Before the
FEDERAL TRADE COMMISSION

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News Media Workshops:	)	Project No. P091200
From Town Crier to Bloggers: How Will	)	
Journalism Survive the Internet Age?	)	
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Comments of Free Press

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Nov. 6, 2009

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Introduction

Free Press submits these comments in response to the Federal Trade Commission's request for information regarding the state of journalism, and, in particular, how the emergence of the Internet has affected traditional journalism and economic models for providing news.[1] The FTC has also stated that it will hold public workshops examining these issues.[2] Given the role that quality journalism plays in providing a check on government and corporations, exposing corruption, and, above all, ensuring an informed citizenry, we are pleased the Federal Trade Commission is launching this review. Indeed, the timing couldn't be more critical.

Accordingly, Free Press takes this opportunity to address a few of the problems facing journalism and to present range of potential solutions for discussion. Free Press is a national, nonpartisan organization working to reform the media. Through education, organizing and advocacy, we promote diverse and independent media ownership, strong public media, and universal access to communications. We submit these comments on behalf our more than 500,000 activists and members from across the country.

Free Press has a strong interest in the future of journalism and the vibrancy of the news marketplace. We are currently engaged in a broad effort to solicit ideas from the public, scholars and advocates about what the response to this crisis should be, particularly in terms of government policy. Our interest is in developing creative and critical responses to the challenges facing journalism that combine smart strategies across government and the nonprofit and for-profit sectors to support public service journalism and revive the democratic role of the press in America. Our concern is that the challenges facing journalism will be used as a Trojan Horse to usher in greater media consolidation, relax antitrust laws or pursue other policies which we believe would result in less competition, less local news, and less quality news and information for our local communities

Some of the issues and recommendations presented in this filing may fall outside of the regulatory ambit of the FTC. Nevertheless, given the broad scope of issues and questions presented by the Commission, as well as the need to consider problems and solutions holistically, we believe it appropriate that a full range of issues be available for discussion in the upcoming FTC workshops.

I. Changes to News Provision and Consumption Driven by the Internet

In its notice, the FTC poses a number of questions regarding how the Internet has affected the production, provision and consumption of news.[3] On the positive side, the Internet presents opportunities for innovation with new models of newsgathering, and encourages public participation in generating and analyzing the news. On the negative side, the Internet has disrupted the old profit-deriving models that have supported news production for the greater part of the 20th century. Below, we explore many of the new prospects the Internet has made possible, as well as some of the challenges created in the online sphere.

[1] Federal Trade Commission, *Public Workshops and Roundtables: From Town Crier to Bloggers: How Will Journalism Survive the Internet Age*? Public Notice, 74 Fed. Reg. 51605 (Oct. 7, 2009) ("Public Notice").
[2] *Ibid.*
[3] *Ibid.* at 51607.

A. The Internet Has Revolutionized How Consumers Access, Consume And Contribute To Media. However, It Has Not Established Itself As A Viable Alternative To The Journalistic Functions And Resources Provided By More Traditional Media Outlets.

The Internet is changing every facet of how news organizations research, produce and distribute the news. In particular, there are three changes we believe are most important to the public interest in the future of journalism. One, the Internet has allowed for new forms of community engagement. Two, the Internet has lowered the bar to entry giving more people a voice. Three, the Internet may foster alternative journalism models, including nonprofit and community-based news sources. However, while the Internet has expanded opportunities for diverse points of view, it has not yet demonstrated that it can substitute for the journalistic functions and resources typically provided by traditional media outlets such as local newspapers and broadcast stations. Thus far, the Internet – for those who have access to it – appears to provide an enhancing and complimentary avenue for news consumption.

The Internet has provided new voices the opportunity to find an audience in ways never before possible. As access to the means of publishing expands, new voices and new outlets are becoming important players in the national political discourse. However, while the Internet can make anyone a publisher, it doesn't guarantee that information will be seen. In study after study, the majority of the most-visited news Web sites are those of established media entities. The same media companies that currently dominate the airwaves, cable, and print also seem to dominate the online space. For example, the Pew Center for Excellence in Journalism reported in 2009 that the top four news sites — Yahoo News, MSNBC.com, CNN.com and AOL News — increased their audience by 22% in 2008. According to data from comScore, this rate of increase is more than twice as fast as in 2007 and more than five times the rate in 2006.[4]

Although the Internet provides another medium for the dissemination of local news, it has yet to diminish the influence, let alone replace the importance, of the traditional newspaper and broadcast news outlets, especially in their coverage of local government and local issues. A 2007 study of online news organizations and competition in the Chicago media market conducted by Free Press is instructive here. Close to 60 percent of the stories in our sample of Chicago-specific websites were on "soft" news topics such as sports and entertainment. Only 13.7 percent of the stories in our sample of Chicago-specific websites contained original reporting, but that too was mostly soft news such as concert and restaurant reviews. In total, only 5.5 percent of the stories in our sample of Chicago-specific websites contained original reporting on hard news topics such as crime, local governance, education and local politics. More than half of the hard news stories linked to stories on Web sites owned by traditional media. Finally, the independent Chicago-specific Web sites have very small audiences. The average number of unique visitors in a single month to the independent Chicago-specific Web sites was just over 14,000. The average number of unique monthly visitors to the websites of the two major Chicago newspapers is nearly 80 times as large.[5] This was not just the case in Chicago. We found similar results in a prior study

[4] The State of the News Media. Pew Center for Excellence in Journalism. Washington, DC. 2009 http://www.stateofthemedia.org/2009/narrative_online_audience.php?cat=2&media=5.
[5] "Independent Local News Sites In Chicago Do Not Significantly Contribute to Source or Viewpoint Diversity." Adam Lynn & S. Derek Turner. Free Press, Washington DC. 2007. http://www.freepress.net/files/local_chicago_websites_study.pdf.

which examined city-specific websites in 16 other media markets. The traditional outlets still dominate, and citizens still need important ownership and antitrust rules to protect their access to a vibrant and diverse local news media.

The Internet has also provided news organizations with powerful new tools to produce and distribute local news (via Twitter, podcasts, video, etc.) It has also allowed for new forms of community engagement, involvement and accountability. Not only can the local community send in tips to a station, but they can discuss stories online, help with an investigation, submit their own videos and much more. Each of these developments invites the community to be an active participant in their local media, not just passive consumers.

One example of this trend is efforts at "crowd-sourcing" information. Crowd-sourcing engages a community of people to undertake massive research efforts that no one reporter could do alone. At its best, this is done as a "pro-am" collaboration with a small paid professional staff and a large number of novice or volunteer reporters and researchers. The "OffTheBus" project sponsored by *The Huffington Post* and NYU Professor Jay Rosen's NewAssignment.net during the 2008 election, for instance, engaged 12,000 people in a collaborative journalism effort designed to tell the local campaign stories that mainstream media missed. Amanda Michel, the project's organizer, acknowledges that this model is insufficient to provide our communities with all the news and reporting they need, but she argues, "If taken seriously and used properly, this pro-am model has the potential to radically extend the reach and effectiveness of professional journalism."[6] Noting that more than 5 million people read OffTheBus in October 2008 alone, even though the budget for 16 months of nationwide collaborative journalism was just $250,000, Michel sees a an opportunity for these models to forge a "new social contract between the press and the public."[7]

Journalists have leveraged the tools of the Internet in diverse ways as they experiment with new models for the news. Two of the new models for journalism that we believe hold the most promise are independent nonprofit news sites and community-based journalism projects.

1. Nonprofit Journalism Models

Much of the conversation about new models for journalism has focused on nonprofit or low-profit structures that might allow news organizations to better focus on their journalistic mission and strike a better balance between public needs and stock prices or shareholder returns. The nonprofit model has garnered significant attention for its potential to de-emphasize profit-making and focus on producing news. By taking the pressure off the bottom line, these nonprofit organizations may be able to invest more fully in the news product.

