

FEDERAL TRADE COMMISSION

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

OPENING REMARKS	PAGE
JON LEIBOWITZ	3

PRESENTATIONS	PAGE
JESSE M. SHAPIRO	13
JOEL WALDFOGEL	31
DAVID BLASZKOWSKY	50
NOEL HIDALGO	67
J.H. SNIDER	82
RUTH Y. GOLDWAY	104
GEOFFREY COWAN	120
ROBERT W. MCCHESENEY	136

PANEL	PAGE
3	163

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FEDERAL TRADE COMMISSION

FEDERAL TRADE COMMISSION )  
WORKSHOP ON: )  
HOW WILL JOURNALISM SURVIVE ) Docket No.  
THE INTERNET AGE ) P091200  
)  
-----)

Wednesday, March 10, 2010

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

The above-entitled workshop commenced,  
pursuant to notice, at 10:05 a.m.

## 1 P R O C E E D I N G S

2 - - - - -

3 CHAIRMAN LEIBOWITZ: All right. I want to thank  
4 you all for coming this morning to day two of workshop  
5 session two, How Will Journalism Survive the Internet  
6 Age, which some may call "Will Journalism Survive the  
7 Internet Age." I wonder about that myself. But in any  
8 event, of course we've had a long discussion about not  
9 saying that and not making that the title because we  
10 don't want to be judgmental or conclusory, but I want to  
11 thank you all for being here this morning.

12 At our workshop in December, panelists and  
13 presenters emphasized the importance of quality  
14 journalism to democracy, so, for example, Paul Steiger,  
15 ProPublica, highlighted the important duty of  
16 investigative journalists who expose corruption and give  
17 the public the power to affect change.

18 Matthew Gentzkow explained his findings that  
19 fewer people vote when a newspaper closes, which is not  
20 surprising actually because people who read the  
21 newspaper or newspapers have a component about political  
22 discourse in elections and public policy, and people who  
23 get an opportunity to read a newspaper probably become  
24 more interested in that.

25 Robert Murdoch and Arianna Huffington, despite

1 very different perspectives on a number of things I'm  
2 sure, both underscored a very similar need, which is for  
3 media organizations to continue to distribute the news  
4 that matters in a way that people can understand, but as  
5 news media organizations falter or continue to falter,  
6 and we all know this is of course going on, consumers'  
7 needs are not always being met.

8           In an effort to cut costs, layoffs continue, so  
9 just two weeks ago ABC News announced that it would be  
10 reducing its staff perhaps by as much as 25 percent.  
11 Coverage of state houses and local city halls is in a  
12 sad decline, and yesterday, I went and I visited  
13 something, a sort of start up of refugees from the  
14 Chicago Tribune called The Chicago News Cooperative. It  
15 was started by an interesting man named Jim O'Shea, who  
16 had worked for the Des Moines Register, the Chicago  
17 Tribune. He had been the editor and chief of The Los  
18 Angeles Times.

19           They have a little start up in downtown Chicago,  
20 and their first contract was signed to give an insert I  
21 think once or twice a week to The New York Times Chicago  
22 edition, but their plan is to put three journalists or  
23 to have three reporters covering the state house, to  
24 have three reporters covering Cook County, very  
25 important in Chicago, three reporters covering city hall

1 in Chicago, and when they do that, and I'm confident  
2 that they will, they will have bigger bureaus in each of  
3 those three places than The Chicago Tribune.

4 I just want you to think about that. I mean,  
5 that tells you something about how a major American  
6 newspaper, The Chicago Tribune, considered to be maybe  
7 not in the highest echelon of newspapers, but certainly  
8 a very important and a very credible one, is becoming  
9 basically a venue for advertising more than anything  
10 else because it's not really covering the news anymore.

11 Advertising dollars for print newspapers are  
12 decreasing, as we all know, as advertising and  
13 especially advertising continues to move online, and the  
14 move to online advertising really isn't surprising  
15 because online and mobile devices is really where most  
16 people and certainly more and more people are accessing  
17 the news.

18 A recent study by the Pew Research Center found  
19 that 61 percent of the people surveyed access some kind  
20 of news online compared to 50 percent who read the news  
21 in a local newspaper. Additionally, 33 percent of cell  
22 phone users access news via their cell phones.

23 Consumers are also turning to their social circle for  
24 the news, with 73 percent of internet users creating,  
25 commenting about or disseminating the news via social

1       networking sites.

2               I would imagine Rick Lang will be walking into  
3       this room soon. I would imagine that those changes are  
4       even more dramatic when you look at different  
5       demographics, especially under 35 years old.

6               In response, news organizations and journalists  
7       are searching for creative ways to either thrive or  
8       really remain alive and in business and stay relevant.

9               Online experiments and competitor collaborations  
10       are beginning to surface. Nonprofit news organizations  
11       are sharing content with for profit newspapers, many of  
12       which previously would never have considered using  
13       content from anyone outside their own staff.

14               Foundation funded online news organizations are  
15       expanding their output in new directions. Existing and  
16       upstart news entities are learning to use the internet  
17       in unprecedented ways, making access to information  
18       easier. Some news media organizations, including The  
19       New York Times, are now taking tentative steps towards  
20       charging consumers for access to their news online.

21               So I would say there's a lot of good  
22       experimentation going on that holds, I would say, some  
23       promise for the future of news and certainly for the  
24       consumers who need to see it and for democracy, which is  
25       so vitally attached to good substantive news and news

1 organizations.

2 It is too early to know for certain though  
3 whether these creative solutions can remedy the  
4 destruction of existing news organizations that's  
5 occurred thus far. What we do know for certain, though,  
6 is that there is no going back. Obviously, the internet  
7 is here to stay, and these changes, at least in part,  
8 will be here to stay as well.

9 So today we're concentrating on potential  
10 solutions in an effort to shed light on the problems and  
11 where we go from here, and our question through this  
12 workshop is this: Are changed government policies  
13 needed to support the optimal, or I might even say the  
14 minimally necessary amount of journalism that we need in  
15 our society?

16 My own sense, by the way, is evolving, and it's  
17 not there yet, and of course we'll write a report, and  
18 we'll be thinking about this with other Commissioners  
19 and with Susan DeSanti and the staff that's been working  
20 on this so productively and so hard, but my own  
21 tentative conclusion is a qualified, yes, so long as, I  
22 would say, the policy is platform neutral, and it  
23 doesn't unnecessarily entangle government in journalism.

24 After all, we live in a Washington where the  
25 widget industry or any industry can lobby sometimes

1 very, very successfully for preferential tax treatment.  
2 It seems hard to me that we couldn't do the same. It  
3 seems hard for me to understand why we wouldn't do the  
4 same for, really, something that is so ultimately vital  
5 to the future of our democracy.

6 And, I know this puts me on the other side of  
7 probably both Rupert Murdoch and Arianna Huffington,  
8 which I don't think it is a bad place to be necessarily.  
9 But you know, again, this is not the kind of creative  
10 destruction that we see when a travel agency is battered  
11 by new internet direct ticket buying by consumers.  
12 That's a great thing for consumers, maybe a bad thing if  
13 you're a travel agent.

14 My staff has heard me say this ad nauseam, Rob  
15 could come up and say it right now, but really if you  
16 own a hotel on Route 1, and they build Interstate 95,  
17 bad for you, great for society. I'm just not sure we  
18 want to take that risk when it comes to the future of  
19 news.

20 So yesterday and today our workshop focused on  
21 policy solutions that have been proposed as ways to  
22 support journalism. On Tuesday, we discussed copyright  
23 issues, technology to lower the cost of journalism, and  
24 corporate and tax approaches, and this morning, by the  
25 way, I was doing a back and forth and, Susan, I don't



1 know if you saw this with the SBA about whether SBA  
2 loans are available for start-up online news  
3 organizations?

4 MS. DESANTI: Yes.

5 CHAIRMAN LEIBOWITZ: I think they ought to be if  
6 they're aren't, and it's not entirely entirely clear if  
7 they are, so hopefully we'll have an answer soon. Today  
8 we're going to turn our focus to additional areas.

9 First we're going to hear from Jesse Shapiro.  
10 Is Jesse here? Thank you, Jesse, who will discuss the  
11 evidence that shows there's a significant demand for  
12 news in accord with one's own political ideology, and  
13 maybe you can answer this question for me, because I do  
14 sometimes, and it's much more intuitive than empirical,  
15 think that that's sort of a problem because too many  
16 people and too many lawmakers, they watch MSNBC or they  
17 watch Fox News, and the twain rarely meet.

18 And I think it really does sort of undermine --  
19 and they talk to each other, but the people who are  
20 watching MSNBC talk to the other people watching MSNBC.  
21 The people that are watching Fox News talk to the other  
22 folks who are watching Fox News. The twain rarely  
23 meets, and I think it really undermines bipartisanship,  
24 which I think is critically important to a functional  
25 democracy. We have a lot of bipartisanship at this

1 agency, and it functions very, very well.

2 Joel Waldfogel. Joel, are you here? Thank you.

3 Oh, that's good. You're sitting next to Jesse. He will  
4 discuss media products, market failures and media  
5 legislation.

6 Our last discussion of the morning will focus on  
7 interactive data and using data to lower the cost of  
8 journalism. We'll see a few examples of these ideas in  
9 action, and after lunch, we're going to review some  
10 journalism history.

11 Chairman Ruth Goldway of the Postal Regulatory  
12 Commission, who I do not see in the audience, will  
13 discuss the past postal periodical subsidies, which were  
14 very important to the newspaper industry before and at  
15 the beginning of the rise of the penny press in the  
16 early 1800s.

17 Geoffrey Cowan, from USC's Annenberg school,  
18 will discuss the history of government funding of the  
19 news. His discussion is based on a fascinating report  
20 released by the Annenberg School in January.

21 Robert McChesney is then going to discuss  
22 additional proposals for public support of the news, and  
23 our last discussion today will focus on competitor  
24 collaborations that can help support news organizations.

25 Our goal for this workshop is really to just try

1 to move this discussion in a positive direction. I  
2 think most of us now agree that there is a problem. Now  
3 we need to focus on what the potential solution should  
4 be, and let me just assure you, everyone in this room,  
5 particularly everyone who is participating, your  
6 participation is going to contribute greatly to our  
7 report.

8 I'm almost as confident, actually I'm equally  
9 confident that our report is going to contribute greatly  
10 to the very critical public policy debate that's  
11 happening here, really around the country, and hopefully  
12 will happen soon, and I expect will happen soon in  
13 Congress.

14 So again I just want to thank you all for  
15 coming. This is really one of the most interesting  
16 issues we have tackled as an agency. We are looking  
17 forward to working with the Federal Communications  
18 Commission, which will be taking a slightly different  
19 approach within its own jurisdiction, but looking at  
20 some of these very same issues.

21 Now I will turn it over to -- do you want me to  
22 turn it over to the first speaker? I will turn it over  
23 to Susan DeSanti, who has been doing just a stellar job  
24 of running these series of workshops.

25 (Applause.)

1 MS. DESANTI: Thank you very much, Chairman  
2 Leibowitz. I am required to give you all a security  
3 briefing first, and that may seem like overkill to you,  
4 but on 9/11, we were holding a conference in this room  
5 so there's some precedence, so they're a little fussy  
6 about this, so here it goes.

7 Anyone who leaves the building without an FTC  
8 badge will be required to go through the magnetometer  
9 and x-ray machine prior to re entry into the conference  
10 center. In the event of an emergency, fire or  
11 evacuation, the alarms will sound. At that time please  
12 gather your personal belongings, if the situation  
13 permits, and leave the building in an orderly fashion.

14 Once outside of the building, orient yourself to  
15 the corner of 7th street and Constitution Avenue,  
16 northwest, where you will enter the National Gallery of  
17 Art. That is our rallying point. Everyone will rally  
18 by floors so please stay together. You will need to  
19 check in with the conference meeting coordinator.

20 In the event that it is safer to remain inside,  
21 a shelter in place, you will be advised where you should  
22 report to while inside the building. Information and  
23 updates will be distributed via the Public Address  
24 System. Please remain with the conference meeting  
25 coordinator. If you spot suspicious activity, please

1 alert the conference or meeting coordinator and/or the  
2 security staff, and I would encourage you to notify the  
3 security staff.

4 Our first presenter today, as the Chairman has  
5 said, is Jesse Shapiro, who is assistant professor of  
6 economics and Robert King Steel Faculty Fellow at the  
7 Booth School of Business at the University of Chicago.

8 Dr. Shapiro's research focuses on the economics  
9 of communication and persuasion in the areas of  
10 industrial organization and political economy. Dr.  
11 Shapiro also is a faculty research fellow in labor  
12 studies at the National Bureau of Economic Study of  
13 Research.

14 Jesse, I believe you did that research with  
15 Matthew Gentzkow that was referenced by the Chairman,  
16 and maybe you could use a couple additional sentences to  
17 give us a little better idea of that research. Jesse?

18 MR. SHAPIRO: Thanks very much, Susan, and  
19 thanks, Chairman Leibowitz. This is joint work, as you  
20 mentioned, with my colleague at Chicago Booth, Matthew  
21 Gentzkow, who was here for the fall workshop, and at  
22 that time he talked about historical research we've done  
23 studying the effect of exits and entries of newspapers  
24 on voting behavior, and in particular, as Chairman  
25 Leibowitz mentioned, on voter turn out.

1           Today I'm going to show you a different slice of  
2           our research. I will talk about a paper called "What  
3           Drives Media Slant, Evidence From U.S. Daily  
4           Newspapers." This work, as I said, is joint with  
5           Matthew and is published. The published version is  
6           available publicly on my web site if anyone is  
7           interested in reading more details. Today I will give  
8           you kind of an overview of what we've done.

9           So as people in this room know much better than  
10          I do, two central principles that have been important  
11          for a long time in guiding U.S. policy towards the news  
12          media are, one, that a diversity of voices is good, and  
13          here is the Supreme Court in a very famous decision,  
14          saying that one of the most vital of all general  
15          interests is the dissemination of news from as many  
16          sources, and with it, as many different facets and  
17          colors as possible. So we want rich diversity in the  
18          marketplace of ideas.

19          And, two, left to its own devices, an unfettered  
20          media market may produce too little diversity, and one  
21          particular threat that's been identified over and over  
22          again to the diversity of opinion in the news media is  
23          the consolidation of ownership.

24          The FCC in this quote has traditionally assumed  
25          that there is a positive correlation between viewpoints

1 expressed and ownership of an outlet, and the Commission  
2 has sought therefore to diffuse ownership of media  
3 outlets among multiple firms in order to diversify the  
4 viewpoints available to the public.

5 This is a question that has been the subject of  
6 much research, but despite a long history of effort to  
7 try to resolve this issue, I think the jury is still out  
8 on how important, in fact, ownership consolidation is in  
9 determining the degree of ideological diversity in the  
10 media space, and I think one of the primary reasons for  
11 that is fundamentally technological, which is that it's  
12 very difficult to quantify the content of a news outlet.

13 News media content is obviously richly  
14 multi-dimensional. If it were possible to summarize it  
15 in a single number, the newspaper would be much shorter.  
16 It isn't, and as a result, most of the existing research  
17 uses some form of human hand coding to try to identify  
18 the partisan slant of news content, and that's been a  
19 limitation on the size of the sample people have been  
20 able to study.

21 So a well known study by Pritchard consists of  
22 only ten newspapers. A recent study in Economics by Tim  
23 Groseclose and Jeff Milyo that's been much cited talks  
24 about only six newspapers, so despite being a very high  
25 quality, these studies are limited in some sense by the

1 number of media outlets they're able to consider.

2 That makes it difficult to answer some of the  
3 questions that are central to the policy debate. And as  
4 a result, the FCC has admitted that this remains an  
5 open, empirical issue. They have said a larger number  
6 of independent owners will tend to generate a wider  
7 array of viewpoints in the media than would a  
8 comparatively smaller number of owners. We believe this  
9 proposition, even without the benefit of conclusive,  
10 empirical evidence. The emphasis is ours.

11 So this is where we try to come in and offer  
12 some contributions towards a possible resolution of this  
13 empirical question. Whether, in fact, independent  
14 ownership is central to ideological diversity, and we're  
15 going to try to make several contributions in this  
16 paper.

17 First, and I will say more about the details  
18 about this in a minute, we're going to try to make a  
19 methodological contribution and offer a content based  
20 measure of media slant, and I'll say more about how we  
21 measure slant in a moment.

22 Then I'm going to try to give you a little bit  
23 of a feel, thinking of this like an economist, trying to  
24 look at the demand for slant and the supply of slant, so  
25 we're going to look at whether in fact consumers demand



1 ideological slant and to what extent they do, and we'll  
2 use evidence on circulation data, and what I'm going to  
3 argue is that the data shows that there's evidence that  
4 consumers value an ideological match between their  
5 ideology and the ideology of the news outlet that they  
6 consume.

7           Then we'll turn and look at whether that demand  
8 is met with corresponding supply by news outlets. We'll  
9 show first that news outlets do respond to consumer  
10 demand, that is, that the kind of news demanded by the  
11 customer seems to play an important role in driving the  
12 heterogeneity across news outlets in the left right  
13 slant of the news, and then I'll actually argue that in  
14 our data, there's little evidence that the owner plays  
15 an important role, that is, two newspapers with the same  
16 owner look no more similar in terms of their ideological  
17 position than two newspapers with different owners.

18           Okay. So the first thing I want to tell you  
19 about is how we go about measuring slant, so one of the  
20 things that we faced as a challenge in this study, given  
21 our goal of trying to extend the sample size, is to try  
22 to find an automated, portable way to quantify the  
23 orientation of news outlets on a left right political  
24 spectrum, and the way we decided to approach that is to  
25 study the strategic use of language. So let me give you

1 an example that illustrates our approach, and then I'll  
2 try to overview in more detail exactly what we did.

