established in 1890 in order to limit the ability of corporations to form cartels and monopolies. This act forms the basis for most antitrust action taken by the U.S. government, even today. The main points of the Sherman Antitrust act are the prohibition of any action that unreasonably restricts competition and affects interstate commerce. Furthermore, the act prohibits any company from actively maintaining monopoly power in a given market, or actively seeking and maintaining monopoly power.

Subsequent to the Sherman Act, the Clayton Antitrust Act was passed in 1914. This act was intended to bolster provisions in the Sherman Act, and further restrict anticompetitive practices. With concern to the newspaper industry, the relevant provisions in the Clayton Act are those banning anticompetitive mergers and acquisitions. The Clayton Antitrust Act clearly prohibits any acquisition or



stocks or assets “where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.”<sup>3</sup> Thus, this act clearly stipulates that mergers are subject to congressional legislation and oversight, with the intent that such oversight will prevent harm to the open market, and to open competition. The Clayton Act is particularly relevant to horizontal mergers within the media industry; consolidation of voices in a single market potentially reduces the diversity of news. The Clayton Act provides for oversight of such horizontal mergers, although it has not always been strictly applied.<sup>vii</sup>

#### *Antitrust Policy and U.S. Media*

The Sherman and Clayton Acts set the standard for antitrust regulation in the United States across industries. With regards to radio and television broadcasting, the 1934 Communications Act has played a longstanding role in setting antitrust policy. The act established the Federal Communications Commission with the authority to allocate licenses and enforce subsequent rules and regulations. The language of the 1934 Act stated that it was intended to maximize the use of spectrum for public interest and convenience. The intention was never focused on profits, or profit maximization; the emphasis was on public good.<sup>viii</sup>

Subsequent to the 1934 act, limited changes were made to antitrust policy; most changes to newspaper antitrust policy were decided through court

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<sup>3</sup> Clayton Act § 1, 15 U.S.C. § 12

cases. In *Associated Press v. United States* in 1945, for instance, the U.S. Supreme Court ruled that the First Amendment was intended to insure a diverse array of news sources, and protected against monopolistic control promoting singular viewpoints.<sup>ix</sup> Between 1945 and 1969 only a dozen antitrust actions were filed against newspapers. Most cases, such as *United States v. Harte-Hanks Newspapers Inc.* in 1959 and *United States v. Times Mirror Co.* in 1967, reinforced the court's desire to protect diversity of voice in media markets.<sup>x</sup>

The act remained largely unchanged until the passage of the 1996 Telecommunications Act. When the 1996 act was passed, it relaxed ownership regulation on radio broadcasting, and paved the way for numerous mergers across industries. The act had less of an impact on newspapers, as compared to other industries, as it mostly sought to address changes within the telecommunications industry. In particular, the 1996 Telecommunications Act had a notable effect on concentration in the radio industry. The act completely lifted restrictions on the number of licenses that can be owned by a single company, although restrictions remain in single markets. In the 10 years following the passage of the act, there has been a 6.8 percent increase in the number of commercial radio stations, paired with a 39 percent decrease in the number of radio station owners.<sup>xi</sup> Additionally, the concentration of stations between the top two owners increased exponentially during this period. Clear Channel Communications owned 62 radio stations in 1996, and 1,100 radio stations in 2007. Likewise, Cumulus Broadcasting Inc. owned 53 stations in 1996, and more than 300 stations in 2007.<sup>xii</sup>

The act loosened ownership restrictions on television station owners as well. Prior to the act's passage, television station owners were allowed to own stations reaching a maximum of 25 percent of the U.S. population; this was loosened to 35 percent. New licensees are also now allowed to purchase both broadcast and cable television stations within the same market, but are still prohibited from purchasing newspapers in those markets. Thus, the act significantly restructured the shape of the television and radio industries, but left antitrust regulation of the newspaper industry largely untouched.

It is important to note that in the context of antitrust regulation specifically governing concentration in the media industry the framework for regulation has existed since 1934. Subsequent regulation has grown out of modifications or adjustments to the original spirit of this legislative work. While antitrust legislation is generally intended to preserve healthy competition, it has not always been effective in the case of media organizations. One issue remains ownership of newspaper companies. As of 2002 family-controlled companies owned only 290 of the more than 1,500 daily newspapers in the United States.<sup>xiii</sup> Corporate interests increasingly control newspapers in the United States. Moreover, controlling corporations are often media conglomerates with interests in multiple markets and multiple countries.<sup>xiv</sup>

### *Joint-operating agreements*

Thus, longstanding antitrust policies have had a decidedly mixed effect on the U.S. newspaper and media industries. Significant portions of media regulation have been delegated to the FCC, leaving many policies in the hands

of a politically dominated rule-making process. There is, however, one notable exception. In the 1960s and 1970s, many two-market newspaper towns faced the risk of losing their second newspaper, and in turn losing a second democratic voice. In response, the Newspaper Preservation Act of 1970 essentially granted an exemption to current antitrust laws to 44 newspapers. The law has allowed these 44 newspapers to function through 22 joint agreements to share of costs on inputs for editorial production.<sup>xv</sup> The act was most recently employed in 2002 in order to grant an exemption to Scripps' Rocky Mountain News and MediaNews Group's Denver Post.<sup>xvi</sup> The Rocky Mountain News subsequently ceased operation in 2009, despite the JOA.