While this idea has enjoyed renewed attention in the current debate about the future of news, nonprofit news outlets have existed for quite some time. One of the best known is the *St. Petersburg Times*, a for-profit newspaper owned and operated by the nonprofit Poynter Institute. The Poynter Institute owns shares of the Times Publishing Company, which in turn owns the *St. Petersburg Times*.[8] Another prominent example is *The Guardian* in England, which is owned by

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[6] Amanda Michel, "Get Off The Bus," Columbia Journalism Review, March/April 2009.
[7] *Ibid.*
[8] Douglas McCollam, "Somewhere East of Eden," Columbia Journalism Review, March/April 2008.

the Scott Trust.[9] Similar nonprofit models — or for-profit ventures owned by nonprofits — exist in various forms elsewhere, including the *Christian Science Monitor*; the Manchester, N.H., *Union Leader*; *The Day* in New London, Conn.; the *Delaware State News*; and Alabama's *Anniston Star.*[10] Other longstanding examples of nonprofit news organizations include *Harper's Magazine, The Washington Monthly, Ms. Magazine* and *Mother Jones*.[11]

Many detractors worry that the 501(c)(3) would prevent newspapers from endorsing political candidates; some are concerned that nonprofits would be more susceptible to government pressure or would see their tax status challenged by subjects of their stories who didn't like their coverage. Other concerns focus on the possibility of newsrooms currying favor with their benefactors over the interests of their readers (though one could argue the commercial press could be too willing to accommodate Wall Street's interests). Indeed, these models do not completely insulate newspapers from market and advertising forces. Nonetheless, the history of nonprofit news outlets in America and abroad would suggest that these concerns are either overblown or easily addressed with the right structures and firewalls.

One compelling alternative to running newspapers as nonprofits is the low-profit limited liability corporation, or L3C. As there are not yet any examples of L3C newsrooms, we discuss this option in more depth in the section on policy changes. [See *infra* section III.B].

2. Community-Based Journalism Projects

Nonprofits are also emerging at the community level, such as *MinnPost*, a nonprofit, Web-based model that covers the Minneapolis-St. Paul area, and the *Voice of San Diego*, a four-year-old, nonprofit, online investigative site dedicated to going "out there and [getting] investigative stories."[12] With a staff of 11, the site updates throughout the day and focuses on key local quality-of-life issues through beat reporting mixed with in-depth analysis. Its revenue depends on a handful of large donors, 800 individual readers who give $35 to $1,000 dollars per year; online advertising; large grants from organizations like the Knight Foundation, as well as smaller grants from local organizations. In a recent profile of the site, the *Christian Science Monitor* lists just a few of the stories uncovered by the *Voice of San Diego*: "The police chief's rosy crime statistics were a lie, it turned out. The councilman who urged water conservation was discovered to use 80,000 gallons a month at his home, more than five of his colleagues put together. And the school board president, according to an investigation, spent a full third of his time out of town and out of touch."[13]

Although the emergence of these local news sites is to be applauded, the question remains whether by themselves they can stand in for the newsgathering operations that are downsizing or disappearing altogether. For example, in cities like Seattle and Denver where newspapers have

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[9] In Germany, there are a number of nonprofit newspaper models. The foundation-owned Frankfurter Algemeine Zeitung is widely regarded as the best German newspaper. The leftist Die Tageszeitung (TAZ) is run by a cooperative from which people can buy nonprofit shares. The TAZ remains one of Germany's major national newspapers. We thank NYU Professor Rod Benson for bringing many of these international models to our attention.
[10] Charles Lewis, "The Nonprofit Road," Columbia Journalism Review, September/October 2007.
[11] Ibid. Also see Tim Arango, "Mother Jones Tests Nonprofit Model in Race to Survive the Recession," New York Times, March 6, 2009. Other examples of nonprofit owners include Consumer Reports, owned by Consumers Union, a nonprofit advocacy organization founded in 1936. Other big special-interest magazines published by nonprofit organizations include AARP The Magazine (22.6 million subscribers) and National Geographic (5.4 million subscribers).
[12] For an informative interview with Andrew Donohue, co-executive editor of the Voice of San Diego, see "Future of News." http://www.onpointradio.org/shows/2009/02/the-future-of-the-news/.
[13] Randy Dotinga, "Nonprofit Journalism on the Rise," *Christian Science Monitor*, Feb. 12, 2008.

shuttered, only a fraction of the reporters who lost their jobs are working at the new sites, whether established by the old newspapers or organized by the laid-off journalists.[14] And even many of these initiatives are struggling to find adequate funding or a big audience.[15]

These community projects are trying to fill crucial gaps in mainstream coverage, but it is not clear that they will be able to provide the in-depth local news required to maintain an informed citizenry, let alone replace today's news institutions. "Can these nonprofits be self-sustaining?" asks Charles Lewis, founder of the Center for Public Integrity, and one of the strongest supporters of these projects. "The evidence is of course they can. Is it easily done? No."[16]

B. While The Internet Opens New Avenues For Providing And Accessing News, The Internet Also Poses Challenges For Monetizing News Consumption.

The shift of audiences to the Internet has been a doubled-edged sword for traditional media. While it has expanded their overall number of readers and given them new ways to present the news, it has also brought a decline in circulation and advertising revenue. To this end, in its notice, the FTC asks, "What are the business models, including the revenue sources, for new models of journalism on the Internet? Are they profitable? What are the prospects for future profitability?"[17]

Unfortunately, for traditional news media, there are no obvious business models for monetizing online readers at the same rate of return as print or broadcast audiences. Accurate and universal measurement tools have not yet emerged, and until they do, the marketplace for online ads will remain unstable. However, even if better measurements for online traffic emerge, it is not clear that ad value will easily translate from print to the online media. In light of these difficulties, industry has proffered alternative methods of extracting revenues, including the use of "pay-walls" and "micropayments". We discuss some of the economic and practical implications of these options in more detail below.

1. Pay-walls

Pay-walls are a term for putting large portions of your Web site's content in a protected area, only accessible to those who have a subscription or who pay to view individual items. The most prominent example of pay-walls being used is by the *Wall Street Journal*, which provides access to selected article or excerpts on its Web site but requires a log-in to access the majority of the site's content. Supporters of pay-walls argue that they generate revue from online subscriptions and help newspapers protect their print content by not "giving away the farm" online. Pay-walls have only worked in a few cases where the news or information is so specialized it can't be reproduced elsewhere. In many cases, these niche markets are also supported by specific businesses or political interests (many people charge their subscription to the *Wall Street Journal* to their business expense account, and Washington lobbying firms pay high fees to subscribe to *The National Journal* or receive a specialized trade publication such as *Communications Daily*).

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[14] See, for example, the attempt to carry on the reporting of the Rocky Mountain News by a number of ex-employees: http://www.indenvertimes.com/who-is-indenvertimescom/.
[15] Amy Gahran, "In Denver Times Troubles May Signal Difficulty of Replicating Newsrooms," Poynter Institute, April 23, 2009. http://www.poynter.org/column.asp?id=31&aid=162416.
[16] Ryan Blitstein, "The Bottom Line for Nonprofit News," Miller-McCune, March 4, 2008.
[17] *Public Notice*, 74 Fed. Reg. at 51607.

In April, the Associated Press announced it was launching “an industry initiative to protect news content from misappropriation online.” The AP plans to develop “a system to track content distributed online to determine if it is being legally used” and to ensure search pages “point users to the latest and most authoritative sources of breaking news.”[18] AP has announced it is building a “news registry to protect content.”[19] Its primary function is to serve as an “industry initiative to protect news content from unauthorized use online.” The technology behind it, though still somewhat mysterious, is described as a “microformat” that “will essentially encapsulate AP and member content in an informational ‘wrapper’ that includes a digital permissions framework that lets publishers specify how their content is to be used online and which also supplies the critical information needed to track and monitor its usage.”

The AP’s move has been met with significant skepticism. Saul Hansell of the *New York Times* suggested that the move was tantamount to the organization turning on its own members.[20] *Wall Street Journal* technology reporter Kara Swisher described the effort as an attempt to “stop the Internet from being the Internet.”[21] Another critic wrote that it “won’t work,” is a “waste of resources,” and “removes value” from news content. [22] Many of these critiques can be organized into several categories that raise serious concerns about the legality, feasibility and ethics of pay-walls.

Legal arguments against the installation of pay walls largely fall into two categories: copyright and antitrust concerns. On the former issue, Free Press believes that the principle of Fair Use is an important part of our creative and news economy and encouraging increasingly restrictive copyright laws is unwarranted.

On the latter issue of antitrust, the viability of a pay-wall system appears to rest on newspapers’ ability to fix prices and set standards as an industry-wide cartel. In May, the Newspaper Association of America assembled representatives from many major news organizations for a “secret meeting” in Chicago to discuss “models to monetize content.”[23] It was noted that “with antitrust counsel present, the group listened to executives from companies representing various new models for obtaining value from newspaper content online.”[24] After this meeting, a number of commentators raised questions about the nature of the meeting. For example, Ben Sheffner wrote in *Slate*:

> Antitrust law is complicated, but one principle is very simple: Competitors cannot get together and agree on price or the terms on which they will offer their services to their customers. It doesn't matter if the industry is ailing or if collusion would be "good" for society or necessary to preserve democracy. An agreement regarding pricing is "per se"—

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[18] “AP Board Announces Initiative to Protect Industry‘s Content,” AP Press Release, April 6, 2009. http://www.ap.org/pages/about/pressreleases/pr_040609a.html.