3 So in the Social Security debate in 2005, there  
4 was a discussion about the strategic use of language,  
5 and one of the ways you can learn about that is from a  
6 widely circulated leak memo by Frank Luntz, a famous  
7 political consultant, which was circulated in 2006 for  
8 public and Congressional hopefuls, and in the context of  
9 the Social Security debate, it gave them the final  
10 advice: Never say privatization or private accounts.  
11 Instead say personalization or personal accounts.

12 Two-thirds of America wants a personalized  
13 Social Security while only one-third would privatize it.  
14 Why? Personalizing Social Security suggests ownership  
15 and control over your retirement savings, while  
16 privatizing suggests a profit motive and winners and  
17 losers.

18 So Luntz is offering strategic advice. If you  
19 want people to support Social Security reform and you're  
20 a Republican, what you should do is avoid phrases like  
21 privatization or private accounts and focus on phrases  
22 like personalization or personal accounts.

23 Well, we went to the 2005 Congressional Record  
24 to see whether, in fact, Republicans were heeding that  
25 advice or whether Democrats were heeding the converse

1 advice to emphasize privatization or private accounts.

2 In the 2005 Congressional Record, Democratic  
3 members of Congress used the phrase "personal account"  
4 48 times. Republicans used it 184 times. Democratic  
5 members of Congress used the phrase "private account"  
6 542 times, and Republicans used that phrase five times.

7 So I take two lessons from this example that we  
8 have tried to generalize from. First, as an economist,  
9 I'm not surprised to see that people who have a  
10 political agenda are trying to find the language that's  
11 going to tend to get a listener to support that agenda,  
12 so language is used strategically, like every other  
13 tool, and it's being used here to get the listener to be  
14 more sympathetic to a policy position.

15 Second, from a statistical standpoint, what I've  
16 learned from this is that if you tell me nothing about a  
17 Congressperson in 2005 except how often they said  
18 "personal account" and how often they said "private  
19 account", provided they said one or the other, I can do  
20 a pretty good job of guessing which political party they  
21 belong to, even if you tell me nothing else about them.

22 So what we've learned is that the frequency of  
23 these phrases is a good predictor of a politician's  
24 ideology. So what we're going to build off of is the  
25 idea that we can go into the Congressional Record and

1 identify partisan phrases, and then what we're going to  
2 do, just to give you kind of a roadmap, is we're going  
3 to go look for those phrases in the news media.

4           So here's another set of examples. On June 23,  
5 2005, The Washington Post talked about the House GOP  
6 offering a plan for Social Security. Bush's private  
7 accounts would be scaled back. On that same date, The  
8 Washington Times, a somewhat more right-wing  
9 publication, said that the GOP backs use of Social  
10 Security surplus, finds funding for personal accounts.  
11 So here's that same contrast in use of language, now  
12 lining up with what we would expect are differences in  
13 the political orientations of these two newspapers.

14           So what we're going to do is go look for a bunch  
15 of phrases like personal accounts and private accounts  
16 in the Congressional Record, and then once we have those  
17 phrases, we're going to go find them in newspapers and  
18 use that to try to index newspapers according to whether  
19 they talk more like a Republican or more like a  
20 Democrat.

21           So the way we get our set of phrases is not from  
22 the Luntz memo, but rather from a computer analysis of  
23 the 2005 Congressional Record. What we do is we  
24 download the Congressional Record using an automated  
25 script. We identify with another script who is speaking

1 at each point in time, and we match that to data about  
2 that speaker, including their political party.

3 For every two and three word phrase spoken in  
4 2005, we count how often it was said by Democrats and  
5 how often it was said by Republicans, and then we select  
6 the 500 two word phrases and the 500 three word phrases,  
7 for a total of a thousand phrases that are the most  
8 diagnostic of the party of the speaker; that is, these  
9 are the phrases for which knowing these phrases is most  
10 useful about identifying the party of the person using  
11 them.

12 So one thing that I want to stress is when you  
13 do something like this, there are pros and cons, so this  
14 is a very scalable method, and it's possible for me to  
15 state an algorithm that produces the list of phrases,  
16 but because we didn't have a human do it, there are  
17 going to be some messy examples and instances of things  
18 that don't quite make sense because we were trying to  
19 teach a computer how to read, and that's a messy  
20 business.

21 So here we have all of the phrases posted  
22 online, but here are the top ones that come up, and just  
23 to highlight a few examples. Here's our Social Security  
24 debate, so Republicans talked about personal retirement  
25 accounts. Democrats talked about private accounts.

1 Private accounts turns out to be the single most  
2 Democratic key word phrase spoken in 2005 in the sense  
3 of how diagnostic it is about the party of the speaker.  
4 Democrats also spoke frequently about the Social  
5 Security Trust Fund.

6 In the context of foreign policy, the  
7 Republicans were talking about the global war on terror  
8 in 2005. The Democrats were talking about the war in  
9 Iraq. If somebody said war in Iraq in 2005, that  
10 somebody was very likely to have been a Democrat.

11 In the context of fiscal policy more generally,  
12 of course the Republicans used the phrase "death tax"  
13 more often than the Democrats did. The Republicans used  
14 the phrase "tax relief", where the Democrats would use  
15 phrases like "tax breaks" or "tax cuts for the wealthy."

16 So once we have our set of 1,000 highly-partisan  
17 phrases, what we do is we match how often each speaker  
18 in Congress says each phrase to an index of their  
19 ideology, and we use a few of these. It doesn't matter  
20 very much which one we use. We use both, the ideology  
21 of their constituency, that is, how did their  
22 constituents vote in the 2004 Presidential election. We  
23 all used some standard indices based on their roll call  
24 voting records, and those two things are so highly  
25 correlated with one another that which one we use is not

1 very important.

2 Then we use a statistical model to basically  
3 allow us to predict, based only on speech, how right  
4 wing or left wing is this Congressperson, so we have a  
5 statistical mapping that says, based on the number of  
6 times this speaker said each one of these 1,000 phrases,  
7 this is how partisan or how right-wing or left wing this  
8 speaker is likely to be.

9 So we basically are able to identify a predicted  
10 ideology based only on speech and confirm that among  
11 Congresspeople, this measure does a reasonably good job  
12 of picking up variation in political partisanship just  
13 based on speech alone.

14 Then we need to apply this to newspapers, so  
15 another computer script goes online and searches the  
16 full text record of 433 U.S. daily newspapers,  
17 accounting for more than 70 percent of the circulation  
18 of daily newspapers at the time in the U.S., and counts  
19 the uses of each one of these 1,000 phrases in news  
20 texts wherever possible.

21 Then we apply the same statistical model to the  
22 newspapers that we've applied in Congress, and ask the  
23 question of the model: If this newspaper were a member  
24 of Congress, how Republican a member of Congress would  
25 it be? Would this newspaper be a very right wing member

1 of Congress or a very left wing member of Congress? We  
2 get a number for every newspaper.

3 Now, again there are things that we like about  
4 this method and things that we have to live with because  
5 of the things we like. This method has the virtue again  
6 of being scalable, reproducible in the sense that  
7 it's performed by computer algorithm and not by  
8 subjective judgment. It's portable across context so  
9 any environment in which there's parliamentary text that  
10 you can identify with the partisan orientation of the  
11 speaker, you can use to calibrate a method like this,  
12 and it doesn't require the employment of armies of  
13 undergraduate and graduate research assistants, which  
14 may be bad from a job's perspective, but very good from  
15 the point of real scaleability.

16 So it allows us to compute a number for over 400  
17 newspapers, which is very nice. The downside of that is  
18 that because this method introduces a lot of noise and  
19 because the computer isn't taking account of context and  
20 meaning, for any one newspaper, our method is going to  
21 be more noisy than a method that really involves a close  
22 reading of the newspaper's text.

23 So for the aggregate of newspapers, this method  
24 I think is very good and very defensible. For getting  
25 an ideology for a single newspaper, I think this isn't



1 ideal method, and you would want to use something that  
2 involves some more significant human involvement.

3           Nevertheless, this method does a reasonably good  
4 job of correlating with people's subjective opinions.  
5 There's a website called Mondo Times where users are  
6 able to submit ratings of the ideology of newspapers,  
7 and Mondo Times was good enough to share their number  
8 with us, and indeed the news sites that are rated as  
9 more conservative on Mondo Times also show up as more  
10 right-wing according to our slant index.

11           So that is an overview of how we measure the  
12 slant of 400 and some newspapers in the U.S. Then we  
13 want to use that to test some substantive economic  
14 hypotheses.

15           The first economic hypothesis is that people are  
16 drawn to newspapers that are an ideological match for  
17 them, which is something that I think we would expect to  
18 be true. We wanted to see whether the data in fact  
19 support that and whether that's an economically  
20 significant force in this industry.

21           To test that, we obtain data from the Audit  
22 Bureau of Circulation in 2005 on circulation by ZIP Code  
23 for a large fraction of U.S. daily newspapers. The  
24 audit data don't include all newspapers, and then we  
25 proxy for a ZIP Code's ideology by the share of

1 donations in the Federal Elections Commission's Public  
2 Register that go to Republicans as a fraction of all  
3 donations to Republicans and Democrats.

4 Then we want to test again the key hypothesis  
5 that consumer demand is going to be greater for  
6 newspapers with a slant similar to consumer ideology,  
7 and I won't go into the details of how we implement this  
8 test, but what we try to do is look within a newspaper's  
9 market, so say within a Metro area, are the more  
10 right-wing available newspapers doing relatively better  
11 in ZIP Codes that are relatively right-wing within that  
12 market, and are the more left-wing newspapers doing  
13 relatively better in more left wing ZIP Codes within  
14 their markets.

15 This builds on methods that Joel has developed  
16 in the media context to study racial patterns of news  
17 consumption. We're here using it, instead of for race,  
18 to look at political meaning.

19 So in particular what we're going to test is  
20 whether more Republican newspapers circulate more in  
21 more Republican ZIP codes, and we find strong support  
22 for that hypothesis in the data, so again this is  
23 something I'm going to skip the details of, but I think  
24 the evidence is very clear, at least in my reading of  
25 it, that this is an important force, and I think that's

1 consistent with our prior expectations about the way  
2 people make consumption decisions in this space.

3 So that raises the question: Do newspapers  
4 respond in a manner consistent with profit maximization  
5 to this incentive, that is, do they tailor the news to  
6 match the ideological predispositions of their customer  
7 base?

8 The first way we're going to test that, and the  
9 main thing that we do in the paper to test that, is to  
10 study whether newspapers that circulated more  
11 conservative areas, like more conservative metropolitan  
12 areas measured by the voting patterns of their readers,  
13 have more conservative language; that is, have a slant  
14 that's to the right of newspapers that circulate in less  
15 conservative areas.

16 We find strong support for that hypothesis.  
17 Variation in the fraction voting Republican in the 2004  
18 election explains about 20 or more percent of the  
19 variation in our slant measure, which is actually a  
20 fairly substantial fraction given the fraction of the  
21 variation that's likely just computer noise, so there's  
22 strong evidence that newspapers are tailoring the news  
23 to match the ideological predispositions of their  
24 customers.

25 In fact, in our data, using some modeling, we're

1 able to actually calculate for each newspaper what  
2 choice of slant would maximize the newspaper's profits  
3 and the data are consistent with the hypothesis that  
4 newspapers are acting to maximize their profits or  
5 circulation given the ideological predispositions of  
6 those in their market.

7           The next substantive hypothesis of importance is  
8 the one I started with, that two newspapers with the  
9 same owner have a more similar slant than two newspapers  
10 with two different owners.

11           Once we control for our proxies for the ideology  
12 of newspaper's customers, we find no support for this  
13 hypothesis, so on the X axis, here again, after  
14 controlling for the ideology of the consumer, this is  
15 the ideological leaning of the newspaper, and on the Y  
16 axis is the average ideological leaning of the other  
17 newspapers that have the same owner, and we find no  
18 evidence that the two are related at all; that is,  
19 two newspapers with the same owner do not appear to be  
20 more similar in our data, at least statistically  
21 speaking, to two newspapers with a different owner.

22           A good example might be The New York Times in  
23 2005 owned the Spartanburg Herald Journal in South  
24 Carolina. That newspaper was more similar -- was more  
25 similar to other newspapers in South Carolina than to

1 The New York Times itself.

2 Another hypothesis of importance that I haven't  
3 mentioned before but that is often talked about is that  
4 incumbent politicians pressure newspapers, either  
5 through access or other means, to slant their news  
6 toward their ideological preferences, and so we've  
7 tested in the data whether having a Republican governor  
8 or a Republican representative locally seems to be  
9 correlated with a newspaper slant, controlling again for  
10 consumer ideology, and once again we find no support for  
11 that hypothesis in the data.

12 So what I hope this paper contributes, most of  
13 all, is a methodology for measuring slant that's  
14 portable to other contexts and widely applicable and  
15 allows us to look at data on a larger scale than was  
16 possible with human coding.

17 I think we find evidence in the data that  
18 there's significant consumer demand for slant; that is,  
19 consumers have a preference for, or exhibit demand for,  
20 consuming ideologically similar news. Firms in turn  
21 respond to consumer preferences by tailoring the news to  
22 match the predispositions of their customer base.

23 Once we've accounted for consumer preferences,  
24 there's little evidence that the identity of the  
25 newspaper's owner is correlated with its content, and

1 little evidence that the party affiliation of incumbent  
2 politicians is correlated with the newspaper's content.

3 Thank you.

4 (Applause.)

5 MS. DESANTI: Jesse, I have one question. I'm  
6 interested in how you controlled for an alternative  
7 hypothesis which is that voters are influenced by the  
8 way the newspapers present the news, and that's what  
9 accounts for -- in other words, it's a chicken and the  
10 egg, so obviously you've accounted for this, and how do  
11 you do that?

12 MR. SHAPIRO: Do you want me to use this  
13 microphone here?

14 MS. DESANTI: Go right ahead.

15 MR. SHAPIRO: So the way we try to account for  
16 that issue is to exploit variation across markets and  
17 ideology that's related to demographic factors that are  
18 unlikely to be directly affected by the newspaper.

19 A good example would be church attendance, so  
20 the markets where people attend church more regularly  
21 also tend to vote more Republican, and those markets  
22 have more right wing newspapers. It's conceivable that  
23 the reason people are attending church more often is  
24 because of the politics of the newspaper, but if you're  
25 prepared to rule out that hypothesis, then this method

1 kind of resolves that issue in favor of the hypothesis  
2 that consumers are the chicken, yes.

3 MS. DESANTI: Okay.

4 MR. SHAPIRO: Thanks very much.

5 MS. DESANTI: Our second presenter today is Joel  
6 Waldfogel who is the Joel S. Ehrenkranz Family Professor  
7 and Professor of Business and Public Policy at the  
8 Wharton School of the University of Pennsylvania.

9 Within industry economics, Dr. Waldfogel has  
10 conducted empirical studies of price advertising, media  
11 markets and minorities, the operation of differentiated  
12 product markets and issues related to digital products  
13 including piracy, pricing and revenue sharing, and he's  
14 going to discuss challenges for media markets and  
15 possible regulation. Joel?

16 MR. WALDFOGEL: Thank you very much, and thank  
17 you for involving me in this conversation. Some of what  
18 I will say, since I didn't know what others will say,  
19 will be just the same depressing stuff on what's  
20 happening and some of it may be some other things.

21 All right. Why don't we just go? I thought of  
22 this last year. I guess it's 2010 now. I should note  
23 I'm aware of that. So we'll talk a little bit about a  
24 few things.

25 The nature of media products, so this will be,

1 in some sense, economic history as well as economics  
2 going forward. Then I'll talk about recent  
3 technological challenges that I think are bringing us  
4 all here, and then finally I'll talk about what I guess  
5 I would think about as implications for the well-being  
6 for industry and the consumers, using the FCC words,  
7 diversity, competition and localism, but they're really  
8 just words about the well being of various participants,  
9 including the consumers of news. I probably won't talk  
10 about things to monitor.

11 So a little bit about the nature of media  
12 products. Media products are special in the sense that  
13 they inform us, sometimes they entertain us. They're  
14 special. They're unlike say usual widgets because usual  
15 widgets care about the buyer and seller of widgets. Of  
16 course in media products, most of which are advertiser  
17 supporters, the buyers and sellers are the buyers of  
18 advertising and displayers of advertising.

19 Here we have this very important third-party,  
20 the consumers of information. Now, they are in some  
21 sense buyers for some of these products. They pay for  
22 newspapers, but really they're not the major source of  
23 revenue, so this is a special product because there's  
24 this third-party who is not directly involved in the  
25 important economic transactions. 80 percent of



1 newspaper revenue, we heard yesterday from Hal, is  
2 advertiser revenue.

3 Now as products, even apart from that special  
4 feature of newspaper products, as products they're  
5 unusual and I think interesting in two other respects.  
6 Media products have really high fixed costs; that is,  
7 costs independent of how many copies or if it's a  
8 physical copy or how many people consume the product.  
9 They have high fixed costs, and that means, if you think  
10 about it, fixed costs have to be covered with revenue  
11 sort of per user.

12 That revenue per user times the number of users  
13 has to be big enough to cover that big fixed cost, so  
14 what's available depends essentially on the value that  
15 advertisers attach to users, not the value that users  
16 attach to content and you need a lot of users, so you  
17 have these two kind of perverse aspects.

18 Oddly, whether we get informed, therefore,  
19 depends not on our appetite for information by and  
20 large, but on whether we're a large segment that are  
21 sought after by advertisers.

22 Now, of course, there are exceptions to this.  
23 There are magazines that are largely user supported, and  
24 there are a spectrum of kinds of products, but for  
25 newspapers in particular, by and large, we're talking

1 about advertiser support. That's been the traditional  
2 mode, so whether we get a newspaper depends on having a  
3 lot of folks like us who also want such a newspaper.

4 So as a consequence of the way these markets  
5 work, large groups tend to get more products, so I've  
6 studied for example the provision of newspapers  
7 targeting minorities versus non minorities, and it's  
8 clearly the case that people in small groups, who have  
9 different preferences, either get no product or a small  
10 product and so forth, so being in a big group favored by  
11 advertisers is an advantage, for getting this biproduct  
12 called information.