The Newspaper Preservation Act was a controversial piece of legislation. Proponents argued that the antitrust exemption was needed because the importance of diversity outweighed any competitive costs. On the other hand, opponents of the act argued that weekly newspapers, suburban newspapers and national news services provided a clear alternative for those seeking diversity of information. Independent newspapers as well as the New York Times and the Newspaper Guild supported this perspective.<sup>xvii</sup> Further, the legislation itself was seen as relatively ineffective. In essence, the exemptions of the Newspaper Preservation Act granted antitrust exemptions in 22 markets, many of which are major metro markets such as Chicago, Seattle and San Francisco.<sup>xviii</sup>

Application of the Newspaper Preservation Act has been complicated by controversy. There have been a number of allegations of creative accounting in order to lower revenues to gain antitrust exemption under the act.<sup>xix</sup> Exemptions

are governed by the Justice Department, and as a result application of the act is subject to interpretation by the Justice Department and whichever political party happens to be in power. Ultimately, the effect of the Newspaper Preservation Act is unclear. Many have argued that the act has artificially preserved fiscally unfit newspapers. Between 1991 and 2006, 12 of the 22 Joint-Operating Agreements formed under the 1970 act dissolved. While JOAs were intended to preserve diversity, the government has, perhaps, failed to fully enforce mechanisms intended to preserve JOAs and prevent their rapid dissolution.<sup>xx</sup>

The Newspaper Preservation Act, however, is notable given the state of today's newspaper industry. This is a clear instance of the U.S. government intervening to preserve industry structure in favor of public interest. How does this differ from today's market? Increased competition today is in the form of Internet news, blogs, social media and digital classified, but the threat to diversity of public voice remains. While few two-newspaper markets exist, there is a clear precedent for government intervention in order to preserve any diversity of voice, even if that means retaining the single remaining traditional news source.

With regards to changes in the newspaper industry, one of the main concerns for media companies lies in the language of the first section of the Sherman Act, prohibiting the formation of cartels. Many within the industry feel that exemptions to the prohibition of cartels or partnerships are needed in order to successfully compete against increased pressure from new news sources.<sup>xxi</sup>

JOAs are one example of the type of legislation that provides a basis for exemptions from the Sherman Act.

*Cross-ownership regulations*

The Newspaper Preservation Act is ultimately a rare instance of congressional intervention. Cross-ownership represents another avenue of government regulation over media interests. On the other hand, however, cross-ownership control is regulated by the Federal Communications Commission and is subject to an entirely separate regulatory structure. The term cross-ownership generally refers to common corporate ownership of multiple media outlets within the same market. The federal government has used cross-ownership regulation over the past half-century as a means of controlling concentration in local markets.

There are six key components to the FCC's media ownership rules. The newspaper/broadcast cross-ownership rules prevent a single company from owning both a local newspaper and television station in one market. The radio/television cross-ownership rule places limits on the number of television and radio stations that may be owned by one company. In any city, the maximum number is one television station and one radio station. If there are at least 10 independently owned media outlets, a company may own two television stations and four radio stations. If there are at least 20 independently owned media voices in a market then a company may own up to 2 television stations and 6 radio stations, or 1 television station and 7 radio stations. The local television multiple ownership rule prevents a company from owning more than one television station in a community, unless there are at least eight other stations in a market. The local radio ownership rule limits radio ownership depending on the

number of stations in a market. If there are fewer than 14 stations, a single company can own up to 5 radio stations. The dual network rule prohibits a merger between any of the four major television networks. Lastly, the national television ownership and audience cap limits any single company from owning television stations that would reach more than 39 percent of households.