[19] “Associated Press to build news registry to protect content,” http://www.ap.org/pages/about/pressreleases/pr_072309a.html; for a critical analysis of its feasibility see Harold Feld, “Now Associated Press Has A Plan So Cunning Even They Don't Know How It Works,” http://www.wetmachine.com//item/1607, July 27, 2009.

[20] Saul Hansell, "The A.P.’s Real Enemies Are Its Customers," *New York Times*, April 7, 2009. http://bits.blogs.nytimes.com/2009/04/07/the-aps-real-enemies-are-its-customers/.

[21] Kara Swisher, "It’s Actually About Figuring Out How to Sell the Sizzle and Not the Steak, Dean," *AllThingsD*, April 7, 2009. http://kara.allthingsd.com/20090407/its-actually-about-selling-the-sizzle-and-not-the-steak-dean/.

[22] Tech Dirt, “Associated Press Tries To DRM The News,” July 23, 2009, http://www.techdirt.com/articles/20090723/1858235640.shtml

[23] James Warren, “Shhhh. Newspaper Publishers Are Quietly Holding a Very, Very Important Conclave Today. Will You Soon Be Paying for Online Content?” *The Atlantic,* May 28, 2009.

[24] Nieman Journalism Lab, “Newspaper execs treading carefully on antitrust laws” May 28, 2009.

automatically—illegal under Section 1 of the Sherman Act, the main federal antitrust law.[25]

In response to the meeting, news industry commentator Dan Kennedy expressed concern that one part of this business plan is to create an "artificial scarcity through an illegal cartel" in order extract higher returns on news copy.[26] While Free Press believes that any organization has a right to charge for their content, we don't endorse any strategy that would require anti-consumer actions or price-fixing. Moreover, we reject calls from the industry for an exemption from antitrust laws. The Department of Justice's antitrust division expressed skepticism about the need for any antitrust waivers for the newspaper industry in testimony before the House Judiciary Committee in April of this year.[27]

Even if digital collusion were allowed, could the revenue streams generated by pay-walls sustain quality journalism? Almost certainly not, though more data is needed. The best estimate is provided by former newspaper publisher Martin Langeveld. He bases his calculations on a total online revenue of $3.109 billion for newspapers in 2008. That year, newspaper sites averaged 67.3 million monthly unique visitors (nearly all of them to free content). "Now suppose a switch were turned, and each and every newspaper started imposing a monthly fee on all those visitors," he asks. By Langeveld's calculations:

- a $1-a-month fee would reduce traffic by 30 percent,
- $2 would knock off 50 percent,
- $5 would chop out 70 percent,
- $10 would say goodbye to 90 percent,
- and $25 would wipe out just about all of it.[28]

If ad revenue drops at the same percentage as web traffic, Langeveld argues that there is no possible way for online subscriptions, pay-walls or micropayments to ever make up for the loss of revenue they will cause. "A simple tollbooth approach at any price cuts out the vast majority of the audience," he writes. This has an obvious economic cost, but also clearly a democratic one as well.[29]

The legitimacy and feasibility of pay-walls and micropayments have come into question for a range of reasons. Jack Shafer of *Slate* notes that even if a pay-wall system "recruits 95 percent of the top newspapers and magazines in the country, welds digital-rights-management security bracelets onto all content, and assassinates hackers who redistribute copy without authorization,

[25] Ben Sheffner, "Collusion Course," *Slate*, May 28, 2009.
[26] Dan Kennedy, "Arrogance and anger over newspapers' decline," http://www.dankennedy.net/, Aug. 24, 2009.
[27] In his testimony before the subcommittee on courts and competition policy, in the judiciary committee of the US House of Representatives, Carl Shapiro, the Deputy Assistant Attorney General for Economics and Antitrust Division argued against relaxing antitrust regulations: "Antitrust is critical to ensure that the public obtains the full benefits of competition. This is especially true in industries experiencing technological change, where competition spurs innovation, including innovative business strategies and business models. In the newspaper industry, major changes are taking place in terms of the creation and distribution of content and in terms of the business models adopted by those who incur the costs necessary to create content, especially content that is relatively costly to provide, such as investigative journalism. [...] Newspapers play a vital role in our society. The Antitrust Division continues to work to protect competition in the newspaper industry. We believe that antitrust analysis is forward-looking and flexible enough to take into consideration the economic and technological pressures facing newspapers as we continue to make market-by-market and case-by-case factual determinations pursuant to the antitrust laws. Vigorous antitrust enforcement will guarantee that this important industry will be as competitive as possible, and that American consumers will have available to them more, rather than fewer, options for getting news and information." Full text of his remarks are available here: http://judiciary.house.gov/hearings/pdf/Shapiro090421.pdf
[28] Martin Langeveld, "Paying for online news: Sorry, but the math just doesn't work. "Nieman Journalism Lab, April 3, 2009
[29] *Ibid.*

the idea can't work." Shafer says "fair use" copyright laws make it impossible for publishers to maintain proprietary control over the basic content of news.[30] Similarly, Jeff Jarvis, a professor at the City University of New York, argues that news is not a product that can be contained within the space of a transaction: "Once news is known, that knowledge is a commodity, and it doesn't matter who first reported it. … There's no fencing off information, especially today, when the conversation that spreads it moves at the speed of links."

Are pay walls good for democracy? The short answer is no. They go against the principle of openness and limit who has access to information; they further inscribe commercial values into newsgathering processes; and, by extension, they further constrict the scope of voices and viewpoints in the press and in our national discussions.

Ironically, many pay-wall proponents couch their rhetoric in democratic concerns. For example, arguing that antitrust exemptions were necessary, Tim Rutten of the *Los Angeles Times* invoked a gross misconception of the First Amendment to support his argument. He wrote, "If the First Amendment is to mean anything, Congress has to suspend antitrust rules for the newspaper industry so publishers can determine as a group how much to charge for online content." But our "first freedom" was never intended to allow for a press system dominated by a handful of corporations or hidden behind passwords. As Supreme Court Justice Hugo Black noted in the historic 1945 Associated Press case, the First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[31]

2. *Micropayments*

In place of the pay-wall structure, the idea of micropayments has gained significant traction. Micropayments allow readers to pay a small fee (pennies or dollars) on a per-article basis online. Not all micropayment proposals are based on a bundling, pay-wall, or per-transaction setup. Another approach is an online "tip jar" using technology like Kachingle that would give readers the "option of whether to pay for a Web site's content."[32] This model is similar to blogger Doc Searls' "PayChoice" project, which would allow customers "to pay any amount they please, when they please, with minimum friction."[33] Similarly, Josh Young suggests that organizations should charge their readers for added convenience or increased interaction with content creators. This "freemium" model would capitalize on and encourage trust between journalists and their readers.[34]

In a "journalism-for-hire" variation of the micropayment option, stories are either solicited by organizations or pitched by a journalist who proposes a story and asks for donations. Another version, being tested by the innovative news project Spot.us collects pledges to fund worthy reporting projects. If the story is picked up by a news organization, donors are repaid.[35] All of these seem to be worthwhile, if limited, experiments.

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[30] Jack Shafer, "Hello, Steve Brill, Get Me Rewrite," *Slate,* April 17, 2009.
[31] *Associated Press v. United States*, 326 U.S. 1, 20 (1945).
[32] Steve Outing, "Forget Micropayments — Here's a Far Better Idea for Monetizing Content," Editor & Publisher, February 10, 2009.
[33] Doc Searls, "After the Advertising Bubble Bursts," Doc Searls Weblog, March 23, 2009. http://blogs.law.harvard.edu/doc/2009/03/23/after-the-advertising-bubble-bursts/.
[34] Josh Young, "Why I Dislike Micropayments, Don't Mind Charity, but Really Have a Better Idea," Networked News, Feb. 11, 2009. http://networkednews.wordpress.com/2009/02/11/no-micropayments-maybe-charity-yes-freemium-news/.
[35] Alexis Madrigal, "Crowdfunded Reporting: Readers Pay for Stories to Be Told," Nieman Reports, Spring 2009.

It is difficult, thus far, to see how new payment models could take off in such a way as to fully support a vibrant press system. In addition, these alternative micropayment models require a good deal of investment by news organizations, which have to dedicate staff time to organizing community support and encouraging donations. This is especially true with regard to lengthy reporting projects or ongoing beat reporting, which doesn't fit within the short-term, project-based model that lends itself to micropayments. Finally, what happens to all those important stories that need to be told, but which donors may not be willing to fund?