13 So what are the ensuing market failures? And  
14 again I'm just talking about history here. We were  
15 thinking yesterday, and the way we talk about this  
16 industry, we think that everything was wonderful before,  
17 but actually even before, there were some things that  
18 made this a complicated environment, and so let's talk  
19 about that.

20 The market failures we could have expected  
21 already, we could sometimes have expected inefficient  
22 underprovision. Now, why is that? Well, whether  
23 something had ought to get provided is determined by  
24 whether the area under the demand curve or the value  
25 that people would attach to this product exceeds the

1 cost of providing it.

2 Whether it did get provided depended on whether  
3 the revenue exceeded the cost. Now, of course, it's  
4 possible, if not all of that willingness to pay can be  
5 captured as revenue, for things that ought to get  
6 provided, to not be provided. Usually economists say,  
7 Well, if price discrimination is possible, that's not  
8 such much of a problem.

9 Of course, it turns out price discrimination,  
10 while it's possible, still isn't going to get all of the  
11 area under the demand curve as revenue. We don't know  
12 much about that, although we've been doing some work on  
13 it, so in any event, there was a possibility that small  
14 groups with different preferences wouldn't get stuff or  
15 would inefficiently not get stuff.

16 Now, one context that you can think about, and  
17 actually I was reminded of it in yesterday's discussion  
18 of possibly granting tax advantage to newspapers, of  
19 course we have public broadcasting, right, and one way  
20 to think about public broadcasting, which isn't really  
21 public, but that's a different story, is simply a way to  
22 correct market failure. In the old days we also  
23 wondered if it was simply cannibalizing commercial  
24 activity, but of course if commercial activity goes  
25 away, you have to have something.

1           So anyways, at the same time we have inefficient  
2 underprovision as a possibility, we also have the ironic  
3 possibility of excess entry, so the way to think about  
4 this is when a private, say a second entrant enters, the  
5 benefit he experiences is partly new demand but partly  
6 just diverted demand from existing firms.

7           The social benefit really is reflected by the  
8 new demand, whereas the other part is a loss to one  
9 party, a gain to another. The private benefit tends to  
10 exceed the social benefit, so it's entirely possible to  
11 have too much entry in markets like media markets, and  
12 probably not so much in newspapers today, but certainly  
13 in radio markets, there are situations like a Dallas  
14 that has six country stations, sorry if I offend country  
15 fans, they're not really literally the same, but they're  
16 rather similar.

17           All right. So what do we know about -- now,  
18 it shouldn't so much be what do we know about  
19 regulation, but stuff that is effected or might be  
20 effected by regulation -- we know that ownership matters  
21 for content. Now, notwithstanding the paper we just  
22 heard, which I actually agree with and believe quite  
23 firmly, but let me talk about the distinctions between  
24 this and that.

25           First of all, we know that ownership

1 concentration can matter for product positioning in  
2 multi product environments, and my evidence for this  
3 first is the radio consolidations that occurred pursuant  
4 to the Telecommunications Act of 1976. We had huge  
5 increases in local ownership concentration, and what we  
6 got as a result of that was a kind of spreading out of  
7 products into product space.

8 Monopoly tended to reduce duplication of formats  
9 and enhance variety or at least variety per station  
10 available, so we know ownership concentration matters in  
11 these multi-product environments. Monopoly  
12 environments, like the ones that Matt and Jesse have  
13 been talking about, are a little bit different.

14 We also know that in some contexts, the owner  
15 demographics actually matter for targeting, so my  
16 evidence for this is again from radio markets, where  
17 Black-targeted and Hispanic or Spanish-targeted stations  
18 or Spanish language stations, the number of Black owners  
19 in a market has an effect on the number of Black  
20 targeted stations over and above demand characteristics.

21 So there's some reason to -- and that's a little  
22 bit ironic because on the one hand, virtually every  
23 Black owned station was Black targeted, but on the other  
24 hand, most Black targeted stations weren't Black-owned  
25 so you didn't need Black ownership to have Black

1 targeting.

2           Nevertheless, the evidence seemed to show that  
3 ownership changes that changed the number or reduced the  
4 number of Black owners over and above everything else  
5 that was happening seemed to reduce the total amount of  
6 Black-targeted stuff. So again, just stepping back,  
7 ownership can matter for the targeting of these  
8 products.

9           Secondly and maybe more important, content  
10 matters for behavior, and so this is true in Matt and  
11 Jesse's paper on closing newspapers. I've done a bunch  
12 of studies on related phenomena, and let me just say the  
13 presence of group targeted content affects voter  
14 turnout. The reason I focus on group-targeted stuff is  
15 that newspapers are generally ubiquitously available.  
16 It's very hard to study things that are ubiquitously  
17 available. If they're always there, there's nothing to  
18 look at, but things like Spanish-language local  
19 television news is not ubiquitously available. It's  
20 available in about 25 U.S. markets up from about ten 15  
21 years ago.

22           So in that context, you can see what happens to  
23 Hispanic-voter turnout in places that get a Spanish  
24 language local newspaper, and sure enough, it seems to  
25 go up, so that may be no surprise to normal people, but

1 economists need evidence for things that seem obvious to  
2 everyone. Otherwise we just don't feel good. So this  
3 conversation matters I think. The provision of  
4 information affects stuff that we very well might care  
5 about, as if you didn't know that.

6 All right. Technological change, the internet,  
7 and some of this we heard yesterday. The internet  
8 brings a number of innovations all at once, most of  
9 which frankly are just plain good, so we're complaining  
10 about something that's mostly good. One innovation is  
11 market enlargement, so now consumers anywhere can get  
12 access to products anywhere, here or elsewhere, which  
13 means that the geographic size of the market that I can  
14 serve isn't just my local physical market, but it could  
15 be wherever.

16 The internet brings reduced distribution costs.  
17 This has got to be good news for both consumers and  
18 firms. It also brings a greater ease of switching.  
19 Instead of having to subscribe to a different daily  
20 paper and wait for it to arrive on my doorstep, I can  
21 just put in a different URL and look at a different one.  
22 Surely this is good for consumers. This is kind of the  
23 quote, more competitive aspect of it, but -- and this is  
24 I think the big but -- the availability of these easy  
25 access to substitutes makes it much harder for sellers

1 to charge for stuff, especially for stuff that's not  
2 particularly distinctive.

3           There's a paradox here I think. Digital  
4 distribution makes information, and by information I  
5 mean all the zeroes and ones, any form of information  
6 you like, ubiquitously available. I mean music, video,  
7 audio, it's all there on my telephone, and you walk  
8 around Washington or the Penn campus, and you see  
9 everybody listening to music for hours and hours a day  
10 and staring at their devices as they walk.

11           The service flow coming off of these digitizable  
12 products strikes me as being at an all time high, but  
13 because of the challenges to appropriability, the  
14 sellers of these things are really hurting, and the  
15 consumer perspective is: Why should I pay for things I  
16 can get elsewhere for free? The seller perspective, as  
17 Hal pointed out with the Bertrand paradox is: How can I  
18 charge for things that other guys are giving away for  
19 free?

20           In music, it's literally piracy that is the  
21 problem. In the case of newspapers, I think there may  
22 be an analogy to piracy, but it's not quite piracy.  
23 It's just that much of what I can get in the thing I  
24 used to have to pay for is available for free and better  
25 elsewhere, but the paradox though is that the value of



1 this product category is at an all time high, and yet  
2 the appropriatability seems to be currently at an all  
3 time low.

4 All right. So what are the implications? Given  
5 the nature of media products, what are the implications  
6 of this changed environment for let's just say the  
7 well-being indexed by these words that the FCC tends to  
8 use. So diversity, first of all, this is a word that  
9 has multiple meanings or maybe no particular meaning,  
10 but one version of diversity is variety of content  
11 appealing to different sorts of people.

12 Certainly market enlargement is great for this,  
13 right? If all of a sudden any product can see a  
14 national or international market, there is room for a  
15 great variety of products serving many different niches  
16 of consumers, so market enlargement, which seems to  
17 promote enormous diversity, especially in non-local  
18 product markets. Reduced distribution costs as well  
19 promote the proliferation of products, which again  
20 should at least favor a variety, if not some deeper  
21 notion of diversity that I'm not quite in control of.

22 Competition is a little more complicated I  
23 think. There's a stylized idea of competition based on  
24 sort of a textbook widget market, and the internet does  
25 bring good news for textbook markets in the sense that

1 they bring lower costs and more elastic demand, which we  
2 would think should drive prices toward costs in textbook  
3 markets, and particularly if we were thinking about  
4 markets with U-shaped cost curves and increasing  
5 marginal costs, this seems just like great good news.

6 I think the nuance in media markets is not only  
7 are fixed costs high, they're endogenously high, I'll  
8 explain that in a minute, and so I think that the  
9 textbook notions of competition that produce benefits  
10 for consumers don't so obviously produce good news in  
11 these kinds of markets because the question is in these  
12 contexts: Can firms still cover their costs and produce  
13 quality products?

14 So let's talk a little bit about quality  
15 competition. How is it that newspapers compete, and I  
16 would argue that it's not mainly by prices. It's not  
17 mainly by the prices that they charge to consumers, but  
18 rather by the content that they prepare for consumers in  
19 the hopes of attracting readers and then in addition  
20 advertisers.

21 When quality is produced with fixed costs, then  
22 what's interesting is that a better product doesn't need  
23 to charge more than a lower quality product because it  
24 hasn't increased its marginal costs. I mean, of course  
25 it has to cover its cost, so what I said isn't quite

1 true, but its marginal costs aren't higher, and if  
2 customers or consumers agree on what constitutes quality  
3 and what's better, for example, if they agree that more  
4 pages, more content is better, then a better product can  
5 attract a large market share, even if the market grows  
6 large.

7           So instead of the textbook idea, there's some  
8 fixed cost of operating, the market gets big, we can  
9 just accommodate more competitors. But if that's not  
10 necessarily true, if as the market gets big, I can  
11 invest more in quality and undercut the prices of my  
12 competitors, I can stay big. So these are arguments  
13 that are not mine, but John Sutton's from his famous  
14 book "Sunk Cost and Market Structure."

15           Well, I think this characterization fits some  
16 media products really well. The quality is produced  
17 with the fixed costs, not the marginal costs, probably  
18 more so newspapers than radio. In radio, we have these  
19 different formats and bigger markets have a  
20 proliferation of formats, but think about newspapers,  
21 and this again is becoming economic history, but across,  
22 for example, U.S. cities, bigger cities don't have very  
23 many more papers, a little bit more.

24           I mean, New York arguably has three dailies that  
25 are targeting the whole Metro area, it depends how you

1 count, but Fergus Falls, Minnesota, population 12,000  
2 has one. New York is about a thousand times bigger and  
3 it doesn't have a thousand. It has about three or maybe  
4 ten, depending on how you count, so what really is  
5 happening across these markets is a different investment  
6 in quality. They have a lot more reporters and editors  
7 and therefore bigger endogenous -- or they choose to  
8 have higher fixed costs. They have more Pulitzer Prizes  
9 per reporter and reader and so forth.

10 Now, the thing here that's maybe a little new is  
11 the notion that it's not really obvious that having more  
12 products is better for consumers in a situation like  
13 this. It might be better to have one high quality  
14 product than a bunch of low quality products, and I  
15 think about this when people talk about the amazing  
16 fragmentation that is going to happen with the internet.

17 I'm not so sure that is right. I'm not sure  
18 we're going to have a thousand people hanging out a  
19 shingle on the internet producing kind of products that  
20 can attract anything. Maybe you have 500 people who get  
21 together or maybe you have one guy who hires a bunch of  
22 reporters and editors and can actually make a much  
23 better local product than the singletons who hang out a  
24 shingle. It's just not quite clear that we're going to  
25 have this super fragmentation.

1           All right. So let me talk a little bit  
2 specifically about localism and newspapers, and some of  
3 this I think we've heard before, this depressing news.  
4 We used to have a local product with lots of monopoly  
5 power and no real easy substitutes or at least -- that's  
6 too strong a statement because there was always radio  
7 and there was always television, but this product, this  
8 local newspaper bundled both local news, national news,  
9 local sports and non local other kinds of information,  
10 as well as classified ads, and there was this cross  
11 subsidization that was going on.

12           I mean, it's entirely possible that what we had  
13 lived through up until ten years ago was a situation in  
14 which owners were able to indulge their preference for  
15 producing lots of news and sort of a golden age maybe  
16 producing too much from a strictly economic perspective,  
17 maybe too much information, although it may well be that  
18 when you take account of the spillover benefits, for  
19 example, the fact that it gets people out to vote, maybe  
20 it wasn't too much, but again from the standpoint of the  
21 market participants, maybe it was too much.

22           Now, the challenges that have arrived with us  
23 are the threats that the classified market from  
24 Craigslist, the national online products. What's  
25 interesting again, think we've subsidized information

1 provision with advertising, but now there are these new  
2 ways to advertise where the advertisers don't  
3 necessarily feel like they have to produce information  
4 along with the advertising they produce, so you know I'm  
5 looking at Hal, but Craigslist and so forth.

6           So it's really the weird way we happen to  
7 finance news that is sort of the problem, and so the  
8 forced unbundling from technology that allows folks to  
9 produce advertising without producing news is what  
10 causes this whole thing to unravel.

11           Alright, so a little bit about competition and  
12 localism. Traditionally when people think about  
13 regulation, one of the big forms of regulation is merger  
14 regulation, and there's traditionally been a concern  
15 about prices paid by advertisers, not usually as much  
16 worry as I think there ought to have been about the  
17 information consumers, who after all aren't really the  
18 big economic participants in the transaction, and there  
19 had traditionally been concerns about mergers from  $N$   
20 firms in a market down to  $N$  minus one and threats to  
21 voices and prices.

22           I think right now the concern is an  $N$  of zero as  
23 opposed to a sort of 3 to 2, that kind of thing, and so  
24 the question is: Do we have a source of local  
25 information? This is where we get back to Matt and

1     Jesse, is one even bad? In the U.S. context, it seems  
2     as though 1 isn't bad from the standpoint of producing  
3     bias. I don't want to suggest that we should let all  
4     the Berlusconis and so forth off the hook with this bit  
5     of evidence, but still some kind words for monopoly  
6     here, if you're worried about these mergers, it could  
7     even be the cross ownership rules no longer are well  
8     rationalized or prohibitions on cross ownership.

9             All right. So kind of finally my business  
10     school professor hat, this is a lot of experimentation  
11     going on that firms are being exhorted to do, and if you  
12     think historically, this is really what the economic  
13     historians and the technology historians call an era of  
14     ferment. Think back to a hundred years ago, the  
15     automobile. There were literally hundreds of firms  
16     making cars. It wasn't clear whether cars would be  
17     steam powered, electric powered, gas powered. It wasn't  
18     clear whether bicycle manufacturers would be the  
19     winners, whether, you know, whoever would be the  
20     winners.

21             Now, that's not that comforting, but the point  
22     is this kind of uncertainty is not that unusual when you  
23     have this sort of revolutionary technological change, so  
24     it is true, right now dailies are shrinking, and that  
25     seems bad. I would think it's bad. It's bad for the

1 outcomes that I claim to have evidence that are defects  
2 and that we all care about, but at the same time local  
3 weeklys seem to be growing or at least shrinking a lot  
4 less.

5 Old media journalists, we hear a lot of stories  
6 about this, are launching hyper-local products. It's  
7 not so clear yet whether, this is going to work, but I  
8 think there is some reason for optimism, if you think  
9 about it. If you want to be successful, you need to  
10 have a product with few substitutes, and so hyper local  
11 maybe has fewer substitutes. It could be that Twitter  
12 from the football game could kill you, but I don't know,  
13 maybe, maybe not. Plus a hyper local product has a  
14 naturally targeting of ads to local firms, local  
15 advertisers, so there's some reason for optimism, but  
16 it's sort of too soon to tell what's going to happen.

17 So I guess the point here is that it's not clear  
18 how much government involvement we're going to need. If  
19 we look back to other episodes of this big kind of  
20 technological change, it's very hard to predict what's  
21 going to happen.

22 Okay. That's it.

23 (Applause.)

24 MS. DESANTI: Thank you. We are going to move  
25 on to presentation of our next panel, interactive data



1 and the semantic web, which I'm going to let my speakers  
2 explain to you because they can do it much better than I  
3 ever could.

4 We've heard a lot about how the internet has  
5 challenged many traditional media models, but it has  
6 also enabled new ways of collecting, aggregating and  
7 analyzing information, and as Sarah Cohen explained to  
8 us yesterday, the hope is that new ways of aggregating  
9 data and making it available to the public will enable  
10 journalists to discover stories more easily and  
11 therefore reduce the costs of journalism.

12 The next three presentations and the discussion  
13 that follows will explore how government might use  
14 interactive data technologies in conjunction with the  
15 internet to enable professional journalists and the  
16 interested public to reduce those costs of doing  
17 investigative or accountability reporting.

18 Our first presenter is David Blaszukowsky, who is  
19 director of the Office of Interactive Disclosure at the  
20 Securities and Exchange Commission, and he's going to  
21 tell us about the SEC's experience in implementing  
22 interactive data for the reporting of public company  
23 financial data.

24 Interactive financial data provides the public  
25 such as investors quicker access to the information they

1 want in a form that's easily used, and it also can help  
2 companies prepare the information more quickly and more  
3 accurately, as well as workers at the agency to analyze  
4 what's going on. David?

5 MR. BLASZKOWSKY: Thank you very much, Susan,  
6 for that kind introduction, and thank you again to you  
7 and to Chris and of course to Chairman Leibowitz for the  
8 opportunity to be here today. Do I click on there?  
9 Wonderful. We're talking about technology, it's nice to  
10 know that technology actually works for this kind of  
11 thing.