In 1975 the Federal Communications Commission adopted a rule banning the cross-ownership of newspaper and broadcast or radio stations within the same market. When the ban was adopted, 40 cross-owned properties were allowed to remain as they had been in place before the rule's passage. The rule has remained intact despite numerous attempts to loosen the restrictions. In actuality, the rules date back beyond 1975. Ten years earlier, in 1965, early legislation banned certain forms of cross-ownership in top-20 media markets.<sup>xxii</sup> From the start, the cross-ownership rule was criticized as being ineffective. Research has shown that homogenization of news occurs regardless of cross-ownership and that ultimately the rules would prove ineffective.<sup>xxiii</sup>

In 2003 the FCC proposed new ownership regulations that relaxed the cross ownership ban. The rules passed by a vote of 3-to-2, directly along party lines. This rule-making process emerged as a marquee battle in the media policy debate, with supporters of media diversity squaring off against supporters of open-market policies. Public opinion fell against the proposed loosening of cross-ownership rules, although a large number of Americans remained unaware of the debate.<sup>xxiv</sup> The debate that followed the rule proposal ultimately pitted interest groups against one another, with the general public remaining disengaged.

Proponents of loosening the rules argue that cross-ownership rules harm the newspaper and radio industries; a loosening of the rules would allow two struggling industries to merge resources. A select number of markets benefit from cross-ownership exemptions. As of 2007, there were 29 cross-owned newspapers and television stations in 27 different markets.<sup>xxv</sup> Changing the rules would allow benefits to be realized across the country. On the other hand, supporters of the ongoing cross-ownership rules argue that the logic of merging two failing industries is flawed at best.

Although the FCC passed the new rules, in 2004 the Third Circuit Court remanded the revised ban back to FCC for revision. The circuit court's ruling backed the FCC's opinion that relaxation of cross-ownership enabled local-media diversity, but did not find sufficient justification for the new rules. While the FCC continues to negotiate cross-ownership rules, the original 1975 cross-ownership ban remains largely intact. In 2007, the FCC passed a new set of rules echoing those passed in 2003, but again the rules were challenged in the Third Circuit Court of Appeals in Philadelphia. While any decision on the case is still pending, it appears likely that the courts will echo their 2004 ruling.<sup>xxvi</sup> Any rule from the Third Circuit Court is likely moot, as the U.S. Senate Committee on Commerce voted in April 2008 to invalidate the FCC's rule making.<sup>xxvii</sup>

While cross-ownership policy has continued to be a source of controversy, there is some evidence that regulation has had a positive impact on local media diversity. A 2007 study of within-market differences between cross-owned stations and other news sources found that local television coverage for cross-



owned stations contained 4-8 percent more news coverage than the average for non-cross-owned stations. Similar results were found for local news coverage and political coverage.<sup>xxviii</sup> The Project for Excellence in Journalism conducted a five-year study finding that cross-ownership is associated with higher quality local news. Their research looked at 23,000 news stories from 172 different stations, although only six were operating under cross-ownership.<sup>xxix</sup> There is a clear argument for efficiencies gained from combining the news gathering resources of newspapers with those of broadcasters.<sup>xxx</sup> This argument does not, however, account for the loss in diversity of voice, nor the argument for open and democratic debate on policy and political issues.

Antitrust policy in the United States is rooted in the longstanding Clayton and Sherman Acts. These laws have provided the basis for competitive regulation to this day, yet the media industry has often been governed by a separate standard. With regards to media, the government has consistently emphasized the importance of public debate, first with the Newspaper Preservation Act and second with the FCC's regulation of cross-ownership rules. Recent changes to these rules have dramatically increased competition and opened the door to increased competition, but done little to preserve the existing institution. Looking forward, questions remain about the role of antitrust policy.

### **New directions: Current industry initiatives and policy issues**

Despite the longstanding history of government involvement, and various forms of government subsidies, the industry is in turmoil. The previous section

provides an overview of the government's history in supporting the newspaper industry; the following section examines current changes in the industry and relevant policy implications. This is not a comprehensive review of proposed solutions to the industry's woes. Rather, this provides an examination of proposed regulatory solutions, as well as the regulatory issues that have been proposed from within the industry. In combination with the previous sections, this highlights the ongoing role of government regulation in the transformation of the news industry. Proposals have been put forth by a number of different industry interests. First, a number of proposals have been put forward under the umbrella of the federal government. Second, within the industry itself there are a number of initiatives to both preserve the current industry and transform it into a more competitive structure.

### *Federal Regulation*

Current indications are that the FCC will revisit cross-ownership regulations sometime in the coming year. Commissioner Copps stated that revisions to existing rules may be necessary in light of recent changes in the industry.<sup>xxx</sup> This perspective, however, is not held by all of the FCC's commissioners. Chairman Genachowski, nominated to the post by President Obama, has indicated that he is less likely to loosen regulatory rules. Although he has publicly stated that he is unlikely to revisit the Fairness Doctrine in any form, Genachowski is likely to advocate for protecting existing cross-ownership rules.<sup>xxx</sup> As the previous section indicates, it's unclear what effect this will have on industry structure.