II. Economic Challenges Of News Organizations

In the Notice, the FTC requests comments on the economic challenges faced by news organizations, as well as some of the cost-cutting measures they have implemented.[36] More importantly, the Commission asked whether these cost cutting measure could have an adverse impact on the provision of news to consumers.[37] Free Press is sympathetic to the economic constraints faced by media companies. However, while current economic conditions pose difficulties for the media industry (as they do for many businesses), we emphasize that some of these companies are not merely victims of a tough economy. Rather, some of their financial problems are of their own making. Additionally, Free Press is concerned that the cost cutting measures adopted by some industry members are likely to have an adverse affect on the quality and quantity of news production and information available to the public.

A. Traditional Media Outlets Face Economic Challenges from the Internet – And From Their Own Bad Business Decisions

The newspapers industry is often quick to blame its troubles on bloggers and online companies like Google for profiting off the content it produces. Many journalists, scholars and politicians have come to accept this as the primary explanation for the current turmoil facing the industry. But the answer isn't that simple. The story less likely to appear in newspapers is about the role the industry has played in its own undoing. Free Press believes three major factors have contributed to industry's current unraveling: media consolidation, the ownership structure of newspapers, and the failure of newspapers to adapt to the changing media landscape.

Clearly the Internet, paired with the general economic downturn and dwindling trust in the media, has had a profound impact on newspaper circulation. The Audit Bureau of Circulation found last year that weekday circulation for daily newspapers dropped 10.6 percent over a six-month period that ended in September 2009. Weekday circulation dropped by 25.8 percent at the *San Francisco Chronicle;* circulation at the *Star-Ledger* of New Jersey and the *Dallas Morning News* both dropped by more than 22 percent.[38]

The advertising-supported model of journalism that thrived throughout the 20th century is collapsing. Ad revenue declined by 16.6 percent in 2008, and is down 28 percent so far in 2009.[39] This is problematic for an industry that relies on print advertising for 90 percent of its

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36 *Public Notice*, 74 Fed. Reg. at 51607.
37 *Ibid.*
38 Richard Perez-Pena, U.S. Newspaper Circulation Falls 10%, New York Times, October 26, 2009: http://www.nytimes.com/2009/10/27/business/media/27audit.html?hp.
39 *Ibid.*

profit.[40] Advertisers pay much less for online ads to reach their target audiences, and classified ads are now available for free on Web sites like craigslist. Although newspaper readership overall has never been higher as more people read news online, online ad revenue makes up just a small percentage of newspaper earnings.[41]

But that does not necessarily mean that the core business of news production is not profitable. Most of the largest newspaper companies in this country are publicly traded. We cannot overstate the negative influence Wall Street has had on the current turmoil facing the industry. In many instances, papers that are nearing bankruptcy actually have profitable newsrooms — often with double-digit profit margins. McClatchy's newspapers earned a 21 percent profit margin in 2008. Yet the company still cut its work force by nearly a third, as it struggled to finance the $2 billion it owes from acquiring Knight Ridder in 2006.[42] Gannett's newspapers enjoyed an 18 percent profit margin in 2008, with some papers earning as much as 42.5 percent.[43] Nevertheless, Gannett slashed 3,000 jobs and forced employees to take a weeklong furlough (though Gannett's top executives still received six-figure bonuses).[44] The relentless pressure from Wall Street for ever-higher quarterly returns has been entirely unrealistic for these businesses. Consequently, it is likely that a major city will soon be without a daily newspaper.[45]

A century ago, most daily newspapers faced competition from other dailies in the same city. In 1910, there were more than 2,200 daily papers in 1,207 cities. By 1961, however, 96 percent of all daily papers didn't have a local competitor and most were family-owned.[46] By 1971, only 2 percent of all cities had company newspapers and by 1977, two-thirds of all newspapers were owned by a newspaper group.[47] During the 1960s, newspaper companies started going public in an effort to finance acquisitions, reduce debt and fight off takeovers.[48] During the 1990s, these companies sought to shore up their local dominance by forming regional clusters. As a result, more than 700 transactions took place from 1994 to 2000.[49] Writing in 2001, Thomas Kunkel and Gene Roberts noted that this level of consolidation was "revolutionizing" the industry "to the point of undermining, the traditional nature and role of the press."[50]

But profits soared: The profit margins from newspapers increased overall from 14.8 percent in 1990 to 21.5 percent in 2000.[51] The industry faced intense pressure from Wall Street to increase profits every quarter. As far back as1998, *the Columbia Journalism Review* was warning of the pressures of Wall Street on the quality of journalism:

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[40] Project for Excellence in Journalism, The State of the News Media: Newspapers, http://www.stateofthemedia.org/2009/narrative_newspapers_intro.php?cat=0&media=4
[41] Project for Excellence in Journalism, The State of the News Media: Newspapers, http://www.stateofthemedia.org/2009/narrative_newspapers_economics.php?media=4&cat=3
[42] Nat Ives, "It's Not Newspapers in Peril; It's Their Owners," *Ad Age*, Feb. 23, 2009. See also, Craig Aaron and Joseph Torres, "Consolidation won't save the media," March 26, 2009. http://www.guardian.co.uk/commentisfree/cifamerica/2009/mar/26/pelosi-media-consolidation.
[43] "Documents reveal double-digit profit margins at scores of papers now on verge of massive layoffs," Gannett Blog, Nov. 28, 2008 http://gannettblog.blogspot.com/2008/11/documents-reveal-double-digit-profit.html.
[44] Richard Perez-Pena, "Gannett to Cut 10% of Workers as Its Profit Slips," *New York Times* Oct. 28, 2008; Richard Perez-Pena, "Gannett to Furlough Workers for Week," *New York Times*, Jan. 15, 2009. Randy Turner, Gannett Executives Receive Nearly $2 Million In Bonuses, Golden Parachute, Amid Layoffs And Foldings, March 18, 2009, http://www.huffingtonpost.com/randy-turner/gannett-executives-receiv_b_176435.html
[45] Mark Fitzgerald, "Several Cities Could Have No Daily Paper as Soon as 2010, Credit Rater Says," *Editor & Publisher*, Dec. 3, 2008.
[46] Gilbert Cranberg, Randall P. Bezanson, and John Soloski, Taking Stock: Journalism and the Publicly Traded Newspaper Company by (Iowa State University Press, Iowa State University Press, 2001). 18-19.
[47] Suzanne M. Kirchhoff, The U.S. Newspaper Industry in Transition: Analyst in Industrial Organization and Business, Congressional Research Service, Washington, D.C., July 8, 2009.
[48] Elizabeth MacIver Neiva, Chain Building: The Consolidation of the American newspaper Industry, 1953-1980, Business and Economic History, Fall 1995. 22-26.
[49] Thomas Kunkel and Gene Roberts, The Age of Corporate Newspapering: Leaving Readers Behind, American Journalism Review, May 2001 38.
[50] Elizabeth MacIver Neiva, Chain Building: The Consolidation of the American newspaper Industry, 1953-1980, Business and Economic History, Fall 1995. 34.
[51] David Laventhol, Profit Pressures: A Question of Margins, Columbia Journalism Review, May/June 2001. 18-19.

> More so than at any other moment in journalism's history — the news product that lands on the newsstands, doorsteps, and television screens is indeed hurt by a heightened, unseemly lust at many companies for ever greater profits. In the service of that ambition, many editors are surrendering part of their birthright to marketers and advertising directors, and making news-judgments based on criteria that would have been anathema only a few years ago.[52]

At first, according to *Seattle Times* publisher Frank Blethen, news executives were still committed to quality journalism.[53]

> In the early stages of this transition we knew the first generation of people who began building the public newspaper companies and laying the foundation for today's concentration of ownership. They were experienced newspaper operators, often with news backgrounds. For the most part, they had respect for quality, local journalism, and our public-service stewardship. But as time passed, the market's short-term profit demands continued and ownership concentration increased. We moved into a new generation of chain newspaper leaders. Frequently, today's chains and public company leaders are business-side, corporate people whose priority must be keeping their institutional investors and the stock market happy. My personal epiphany occurred in the early '90s when I realized the industry had replaced important words like "communities" and "newspapers" with new words like "markets" and "properties."