12 As I said, it is a privilege to be here as a  
13 member of staff at the SEC, which was itself birthed by  
14 the FTC 76 years ago, as we are raising really our game  
15 for mere disclosure, which is what we were created for,  
16 to something closer to true transparency for  
17 information.

18 Now, my last journalism experience was a long  
19 time ago as a college freshman, but I do get -- I do  
20 remember that as a journalist, what matters are facts  
21 and where facts are more plentiful, plentiful and robust  
22 in meaning, analysts of all kinds, including  
23 journalists, get new opportunities to change the game,  
24 to redefine the game, and interactive data, which is  
25 liberating facts broadly, financial information broadly

1 right now and other kinds in the future, broadly and  
2 usefully promises that kind of impact, at least in  
3 business journalism, and I would submit probably beyond.

4 Now, here I'll discuss a bit about what  
5 interactive data is for those who are not familiar with  
6 the term, how it works and how it might apply to  
7 journalism, but first as an SEC employee, you've heard  
8 many of these, you have the same thing at the FTC I am  
9 sure, but as a matter of policy, the SEC disclaims  
10 responsibility for the private statements of its  
11 employees. Therefore, the views I am expressing today  
12 are solely my own and do not reflect the views of the  
13 Commission, the Commissioners or any employees other  
14 than myself.

15 So back to the program. Let's take another look  
16 at the title, better data, better reporting. I'm not  
17 mentioning cost anywhere in this, and I'm going to avoid  
18 that issue, please behave, because I think interactive  
19 data -- I'm not going to get into this because I believe  
20 that the issues of cost, because I believe that  
21 interactive data such as XBRL, which I'll explain in a  
22 moment, and technologies like it might cut costs  
23 profoundly. I think they will, but more importantly  
24 they can bring the kinds of dynamic new and compelling  
25 insights with the added advantage of low costs that make

1 news news.

2 As the Chairman pointed out in his Tribune  
3 example, innovation is as important. It's a value add  
4 in business jargon. Predictions of demise or limits are  
5 dangerous, for anything, media or non media. Let's not  
6 forget in the '50s, the chairman of IBM was predicting  
7 that the market for computers was going to be exactly  
8 30. 25 years later, the head of one of the largest  
9 mid-sized -- one of the largest computer manufacturers,  
10 DEC at the time, thought that the personal computer was  
11 a silly idea, and of course there is no DEC today, but  
12 there are lots of PCs all around the room, aren't there?

13 Financial reporting really does go back 4,000  
14 years to clay tablets and cuneiform, which you might  
15 agree with me is the hardest of hard copy. Frankly,  
16 that media paradigm, hard copy, took us up through  
17 parchment and paper into the late '80s, microfiche and  
18 other forms of film for recording and managing and  
19 distributing content.

20 This paradigm really is all about documents.  
21 Documents are important, not just to lawyers but to all  
22 of us, documents that are filled with facts, but  
23 documents nonetheless where you do have to read  
24 everything pretty much linearly to find what it is that  
25 you need.

1           From the '60s into the '90s and still today,  
2       electronic formats like ASCII through even the more well  
3       known to most of us, HTML and PDFs, they are still  
4       documents, numbers, terms, concepts. They're are all  
5       just strings of character devoid of semantic meaning.  
6       They are electronic, therefore more transportable, more  
7       convenient, but they're still pictures engraved in  
8       virtual clay rather than the physical stuff.

9           The test, you can't convert a table of data from  
10      a PDF into a spreadsheet any more easily than you can  
11      stuff a clay tablet into a hard drive, certainly not  
12      without a whole lot of smart stuff going on behind the  
13      scenes.

14          Whether you're a hedgefund analyst or a  
15      journalist, you can buy it, you can transcribe it, but  
16      either way you still have to convert it manually at some  
17      point. Even spreadsheets and databases, easier to  
18      download and use, but hard to re-purpose for the way you  
19      might want to use them, given the naming conventions,  
20      lack of standards and proprietary software and protocols  
21      that are involved with both database standards and  
22      spreadsheets. The world is better with them, but still  
23      not good enough.

24          The same folks who brought you the web finally  
25      wrote a language that did for data what HTML did for

1 images and pictures. XML, extensible markup language,  
2 is a generic standard made to transport data across the  
3 internet, and it's been adapted into XBRL designed  
4 expressly for business and financial reporting or  
5 securities. Today they are what I'll define -- and  
6 their media cousins in the XML family are what I'll be  
7 referring to as interactive data.

8           So what is XBRL or extensible business reporting  
9 language? It's a computer language, nothing more  
10 really, but it facilitates the use of financial  
11 information by people rather than merely shepherding it  
12 through the innards of a computer. It's a concept for  
13 really liberating financial concepts from the documents  
14 with which they're associated. To be found, to be taken  
15 and to be used by those of us who need the information.

16           Very important here is that it's a standard. It  
17 really is a standard. It's a standard that can operate,  
18 or interoperate even better, across platforms,  
19 application, countries and national borders. It really  
20 doesn't care what language it is. It's supervised.  
21 There are regulators such as ourselves, standard-setters  
22 who are involved in making sure that this standard  
23 really is standard across the world.

24           Something that's flexible or extensible, thus  
25 the X in XBRL, that's appropriate for things such as

1 U.S. reporting, financial reporting, which is subject to  
2 many judgments by those who are preparing financial  
3 statements. Not everything fits into a box that can be  
4 identified.

5           And finally the transcends financials, and I  
6 think this is where it begins to connect even more with  
7 journalism, even beyond financial-type items, such that  
8 text, such as narratives, non-financial numbers as well  
9 as things from the dollar sign or the Euro sign can be  
10 represented. And of course it's something -- this a  
11 standard. It's not new to the world. It's something  
12 that's already used wildly by financial regulators here  
13 in the states such as us and the FDIC and by  
14 international regulators.

15           So what XBRL does and why it's useful to those  
16 of us who want to use financial information, business  
17 information in our work, whether we're reporters or  
18 government folks or investors, is that it adds structure  
19 and meaning to what otherwise is a flat and dead  
20 document to represent the financial statements such as  
21 you see on the right, the little excerpt. I don't know  
22 that -- well, I know it's not readable at the back.

23           It's a financial statement, an income statement  
24 to be precise, so XBRL is really a language. It's, for  
25 these purposes, a syntax by which to identify real world

1 items such as net sales with vocabulary or tags that  
2 come from a standardized list that's called a taxonomy.  
3 You see it on the left, and the taxonomy here describes  
4 U.S. Generally Accepted Accounting Principles, better  
5 known as GAAP, which is almost as complicated as the  
6 taxonomy of life, where you probably heard taxonomy last  
7 in ninth grade biology, because accounting is hard.

8 Accounting is hard and complicated, but it has  
9 structure, which supports meaning of the branches of  
10 income statement, balance sheet, equity statement and  
11 footnotes, just as being in the mammal branch of the  
12 animal kingdom means you are going to have four limbs  
13 and hair or fur, but the important things that are  
14 implied by that, silly example, except that where you  
15 are really determines what you are about, and therefore  
16 there's structure.

17 There's syntax, and there's vocabulary that can  
18 be used to describe where you are and how you relate to  
19 everything else in that taxonomy, and together they  
20 enable the semantic value of context, rules and content.

21 Interactive data, and here specifically XBRL,  
22 means that producers of info such as companies can tag  
23 their financial reports using this standard. That's  
24 basically the proposition. Each tag comes with a name  
25 like a bar code. It's unique, and metadata to describe



1 its precise coordinate in the taxonomy and in the  
2 company's information.

3 Here net sales in the report corresponds only to  
4 a GAAP definition and tag of net sales in the red oval,  
5 with a unique computer name in the red box at the top,  
6 and with metadata to describe its particulars so that it  
7 can be found and used with precision. For example,  
8 currency, year, amount, is it audited? Those are all  
9 examples of metadata, and they are all searchable too as  
10 much as the actual numbers that are being used.

11 What if a company has unusual or unique  
12 characteristics? You can create extensions, which are a  
13 complication to comparability but are themselves of  
14 immeasurable value all same. Of course, each extension  
15 can be a red flag by itself, begging for investigation  
16 say by a journalist or a business school professor or a  
17 grad student.

18 Comparability is important, but so are the  
19 things that aren't necessarily comparable and stick out  
20 or are anomalous, and of course this tagging applies to  
21 all of the good stuff that's in the footnotes as well,  
22 and if I may foreshadow a bit, it's this very  
23 structuring built into the front end into XBRL and then  
24 applied to each fact that makes the data in XBRL so easy  
25 to transform via software, into insights, into analysis,

1       into reportage.

2               Today as we've said, all a company could do  
3       until now is submit their financials as a document and  
4       leave the poor users on the other end of our financial  
5       disclosure system known as EDGAR, gem of disclosure that  
6       it is, to either print them out, transcribe them or pay  
7       for someone else to do the transcription as part of a  
8       service. It kills trees, it kills time, it kills  
9       dollars, it kills productivity.

10              If you submit the same thing in machine readable  
11       XBRL, it's just gobbledygook in the technical sense of  
12       the word. Don't worry about not being able to read  
13       that. It's just code into the same EDGAR, and those  
14       will be snowflakes floating around of individual facts,  
15       and all those individual facts, and you have multiple  
16       exciting means of access through viewers, downloads,  
17       spreadsheets, RSS feeds, specialty applications, right  
18       into the analyses that you have to do for even the most  
19       granular arcane fact, but whatever you're trying to do,  
20       whatever you're using to find information to turn into  
21       analysis. That's what's different about XBRL. It's  
22       intrinsically usable content ready to consume by  
23       machines and by humans both.

24              So let's hit on some benefits for users, but for  
25       companies, starting just for a moment. Companies can

1 distribute information better. That's the interactive  
2 part of interactive data. It's not just one way. It  
3 goes both. All companies with no time lag -- and let me  
4 emphasize, all companies, not just largest with no time  
5 lag, all of the information they present, whether  
6 they're large or small, but for the user, let's start  
7 with faster, cheaper, better.

8           The whole story -- the whole story is as  
9 granular as it comes with no filtering or softening by  
10 intermediaries right or at least as right as the filer  
11 itself made it, but even more important is the  
12 functionality, and to you, the functionally, the  
13 applications, the fees, the alerts, the ability to  
14 innately transform that data into other more useable  
15 forms, and looking at the productivity bullet, that you  
16 can do more with less.

17           This is my one touch on the cost line, both more  
18 and less productivity, but by increasing the numerator,  
19 news quality and quantity even as the denominator cost  
20 can be reduced. Together the two sides contribute to  
21 making the market efficient, which is good mechanics as  
22 well as transparent, which makes for a good basis for  
23 understanding for the journalist and for the investor  
24 alike.

25           Just a very quick look at our most well known

1 rule for interactive data, for all publicly listed  
2 companies to provide their financial information in  
3 XBRL, their registrations and their periodic statements,  
4 especially the most well known, 10-Ks and the 10-Qs, and  
5 their foreign equivalents.

6 We're rolling out this rule in phases starting  
7 with the largest companies. What we're requiring from  
8 all U.S. listed companies is complete tagging of their  
9 financials using the U.S. GAAP taxonomy of all the  
10 primary financials and, in the first year, simple block  
11 taggings of one tag for the whole block of their  
12 footnotes and schedules.

13 Of course, you know as well as I do, that the  
14 good bits are in the footnotes, they always are, and  
15 every company will have to use, in their second year of  
16 tagging under the rule, the standard tags to tag all of  
17 the amounts, all of the facts of their footnotes and  
18 associated schedules.

19 Think of that. Everything in the footnotes,  
20 everything in the financials accessible, from litigation  
21 details to derivatives to lines of business to  
22 accounting policies, all available at the click of a  
23 button.

24 The largest 500 have already started. You can  
25 come to SEC.GOV to our EDGAR site and come on board, and

1 you will find already three periods, including the  
2 annuals, already filed for these largest 500 or so  
3 companies. Another 1,200 companies are starting to file  
4 this coming June, the mid caps or what are called large  
5 accelerated filers, and then the last 10,000 will start  
6 filing next year, June 2011, including even the smallest  
7 public nano cap, and all companies reporting in  
8 international financial reporting standards so that's  
9 quite a rapid pace.

10 Now, that will be an immense, unique data set  
11 for analysis, investigation and comparisons, whether by  
12 journalists or by academics or, of course, by the  
13 professional and retail investor communities, but this  
14 is all the information on our public company's rule.  
15 All mutual companies will start reporting their risk and  
16 return and performance information in 2011, and ratings  
17 companies will have to report all of their ratings very  
18 shortly.

19 In the end it's what you can do with it. We at  
20 the SEC have seen cool off the shelf tools, tools that  
21 can and should be on the market for you soon. Better,  
22 we're starting to see free tools, widgets and more  
23 emerging, and we even suggest come and visit our free  
24 viewer which is on the SEC's website. We're looking at  
25 some of the points here.

1           I mentioned faster, better and cheaper, again  
2 referring not just to the cost element, but to the  
3 better element, the value add element. These are all  
4 opportunities to put every user of information, whether  
5 it's the largest hedge fund or the blogging journalist  
6 sitting at home, to be able to be on really the same  
7 basis for the first time.

8           The information that's coming out of this for  
9 companies is actually better than even the largest hedge  
10 fund might be able to create today when you take into  
11 account that there's still a lag to do transcriptions.  
12 There's still a lag to normalize and standardize  
13 information.

14           Metadata, metadata allowing you to look for  
15 unusual tags has a lead, looking for a precise item,  
16 looking for the kinds of things that might allow you to  
17 get the story -- the numbers behind the numbers, the  
18 story behind the numbers. For precision and providence  
19 as well as machine now that's called crunchability and  
20 applications.

21           Let me give you an example. Just on our own at  
22 the SEC, we built in the course of a morning or one of  
23 my folks built in the course of a morning a simple  
24 widget to be able to take all of these footnotes, the  
25 common footnotes for all of the competitors in a

1 particular sector and just lay them out in one  
2 spreadsheet in real time and to add more as they  
3 continue to be filed, an act which, while not profound  
4 in its nature, it's not necessarily hard, but would  
5 require today scrolling through to find that particular  
6 footnote in each one individually, cutting and pasting  
7 and lifting it in or writing very complicated scripts in  
8 order to make that happen, probably with a significant  
9 error rate.

10 Now, when we start requiring the detailed  
11 tagging of the footnotes, starting this summer for those  
12 largest companies, not only will you get the footnote  
13 with its full text, but you get all of the details that  
14 are within it, able to be laid out next to each other.  
15 I would argue that going up to faster, better and  
16 cheaper, those are opportunities to be able to get the  
17 story found, to get the story verified and get the story  
18 out with all of those three attributes in place.

19 Joining in mashing up with any structured data  
20 set, XBRL and XML, that's really a whole family of kinds  
21 of structure data, and the big story there is structure  
22 data. The structures can be compared, can be aligned  
23 and using software, brought together and made to work.  
24 Remember before I said the structuring upfront is very  
25 important. It might even seem excessive, but the

1 structuring upfront makes it much easier to be able to  
2 pull together the information at the end.

3 So it makes building software easier, using  
4 software easier, and of course for the retail, the guy  
5 at the end of the day who might not be a computer whiz,  
6 to be able to just get to the analysis, just find the  
7 message.

8 So bots and alerts are easy to create. Social  
9 media-friendly and interactive tools, let me just give  
10 you an example there. They're all kinds of free widgets  
11 that are popping out on to the web. For example, in the  
12 rating space, there's already a site you can go to, and  
13 you will find ratings models that are out there that are  
14 being pumped with XBRL data from our financial site into  
15 ratings formulas that can, in true social media sense,  
16 can be modified and amended and commented on and  
17 compared by any participant.

18 Of course, you can download what you like, don't  
19 download what you don't like, but it's an opportunity to  
20 bring real information into real analyses that might  
21 supplement issues that exist in the current market  
22 today, in this case in the ratings market, and the night  
23 is still young, as is XBRL.

24 XBRL is easy to use and, like with the web,  
25 freeware will emerge, but most important is what curious



1 driven folks such as reporters and their teams will do,  
2 so like the chemicals commercial, XBRL won't alone do  
3 the job but within the hands of a talented journalist,  
4 maybe with a bit of tech savvy, it will make them  
5 immeasurably better, and probably a lot cheaper through  
6 saved time, travel, et cetera, but the real story will  
7 be I think the better story.

8 Are we talking just about financial data? No,  
9 we're not. We are talking about applications beyond as  
10 well, but I'm limiting my comments here to the financial  
11 stuff. The point is that moving to a world of easily  
12 transformable data, we are moving from mere disclosure  
13 of documents into their transparency.

14 Just as a parting page, a last page, let's look  
15 forward to where this could go, even without the SEC  
16 pushing it. The SEC does have currently five series of  
17 interactive data, the company stuff I mentioned before,  
18 mutual funds and ratings, also in XML, ownership data  
19 and small company data, but other kinds of financially  
20 reporting information are able to be considered  
21 whether by SEC action or by other more voluntarily  
22 means.

23 For example, in the case of proxies, which have  
24 been recommended by our investor advisory committee,  
25 proxy, proxy voting, to have that information clearly

1 available, both for investor decision making and for  
2 analyses. These have been advanced by commentators in  
3 the press, SEC committees, standards organizations and  
4 of course by journalists and other public interest  
5 entities. It's not about the SEC only, though our  
6 experiment is quite robust. Other agencies, again the  
7 FDIC here in the U.S., private entities and other  
8 governments are producing or planning such sets.

9           Using the same standard of course, you can match  
10 and interact these across the data sets. Again because  
11 of the structuring upfront, the analytical side is much  
12 easier, and there's a network effect here as well in  
13 terms of the kinds of analyses, their complicity and  
14 tools.

15           The bottom line, through interactive data,  
16 journalists can have at their fingertips in as good a  
17 form as anyone and better than any today huge amounts of  
18 vital information, and they will have the means to  
19 extract out meaning and insight and interesting  
20 analyses.