Policymakers, however, have continued to push for a re-examination of antitrust rules and policies. In March 2009, House Speaker Nancy Pelosi sent a letter to the Justice Department urging a loosening the view of media competition in order to allow for a wider area of media mergers.<sup>xxxiii</sup> In her letter, Pelosi noted that the focus of the government should be in ensuring that “our policies enable our news organizations to survive and to engage in the news gathering and analysis that the American people expect.”<sup>xxxiv</sup>

Such a move would lend credence to proponents in favor of loosening cross-ownership rules; a loosening of views of media-competition would nullify current cross-ownership policy and weaken previous barriers used in legal challenges. Pelosi’s letter coincided with increased pressure on the Hearst Corporation to find a buyer for the San Francisco Chronicle, although Pelosi aides reported to the Los Angeles Times that the letter was not based in any veiled political motive. Ultimately, however, the letter brought attention to political pressure to reexamine antitrust policy. In the following months, both the United States House and Senate convened hearings on the future of the newspaper industry.

### *House Proposals*

In order to address changes in the industry, and the potential need for legislative action, both the House and Senate convened hearings to address the state of the newspaper industry. These hearings shed light on the current attitudes of the Federal government; no new legislation was proposed during these sessions, but they have brought focus to the debate of policy and news

media. In the current congressional session, hearings were first held in early 2009, but these issues continue to be addressed on an ongoing basis. In April the House Committee on the Judiciary held hearings on “A New Age for Newspapers: Diversity of Voices, Competition and the Internet.” The committee heard testimony from seven leading thinkers, practitioners and policy makers in the industry, with the aim of addressing industry competition.

Carl Shapiro, Deputy Assistant Attorney General for Economics in the antitrust division, testified that antitrust exemptions for newspapers are not necessary. In his testimony, Shapiro discussed the many pressures facing the news media industry, noting that in the face of new technology and new competition the newspaper industry is at a crossroads. According to his testimony, as newspaper companies seek new business models, they are considering many possible alternatives, including “new revenue models for traditional newspapers, user-supplied online content including blogs, open-source approaches like wikis, crowd-sourcing, and non-profit news organizations. This is the essence of the competitive process that the Division is dedicated to protecting.”<sup>xxxv</sup> While the Newspaper Preservation Act stipulated that newspapers operating under joint agreement were exempt from antitrust regulations, the act did not make provisions for exemptions beyond those newspapers including in the original act.

Shapiro further noted that the Antitrust Division closely monitors newspaper mergers and acquisitions, monitoring not only the fiscal effects, but also the impact on readers and advertisers. The intention is to maintain a

competitive and open market system, he said. The key indicator, however, is the likelihood that in response to a merger of two local newspapers readers and advertisers would shift to other media in response to a price increase.

Additionally, as more and more mergers and acquisitions are proposed moving forward Shapiro's contention is that many newspapers may qualify as failing businesses. Thus, given the potential for digital news sources to serve as a substitution, and the lack of economic viability, the Division will increasingly advocate an open-market approach.

Testimony was also heard from a number of industry executives. Brian Tierney, CEO of Philadelphia Newspapers LLC, argued that newspapers are an indispensable source of public information, and critical to the continuation of democratic debate in the United States. As Tierney notes, the Newspaper Preservation Act is applicable only in two-newspaper markets where one paper is failing. According to Tierney, new exemptions must allow for the preservation of single newspaper markets. From this perspective, antitrust exemptions are needed to allow for the reinvigoration of the newspaper industry. Tierney notes that current policies could prevent "publishers and other journalists from experimenting with innovative content distribution and cost savings arrangements." While others, such as Ben Scott of Free Press, advocated a publicly driven solution to news production, focus in the House hearings remained on antitrust exemptions.

### *Senate Proposals*

Following the House hearing, the United States Senate Commerce Subcommittee on Communications, Technology and the Internet convened hearings on the “The Future of Journalism” in May 2009. The hearing included statements from the attorney general’s office on antitrust exemptions, as well as from the Philadelphia Inquirer, Philadelphia Media Holdings and the Newspaper Guild.

During the Senate hearing, publishers pushed for an antitrust exemption to begin discussions regarding copyright protections from aggregators, and collusive charging for online content. In opening the hearings, Sen. John Kerry (D-Mass) commented that, “If we take seriously this notion that the press is the fourth estate, or the fourth branch of government, it’s time we consider its importance to democracy.” In testimony, James Moroney of The Dallas Morning News echoed what had been said during the House hearings. Moroney argued that Congress has an obligation to push for antitrust exemptions in order to preserve diversity of voice and to allow newspapers to experiment with innovative modes of content distribution. Moroney went one step further, arguing that newspapers should be granted temporary tax relief to provide an infusion of capital, and that Congress should work to ensure that newspapers are adequately compensated for content distributed and repurposed online.