The final phase of this transition seems to be moving media ownership from the hands of consolidated media companies to banks and private investment firms even further removed from the work of journalism. In 2004, institutional investors such as banks owned 93 percent of the stock held in 15 publicly traded newspaper companies. The top 10 institutional investors owned 66.7 percent of newspaper stock. In addition, the executives from banks and large investors make up of the majority of outside board directors.[54]

As newspaper and broadcast media companies are bought, sold and traded by financial institutions and private equity firms, their public service mission of newsgathering is superseded the by their stock value. In changing hands and changing owners, our most important sources of information are increasingly seen as mere investments. "The more people disparage 'old media,' the happier I am," said one private equity manager. "These companies don't require a lot of capital investment. They sell subscriptions, so you get the money up front and deliver the product over time. They generate a lot of cash, so they make great buyout candidates, and you can get them at reasonable prices, because everyone else is focused on buying shares of Google."[55]

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[52] Neil Hickey, Money Lust: How Pressure for Profit is Perverting Journalism, Columbia Journalism Review, July/August 1998. 28-36
[53] Frank A. Blethen, It's Going to Get Worse, Columbia Journalism Review, May/June 2001. 40.
[54] Jon Soloski, Taking Stock Redex: Corporate Ownership and Journalism of Publicly Traded Companies, Corporate governance of Media Companies, Jonkoping University Business School (Jonkoping University Business School, Sweden, 2005) 68-71.
[55] Andrew Ross Sorkin and Peter Edmonston. Private equity firms attracted to traditional media companies. *The New York Times*. November 17, 2006. http://www.nytimes.com/2006/11/17/business/worldbusiness/17iht-media.3578586.html?_r=1.

Perhaps the most vivid example of this in the newspaper industry came in 2006, when institutional investors forced Knight Ridder to put the company and its 32 papers up for sale. At the time, Knight Ridder was the second largest newspaper company in the country. The McClatchy company bought Knight Ridder for $4.5 billion and assumed $2 billion of the company's debt. But McClatchy is now having a hard time paying off its debt [56]

B. News Industry Cost-Cutting Measures Have Resulted In Newsroom Layoffs and Lower Quality News

Unfortunately, the default response of too many media companies to their economic challenges has been to try to achieve savings through consolidation or by making massive cuts in the newsroom. The compensation of executives and even editors has been tied to their companies' financial performance, not the quality of their news operations.[57] "In bad times, chain owners convince themselves that less news, less space, fewer journalists, less money spent on reporting is still enough," wrote Len Downie and Robert G. Kasier in their 2002 book the *News about the News*. "By instinct, no editor is likely to agree, but instinct can be modified. If the editor's personal compensation is closely tied to the paper's overall profitability, he or she can develop a new appreciation for meeting the corporation's financial goals. And editors of chain papers rarely have the autonomy to resist pressures from corporate headquarters. Like it or not, editors generally make the cuts demanded of them."[58]

Hardly a day goes by without another obituary for the newspaper industry. Hemorrhaging jobs, subscribers and advertising revenue, news organizations are dismantling foreign, Washington and statehouse bureaus.[59] Nearly 16,000 journalists and newspaper employees lost their jobs last year, and more than 8,000 employees have been sacked in the first four months of 2009.[60] Across the industry, diverse voices are disappearing from the airwaves and broadsheets in unprecedented numbers. The American Society of News Editors' 2009 survey showed that journalism job cuts are hitting people of color particularly hard. Of the nearly 6,000 journalists who lost their jobs in 2008, 854 were people of color, leaving the percentage of minorities in newsrooms at just 13.4 percent.[61] Meanwhile, Sally Lehrman writes in the *Boston Globe*, "More than 42 percent of print newsrooms across the country employ no black, Asian American, Latino, or American Indian journalists at all."[62] While ethnic media in major urban areas like Los Angeles and New York may be doing better, in the near future, many groups in rural areas and smaller cities are at risk of losing the only media outlets that cover the issues facing their communities or that report in their language.[63] And it's not just newspapers failing. Recent evidence suggests both network and local television are facing severe

[56] David Lieberman, McClatchy to Buy Knight Ridder for $4.5 Billion, March 3, 2006: Accessed online November 4, 2009: http://www.usatoday.com/money/media/2006-03-13-knight-ridder_x.htm
[57] Gilbert Cranberg, Randall Bezanson and John Soloski, Trading Stock: Journalism and the Publicly Traded Newspaper Company, (Iowa State University Press, Ames, Iowa, 2001). 48-49.
[58] Leonard Downie Jr. and Robert G. Kasier, News about the News: American Journalism in Peril (Alfred A. Knoff, New York, 2002) 79.
[59] Richard Perez-Pena, "Big News in Washington, but Far Fewer Cover It," *New York Times*, Dec. 18, 2008.
[60] For a running tally of job losses in the newspaper industry, see http://graphicdesignr.net/papercuts/. See also "U.S. Newsroom Employment Declines," American Society of News Editors, April 16, 2009, http://www.asne.org/index.cfm?id=7323; Jennifer Saba, "Newsroom Employment Drops to Lowest Level Since 1978 — But Online Jobs Up," *Editor & Publisher,* April 16, 2009. The bloodletting has accelerated over the past several years. According to a 2007 report by Challenger, Gray & Christmas, 17,809 media jobs were lost in 2006, an 88 percent rise over the previous year. See Ann Becker, "Old Media, New Media," Broadcasting & Cable, Feb.25, 2007. By late 2008, the industry was in a "tailspin." See David Olinger, "Ad Losses Send Industry into a Tailspin," *Denver Post*, Dec. 5, 2008. By early 2009, the situation had surpassed the most dire predictions made just months earlier. See Lynda V. Mapes, "Seattle P-I's Expected Closure a Sign of the Times," *Seattle Times,* March 10, 2009.
[61] "U.S. Newsroom Employment Declines," The American Society of News Editors, April 16, 2009.
[62] Sally Lehrman, "The Danger of Losing the Ethnic Media," *Boston Globe*, March 5, 2009.
[63] Terence Chea, "Ethnic Press Stung by Recession, Advertising Drop," *Associated Press*, March 29, 2009.

downturns as well, and magazines are downsizing and closing.[64]

Consolidation has taken its toll. But another way media companies are cutting costs and shedding journalism jobs is through the increased use of joint ventures, such as "local news sharing agreements" and "shared services agreements." Over the past year, local television broadcasters have been quietly pooling news production, and in some cases completely merging news staff and operations.[65] These arrangements, which vary in scope,[66] allow local television broadcasters to pool staff, equipment, and operations, or otherwise share control and development of local broadcast content, including local news coverage.[67] As reliance on these schemes increases, local news competition is reduced and the quality and quantity of independently reported and produced local news declines.[68]

Stations participating in these types of joint ventures argue that the efficiencies and cost-savings generated by sharing news and operations allows cash-strapped television stations to invest more resources covering other news stories.[69] Some television stations claim that they have even increased the amount of local news produced under these arrangements.[70] Yet it is unclear whether stations are actually producing more news or whether they are simply producing more of the *same* news. For example, the Radio and Television News Directors Association reports that 200 local broadcasters now run local news programs or segments produced by another television station.[71] This means that while these newscasts may contribute to the overall volume of local news in a market, any increase in quantity is misleading because some of the news product will be identical to the news produced by competitors and, thus, does not increase product diversity in terms of viewpoints or coverage of different issues.

While a decrease in coverage and editorial independence is a clear danger in cases where local broadcasters merely repackage news stories produced by their competitors, these problems can also arise in the more limited (and seemingly more innocuous) arrangements involving shared video equipment and footage. By sharing equipment and video footage, broadcasters must coordinate to decide what stories get covered (and how). This may necessarily impact the editorial independence of the stations and the diversity of news content that would be available if stations were not acting in concert.

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[64] See the State of the News Media 2009, Pew Project for Excellence in Journalism, http://www.stateofthenewsmedia.com/2009/index.htm; A recent report found that nationwide, local television news stations slashed 4.3 percent – or 1,200 – newsroom jobs in 2008. See Radio-Television News Directors Association, "Television News Jobs and Salaries Decline As Amount of News Increases, RTNDA/Hofstra University Survey Shows," April 19, 2009. See also, David Carr, "Portfolio Magazine Shut, a Victim of Recession," *New York Times*, April 27, 2009.

[65] New sharing and/or shared services agreements are in place in Atlanta, Austin, Boston, Chicago, Cleveland, Columbus, Dallas-Ft. Worth, Detroit, Honolulu, Los Angeles, New York, Peoria, Philadelphia, Phoenix, San Antonio, Syracuse, Tampa, Washington, DC.