21           In investments, these will be called buys or  
22 sells decisions. To the staff at the Commission, those  
23 might be called leads. To a journalist I guess they  
24 would be called leads too, but I think we're talking  
25 about the stories that they would drive to, and to their

1 readers, I think news they can use, and to me as an non  
2 journalist here talking about journalism, it does seem  
3 to me to be a very exciting story.

4 Thank you very much.

5 (Applause.)

6 MS. DESANTI: Thank you very much, David. We  
7 agree it's a very exciting story.

8 Our next speaker is Noel Hidalgo, who is  
9 director of technology innovation at the New York State  
10 Senate Office of the Chief Information Officer, and he  
11 will discuss the U.S. Senate Chief Information Officer's  
12 experience in making his public website more useful to  
13 the public, including through the use of interactive  
14 data. Noel?

15 MR. HIDALGO: Thank you. Well, now that a third  
16 of the room has left, I feel less stressed. So thanks  
17 for sticking around and looking forward to hearing this  
18 conversation about how the role of social media and open  
19 data is being used within the state legislature.

20 What I will first brief as the situation is --  
21 what the first series of slides I will show you is what  
22 we came with, and then the last series of slides is  
23 where we're heading to, and just about every single  
24 state legislature across the United Nation, which there  
25 are 110 different governmental bodies that represent

1 states, territories or districts, this is the problem  
2 that they're all facing, and you can go through state by  
3 state, legislature by legislature, including D.C.'s city  
4 council, and you will find that we all face the same set  
5 of tools and the same number of problems.

6 This is a hundred years ago in Albany. Sadly to  
7 say, not much has changed. The buildings have been  
8 destroyed, but the State House pretty much looks as epic  
9 as it ever has been and continues to be the center of  
10 New York City or New York State's government. Even  
11 though the city will continue to try to be an upstart,  
12 we have constant issues up in Albany that really produce  
13 a very interesting balance within the state.

14 Particularly, and here is the inside of the New  
15 York State Senate Chamber. Sadly not much has changed  
16 since this photo has also been taken, and you can still  
17 only cram about a hundred people into the galleys, which  
18 are on the second floor. We have 62 Senators, which  
19 represent roughly around 300,000 people within New York.

20 Most legislatures, when you come to them these  
21 days, have a Lotus Notes web based system. I don't know  
22 how many of you are from state legislatures yourselves  
23 or have this type of information dispersal, but it's  
24 raw. It's not easy to get to. You then go to their  
25 legislative bill look up service, and it's also raw.

1 It's not easy to get to.

2 If they are providing information, it's normally  
3 behind a pay wall that is expensive. For example, the  
4 organization that runs our Joint Commission, the LDBC,  
5 1/12th of their budget is generated by income, which is  
6 going out to lobbyists and newspaper organizations and  
7 charging them money for the information, which should be  
8 within the public domain.

9 Within the State Senate, we then for many years,  
10 for the 40 years that the majority was under Republican  
11 control, they had a news clipping system, which was all  
12 about paper. It cost \$1.5 million a year to run, and  
13 people would show up at four o'clock in the morning  
14 stocked with newspapers from around the state, and they  
15 would Exacto knife them to bits or photocopy them and  
16 redistribute them around the state, tagging each issue  
17 within the upper right-hand corner with some type of  
18 tag.

19 Our email system was very much the same. It was  
20 Lotus Notes. It really hadn't changed since IBM had  
21 introduced the Lotus Note system. Our internal intranet  
22 was also similar, also based on Lotus Notes, provided  
23 very little flexibility for us to be able to communicate  
24 dynamically within the legislature, and kind of the  
25 saddest thing, but kind of the most telling of all of

1 this, is that our constituent management system,  
2 tracking all of our issues, all the constituent issues  
3 to the State Senator is held in a green screen terminal  
4 like this.

5 It wasn't until just three or four years ago  
6 that the Democrats had access to this particular system,  
7 so there was a huge disparity in resources that were  
8 being given to state legislatures.

9 So in 2008, the State House switches parties  
10 from Democrat to Republican, and the question was: How  
11 do we reform this? We have been consistently seen as  
12 the worst state legislature in all 50 states, so how do  
13 we bring this about?

14 Well, to the majority, it was obvious. You have  
15 to hire a rocket scientist, and Andrew Hoppin was hired  
16 as the first CIO of the New York State Senate to think  
17 about using technology tools to bring about greater  
18 access to information to not just the citizens but to  
19 everybody.

20 So when we start this whole process, we started  
21 under what is open government because the New York state  
22 legislature had been considered an unopen government.  
23 Well, thank goodness we didn't have to do too much  
24 homework because Barack Obama, one of his very first  
25 initiatives was to focus on the open government

1 initiative.

2           The text in the lower right-hand or left-hand  
3 corner is unreadable, but there are three general  
4 principles about them. It's about collaboration. The  
5 first one is about collaboration. Just like you see  
6 here in the public street where it is accessible to  
7 pedestrians, to cars, to commerce, to cyclists, to  
8 individuals, to storefronts, we need to think about data  
9 as a collaborative experience, that it is part of the  
10 enterprising street scape. Anybody should be able to  
11 get to these pieces of information and use them.

12           It also brings about transparency. It promotes  
13 accountability. It brings and provides information for  
14 citizens what the government is actually doing, and  
15 finally it's participatory in nature. It's  
16 fundamentally participatory in nature. Government is  
17 about participation, regardless of whatever some of  
18 these elected officials think.

19           So how do those three things -- how does it  
20 really impact a state like New York, which is where it's  
21 the I think the 16th or 17th largest state? It's the  
22 third largest in population. Albany and New York City  
23 are separated by three hours via train. It's a two day  
24 walk. It's a day and a half long carriage ride.

25           Just from around the state alone, Albany is

1 pretty much centrally located, whether you're going out  
2 from Buffalo on the eastern part of the state, whether  
3 you're coming up from New York or you're coming from the  
4 north up in Plattsburgh, so the digital technologies  
5 eradicate that distance, especially with the  
6 understanding that in the north country, you tend to  
7 have cell phone reception. You tend not to have  
8 high-speed internet connectivity.

9 In the west, you have pockets of higher speed  
10 internet connectivity and other methods of inactivity,  
11 so what we've considered is we've created a flat playing  
12 field that enables citizens of New York from across the  
13 state, regardless of whatever technology tool that  
14 they're using, to access the information of the State  
15 Senate.

16 Fundamentally it's based upon open content. We  
17 take a look at the web content at a very serious level.  
18 We focus on web, mobile and SMS. You can access, you  
19 can pull out your phone right now, type in  
20 m.nysenate.gov, and you'll get a mobile version of our  
21 web site.

22 Fundamentally the Senate is required by our  
23 radical rules -- well, our rules were re-radicalized  
24 once there was a coup last year where the Republicans  
25 and some Democrats switched parties, and they created a



1 whole separate Senate and it became a month long drama  
2 that still plays out to this day, but one of the cool  
3 things in this coup is that our rules reform changed  
4 drastically.

5           We were forced to put legislation, all of our  
6 Senator's content, videos of session and committee  
7 hearings and committee meetings and public hearings, all  
8 of that has to be streamed live. We also took proactive  
9 steps, so we're displaying our web traffic, so you can  
10 see how Senators' offices are actually using this type  
11 of information.

12           We're the first State House to adopt a creative  
13 commons license. We have RSS and iCal feeds for almost  
14 everything, and we're developing an API for each Senator  
15 which on demand you will be able to call up their  
16 contact information, most recent -- contact information,  
17 content that they're putting up there, and more or less  
18 you have this information at the tips of your  
19 fingertips.

20           What has it brought about is open questions. By  
21 providing an interactive website, the Senators have  
22 started posing more and more questions to their  
23 constituents. On the Stanton Island Ferry, Senator  
24 Savino surveyed her constituents and asked: What do you  
25 want to change within your transit? And they said,

1 Well, we need quiet zones.

2 Senator Volker and a majority of the minority  
3 Senators got together, and they all posed the same  
4 question, which is: Do we really want to have \$25  
5 mandatory registration fees? And they were able to get  
6 the governor to reverse that in the budget.

7 We've produced -- because the Senate website is  
8 the culmination of 62 different Senator sites and 32  
9 different committees, schedules are now publicly  
10 available, and we're forced to do session committee  
11 hearings and public hearings -- yeah, got them.  
12 Senators have now seen that it's great to have  
13 everything else up there. Now that they realize that  
14 their calendars are being out there and that stuff is  
15 being out there on the internet, they start to change  
16 their performance in regards to video.

17 Our number one streamed event was the debate for  
18 marriage equality. When we started the debate, it was  
19 one of the few bills -- and I'll repeat this again, it's  
20 one of the few bills that has ever been introduced to  
21 the floor of the State Senate that there wasn't a  
22 predetermined outcome. I'll pause for that.

23 So we recognize the unique opportunity here to  
24 stream this debate that was going on in Albany to the  
25 general masses across the U.S. and across the world on

1 such a heated issue. We had 16,000 concurrent streams.  
2 It ended up that the number 1 viewed video from all of  
3 that is on the verge of half a million views on YouTube  
4 right now. That's something that would have never been  
5 possible if you had asked those individuals to come to  
6 Albany to participate in all of this.

7 All of our videos are there online for you to be  
8 able to take, to download, to read, mix and to mash up  
9 into whatever system you want. We have discovered that  
10 now by just providing these videos online, blogs and  
11 newspapers, particularly The Daily News, The New York  
12 Post and The New York Times are really sucking in this  
13 content and using it on a day-to-day basis.

14 Routinely, the blogs that have the political  
15 blogs of The Daily News and The Post are linking to our  
16 live stream videos of different committee meetings over  
17 and over and over as well as to our new legislative bill  
18 system, which I'll show you in a minute.

19 So once the Senators have realized that their  
20 schedules are out there and that their content is out  
21 there, they have really bought into this whole notion of  
22 social networking, to the point that there have been a  
23 few videos kind of critiquing different Senators, and  
24 how do I say this, more or less their online attitude of  
25 what they're doing online.

1           Some Senators were discovered playing Mafia Wars  
2           on Facebook. Some Senators, like Senator Maziarz down  
3           on the right-hand side, uses this as his vocal point, as  
4           his mouth piece to combat what the liberal governor is  
5           speaking about. These Senators really have engaged in  
6           online conversation.

7           Senator Stachowski has an ongoing conversation  
8           with Robert Harding on a frequent basis, as you're  
9           seeing, so there is this intense value of giving these  
10          local elected officials a platform to continue this  
11          conversation, and once again, all of these feeds that  
12          you're getting from Facebook and Twitter as well as  
13          Picasa and YouTube are all aggregated within the  
14          Senator's page, within this grand API that we're working  
15          on so that way, you can suck it into your own database  
16          and monitor all this content.

17          We continue to do further outreach and  
18          participation through online town halls and  
19          unconferences. Unconferences are these groovy ideas  
20          where you pretty much propose a question, and people  
21          come from wherever, really you can open it up to  
22          whomever come in and hang out and talk about the issues  
23          that are at hand.

24          Here within D.C. there's been quite a number of  
25          them that focus around government 2.0 and open

1 government, and if you are interested in that, I could  
2 tell you more about that later, but we're breaking  
3 ground by actual hosting unconferences inside of the  
4 State House. This is the first unconference.

5 We've been really pioneering how we can do  
6 online town halls. Senators are required to spend half  
7 of the year up in Albany, so how do we engage their  
8 constituents while they are up in Albany? We're going  
9 to have three town halls, online town halls on a Sunday  
10 at the end of the month, which is going to be pretty  
11 interesting.

12 The last thing that we're working on is idea  
13 generators, and this is where it enables direct  
14 constituent feedback, enabling individuals to -- once  
15 again you propose a question and let the constituent  
16 answer it. There is about crowd sourcing, but this is  
17 about finding out a way to have not a moderated  
18 conversation but at least an educated conversation about  
19 what are the issues that are pressing.

20 All of these tools that we've written are based  
21 on open source tools, so Drupal is our main content  
22 management system. We use GitHub, which is online  
23 social code repository so that way you can download the  
24 code as we've created it and use it. We're pretty big  
25 in understanding, just as like I showed you, the street

1     scape is that code itself is part of that grandiose  
2     street scape.

3             It enables for commerce to happen, just like the  
4     laws and rules that govern the existence of our physical  
5     space. Like Lawrence Lessig says, code is law. Code  
6     governs our online space, so we've adopted a very unique  
7     license where we do license all of our software code.  
8     One is initially put into the public domain under a BSD  
9     license, which essentially enables to you go ahead and  
10    run free and to do whatever you want with it.

11            Then if you want to continue to enhance the  
12    product in a collaborative, communicative manner, we  
13    license all of our code under a GPL3, so it ensures that  
14    there is no privatization of the public space while also  
15    enabling and allowing individuals to capitalize on the  
16    tax dollars investment.

17            So where does this all lead? It leads to the  
18    fundamental re-understanding of how you get to  
19    legislation. We've really been looking at a lot of  
20    systems that do this type of code. David talked about  
21    the security and the financial framework of all of this,  
22    but what is the legislative framework?

23            So if you go to [open.senate.gov](http://open.senate.gov), you will get to  
24    our legislative look up service, which we've taken a lot  
25    of cues from Google. It's designed specifically for

1 allowing the end user to get easy access to this.  
2 Because bills are readable in RSS, XML, CSV, JSON, you  
3 can parse it into whatever system you want.

4 We saw The New York Times represent, and we  
5 said, you should no longer -- you should stop scraping  
6 the government's data, we should just be giving it to  
7 you so that way you can go ahead and add enhancements to  
8 the constituent.

9 We also allow people to vote. Well, we allow  
10 people to leave their comments, and you can also, for  
11 the first time, see the actions of the Senate, where  
12 these bills go, where they're same as in the assembly,  
13 and most importantly, you can see the actual vote on  
14 these bills, which beforehand you had to file a FOIA  
15 request for.

16 One of the last things we've been working on is  
17 just like the news clip system that we used to pay \$1.5  
18 million a year for, is figuring out how do we do a news,  
19 like a Google news system, for the State Senate? We  
20 have, as I showed you, a very large state. We have  
21 multiple repositories of news that go from traditional  
22 news publications all the way down to small blogs.

23 How do we incorporate those things into this  
24 news aggregation system? We've been slowly building  
25 this application based off of daily life that

1 incorporates blogs as well as major name newspapers to  
2 incorporate both sides of use.

3 One thing that is interesting is that when a  
4 Senator has their name mentioned in any one of those  
5 different news feeds, they proactively reach out to  
6 those news organizations. Even if it's a smaller blog,  
7 they will have their communications person reach out to  
8 them and say, Hey, thanks for writing that really great  
9 article, or you were misinformed in your scathing  
10 criticism of me.

11 So where does this come from or where does this  
12 go to in regard to state government as a platform?  
13 Well, as I said, it's about multidisciplinary or multi  
14 interactive ways of communicating with the constituent,  
15 from voice calling traditional constituent services,  
16 you pick up the phone, you get someone on the line, they  
17 answer your question, to SMSing and to the iPhone and  
18 Android and smartphone aps.

19 Instant messaging clients, we have the ability  
20 that you can IM bill information, so you can sit there  
21 in AOL chat and just keep on pinging the system over and  
22 over again. We have Twitter notification and Twitter  
23 reply, so we proactively send out information on  
24 Twitter, and then we have a reactive system that also  
25 comes in that does queries.



1           Everything below the -- well, actually  
2           everything on this page except for some of the stuff  
3           that we're doing within the iPhone and Android ap was  
4           developed outside of the State Senate. It was developed  
5           by an individual in Virginia, Mark Heed, on a weekend  
6           because he thought it was really, really cool what we  
7           were doing, and we continue to leverage his investment  
8           and time and support his work because he saw our work  
9           was valuable to plug into.

10           So our one primary developer who is working on  
11           this legislative system, if you are in a state or a  
12           location that is looking for a hand up to make this a  
13           really better system, you should contact Nathan Freitas.  
14           He's on Twitter as Nathan Freitas, and he's truly the  
15           mastermind behind understanding what is this legislative  
16           bill look up service, and thinking how the API can  
17           access, in four different restful manners, how we can  
18           build this truly multi dynamic system that enables great  
19           interaction.

20           Like I said, everything is creative commons  
21           where we can, so thank you for your time. Thanks for  
22           this great opportunity.

23           (Applause.)

24           MS. DESANTI: I would like to thank both you and  
25           David. It's really exciting to see what can be done in

1 government, even one that's having a few problems like  
2 the one in New York.

3 Our final speaker is Jim Snider, who is  
4 president of iSolon.ORG. He will present ideas on how  
5 interactive data might improve journalist's ability to  
6 report on public official's conflict of interest.

7 He's going to discuss how reporting for public  
8 officials could be required in a way that's analogous to  
9 how the SEC is enabling better and less expensive  
10 financial reporting. Jim?

11 MR. SNIDER: I have an accompanying working  
12 paper that's close to what this is, but the significant  
13 difference is between the presentation, and I've got  
14 these here if you want to pick that up afterwards. I  
15 know I'm the last speaker. I'm going to try to raise  
16 the energy level. I'm quite enthusiastic about what I'm  
17 presenting, so I think that's going to be easy to do.

18 So the outline of the presentation, I'm going to  
19 talk a little bit about what this excitement is about  
20 the semantic web briefly, the technology, then look  
21 briefly at three case studies where it's being used.  
22 Including overlaps from the last two that you just heard  
23 but with a different twist, and then I'm going to  
24 present what I all this bias ontology, which is a way to  
25 automate conflict or interest reporting in a really

1 powerfully way. Hopefully I'll take your breath away  
2 when you're done.

3           So the basic technical idea is the story line is  
4 simple of the semantic web. Great gains and efficiency  
5 for publishing government data and making it more  
6 accessible. The difficult part is implementing it, but  
7 I'm going to argue the payoff is worth that pain.