As a counter to Moroney’s testimony, Marissa Mayer of Google Inc., testified that online search engines such as Google actually aid the news industry by driving traffic to newspaper publishers. Mayer argued that compensation is provided through the creation of revenue opportunities in the form of advertising,

yet she did not discuss article compensation. Arianna Huffington, who argued that online news sites such as Huffington Post provide consumers with the variety and depth of content that they seek, further heralded the advantages of online news. The hearings provided a comprehensive review of the current arguments for preservation of diversity in the press, as well as the reality of news content online.

In the months following the Senate hearings, Sen. Max Baucus (D-Montana) and Sen. Olympia Snow (R-Maine) have proposed that newspapers be allowed to offset their operating losses over a period of up to five years, cushioning the economic blow to individual papers. Their proposal further suggests greater antitrust flexibility for the industry as a whole. Separate from the Senate hearings, Sen. Benjamin Cardin and Rep. Carolyn Maloney have proposed that the answer lies in aiding small community papers, rather than exempting major conglomerates from antitrust legislation. Their proposed Newspaper Revitalization Act would grant tax-exempt status to newspapers for advertising and subscription revenue. According to Cardin, the economic impact for major papers is notable, but more importantly the exemption could be a boon for small papers.

In September 2009, the U.S. Congress Joint Economic Committee convened a third hearing on the future of news. This hearing looked specifically at the industry's impact on the economy and over democracy in the United States. Testimony focused on economic action to support the newspaper industry. John Sturm, president of the Newspaper Association of America,

testified in support of the Newspaper Revitalization Act, and encouraged the committee to further investigate solutions to allow newspaper to be compensated for content reproduced online and distributed by competitive Web sites. One consensus, however, was that there is no singular answer to the industry's problems. Tom Rosenthal, director of the Pew Research Center's Project for Excellence in Journalism, testified that, "the only thing close to a consensus is that most likely no one revenue source will be sufficient."

### *White House Policy*

Despite congressional hearings, the White House has for the most part stayed out of the discussion of government intervention in the newspaper industry. Under the Obama administration, the White House has taken a laissez faire approach to policy governing the newspaper industry. In the Wall Street Journal, the editorial board sharply observed that "President Obama deserves credit for finally identifying an industry that he doesn't want to rescue – ours."<sup>xxxvi</sup> This, of course, is not without controversy. During the House hearings, Bernard Lunzer, President of the Newspaper Guild, commented that President Obama had in fact campaigned in favor of antitrust enforcement protecting diversity of voice in increasingly consolidated markets. Among others, Tim Rutten, of the Los Angeles Times, published a column calling on the Obama administration to allow newspapers to collude in order to charge for online content. Yet the administration continues to remain above the ongoing debate.

### **New Models and the Need for Collusion**



Challenges abound for the newspaper industry. While the political mindset appears to be in opposition to any legislative act to cushion the blow of declining print revenues, the industry itself is reeling, and actively seeking new business models for recapturing lost revenues. While revenue generated in traditional print sectors is irrevocably diminished, newspaper executives hope to slow the current downward spiral while simultaneously increasing alternate revenue streams as media companies seek alternative business operations. Many of these new proposals have focused on antitrust exemptions or government enforcement of copyright protection across Web sites.

In the midst of these hearings, there has been increased pressure to seek a solution within the industry. One central issue for traditional newspapers is that content is often aggregated by third party sources, and it is difficult to charge for each article unless there is a common mechanism for identifying ownership. This would, ultimately, require newspapers to collaborate in order to develop the technology and pricing schemes needed to capture this revenue stream. Newspapers further need to collaborate in order to develop a copyright mechanism that would allow them to license content to search engines. Ultimately both of these proposed mechanisms may violate antitrust regulations prohibiting collusion, but also those banning price-fixing. Even within the industry, however, opinions are divided. Steve Brill of Journalism Online LLC, who has worked for the past few years to develop technology to aide in charging for content, commented in *Paid Content*, “a common solution is unnecessary and ill-advised, though one might evolve.”