[66] Local television joint ventures are not uniform. For example, broadcasters engaged in "local news sharing services" tend to pool equipment (like video cameras or helicopters) and commonly produced video footage, but claim to maintain independent editorial discretion. In other markets, however, stations are entering into shared services agreements that combine advertising sales departments, newsroom staff and operations, and appear to be generating the same (or virtually the same) news coverage for all partner stations. While, some arrangements may be more problematic than others, we believe that both types raise significant anti-competitive problems in terms of negative impact on diverse and independent reporting.

[67] Similar efforts are underway in the newspaper industry. Content and resource sharing alliances are increasingly being seen as a core part of the business of news. In Ohio, eight of the major newspapers in the state have formed the Ohio News Organization to share stories across the state. A similar content sharing effort, the Northeast Consortium, includes five papers in New Jersey and New York. These and other news sharing agreements in the newspaper industry are implemented in vary different ways. Some involve sharing of articles or staff, others involve pooling of resources – to co-sponsor election year polling for example – that is then used individually by each paper to produce original reporting

[68] Hilary Atkin, "As Local Sharing Progresses, New Concerns Emerge" TVWeek, Aug. 5, 2009, http://www.tvweek.com/news/2009/08/as_local_sharing_progresses_ne.php.

[69] *Fox and NBC Partner on Local News Services*, BNET BUSINESS NETWORK, Nov. 14, 2008 http://www.bnet.com/2448-13071_23-249263.html.

[70] David Bauder, "Local News Doing More With Less: Adding Hours Despite Cuts" The Huffington Post, April 24, 2009, t http://www.huffingtonpost.com/2009/04/27/local-news-doing-more-wit_n_191641.html.

[71] *Ibid.*

Another concern is that some joint ventures actually encourage and facilitate layoffs of news production staff. Broadcasters have argued that pooling resources with other stations frees up news staff to cover other stories.[72] However, in most cases, the "extra" employees are being laid-off and newsrooms are being shuttered because broadcasters can instead rely on partner stations to produce and share newscasts.[73]

Most recently in Honolulu, the local NBC, CBS, and MyNetwork stations have created a virtual "tri-oply" by entering into a shared services agreement.[74] The agreement condenses the news resources of the three stations into one consolidated joint operation which will provide news coverage for all three channels. Critics point out that TV executives have made no pretense that the stations will maintain their editorial independence. Instead the three channels will show the same news, reported on by the same staff but branded with different network affiliations.[75]

Free Press is not insensitive to economic hurdles currently faced by local broadcasters. Nevertheless, the lack of oversight or governing standards over such arrangements increases the potential that these agreements will be abused to the detriment of the public's access to local news provided by diverse and competing sources.[76] In comparison, the use of comparable arrangements in the newspaper industry, called Joint Operating Agreements, is subject to significant government oversight. These agreements only operate via a specific statutory exemption from antitrust laws provided in the Newspaper Preservation Act.[77] Furthermore, to qualify for the exemption the parties must demonstrate that one of the papers is "failing," and moreover, the parties must show that they will maintain "separate reporting and editorial staffs as well as separate editorial policies."[78] The news sharing agreements being forged by broadcasters have not been subjected to any such scrutiny or standards.

We recognize that some of these issues fall more appropriately in the purview of the Federal Communications Commission, particularly to the extent that these joint ventures circumvent the FCC rules regarding multiple ownership of broadcast properties.[79] Nevertheless, these agreements also raise important competition issues regarding local news production that are appropriate for the FTC to consider in its workshops. When stations who should be competitors in the local news business decide that they will join forces and no longer compete, you can expect a decline in the quality and diversity of news coverage, and fewer options for the public.

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[72] *Fox and NBC Partner on Local News Services*, BNET BUSINESS NETWORK, Nov. 14, 2008, http://www.bnet.com/2448-13071_23-249263.html.

[73] For example TV stations owned by Granite and Barrington Broadcasting in Peoria, Ill., have combined news operations. A parallel joint venture between Granite and Barrington is also in place in Syracuse, NY. In each of these markets, one of the stations has shuttered its newsroom, laid–off employees, and now relies on news produced by the other station to supply its newscasts, rather than producing its own. *See, e.g.,* Steve Tarter, "WEEK-TV taking over WHOI operations" Peoria Journal Star, Mar. 3, 2009, http://www.pjstar.com/business/x1959832349/Owners-of-WEEK-TV-taking-over-operations-of-WHOI-TV (reporting that Barrington Broadcasting-owned WHOI-TV would shutter its newsroom and lay off as many of 30 of its employees under the new sharing agreement with Granite Broadcasting); John Lammers, "Syracuse's Channel 5 shuts down its newsroom" Syracuse.Com, Mar. 2, 2009, http://www.syracuse.com/news/index.ssf/2009/03/the_staff_of_wtvh_laid.html (reporting that Granite Broadcasting-owned channel 5 way closing its newsroom and laying-off employees as a result of its news sharing agreement with Barrington Broadcasting).

[74] *See* "Press release from KGMB-TV, KHNL-TV, KFVE-TV and Raycom Media," Aug. 18, 2009, http://www.starbulletin.com/business/businessnews/20090818_Press_releases_from_KGMB-TV_KHNL-TV_KFVE-TV_and_Raycom_Media.html.

[75] *See* "KHNL/KFVE, KGMB Merger To Cut 68 Jobs: Raycom To Simulcast Some Newscasts, Combine New Operations," KITV.Com , Aug. 18, 2009, http://www.kitv.com/money/20450266/detail.html (quoting University of Hawaii journalism professor, Gerald Kato, "You'll have a lot of news, but it'll be the same news put out by the same news operation and I think that does a disservice to the public here."); Erika Engle, TV Stations' pact draws fire," Honolulu Star Bulletin (Aug. 19, 2009) available at http://www.starbulletin.com/business/20090819_TV_stations_pact_draws_fire.html.

[76] We understand that in some respects these arrangements implicate communications law and regulation (such as circumvention of local broadcast media ownership limitations) which fall within the purview of the Federal Communications Commission. (Explain duopoly rule and cite). Nevertheless, local new sharing also raises substantial anti-competitive implications that are appropriate for the FTC to consider in this review.

[77] 15 U.S.C. § 1801 (1970).

[78] Rex S. Heinke, MEDIA LAW 271 (1994).

[79] *See* 47 C.F.R. 73.3555.

III. Government Policies

In the Notice, the Commission asks whether "new or changed government policies [are] needed to support optimal amounts and types of journalism, including public affairs coverage" and whether "new or changed government policies [could] encourage more competition among news organizations."[80] Free Press believes that, just as we have created national plans to address crises in health care, energy independence, and education, it is time to craft a national journalism plan. We are calling for a comprehensive effort from government, private industry, the nonprofit sector and the public to work together to meet common goals.

Free Press has outlined a series of guiding principles that should serve as a baseline for any policy considerations designed to support quality journalism:[81]

- **Protect the First Amendment.** Freedom of speech and freedom of the press are essential to a free society and a functioning democracy. Everyone should have the right to access and impart information through the media of their choice.

- **Produce Quality Coverage.** To self-govern in a democratic society, the public needs in-depth reporting on local issues as well as national and international affairs that is accurate, credible, and verifiable.

- **Provide Adversarial Perspectives.** Reporting must hold the powerful accountable by scrutinizing the actions of government and corporations. Journalism should foster genuine debate and discourse.

- **Promote Public Accountability.** Newsrooms must serve the public interest, not private or government aims, and should be treated primarily as a public service, not a commodity. Journalism must be responsive to the needs of diverse and changing communities.

- **Prioritize Innovation.** Journalists must utilize new tools and technologies to report and deliver the news. The public needs journalism that crosses traditional boundaries and is accessible to the broadest range of people across platforms.

Keeping these goals in mind, below we list and discuss some policy options for sustaining journalism.

A. Federal Funding For Journalism

In the Notice the Commission asks whether the federal government should provide additional funding for news organizations and if so, whether only current recipients of federal funding receive increased funding.[82] Free Press believes that government funding for news organizations is vital. Increasing support for public media will help strengthen a vital infrastructure, fixing what doesn't work and building on what does. Meanwhile, a new fund for journalism could help

[80] *Public Notice*, 74 Fed. Reg. at 51607.
[81] Much of the content of this section has been adapted from the recent Free Press publication, *Changing Media: Public Interest Policies for the Digital Age* (2009), available at http://freepress.net/files/changing_media.pdf.
[82] [82] *Public Notice*, 74 Fed. Reg., at 51607.

build new journalism institutions, spark innovation, offer training to new and veteran journalists, and support community media.