8           So here is a slide that I think really nicely  
9 summarizes the semantic web, and when you look at this,  
10 it's a little bit jarring because by the time you're  
11 generally three or four years old, you know that a house  
12 is a house, and a shirt and pants, you know what all  
13 those things are, and here they're labeled, but a  
14 machine looks at that picture and doesn't know that a  
15 house is a house and a shirt is a shirt.

16           So this illustrates the core ideas of the  
17 semantic web from my perspective. These labels on these  
18 objects are metadata. We introduced the term metadata  
19 in that XBRL description. XBRL is a type of metadata,  
20 so these different items are tagged, that's metadata, to  
21 make it more machine readable, so a machine who looks at  
22 this picture can understand it, and ontology are logical  
23 linkages between the metadata, so an ontology would be  
24 the door is part of a house that would be a house  
25 ontology, very simple ideas.

1           Now, let's apply it to the FTC's page where it  
2   has an address, so here I've highlighted some structured  
3   data on the page, and you could then add metadata to  
4   that. The title Federal Trade Commission is the  
5   organization. Washington, D.C. could be tagged as  
6   state. The Zip Code is tagged. This is all done in the  
7   source code behind the scenes. It doesn't affect what  
8   you're looking at, and then the whole set of metadata  
9   together forms an address ontology.

10           So this is the transition that we're beginning  
11   to see between a human readable document centered web,  
12   and this machine readable web, which is what all the  
13   XBRL and whatnot is about, allowing you to do all sorts  
14   of things that weren't previously possible.

15           So now we have these three levels. We have the  
16   data. That's the web we're familiar with right now is  
17   what we see. We have on top of this the metadata, and  
18   then the metadata are linked logically ontologies, and  
19   then ontologies also can be linked together in  
20   sophisticated ways.

21           Now, the ontology is the glue that allows you to  
22   take all this data, that's scattered across the web, and  
23   make it into one sort of virtually relational database.  
24   That's why the semantic web is often sort of called the  
25   web in the sky. You're taking all this data and

1 experience you might have had with an individual  
2 relational database let's say, and you can apply it  
3 across the entire web.

4 So here it is in critical pieces, not just well  
5 structured data with all these tags, but it's posted to  
6 the web and so again, the web becomes a web of semantic  
7 data, data that's enhanced with meaning and that you can  
8 search across the entire web.

9 So we've heard a lot about new technologies  
10 lowering the cost of journalism. The story I'm more  
11 interested in is vastly approved journalism as a result  
12 of this technology. Let's say we went back to the great  
13 days of high revenue journalism, and we multiplied it by  
14 ten. Hell, let's make the whole economy devoted to  
15 journalism.

16 I would still argue that with semantic web  
17 technologies, we could dramatically improve the quality  
18 of journalism because we're talking about, in many  
19 cases, improving by a factor of a million or more,  
20 things that are just prohibitively expensive to do  
21 today, suddenly become possible so we're talking about a  
22 qualitative leap in the quality of investigative  
23 research, all sorts of really important problems that no  
24 journalist, even at the wealthiest organization, even at  
25 the national level would do because it's just too

1 expensive, too much of a pain to do, suddenly becomes  
2 possible at a click of a button.

3           So I would say let's forget about -- the cost  
4 side is important, but there's a giant leap in quality  
5 which I would focus on as a result of this, and this  
6 goes well beyond just political conflict of interest  
7 reporting. It also covers all sorts of business  
8 applications and consumer protection issues as well  
9 we'll see. This is a powerful language, but it's  
10 simple.

11           So now we're going to -- okay. So just the  
12 overview, the technology is not the critical problems.  
13 The economics, significant market failure in the  
14 development of these types of ontologies and real  
15 political obstacles because people don't like to be made  
16 or held accountable, they're not going to push this so  
17 you're going to have an external party doing it. So  
18 there's real economic and political market failure  
19 problems and political failures to making this come  
20 about.

21           So we're going to look quickly at three  
22 ontologies that are sort of shaking up the world. One  
23 is Google's rich snippets that was introduced last May,  
24 May of 2009. There are several components to it, simple  
25 ontologies. They have a product line, a name line, an

1 organization line. This is product reviews, very  
2 simple.

3 So in the old days, when you were doing a  
4 search -- this is Capitol Grille. It's about a mile or  
5 a half a mile here from the FTC, nice restaurant. You  
6 get -- the old type of snippet is this type of snippet  
7 here. Here is the Capitol Grille and here's a little  
8 description of it.

9 Here's the new type of snippet you get with  
10 product reviews. They rate them by stars. This is a  
11 summary of all the ratings for that restaurant here, and  
12 then you can click on it, and you can see all the  
13 reviews from all the different entities that they have  
14 crawled along and they aggregated them, and it's a much  
15 more useful set of information.

16 So now you can take -- once you have the  
17 structured data, you can do things with it, like mix it  
18 with a map, so this is -- here's the FTC down here, and  
19 these are some restaurants that are three stars and  
20 above that are within easy walking distance, and then  
21 you can drill down, and you get all sorts of wonderful  
22 things when you have structured data to match up  
23 together in an automatic way.

24 So that whole thing is based on just basically  
25 these six fields here: The item reviewed -- six tags,

1 the name of the item, so that would be the Capitol  
2 Grille, a description, the rating, how many stars an  
3 individual reviewer gave, the name of the reviewer, the  
4 date review and then the description of the reviewer,  
5 and from this basic data, you can do all these wonderful  
6 things.

7 It's pretty simple. This is what's behind the  
8 hood, underneath the hood in the source code. Google  
9 has a number of different ways that basically allow  
10 vendors to put it -- to markup their data or in micro  
11 formats or RDFa, but it's actually very simple. These  
12 are the tags added to the data that you see.

13 So now the second one, which we've seen, is  
14 XBRL. I can't tell you how ecstatic I was when I first  
15 saw XBRL. My first job coming out of college was I  
16 worked for the professor of entrepreneurship at the  
17 Harvard Business School writing case studies, and when I  
18 wanted to get SEC data, I had to go to the library  
19 stacks or right to the SEC and get them.

20 And then later in the '80s, when they came out  
21 and made it available on the web in document format, and  
22 now in PDF, oh, that's the greatest thing in the world,  
23 I still have to cut and paste and put it together to  
24 make sense of it, but now it's like all this data is one  
25 giant database that you can search through because its



1 tagged. It's unbelievable what that means.

2 The one point I want to highlight on XBRL is how  
3 difficult it was, how time consuming it was to make it  
4 happen. Charlie Hoffman came up with the idea for XBRL  
5 1998, and it's 2009, and the SEC has just started  
6 rolling out on a four-year roll out as we see. This is  
7 a big deal. They had to form a standards body and get  
8 everybody on board, and it's just not the SEC.

9 Basically every advanced country in the world is  
10 rolling out XBRL: China, Netherlands, Israel,  
11 Singapore, Chile. You name the country. They're  
12 either -- have already adopted in the last year or two  
13 or are planning on adopting it in the near future, and  
14 this is just a crazy thing. If you had told me a few  
15 years ago that something as incredibly complicated as  
16 XBRL was just in the United States more than 14,000  
17 tags, this type of thing could happen, I would say  
18 you're crazy.

19 Now, this legislation ontology, you got a little  
20 hint of that in the presentation here. This is also  
21 very exciting. A few years ago I was at the Harvard  
22 Kennedy school, the Shorenstein Center, and I did a  
23 survey of 126 legislatures, how they made their  
24 information available, and I can tell you the New York  
25 Senate was the absolute worst. My research assistant

1 spent weeks going back and forth just to do a basic roll  
2 call. They had the little box for it, but it didn't  
3 work, and it's amazing what they're proposing to do.

4 Basically what they're doing is taking a mess of  
5 data, these unstructured type of document forms and  
6 tagging it so it can be searchable, but the approach  
7 that is being taken in the United States is very  
8 different than what's being taken by other legislatures.

9 In the United States, each legislature is doing  
10 this on their own. There is no common ontology. It's  
11 great what they're doing. It's just a huge improvement,  
12 but in Europe the intra parliamentary union, which has  
13 more than a 150 legislatures, has come up with a common  
14 standard. I can't speak about its adoption, and they  
15 have a legislative XML university there where IT folks  
16 can go all over and learn this standard, and that is a  
17 much more powerful way to approach this, but that's a  
18 little bit too far for the Americans, for whatever  
19 reason it is, so it's a very different approach than  
20 XBRL.

21 Let's just summarize some of the differences  
22 with the product review ontology, very simple, private  
23 industry, implemented on its own. It worked great. I  
24 don't believe it's an extensible type of approach. The  
25 financial ontology, very complex. We have private, the

1 accountants, all the financial players got together with  
2 the government agencies, the FDIC, the FCC, the  
3 government of other countries, to design this standard.

4 The government incentive was very high to do  
5 this, and the private players' incentives were very  
6 strong to do it. Legislative ontologies, quite  
7 different, sort of medium complexity, I would say purely  
8 government and very low incentive to do this, so that's  
9 the comparison.

10 Now, this is the core of what I want to get  
11 across to you is this bias ontology, which is a way to  
12 describe the conflicts of interest in a well structured  
13 way to revolutionize all sorts of accountability type of  
14 information.

15 So it's just the basic story is -- and a little  
16 bit of terminology. The division of labor is the source  
17 of wealth in our society, and division of labor requires  
18 that if you have principles that delegate tasks to  
19 agents, this is terminology used in economics,  
20 management and political science, or when you delegate a  
21 task to an agent, you want to ensure that the agent does  
22 not have conflicts of interest, to the extent you can,  
23 or you want them to disclose that so you can take that  
24 into consideration.

25 This is a pervasive type of relationship we have

1 in modern society, and it's becoming increasingly  
2 important as the marketplace gets more complex or you're  
3 delegating things to like elected legislature. You  
4 really don't know what they're doing in the outcomes.  
5 Where you don't know what the outcomes are, the  
6 conflicts of interest become absolutely essential to the  
7 accountability system. This is why our fiduciary laws  
8 and whatnot have exploded in the last generation.

9 So the key elements of a bias ontology is first  
10 you have got to designate who has put together the  
11 agency claim. The agency claim -- the agent always  
12 claims to act on behalf of the principal. That's the  
13 agency claim, so the government can put together the  
14 agency claim. The SEC has all sorts of agency  
15 requirements, the FTC, the FDIC.

16 Basically there are literally thousands of  
17 agencies at the local, state and national level that  
18 have these agency claims, and also you can have third  
19 parties doing agency claims. In the case of the media,  
20 the journalists' ethics disclosures, that would be an  
21 agency claim put out by the agent.

22 So the part that I'm going to focus on here,  
23 the five major components of an agency claim: You have  
24 to specify the principal, the agency, agency's covered  
25 interests, that's the agent's income and assets, and

1 we'll see how this works in a second so it's been very  
2 vivid, and the covered actions. The covered actions are  
3 what the agents do on behalf the principal, and then  
4 these default settings allow you to really speed up the  
5 way it looks in practice.

6 So now here's an example, a very simple example,  
7 powerful earmarks, so here we have the agent is Senator  
8 Shelby, who apparently is the king of earmarks in the  
9 Senate. He's the agent. The covered action is he's  
10 given money to the University of Alabama for earmark.  
11 The covered interests are the independent contributions  
12 he's received, the PAC contribution and the lobbying  
13 there, and this language allows you to integrate them in  
14 a well structured, very efficient way.

15 Now, this is provided -- one of my board members  
16 is the executive director for the Center of Responsible  
17 Politics. You will see their stuff all the time in the  
18 Washington Post, The Wall Street Journal, Politico, you  
19 name it. All the time when reporters want information,  
20 they tend to go at the national level to the Center For  
21 Responsible Politics to get this type of linkage  
22 information.

23 So there are great advantages of this type of  
24 languages, economies of scale and application markets.  
25 We're talking about today these applications are sort of

1 done sort of database by database. We're talking a  
2 factor of tens of thousands, applications that will work  
3 broadly so revolutionize the economics of providing  
4 these types of applications.

5 As we saw in XBRL, this type of ontology allows  
6 for more efficient data entry and integration. What I  
7 want to focus on is more efficient semantic search. You  
8 can do now in one query what would have taken tens of  
9 thousand of queries to do, even assuming the data was  
10 available on the web, which for many of these with  
11 databases, we're not even to web 1.0, it's not, but it's  
12 there, with one simple well structured search, you can  
13 do amazing, well structured searches.

14 Even though we're focusing on journalism here,  
15 which is the impact for information intermediaries,  
16 we'll see that for direct search, for example the FTC  
17 blogger rules, it can have a huge impact on how those  
18 things are done.

19 So now the critique of the current mechanisms  
20 like the earmark one that look nice, but actually  
21 underneath the hood, it was incredibly labor intensive.  
22 The way that was actually done is each member of the  
23 House posts on their home page their earmarks in a PDF  
24 style document, something you have to go through and  
25 parse that information to allow you to structure these

1 links, and to make those links between those databases  
2 and earmarks is a non trivial task. It's quite  
3 complicated.

4 So I'm talking about an increased efficiency of  
5 maybe a million fold for certain types of applications,  
6 and I'm going to show you that type of application now.  
7 The earmark is not one of those that's a relatively  
8 simple application.

9 So here we're going to look at the state of  
10 Arkansas, its budget, okay, and if we want to do one of  
11 these agencies queries, this is the type of -- to find  
12 conflicts of interest linking items in the budget to  
13 covered interests, you can specify this in a very simple  
14 way.

15 Now, if you do this today, it would require, for  
16 a medium sized city or a small state, literally millions  
17 of queries. Now it can be done instantaneously so here  
18 is a simple -- this is what we're all familiar with, a  
19 budget. You have the line items. You have the costs,  
20 whatever it is. This is what we have today, no bias  
21 ontology. Suddenly you can link all of the budget items  
22 to covered interest, just like we saw on the earmarks.

23 The budgets tend to be a little bit more  
24 complicated, and then we consider to do all sorts of  
25 budget manipulations. We can drill down and see the

1 individual line items. Budgets can be viewed in many  
2 different ways, by program. That was a programmatic  
3 view, by object, salary, benefits, capital expenditures  
4 and whatnot, by location.

5           You can see integration with geographic  
6 information systems how all these items do it by  
7 political district whatever it is, you can do all --  
8 once you got the data in there in a well structured way,  
9 you can manipulate it in incredible ways that nobody  
10 does today because it would be insanely difficult to do.

11           So now what I focused on here in the description  
12 is elected officials and voters. I could have gotten in  
13 one of a million cartoons on this subject. This is a  
14 big thing, but there are many, many other applications  
15 of this type of ontology. Here doctors and patients.  
16 Today's doctors are rife with conflicts of interest, in  
17 prescriptions and whatnot. This type of technology  
18 could make a huge difference in really user friendly  
19 ways that you can barely imagine today.

20           Journalists, all sorts of problems with writers  
21 and their undisclosed conflicts of interest. I have  
22 worked in the think-tank world, rife with hidden  
23 conflict or interest. Real estate agents, we have all  
24 these highfalutin laws about conflicts of interest that  
25 everybody just ignores. This would be a way to really



1 rethink how real estate ethics works here.

2 We've got some people at the FCC that are doing  
3 a look at the public interest obligations of  
4 broadcasters. They have a whole bunch of conflicts of  
5 interest rules. They're all implemented with dark ages  
6 technology, and this is -- when they look about not just  
7 how programming data can be changed but the metadata  
8 associated with the programming data, with all the  
9 digital streams, this could be a revolution. They're  
10 supposed to disclose product placements, but they have  
11 barbaric type of disclosure approaches that they take to  
12 doing this, so we have all these product placement types  
13 of things, sometimes where there's laws, sometimes where  
14 they aren't.

15 This is one that I think is one of the most  
16 exciting areas. The FTC released blogger rules  
17 effective last December where bloggers who do reviews of  
18 products have to disclose conflicts of interest in the  
19 blogs. This got a lot of attention. I would say it was  
20 fun for the cartoonists. I could of picked also many  
21 other cartons on this one here because it was viewed as  
22 so controversial.

23 So here's a very different type of display than  
24 the one I showed you so far. So we have a document, and  
25 this is the way I envision most of these would work, so

1 here's a review of a baby stroller. The conflict of  
2 interest item, the review is linked there, which is you  
3 click on it and then you can see the conflicts of  
4 interest that are related.

5 Now, the critical thing here is this gets the  
6 government out of the graphic design business, deciding  
7 how conflicts of interest should be displayed, because  
8 the reader can choose how to view the conflict or  
9 interest, the font, the box, the highlight, whether it's  
10 in the text, whether it's summarized under a separate  
11 box is all under the control of the reader. The reader  
12 does it once for any type of blog, sets the parameters  
13 and then the display is automatic.

14 So here, for the proposed bias ontology compared  
15 to the other ontologies we've seen, relatively complex,  
16 more complex than the product review but I think quite a  
17 bit less complex than the XBRL ontology. For some of  
18 these applications, this huge -- elected officials are  
19 not going to be at all excited about it, but for certain  
20 other ones, when it comes to occupational licensing as a  
21 new type of vehicle to manage conflicts of interest,  
22 maybe for the FTC's blogger rules and whatnot, there I  
23 see less of a conflict or interest.

24 Here in some cases, private entities are like  
25 government officials, nobody wants to be made

1     accountable. They're not going to be that excited about  
2     a technology that is going to make them disclose all  
3     sorts of things that will reduce their market power, but  
4     it varies by the time of application.

5             So there's some problems with wanting the  
6     market to come up with these ontologies. It varies by  
7     product. Standards development is expensive. There's  
8     significant free riding problems, and when it comes to  
9     ontologies, there are very significant network effects  
10    and positive externalities associated with doing these  
11    things.

12            Google has been a great solution in moving this  
13    ahead in a lot of areas, but you can't rely on Google  
14    for everything, and they largely saw a lot of these  
15    coordination problems because they get more than 70  
16    percent of the market. When Google says, "This is the  
17    way we want to do product reviews," all the Trip  
18    Advisors, everybody that gets in shape and online and  
19    posts their data that way, they solve the coordination  
20    problem, but we don't always have a monopolist that can  
21    do that type of thing.