In June 2009, a consortium of two dozen newspaper executives met to discuss potential options for capturing revenue based on a monetization of digital content. During the meeting, three general solutions were proposed to newspaper executives. Brill presented technology that will help newspaper companies to track and charge for online content. Journalism Online hopes to collect Internet fees with the backing of participating companies. Brill hopes to have enough newspapers commit to his initiative that he can sell a common pass that allows users to view content on multiple sites without signing up individually. This type of vendor solution, as discussed above, is seen as one avenue around any potential violations of antitrust regulations. In addition, Brill views the vendor solution as a competitively superior solution to other proposals. Further, if such a solution is able to deliver a significant increase in the user base, newspapers will be able to realize the benefits of an increase in CPMs. CPMs, or costs per thousand, is the primary metric used to determine the rate at which advertising is sold online. Advertisers are charged per thousand people viewing a given page; the more popular a Web site, the higher a CPM, as that Web site is able to deliver a more concentrated group of users than less popular Web sites. According to Brill, this model was inspired in part by the success of Apple's iTunes.<sup>xxxvii</sup> The iTunes platform has shown that a common aggregator can successfully bring together content from multiple producers and charge on a common platform.

During the May publishers' meeting, Attributor Inc., offered a second avenue for monetization. The company, a Silicon Valley startup, focuses on

identifying copyright violations and tracking unauthorized distribution of content.<sup>xxxviii</sup> The third technology proposed was a system called ViewPass, which allows for the charging of content on a per use basis. ViewPass facilitates a payment system whereby newspaper publishers could charge for access through subscriptions, bundled packages, or through a micropayment system where users are charged a la carte for the content that they view.<sup>xxxix</sup> It is possible that such third party vendors as Attributor or Journalism Online could provide a partnership that would allow newspaper companies to avoid violating antitrust legislation, however the exact ramifications are unclear. Along these lines, more than 250 newspapers have joined in a partnership with Yahoo! in order to sell online ad space on local Web sites. Such “single vendor” solutions could provide a potential solution to newspaper companies.

While government interests currently appear to be opposed to any antitrust exemptions, there is a clear precedent for such intervention. First off, the Newspaper Preservation Act sets the stage for limited intervention to protect diversity of voice in local markets. Examples from other industries provide additional evidence that an intervention is not without merit. In the online space, one key argument for antitrust exemptions is the position that collusion will allow newspapers to realize higher online advertising rates. Newspapers that are able to work together generate a higher combined audience; as a result, advertisers are willing to pay more to reach a concentrated audience.

This is a difficult argument to analyze, because it requires comparing the current rates paid to newspaper companies against the rates that would

hypothetically be paid to a group of newspaper companies working in collusion. A corollary to this argument can be seen in an examination of advertising rates in the local newspaper business in the 1980s. A 1983 study in the *Journal of Law and Economics* considered the difference between advertising rates for single-market newspapers compared to newspapers operated under cross-ownership exemptions. In markets where a newspaper and television were operated under a cross-ownership agreement, advertising rates for newspapers decreased significantly even though newspaper circulation increased. In markets where newspapers and radio stations operated under cross-ownership agreements, newspaper rates did not change even though circulation tended to increase.<sup>xi</sup> The 1983 study suggested that when newspapers operated under cross-ownership exemptions, they gained production efficiencies in the newsgathering process and as a result costs transferred to advertisers decreased. The study suggests that profits would increase in cross-owned situations due to the overall increase in the number of advertisers purchasing space, and the increased number of subscribers. This is the same argument being made by newspaper executives arguing that collusion will facilitate higher CPM rates. In addition, digital advertising has the added benefit of having a minimal associated overhead cost.

The issue of online advertising rates and online revenue streams is additionally a problem of technology. In order to track online advertising rates, newspaper companies face a challenge in improving “ad serving” technology. This refers to the systems that are used to display ads based on inventory

available and purchase orders from advertisers. The capital investment required to upgrade this technology has been a hurdle for newspaper companies, and has prevented accurate tracking of ad performance. Similar technological issues plague newspaper companies' battle to protect the flow of content. For instance, in order for newspaper companies to be able to charge for content, technology must be improved to secure online "walls." That is to say, newspaper companies must devise a way to insure that content remains protected from aggregators and bloggers.<sup>xli</sup>