1. Public Media

The United States is alone among democracies in how little it devotes to its public media system. The United States was late to the party in creating public broadcasting, leaving us with an under funded and structurally flawed system in need of significant reforms. The growing crisis facing commercial journalism — and public media's unique ability to address it — makes such reform all the more urgent. Add to that the new opportunities arising from technological changes in media production and distribution, seismic shifts in the commercial broadcasting marketplace, and the changing demographics of America itself — and you have a rare opportunity to achieve real change and reinvent public media. With better funding, reformed leadership, new technology and a renewed commitment to its founding mandate, we believe public broadcasting — reborn as "public media" — can fill the void at this critical juncture.

At the same time that public media outlets are looking to deepen their roots as local community institutions, commercial media outlets are heading for the exits. Local newspapers are filled with more ads and wire-service content. Local broadcasters are eviscerating newsrooms and airing reality TV or reruns instead of public affairs. What's left of local TV and radio news is dominated by sports, weather and traffic. Laissez-faire media policies and lax oversight have enabled and expedited this process. The social contract of commercial broadcasting that traded stewardship of the public airwaves for public service programming has been crumbling for years. It is now hardly recognizable.

Meanwhile, public broadcasters and other noncommercial outlets are capable of producing some of the best reporting and programming on radio and television. The American public puts a premium on their services that rivals any national institution. In 2009, Americans ranked PBS among our most valued institutions, second only to the military, and put NPR third, tied with law enforcement.[83] This year was the sixth consecutive year in which Americans ranked PBS as No. 1 in public trust, ahead of newspapers, commercial broadcasters, the judicial system and the federal government.[84]

Currently, the federal government provides just over $400 million per year to support public media, doled out through annual congressional appropriations and distributed by the Corporation for Public Broadcasting.[85] That figure puts U.S. public media among the lowest-funded systems in the world, at just $1.35 per capita — a paltry figure compared to countries like Canada ($22.48 per capita) and England ($80.36 per capita).[86]

In considering whether greater funding for public media is worth the effort, we should consider the popularity and quality of BBC News or the Canadian Broadcasting Corporation and compare

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[83] GfK Roper Public Affairs & Media Survey, 2009, http://www.pbs.org/roperpoll2009/2009_RoperSurvey_FINAL.pdf
[84] *Ibid.*
[85] Corporation for Public Broadcasting, "Federal Appropriation History," http://www.cpb.org/aboutcpb/financials/appropriation/history.html.
[86] In many countries, public media funding is derived from an annual government-mandated television license fee. In general, the total amount generated through this license fee for 2007 was divided by the population of the country for the same year. The currency was converted to U.S. dollars using the relevant exchange rate from Jan. 15, 2009. The U.S. figure was calculated by relying on the money appropriated in 2005 for the 2007 fiscal year.

these institutions to our increasingly degraded commercial media system. The BBC is unrivaled in the world as a source for international public service media. Research has showed the BBC demonstrating an independence that compares favorably with U.S. media and calls into question some common fears about government-subsidized media.[87]

For U.S. public media to become a truly world-class system will require a substantial increase in funding. This could be accomplished by an increase in direct congressional appropriations to the Corporation for Public Broadcasting. With increased funding — to as little as $5 per person, increasing annual appropriations to some $1.5 billion — the American public media system could dramatically increase its capacity, reach, diversity and relevance. At $1.5 billion annually, the United States would still spend five times less on public media than Canada per capita and 16 times less than England.

We view this as an important strategy to employ while working for long-term solutions. Over time, the system's reliance on the annual appropriations process is not sustainable, even if the annual appropriations were increased several-fold. Leaving the system vulnerable to repeated threats of funding cuts is not viable. It produces a system that is weary of angering the political elite. Furthermore, it pushes the system to be more reliant on corporate backing, via the underwriting process. This, too, poisons editorial freedom, and is also susceptible to the ups and downs in the broader advertising economy.

A better and more durable solution would be to create and fund a public trust, seeded with a large endowment and operated by the Corporation for Public Broadcasting or other NGO. The money for such a trust could be provided directly through an act of Congress or perhaps by placing a small tax on advertising. We estimate that a trust fund would require $50 billion to create sufficient revenue. If that figure seems high, consider that since last year, more than $173 billion in tax money has been sunk into just one corporation, AIG. Given that Congress just passed a nearly trillion-dollar economic recovery package, $50 billion for public media seems like a smart investment.

A vibrant Fourth Estate should be neither dependent on the whims of the market nor subject to shifting political landscapes. We have an opportunity to re-imagine our current public broadcasting system and rebuild it as new public media with an overarching commitment to newsgathering and local community service. A significantly reformed and repurposed national media system should include many already existing pieces: NPR, PBS, community radio, as well as those nonprofit entities not commonly associated with public broadcasting, like PEG television channels, Low Power FM radio stations, noncommercial publications, and community Web sites.

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[87] Jay Blumler and Michael Gurevitch, "'Americanization' Reconsidered: U.K.-U.S. Campaign Communication Comparisons Across Time," in W.L. Bennett and R.M. Entman (eds.), *Mediated Politics.* Cambridge: Cambridge University Press, pp. 380-403, 2001. It should be noted that dramatically increasing support for public media would entail formidable political challenges, yet substantially increased funding for public media is nevertheless more feasible than creating an entirely new entity for supporting national and local journalism. It is often taken as an article of faith that such a model could never flourish in the United States, but it is important to note that a more robust public media system didn't emerge as it did in other nations only as a result of a vicious series of political campaigns led by U.S. broadcasters in the early 1930s and again in the postwar 1940s. See Robert McChesney, *Telecommunications,* Mass Media & Democracy: The Battle for the Control of U.S. Broadcasting, 1928-1935. New York: The Oxford University Press, 1993.

2. *Research and Development Fund for Journalism*

Another form of government investment that could help spark new competition in the news ecosystem is the creation of research and development fund for journalistic innovation and experimentation. We need to think about the new media marketplace as an incubator for innovation. Just as government invests in medical research to heal the ails of the body, we need government to invest in experimentation with news models to heal the democratic ails of the body politic.

We should explore the creation of a government-seeded innovation fund for journalism — a taxpayer-supported venture capital firm that invests in new business models. As a starting point, we are proposing a $50 million per year budget. This new venture capital firm could be set up as a public-private partnership, with federal matching funds for foundation-supported projects, or designed to provide guaranteed loans at low or no interest to start-up initiatives

Such a fund is not without precedent. The Telecommunications Development Fund (TDF) was created by Section 714 of the 1996 Telecommunications Act to focus investment in small businesses that produce important public goods in the communications sector that were ignored by for-profit venture capital. A private, non-governmental, venture capital firm, TDF was seeded with public funds and authorized to make investments with public service goals. TDF is governed by a board appointed by the FCC chairman. This model could be adopted for a journalism fund. A firewall would be set up between the board and the journalism initiatives they fund.

3. *Journalism Jobs Program*

Free Press recommends exploring the creation of a journalism jobs program to support veteran, qualified reporters and simultaneously to engage young people in journalism. One of the biggest problems with the collapsing business model of print newspapers is the possibility that tens of thousands of highly trained and experienced reporters will leave the news business, and tens of thousands of talented young people will be dissuaded from becoming journalists in the first place.[88]

With the recent expansion of AmeriCorps, now would be an opportune moment to include journalistic activities as part of its mission. "The Serve America Act," which Congress approved in March, will dramatically increase service and paid volunteer jobs from 75,000 to 250,000 positions. The AmeriCorps expansion — which will cost approximately $6 billion over five years — also provides for a Social Innovation Fund to expand on proven initiatives while supplying seed funding for experimental programs.[89]A small percentage of these AmeriCorps jobs could go to journalism positions, fellowships, or even to journalism projects to report on the new initiatives being created through this act.

These jobs could also support university media literacy programs. A promising model has been implemented recently by a John S. and James L. Knight Foundation-backed initiative at Stony

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[88] Currently, journalism school enrollment is up. See Brian Stelter, "Digital Defeats Newsroom? J-Schools Boom Despite Crisis," New York Times, April 19, 2009.

[89] "Expanding National Service," New York Times, March 24, 2009; Craig Newmark, "The Serve America Act, a Really Big Deal," The Huffington Post, April 23, 2009; "Senate Moves to Expand National Service Programs," New York Times, March 27, 2009.

Brook University. The school has hired 50 laid-off journalists to undergo summer training with the goal of joining dozens of universities in the fall to teach "news literacy" to non-journalism majors.[90] A similar program could be established to hire journalists to teach media literacy and help launch journalistic endeavors at all levels of education. The media literacy program could be expanded to include many more universities through the creation of formal Department of Education grants that might be leveraged using foundation support.