22            Then a big issue, why I think there has to be  
23    government involvement, is this real significant  
24    conflict of interest problem in implementing these. The  
25    market players don't mind vague ethic statements and

1 whatnot as long as they're art and force and they feel  
2 good, but when you start talking about something that  
3 makes it simple to enforce and track what's going on,  
4 that's a completely different story, so that's the  
5 reason for government involvement.

6 Now, there's different flavors of government  
7 involvement. One type of flavor is like we've done with  
8 the legislation. Agency by agency comes up with their  
9 standard. I don't like that approach as I think you  
10 probably have here. Another is the government wide, and  
11 the Department of Homeland Security and our criminal  
12 justice system has worked really hard to come up with a  
13 number of ontologies that work across the government.

14 That's great, that's better than doing it agency  
15 by agency, but the gold standard for me for this type of  
16 ontology, I think you need to have a government private  
17 partnership because its scope is so great, and XBRL is  
18 the case study of how you can do that.

19 So with that, I want to just make a few caveats.  
20 Conflict or interest are subtle. This a powerful  
21 technology but at the end of the day you can only prove  
22 correlation. You can't prove causality, all sorts of  
23 things. There are limits to the technology. We're  
24 talking about a significant, long-term framework to make  
25 this happen. Like XBRL, this is not the type of thing

1 that can happen today, but we can do some really neat  
2 experiments in the short-term to get a sense as to what  
3 this will do, but this is like a chicken and an egg, the  
4 more people that use it, the more powerful it becomes.

5 I think this has great implications for open  
6 government and media reform. This is not the way the  
7 open government and media reform community -- I mean,  
8 I've been to countless events like this. This is not  
9 how they frame issues, and one reason they don't frame  
10 issues like this, from my perspective, is that folks are  
11 looking for quick hits, quick results, the foundation.  
12 Anything that smacks of requiring work that's a little  
13 highly tech and what not they're scared of.

14 The foundations don't like it, but when you want  
15 to do great things, developing skills, human capital,  
16 whatever it is, it takes a long-term commitment and this  
17 is it, and I would encourage these communities to start  
18 reconceptualizing how they frame a lot of these issues  
19 with standards making central to what is done.

20 So I'm trying to put together a standards group.  
21 We will get the stakeholders together to do this. If  
22 you have any thoughts, I would welcome them, and I have  
23 also this working paper that I am releasing today, which  
24 largely covers what's here, but it focuses much more on  
25 the FTC's blogger conflict or interest rules than this

1 presentation.

2           It's just a vivid illustration largely of how  
3 this can allow us to rethink how we've conceptualized  
4 these types of public policy problems. So that's it.

5 Thank you.

6           (Applause.)

7           MS. DESANTI: Thank you very much, Jim. We're  
8 going to adjourn for lunch now.

9           (Whereupon, at 12:14 p.m., a lunch recess was  
10 taken.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## 1 AFTERNOON SESSION

2 (1:37 p.m.)

3 MS. DESANTI: Could I ask you to take your  
4 seats, please, and we'll get started. To begin with  
5 this afternoon, we have three presentations that will  
6 address different forms of public funding or subsidies  
7 that have been used to support the gathering and  
8 dissemination of news.

9 To the surprise of many journalists, there  
10 actually is a substantial history of government support  
11 for the news, and we have found three people who can  
12 really help us put that in perspective and give us some  
13 real data to work with.

14 First, we are honored to hear from Chairman Ruth  
15 Y. Goldway of the Postal Regulatory Commission. She  
16 was first appointed by President Clinton in April 1998  
17 to the predecessor agency, The Postal Rate Commission.  
18 She was twice reappointed by President George W. Bush,  
19 and in August 2008 reappointed by President Barack  
20 Obama. She is the longest serving, full-time Senate  
21 confirmed presidential appointee within the Executive  
22 Branch of the United States government, and that in  
23 itself deserves an award.

24 I really can't imagine how you've done that, but  
25 it clearly speaks here to your talent and perseverance.

1 Chairman Goldway will discuss the history of Postal  
2 periodical subsidies.

3 CHAIRMAN GOLDWAY: Thank you.

4 MS. DESANTI: Thank you.

5 CHAIRMAN GOLDWAY: Thank you, Susan. It's my  
6 pleasure to be here. I'm going to have to take that out  
7 of my bio. It just reminds me of how old I am. I've  
8 been around so long.

9 I'm really delighted to be part of this workshop  
10 and to have reconnected with Jon Leibowitz after many  
11 years and to find many areas in which the FTC and the  
12 Postal Regulatory Commission can work together in the  
13 future.

14 Today's workshop, I feel a bit guilty because I  
15 think the other two panelists know as much as I do about  
16 the history of postal subsidies, but for those of you  
17 who may not be as well briefed as they are, I will do my  
18 best to do a survey of some of the history of the  
19 nation's post and its relationship to periodicals.

20 The post and the press share an impressive  
21 common ancestry. They're both pillars of the founding  
22 democracy that we call our home. Both the U.S.  
23 Constitution's First Amendment, which requires freedom  
24 of the press, and Article 1, Section 8, which gives  
25 Congress the power to establish post roads and post



1 offices.

2 The Postal Service is the only nationally owned  
3 government monopoly in the federal government. We have  
4 some areas like TVA or rural electric co-ops, but it's  
5 the only national government owned monopoly, and it's as  
6 a result of the Article 1, Section 8.

7 Of course, Ben Franklin is the personification  
8 of this relationship, a founding father, a signer of the  
9 Declaration of Independence. He was a leading publisher  
10 and printer in his day, and he was the first Postmaster  
11 General in 1775 when the Continental Congress was  
12 created.

13 I like to say that because he was a magazine  
14 publisher, he made sure that the government would take  
15 care of his business in the future, but he also, I  
16 think, recognized the unique value of both the content  
17 of communication and its ability to be spread evenly and  
18 fairly through a neutral agency that created the  
19 symbiosis that we have in our nation's history.

20 You need a full range of open ideas in a  
21 democratic society, and you need them to be distributed  
22 in a way that they will be available to everybody. So  
23 the post and the press are brothers in a commitment to  
24 having an educated democratic and participatory  
25 citizenry.

1           The first major postal law heavily favored the  
2           press in 1792. Postage for letters ranged from 6 cents  
3           to 25 cents, which was a lot in those days, if you think  
4           that we now charge .44 for a first class letter.  
5           Postage for newspaper subscribers, however, was 1 cent  
6           up to a hundred miles and 1 or a half cents for  
7           distances of more than a hundred miles.

8           The law also let printers send each other  
9           newspapers for free, and the symbiotic growth developed  
10          throughout the nation's history. In 1800, there were  
11          903 post offices and 200 newspapers. In 1850, there  
12          were 18,417 post offices, and 2,200 newspapers.

13          According to Alexis de Toqueville when he  
14          visited the country, it appeared that Americans spread  
15          out across half a continent were better connected than  
16          the citizens of the single province of France.

17          Through the mid 1800s, the postage deal for the  
18          press was often sweetened. One example we found is in  
19          the New York City to Washington trip, a subscriber  
20          postage was 1 and a half cents in 1850, 1 cent in 1852,  
21          and just a half cent if prepaid, and that was a pretty  
22          good deal.

23          In 1863, mail was divided into classes, an  
24          approach that still works today, and we had first class  
25          letter mail and second class mail, which included

1 periodicals, but for periodicals, the service they  
2 received was still first class service, and that remains  
3 until today, that there is a preference for periodical  
4 mail in the delivery stream as opposed to other second  
5 class mail. We now call it standard mail. Also pricing  
6 by the pound was initiated so you differentiated between  
7 the piece rate and the pound rate.

8 By 1911, second class publishers paid 1 cent a  
9 pound, but the Post Office's costs were about 5 to 8  
10 cents a pound, so subsidies began to develop, and there  
11 were Congressional Commissions in 1906 and 1911 calling  
12 for higher rates, but the system stayed the same.

13 In 1951, for instance, President Truman pointed  
14 out to Congress that 80 percent of magazine and  
15 newspaper postage costs were paid by the public, but  
16 Congress was very reluctant to raise rates. They did it  
17 slowly. They have did a rate raise in '51 and '58. By  
18 the way, I'm wearing a little pin that I was given by  
19 one of my staff people today in honor of this. It's a  
20 freedom of the press stamp from 1958, a 4 cent stamp.  
21 There were rate increases again in '62 and '67, but  
22 second class rates, standard rate deficits kept  
23 climbing, from under 200 million in 1950 to 435 million  
24 in 1968.

25 By 1971, there were pressures from both postal

1 unions and from Congress, postal unions wanting raises  
2 and Congress not wanting to raise postal prices, to set  
3 up an independent agency for the Postal Service to be  
4 independent of the federal government but wholly owned  
5 by the federal government, and for a Postal Rate  
6 Commission to bear the burdens of the controversy of  
7 setting rates for different classes of mail.

8           The Postal Service, as it was then called as  
9 opposed to the Post Office, was given the mandate of  
10 breaking even. Its revenues had to cover all of its  
11 costs, so there were eliminations of direct subsidies  
12 for various classes of mail.

13           Before the Postal Reorganization Act of 1971,  
14 you had direct taxpayer subsidies for newspapers and  
15 magazines that had a history that went back to the  
16 founding of the country, but after 1971, what happened  
17 was that periodicals became part of a system where there  
18 were -- if there were subsidies, they would be rate  
19 payer subsidies, and what we have now is a system where,  
20 to the extent that magazines and newspapers get  
21 subsidies, they are subsidized by other payers for the  
22 Postal Service, not by the general public, and that's a  
23 very fundamental distinction in the debate we have about  
24 future subsidies for the post.

25           Under the new law of 1971, the Commission was

1 directed to oversee a rate setting process that would  
2 bring rates into balance over time so that all mail  
3 would pay its own way, and attributable costs, that's  
4 the basic cost of the actual handling of the mail and  
5 the delivery of the mail, would have to be paid for by  
6 the rates, but different classes of mail would be  
7 allowed to cover a different percentage of what were  
8 called overhead or institutional costs based on a series  
9 of factors that were provided in the law.

10 We call them the ECSI factors, educational  
11 cultural, scientific and informational qualities, and as  
12 a result, the Postal Rate Commission could say that  
13 while letter mail contributed as much as twice its rates  
14 into the overhead pool, that periodicals could simply  
15 pay only for their basic costs and didn't need to  
16 contribute to the operating overhead of the Postal  
17 Service.

18 So even after the rates were stabilized and  
19 that, by the way, didn't occur until about 1980,  
20 Congress provided direct subsidies on a declining basis  
21 over time so that periodicals wouldn't have a rate  
22 shock, but about 1980, periodicals were balanced so that  
23 the rates they were paying pretty much covered the costs  
24 that you could attribute to their operations in the  
25 mail, but periodicals got a free ride when it came to

1 Post Office's or institutional costs or administrative  
2 costs or the infrastructure of the system that they were  
3 relying on to use the mails.

4 So there were three key points in the old law  
5 that I think are important to remember, and for the most  
6 part, they remain in the law that was enacted in 2006.  
7 The law recognized the historic value of the press.  
8 Periodicals wouldn't have to bear a proportionate share  
9 of their overhead costs. The key goal was to cover only  
10 attributable costs.

11 They were given a subsidy that spread out over  
12 many years to avoid a rate shock, and then the ECSI  
13 factors were institutionalized in the law, memorialized  
14 in the law so that the Rate Commission would have to  
15 refer to them and make sure that those factors were in  
16 place whenever decisions were made about rates in the  
17 future.

18 So until about the year 2000, periodical rates  
19 more or less covered their costs. 1996 was probably the  
20 year where periodical rates began to slip under that  
21 hundred percent coverage, but the Postal Rate Commission  
22 was able to adjust the rates and make a few changes here  
23 and there, so at least on the record, it looked like  
24 periodicals were covering their costs until about the  
25 year 2000. After the year 2000, there's only one year

1 in which periodicals appeared to have covered their  
2 cost, and that was in 2003.

3 Part of the reason is that the Postal Service  
4 actually created a system of great savings and  
5 efficiency for letter mail, so letter mail became  
6 automated, but magazines, periodicals were not  
7 automated, so a greater share of the labor cost of the  
8 Postal Service, a greater share of what would be  
9 overhead costs were then attributable to the magazines  
10 and newspapers because they still had to be handled  
11 manually whereas the efficiencies were gained in  
12 letters, and letter, even when rates were not going up  
13 because of the efficiencies, created a great deal of  
14 revenue for the Postal Service.

15 I think the other thing I would like to mention  
16 is that one of the reasons that the Postal Service and  
17 the periodicals did so well through the year 2000 was  
18 that they made a deal with the devil, that they agreed  
19 that most of the costs would be covered by advertising,  
20 and so the mail system in the United States grew  
21 exponentially from the mid 1980s through the mid 2000  
22 years because of expanding advertising.

23 The volumes would grow, and the relative amount  
24 of profit for each piece of mail could decline because  
25 there were greater volumes, and we relied on a system

1 that was coming to us because there was more and more  
2 advertising in the mail, and magazines did the same  
3 thing. You relied on advertising to cover your costs,  
4 for the most part, and advertising was the major cash  
5 cow for periodicals as well.

6 So the real cost of the transportation and  
7 communication system of the Postal Service and the real  
8 cost of newspapers and magazines was hidden by the  
9 subsidy that we were both getting from being used by the  
10 advertising world for better or worse.

11 The recession of 2001 and the Anthrax scare put  
12 the first dent in that what seemed to be a perfect  
13 devil's bargain, and there was a huge decline in volume,  
14 and as a result, the Postal Rate Commission allowed the  
15 Postal Service to have a rate increase that did not  
16 include any of the careful review that we would do to  
17 balance rates.

18 We had what was called a settled rate case, and  
19 the only rate case we had after that was in 2005,  
20 another settled rate case, which that case was just a  
21 small percentage across the line for every rate, so by  
22 2007, when we were required to do the last rate case  
23 under the old regime where we were looking at each rate  
24 to pay its cost, we had to make rather significant  
25 adjustments in the rates that periodicals were paying



1 and especially what flats were paying.

2 Flats got a much bigger hit than periodicals,  
3 but both classes of mail that were still more or less  
4 handled by hand, that hadn't had the benefit of  
5 automation, had to have rate increases to cover their  
6 costs, so in 2007, there was a big rate increase for  
7 periodicals, and while periodicals were shocked by it  
8 and troubled by it, it was from, the Rate Commission's  
9 point of view, the only fair thing to do because after  
10 all, we had single piece users of the mail, people who  
11 are paying bills and using correspondence, who were  
12 subsidizing other uses of the mail unwittingly, and  
13 under the law, that's our obligation to try and spread  
14 the responsibility for the costs more fairly.

15 After that rate case in 2007, we average that  
16 periodicals were covering about 97 percent of their  
17 costs, but with a CPI price cap in the new law, which we  
18 now have the Postal Accountability and Enhancement Act,  
19 PAEA we say, it's not the Spanish rice dish but the new  
20 law, but the PAEA requires that the Postal Service have  
21 a rate setting process that gives them an increase each  
22 year based on the cost of living, a CPI price cap  
23 regime, and that means that periodicals as a class can  
24 only go up by the price cap.

25 However, periodicals' costs were going up far

1 greater than the price cap, and now we're in a situation  
2 where we have a negative CPI, so the Postal Service  
3 can't raise prices at all, and we're at a situation that  
4 it appears that cost coverage for periodicals is now at  
5 76 percent, so there is a subsidy that periodicals now  
6 have. Only 76 percent of the attributable costs of  
7 magazines and newspapers is being paid for by magazines  
8 and newspapers, none of the overhead costs and 25  
9 percent of the attributable costs.

10 We believe in the current estimate of costs that  
11 we have that this amounts to 600 -- what did we say --  
12 \$641 million. That's a pretty big subsidy, and it is  
13 something that the letter mailers in the system are  
14 complaining about constantly, and they very much want  
15 the Postal Regulatory Commission to address this issue.

16 So we have a complex problem here that has to be  
17 solved. Under the current rate regime, which we  
18 inherited from the Postal Rate Commission, periodicals  
19 have rates that are very complicated and set on a very  
20 wide range of characteristics. You have a rate that  
21 you're charged for the editorial content of your mail, a  
22 rate that you're charged for the weight of your mail, a  
23 rate that's charged for your advertising, and a rate  
24 that's charged for the distance that you send your  
25 magazines.

1           Furthermore, you get discounts on your editorial  
2 rate. You get discounts if you work share, which means  
3 presenting the material to the Postal Service in some  
4 sort of package order, further discounts if you drop  
5 ship, in other words, deliver the mail to a location  
6 that's closer to where it's supposed to go, and for the  
7 editorial rates, you don't pay a distance fee. There's  
8 no distance surcharge. It's just a flat fee, but for  
9 the advertising rates, you pay a surcharge, and for the  
10 pound rates, you pay a service charge, so it's a very  
11 complex matrix.

12           What I can say fairly generally is, and my  
13 expert on rates is sitting here with me, and you can ask  
14 her more later, is that the higher the editorial content  
15 of the publication, generally the higher the subsidy.  
16 The more editorial content, the higher the subsidy.

17           There are about 9,000 publications with what we  
18 call medium editorial content, somewhere between 51 and  
19 85 percent as a whole, and that group we think costs the  
20 Postal Service about \$350 million a year.

21           The lowest work sharing groups, those with the  
22 smallest circulation and with the highest editorial  
23 content, actually cost the Postal Service on average  
24 about 19 cents a piece, and those periodicals are often  
25 the ones that journalists are most concerned about.

1 Those are often the periodicals of opinion, and they're  
2 the ones that are distributed nationwide as opposed to a  
3 particular region.

4 So it's very difficult for them to do any work  
5 sharing or any drop shipping, so the costs to the Postal  
6 Service are greater, even though their rates may be  
7 higher than some of the largest magazines. The  
8 subsidies they're getting, if you're looking at the cost  
9 to the Postal Service, are greater, and that's another  
10 important principle that I think has to be addressed in  
11 any future discussion about what we do about supporting  
12 periodicals in the future.