**Summary: Preserve and Innovate**

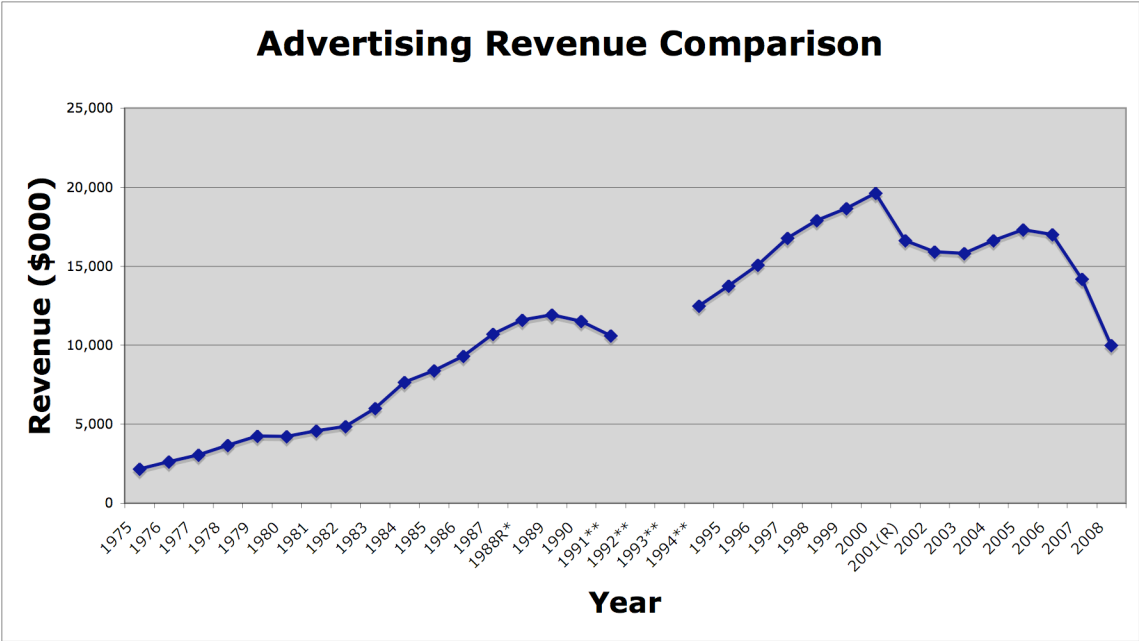
This brief has highlighted the ongoing role of government in the transformation of the newspaper industry. Historically there is a longstanding precedent of government intervention in various aspects of newspaper publishing, and more recently there has been a marked increase in rhetoric around the topic. Current discussion in both the industry and government is focused on two areas: antitrust exemptions and revenue capture from online reproduction. Both solutions represent a means of supplementing the existing revenue streams of traditional newspaper, yet much of this debate fails to address how the industry moves forward.

Ultimately the answer lies in innovation. Newspapers are a critical component of democracy in the United States and provide a critical service in the production of news and information. But temporary moves to increase revenue will not provide a long-term answer. Any actions undertaken by government interests would be best served by encouraging newspapers to use increased

revenue to supplement innovation. As Moroney noted in his testimony to Congress, any antitrust exemption should be limited to focus on experimentation with cost savings arrangements and innovative content distribution. This is sufficiently vague as to not provide guidance. Yet any congressional action should do just that; provide guidance. “Newspapers,” according to Tom Rosenstiel of the Pew Research Center, “are more than partly to blame.” If media policy continues to play a guiding role in the structure of the newspaper industry, there is therefore a strong argument to be made for legislation that mandates innovation. Any increased revenue should be dedicated, in part, to driving innovation. Such a step would provide relief to newspaper companies while encouraging growth.



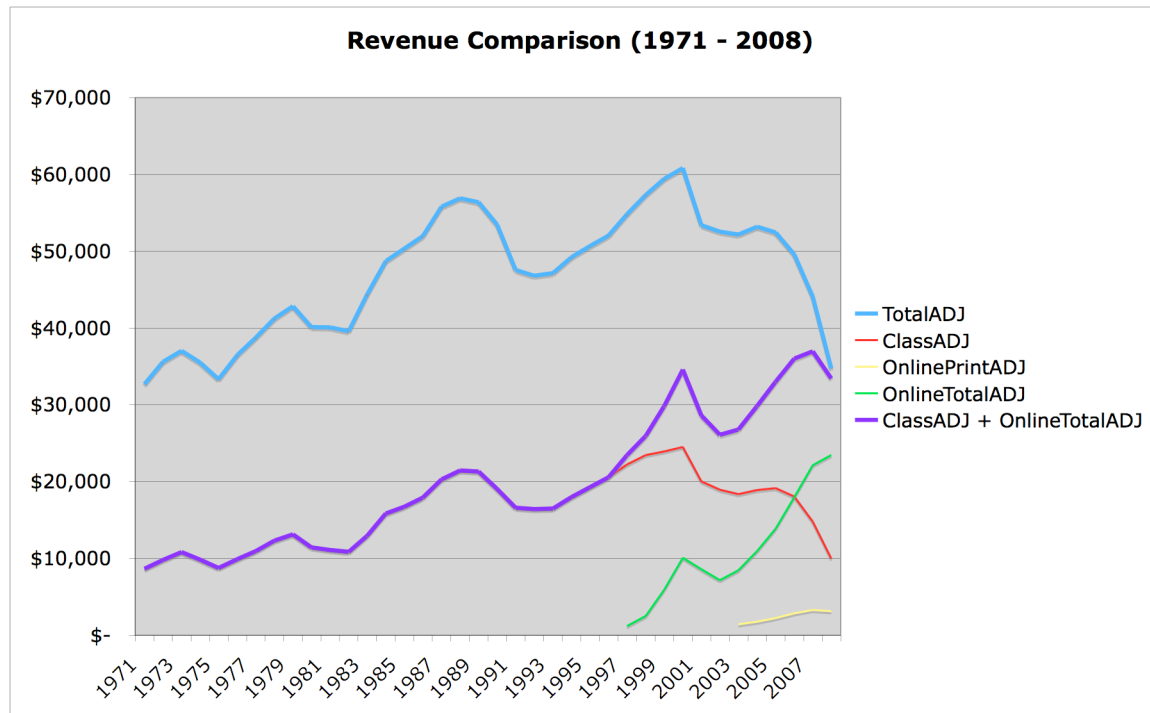
Figure 2:



Newspaper Association of America



Figure 3:



Newspaper Association of America, Borrell and Associates, eMarketer

## Appendix A

Newspapers Operating Under JOAs (Dissolution date in parentheses if applicable)

City	Newspaper	Newspaper	Dissolution
Charleston, WV	Charleston Gazette	Charleston Daily Mail	
Detroit, MI	Detroit Free Press	Detroit News	
Ft. Wayne, IN	Fort Wayne News-Sentinel	Fort Wayne Journal-Gazette	
Las Vegas, NV	Las Vegas Review-Journal	Las Vegas Sun	
Salt Lake City, UT	Deseret Morning News	The Salt Lake Tribune	
Tuscon, AZ	Arizona Daily Star	Tuscon Citizen	
York, PA	York Daily Record	The York Dispatch	
Albuquerque, NM	The Albuquerque Journal	The Albuquerque Tribune	2008
Anchorage, AK	Anchorage Daily News	Anchorage Times	1978
Birmingham, AL	The Birmingham News	Birmingham Post	2005
Chattanooga, TN	Chattanooga Times	Chattanooga Times Free Press	1999
Cincinnati, OH	The Cincinnati Enquirer	The Cincinnati Post/Kentucky Post	2007
Columbus, OH	Columbus Dispatch	Columbus Citizen-Journal	1985
Denver, CO	Denver Post	Rocky Mountain News	2009
El Paso, TX	El Paso Times	El Paso Herald-Post	1997
Evansville, IN	Evansville Courier	Evansville Courier & Press	1998
Franklin and Oil City, PA	Franklin News-Herald	Oil City Derrick	2000
Honolulu, HI	Honolulu Advertiser	Honolulu Star Bulletin	1991
Pittsburgh, PA	Pittsburgh Post-Gazette	Pittsburgh Press	1992
Richmond, VA	Richmond Times-Dispatch	Richmond News-Leader	1992
San Francisco, CA	San Francisco Chronicle	San Francisco Examiner	1999
Seattle, WA	Seattle Post-Intelligencer	The Seattle Times	2009
Shreveport, LA	Shreveport Times	Shreveport Journal	1991
St. Louis, MO	Post Dispatch	Globe-Democrat	1986
Knoxville, TN	Knoxville News Sentinel	Knoxville Journal	1991
Miami, FL	Miami Herald	Miami News	1988
Tulsa, OK	Tulsa World	Tulsa Tribune	1992

Notes

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<sup>ii</sup> Robert McChesney, *The Political Economy of Media: Enduring Issues, Emerging Dilemma* (New York City: Monthly Review Press, 2008).

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<sup>viii</sup> Douglas Gomery, *The Fcc's Newspaper-Broadcast Cross-Ownership Rule: An Analysis* (Washington D.C.: Economic Policy Institute, 2002).

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- <sup>xvii</sup> Gomery, "Interpreting Media Ownership."
- <sup>xviii</sup> Jones, "Antitrust Malaise in the Newspaper Industry: The Chains Continue to Grow."
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- <sup>xx</sup> Jason A. Martin, "Reversing the Erosion of Editorial Diversity: How the Newspaper Preservation Act Has Failed and What Can Be Done," *Communication Law and Policy* 13 (2008).
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<sup>xxiii</sup> William T. Gormley, Jr., "The Effects of Newspaper-Television Cross-Ownership on News Homogeneity," (Institute for Research in Social Science, 1976).

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<sup>xxv</sup> Jeffrey Milyo, "The Effects of Cross-Ownership on the Local Content and Political Slant of Local Television Stations," in *Media Ownership Study* (Washington D.C.: Federal Communications Commission, 2007).

<sup>xxvi</sup> Sass, "Fcc's Mcdowell: Cross-Ownership Could Save Newspapers."

<sup>xxvii</sup> "Senate Rejects Fcc's Media Ownership Rules," *Broadcast Engineering* 2008.

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