B. Special Tax Status For Journalism Institutions

In the Notice, the Commission specifically asked whether the tax code should be modified to provide special status or tax breaks to all or certain types of news organizations.[91] Free Press believes that changes in the tax code could have long-lasting positive outcomes for local news. Subtle changes in the tax code could serve both to aid struggling news outlets and to make more room for new voices and foster competition. The goal of these tax changes should be to remove the profit pressures from news organizations and encourage new models for ownership, not based on shareholders and absentee media conglomerates.

Under either the 501(c)(3) (nonprofit) and L3C (low-profit) models, news organizations could be set up to accept philanthropic donations (which, in the case of tax-exempt newspapers, would be tax-deductible) or investments. And they could be owned, in whole or in part, by a wide range of socially motivated parties, including workers, foundations, community organizations and other civil society groups whose primary mission will be to provide a public good that benefits the collective welfare of the local community. Each of these models offers news organizations a number of benefits and protections not available to their commercial counterparts.

Sen. Ben Cardin's Newspaper Revitalization Act, introduced earlier this year, would offer tax benefits to philanthropic groups and individuals that donate to newspapers, while providing the newspapers themselves with the tax benefits enjoyed by all tax-exempt organizations. The precise wording of the Cardin bill in its current form, however, mandates that a qualifying newspaper contain "local, national, and international news stories of interest to the general public," which seems to preclude smaller community papers and other news organizations. Most important, any bill along these lines should explicitly state that it does not pertain to just newspapers, but also news Web sites and other forms of media dedicated to journalism.

A related initiative is the move toward federal L3C legislation. The L3C is a type of limited liability company (LLC), a time-tested, for-profit business model that is organized and operated primarily to serve a charitable purpose, with profit a secondary concern. Bill Mitchell of the Poynter Institute explains that L3Cs address "a fundamental conflict of publicly traded news companies: the obligation to increase shareholder value while spending what it takes to provide communities with the journalism needed to inform civic life."[92] Indeed, the L3C promises advantages from both the nonprofit and for-profit worlds. "L3Cs are an interesting mix of for-profit and nonprofit," says Bernie Lunzer, president of The Newspaper Guild. "This is not a

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[90] "Knight Foundation Backs Plan to Hire 50 Laid-off Journos to Teach 'News Literacy,'" Editor & Publisher, March 13, 2009.
[91] *Public Notice*, 74 Fed. Reg. at 51607.
[92] Bill Mitchell, "L3Cs a 'Low Profit' Business Model for News," The Poynter Institute. Mar. 2, 2009 http://www.poynter.org/column.asp?id=131&aid=159320

bailout. This is a tool, but you'd still have to have financing and succeed on your own merits."[93]

In the past year Vermont, Michigan, Wyoming, Utah, North Dakota and the Crow Tribe in Montana have passed L3C laws, and laws in many other states are pending.[94] There's currently no federal statute for L3Cs, but Mitchell suggests that "just as many companies around the country incorporate in Delaware, you can register a Vermont L3C almost as easily from Burlington, Iowa, as Burlington, Vt." [95] However, Robert Lang, the inventor of the L3C, argues that federal legislation "is essential" for L3Cs to apply broadly to newspapers because "historically, the IRS has not accepted newspapers as nonprofits."[96] The Program-Related Investment Promotion Act, endorsed by Lang and the Council on Foundations, would accomplish this objective.[97]

C. Government Incentives To Encourage Local Ownership And Media Divestiture

Several major newspapers are already bankrupt or looking to sell off or shutter properties to escape enormous debt. Absent some intervention in the market, there is a strong chance that these papers will find buyers that are less interested in journalism than they are in maximizing asset value in the short term. Instead of watching them fall into the hands of private equity firms or other consolidated conglomerates, we have an opportunity to use small changes in the tax code to build incentives for their transfer to owners more committed to public service and local communities. The idea is to create, via changes to the federal tax and bankruptcy laws, a number of targeted "sweeteners" that could be invoked — alone or in combination — when media properties are being put up for sale that would make new owners or ownership structures, like L3Cs, more attractive than traditional corporate ownership models. This would also encourage diverse local owners and thus more competition, than current conglomerate media structures allow for.

One option worth pursuing is the utilization of "prepackaged" bankruptcies, which would allow interested parties to work out future ownership of the assets prior to actually going into court, which dramatically cuts down on costs. These cost-savings, combined with the legislative incentives described below, could make the package more attractive to the bankruptcy judge and ultimately enable public-interest-minded groups to take control of a struggling news outlet. An advantage of this "soft-landing" approach is that it precludes very few of the options discussed earlier. For example, a failing local newspaper could be bought up by a cooperative of its employees through a prepackaged bankruptcy; turned into an L3C or 501(c)(3) news organization; accept money from public trusts, foundations and local entrepreneurs; and employ any number of creative online techniques to generate revenue — all while producing journalism and experimenting with new models of sustainability.

Newspaper owners might be more inclined to sell to socially motivated parties if the government offered certain subsidies or other incentives to facilitate the transactions. Perhaps the IRS could guarantee nonprofits a reduced buyout rate. In addition, government-guaranteed loans and bidding credits could be offered to nonprofits to help them purchase failing news organizations

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[93] Mark Fitzgerald, "Prophet Motives," Editor & Publisher, March 1, 2009.
[94] The legislation is pending in some form in Arkansas, California, Colorado, Connecticut, Georgia, Illinois, Massachusetts, Missouri, Montana, North Carolina, Oregon and Tennessee. Robert Lang, personal communication, April 24, 2009.
[95] Mitchell, *ibid.*
[96] Duros, *ibid.*
[97] For information on the L3C federal legislation movement and related topics, see http://www.nonprofitlawblog.com/home/2009/03/l3c-developments-resources.html.

with the promise to convert them into locally owned and controlled multimedia newsrooms. Similarly, if the IRS granted tax relief from a long-term capital gains tax, tweaked the net operating loss rules, and offered other tax advantages to the newspaper seller, legacy owners of failing newsrooms may be incentivized to sell to nonprofits during the bankruptcy process. Substantive debt-relief would help placate creditors and investors to some degree.

These "sweeteners" should be combined with a minority media tax credit — much like the Minority Tax Certificate Program that was in place during the 1980s and 1990s — that would encourage the sale of news organizations to minorities, women, and other underrepresented groups. Restoring some version of the minority tax certificate will greatly increase minority and female ownership of news media outlets, which currently stand at an appallingly low number.[98] This policy has already proven successful in increasing the diversity of media ownership and never should have been dropped from the books.[99]

Conclusion

The consequences of failure here are rather severe. A loss of journalists and the corresponding loss of journalism open up a host of problems for a democratic society. Historian Paul Starr notes the correlation between government corruption and a dearth of news coverage.[100] The fact or even the possibility of oversight by the Fourth Estate is a powerful disciplining force. But even more central to democracy are the tenets of Jeffersonian theory that the gathering and distribution of news to a society is the essential lifeblood of self-government.

We need to reframe the debate about journalism as one about an essential public good and a service that is vital for the future of democracy. Journalism is a critical infrastructure. It is too precious for a democratic society simply to sit back and pray that the market will magically sustain it. The crisis in journalism is undeniably an economic issue, exacerbated by shifting revenue streams, new forms of content creation, and new methods of distribution. But it is also fundamentally a policy problem. While we explore new economic models for journalism, we must also examine what role government can play in supporting this indispensable institution.

It is in large part policy decisions — and the political will to make the right ones — that will decide what is next for journalism. Unfortunately, there is no magic bullet. The crisis in journalism will undoubtedly require a menu of responses, not a one-size-fits-all solution. Driven by a growing media reform movement, a period of vigorous experimentation with bold new models is the best hope for the future of journalism, the lifeblood of democracy.

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[98] For a report on broadcasting numbers, see Derek Turner and Mark Cooper, "Out of the Picture 2007: Minority and Female TV Station Ownership in the United States," Free Press, October 2007. http://www.freepress.net/files/otp2007.pdf.
[99] See Kofi Asiedu Ofori and Mark Lloyd, "The Value of the Tax Certificate Policy," The Civil Rights Forum, 1998, http://www.vii.org/papers/taxcert.htm
[100] Paul Starr, "Goodbye to the Age of Newspapers (Hello to a New Era of Corruption)," *The New Republic*, March 4, 2009, .http://www.tnr.com/story_print.html?id=a4e2aafc-cc92-4e79-90d1-db3946a6d11.9