13 The classic periodicals that are the most  
14 expensive to the Postal Service that are the ones that  
15 are asking for the subsidy but actually get the largest  
16 subsidy now.

17 I think what we have to do about the future is  
18 to have a discussion that really comes to grips with the  
19 contradictions that are in the current law and in the  
20 arrangements we now have for a relationship between post  
21 and periodicals.

22 The PAEA requires that all rates cover their  
23 costs, and it also provides us with guidelines for the  
24 ECSI factors, but it provides a very limited way in  
25 which rates can cover costs, and it has also put this

1 enormous additional financial burden on the Postal  
2 Service of prepaying its healthcare retiree fund to the  
3 tone of \$5.5 billion a year, so that the Postal Service  
4 is now running enormous deficits.

5 Last year it was a \$3.8 billion deficit. It  
6 would have been 7.8 if the Obama Administration had not  
7 forgiven \$4 billion of that payment, basically tacked it  
8 on to a year later instead of what it is now.

9 The Postal Service is estimating we'll have  
10 losses of between \$6 and 7 billion this year, so for us  
11 to be asking the Postal Service to absorb \$641 million  
12 of subsidies to periodicals, which are a very small  
13 portion of the volume of the mail, is a very difficult  
14 proposition for us and doesn't make sense financially if  
15 we're concerned about the overall financial survival of  
16 the Postal Service, and we have a dilemma.

17 Now, there are some things the Postal Service is  
18 doing. It's trying to cut their overhead costs, and  
19 you've read about all of that. They've cut 20 to 25  
20 percent of their employees already. They want to cut  
21 delivery one day a week. They're talking about closing  
22 Post Offices.

23 They also have a huge investment in an  
24 automation project for flats and periodicals, which has  
25 been delayed for many years, but I think by next year,

1 if not end of this year, will be up and running with a  
2 hundred machines throughout the country that will be  
3 able to sort flats and periodicals much more quickly,  
4 and the system will be more like the system they have  
5 for letters.

6 Now, they've been promising this automation  
7 improvement for many, many years, since I've been on the  
8 Commission, so it's a long time, but we're hopeful that  
9 they will actually be able to have some really  
10 documented cost savings, so that there will be less of a  
11 cost overhead, a cost requirement for periodicals to  
12 meet in the future, and there may be reductions in their  
13 general overhead through these other cost savings that  
14 will save the Postal Service some money.

15 I think that it's only fair for both the  
16 periodical community and the postal community to  
17 approach Congress with the notion that there is this  
18 symbiotic relationship and support for both parts of  
19 this communications network that supports democracy are  
20 necessary, and I think if the Congress understands this  
21 unique relationship, arguments can be made for finding  
22 financial support in one way or another that may address  
23 both of our concerns.

24 We've not been that successful to date in  
25 getting the Congress simply to focus on addressing the

1 concerns of the Postal Service on its own, but I think  
2 together, we have a case for what is an essential part  
3 of American infrastructure and something that the  
4 Congress really does want to maintain. If only for its  
5 own personal desire to get reelected every year, they  
6 want to make sure that there's a vibrant political  
7 dialogue in the country.

8           So I don't have answers for you, other than to  
9 say that I'm delighted to be here and that you have my  
10 pledge in my role as a regulator to participate in these  
11 discussions and to see if we can't find ways in which  
12 both the post and the periodicals can work together to  
13 insure our future. Thank you.

14           (Applause.)

15           MS. DESANTI: Thank you very much, Chairman  
16 Goldway, for really enhancing our record and our  
17 understanding of these issues.

18           Next we're going to hear from Geoffrey Cowan,  
19 who is a professor and holder of the Annenberg Family  
20 Chair in Communication Leadership at the University of  
21 Southern California's Annenberg School for  
22 Communication, as well as Dean Emeritus of the Annenberg  
23 School for Communication and Journalism.

24           He also recently completed service as a fellow  
25 of the Shorenstein Center on the Press, Politics and

1 Private Policy at the Harvard Kennedy  
2 School of Government, and I would be remiss if I did not  
3 mention that he is also a well known playwright, who  
4 just had a play opening in New York.

5 So please welcome Geoffrey Cowan.

6 MR. COWAN: Susan, thank you, and I have to say  
7 it's a pleasure to be on this afternoon series of  
8 discussions with Chairwoman Goldway, who I have known  
9 since before she was in this role, so it doesn't seem to  
10 me so long ago, and with Bob McChesney, whose work I've  
11 admired for so long, so it's really nice to be on this  
12 panel.

13 I think, Susan, when you asked me to talk  
14 about -- to be part of this panel, you wanted me to talk  
15 about they report that David Westphal and I wrote, and  
16 we have copies of that report for anybody who wants to  
17 see if. I also wanted to start off by mentioning that  
18 from the discussion that I heard this morning, I think  
19 that maybe the FTC should think in a slightly broader  
20 context about what you're considering here, which is not  
21 just the future of journalism, but what sometimes is  
22 called news or information in the public interest,  
23 because many of the panels this morning actually were  
24 about how information gets disseminated.

25 It's not only through any form of traditional



1 journalism, for example, the Center For Responsible  
2 Politics, which was mentioned, is its own form of news  
3 as well as providing news for journalists, and I think  
4 that's an important thing to keep in mind.

5           What we do at our center involves several things  
6 that are not specifically on my agenda to talk about  
7 today, but I just want to mention it because they may  
8 prove to be relevant. One is we've also been doing a  
9 lot of work explaining the role of foundation funded  
10 journalism. We've been reporting on the status of web  
11 based community journalism, which is also an exciting  
12 innovation, and we've been incubating some new kinds of  
13 outlets, and if the FTC is ever interested in our work  
14 in those fields, we're happy to talk about them.

15           What I want to do today is to talk about the  
16 report that we have presented on government funding of  
17 the news, which I think is quite interesting, and the  
18 Postal subsidy discussion that Chairwoman Goldway just  
19 talked about is certainly an important part of it.

20           It seems that whenever a proposal is advanced  
21 for some kind of government support for the media or for  
22 journalism, cries of horror rise in which people say,  
23 This is a break with the American past, this is  
24 something that will be a violation of all that we hold  
25 true about a notion of the First Amendment, and they

1 often act as though there's some kind of a press state  
2 wall like the church state wall that's in the  
3 Constitution, but it's not so. There never has been, as  
4 Chairman Goldway has suggested, and there is no, in our  
5 view, strong argument for it.

6 So we decided to conduct the study that I'm  
7 going to talk about today in order to try to help  
8 refrain the debate, because while there might be some  
9 people who do think it's good to have such a wall, there  
10 never has been, and the government support has taken  
11 many forms. Chairman Goldway talked about the fact that  
12 this concept really began, in large part, in the  
13 earliest days of the Republic, when George Washington  
14 and James Madison both thought that there ought to be  
15 huge subsidies for the press.

16 George Washington thought that the press should  
17 be delivered free. James Madison said have a little bit  
18 of a cost. You just heard some of the figures about how  
19 large the subsidies were in those early days and about  
20 the Postal Act of 1792.

21 We think that the Founders were right and that  
22 there is good argument for the government to be able to  
23 support journalism in important ways, but at least we  
24 think that as the debate moves forward on this subject,  
25 it should move forward on the basis of an honest

1 discussion of what history is and of what the true facts  
2 of the ground are.

3           So what we did was to look at three areas, and  
4 there were many others. We looked at three areas in  
5 which the government currently, in one way or another,  
6 supports journalism or the press.

7           What we found was that the government, of  
8 course, has always supported the press at the local,  
9 state and federal level, but we also found something  
10 else that I think comes as a surprise of many people,  
11 and that is that the level of that support is declining  
12 and that without a new approach, the level of support  
13 will continue to decline. It seems almost inevitable  
14 that it will.

15           So we think instead of debating whether the  
16 government should start supporting commercial  
17 journalism, we really should think about whether the  
18 government should, as it's now doing, continue to reduce  
19 the level of funding for commercial journalism because  
20 that's the truth of what's happened. It's gone down.  
21 It's going down, and the debate ought to be whether it  
22 continues to go down or whether we restore some of the  
23 kinds of support we've had before.

24           Now, those findings came as a surprise to many  
25 people that worked on the study, including my colleague,

1 David Westphal, who spent more than 30 years working as  
2 a journalist, including most recently being the head of  
3 the McClatchy bureau in Washington, but they surprised  
4 the journalists who covered our report. One of the top  
5 media reporters, who called me up after reading the  
6 report said, who knew? Well, in any case we hope that  
7 they now know and that the debate will be an honest one.

8 One of the things that David suggests is maybe  
9 there's a kind of mythology here that's gone around,  
10 that's gotten in the way of an informed debate. Maybe  
11 it's a mythology that served a lot of people's interest.  
12 Maybe journalists didn't want to quite know the fact  
13 that they were being supported by the government. Maybe  
14 their publishers, who were getting these forms of  
15 support, didn't really want the journalists to soil  
16 their pretty little heads with that information.

17 Maybe government leaders who were doing this  
18 didn't necessarily always want the public to know, but  
19 the fact is it has been true throughout, and we think  
20 that it's important to get some fundamentals right. So  
21 we think it's clear that there's never been a time when  
22 the government didn't support the press, and we think  
23 that there are at least these three important areas  
24 where we want to talk about them.

25 The three areas which we're going to talk about

1 are postal subsidies, which Chairman Goldway has talked  
2 about, and then we're going to talk about a couple of  
3 others that are very important, but first I want to  
4 mention that both postal subsidies and public notices,  
5 which we're going to spend some time on, go back to  
6 actually before the founding of the Republic. These are  
7 concepts that were brought over. They were in the  
8 Colonies, and they were brought over from old Europe,  
9 that there was that kind of support.

10 They were support -- it was true from the  
11 earliest era as Chairman Goldway said. Ben Franklin and  
12 others, who was both the Postmaster and a publisher all  
13 believed that there was important. That history laid  
14 the ground work for high postal subsidies.

15 There's a very similar story for the paid public  
16 notices, which was an idea that also came from old  
17 Europe, and public notices are required, and some people  
18 may wonder just what we're talking about when we say  
19 public notices. We're talking about notices for  
20 municipal zoning changes, school district budgets,  
21 bankruptcy notices, seized property actions and the  
22 like.

23 Government's imposed these requirements on  
24 themselves, but importantly, they also impose them on  
25 private actors who have to do certain things because of

1 government regulations and laws that effect what they  
2 do.

3 Just for a example, foreclosure notices which  
4 often have to be taken out by banks, and I thought it  
5 might be interesting look -- I'm going to talk a little  
6 later about The Wall Street Journal, but I thought it  
7 might be fun, I know you all brought with you the  
8 classified section of the paper, of today's Washington  
9 Post to read in case anything got boring here, and it  
10 will be interesting. I have copies of this to share  
11 with you too, but you can take also take this section  
12 out of your Washington Post today and look at it.

13 Look at the first section, and you think this is  
14 a section that is all about automobile advertising. The  
15 only automobile ads on the front page. Every other page  
16 here is a public notice. Many of the public notices  
17 that are by banks or trustee sales, again required by  
18 law, and you will have a great time reading them, if you  
19 have a magnifying glass with you, because they are let's  
20 say -- and this is easier to read than the stuff that  
21 generally appears in The Wall Street Journal. They are  
22 very small type, but they are required as advertisements  
23 and they continue in an important way to support the  
24 press.

25 In each case the impact is the same. For

1 commercial journalism, it means money in the bank. It's  
2 a particularly important source of support for community  
3 newspapers. The National Trade Association of Community  
4 Newspapers, and that includes rural papers, which is  
5 something that I think is of special interest is the  
6 National Newspaper Association.

7 In the year 2000 the National Newspaper  
8 Association estimated that public notices represented  
9 between 5 and 10 percent of all revenue. It may well be  
10 much higher today as other revenues have gone down, but  
11 public notices to this point have remained pretty much  
12 the same, but it's not just small newspapers that  
13 benefit.

14 As I mentioned, many others do, including the  
15 Wall Street Journal, which I think is interesting  
16 because the Wall Street Journal has often editorialized  
17 against government support for the commercial media, but  
18 look at the truth of the Wall Street Journal itself,  
19 which my guess is that its editorial page writers have  
20 never really looked at.

21 We did a study over a one-month period in which  
22 we tried to analyze the amount of space in the Wall  
23 Street Journal for public notices and the amount of  
24 space for other advertisers during that one month, and  
25 as far as we could determine, the single largest

1 advertiser in the Wall Street Journal during that one  
2 month period was the government, and it's not that the  
3 Wall Street Journal only -- and I don't mean to be  
4 picking on the Wall Street Journal, I just picked on the  
5 Washington Post, if you want to think about it that way  
6 or identified them, don't mean to be picking on them,  
7 but the Wall Street Journal is in court right now  
8 arguing for the right to expand public notices in other  
9 states.

10 They're arguing in Virginia they should be able  
11 to compete with the local Virginia papers for Virginia  
12 public notices and be able to compete with the  
13 Washington Post in Virginia for public notices, and in  
14 fact, they've made it part of their business plan to  
15 compete for public notices wherever they can.

16 If you look at the cumulative effect of all of  
17 these things together, we think the following is fairly  
18 true. Now, we have some slightly different statistics  
19 than the ones that the Postal Rate Commission just  
20 distributed, and I want to explain why, and actually  
21 Chairwoman Goldway and I had an exchange about this, and  
22 I think we now understand it.

23 What we think is that by the late 1960s, postal  
24 subsidies were worth nearly \$2 billion in today's  
25 dollars, but we were looking at the postal rate cost of



1 a couple years ago. If you look at the page in front of  
2 you, you will see how between -- in 2006 the total cost,  
3 total subsidy was about 245 million. Today by their  
4 figures, it's \$241 million, so it's more than doubled  
5 during that time. Probably the same thing is true of  
6 the subsidy today, so the subsidy today would be more  
7 like \$4 billion dollars in today's actual dollars  
8 because the cost of mailing has gone up so much.

9 And public notices at that time brought in  
10 hundreds of millions of dollars of revenue. State and  
11 federal tax breaks also were worth hundreds of millions  
12 of dollars. It's a little hard to know just how much  
13 they're worth, but probably in today's terms at least a  
14 billion dollars, so we thought at the time that we  
15 issued this report that there was probably a cumulative  
16 amount of money of something about \$4 billion. I think  
17 given what we now understand to be a very sharp increase  
18 in the Postal mailing cost, it might be as much as \$6  
19 billion in 1969 dollars, 1970 dollars, that were going  
20 into the commercial press.

21 Now, that's a small but significant chunk of the  
22 news industry's business, and it's the first key finding  
23 of this report. Government backing for the commercial  
24 press has always been with us, and it adds up to very  
25 large amounts of money, but here's the second finding.

1 This support is in the midst of a long-term decline  
2 which is destined to continue unless policymakers take a  
3 new tack. Now, we know that that's already played out  
4 in terms of postal subsidies.

5 Pre 1970 the amount of the postal subsidy, as we  
6 understand the figure, was about 75 percent. Today it's  
7 about 11 percent.

8 CHAIRMAN GOLDWAY: 25.

9 MR. COWAN: Today we've heard the subsidy they  
10 have is 25 percent. If the figures are right, as we  
11 understand it, it's gone from maybe \$4 billion down to  
12 maybe \$500 or 600 million today. It would be good for  
13 somebody, maybe the Postal Rate Commission or maybe FTC,  
14 to sort out these actual figures.

15 We had a doctoral student do it. All of our  
16 findings are available to everyone here to be able to  
17 study, but in any case, it's a drop of several billion  
18 dollars, and frankly it seems to me that it's likely to  
19 continue still further, and so here you see the numbers  
20 as we understood them.

21 Federal and state tax breaks are also almost  
22 certain to fall because, for one thing, they are often  
23 tied to old media forms of distribution, that is, to  
24 circulation and to ink and other specific print models,  
25 and secondly, everybody's looking for places to gain

1 revenue at every level of government, so we think it's  
2 likely that that will also happen, so the amount of tax  
3 breaks is likely to continue to fall.

4           When you look at the public notices, there are  
5 many people who no longer think they really make sense.  
6 Their effort is in 40 states to move public notices to  
7 the web, which most people have done with their other  
8 classified ads which is one reason that the classified  
9 advertising section mainly consists now of public  
10 notices or heavily consists of it in some papers. So we  
11 think a shift to the web is basically inevitable, and  
12 it's hard to completely argue against it.

13           Imagine that you're in a school -- you're in a  
14 school system where it costs you a hundred thousand  
15 dollars to advertise in the local newspaper because  
16 your school budget has to be advertised or because  
17 you're making a zoning change, and you're firing school  
18 teachers right and left, and you could retain two of  
19 those school teachers for that hundred thousand dollars  
20 and have the information be available on the web.

21           It's a very compelling argument in each of these  
22 communities, so we think that a shift to the web is  
23 almost inevitable, and the result is that this is going  
24 to be -- and it's particularly going to be true for  
25 these community newspapers and in rural communities, and

1 we think it's going to be a crushing loss for them, and  
2 we think it's also unexamined up until this point, so we  
3 think this is a very important direction that things are  
4 going in.

5           So basically all of this raises a question.  
6 Knowing this history that the government has always  
7 supported journalism and always known that it was doing  
8 so because journalism was essential to this democracy,  
9 at this time when journalism is in some trouble, should  
10 the government now continue to reduce the amount of  
11 money that goes into the press or should it rethink it  
12 and find some ways to support the press? And we think  
13 that's what the debate should be.

14           In our report we don't really make specific  
15 recommendations for policies. I think that Bob  
16 McChesney will probably have some that he wants to  
17 suggest. There are many suggestions that have been made  
18 that are very interesting. Again we think they should  
19 be discussed against the backdrop, not of should there  
20 be government support, oh, it's a whole new thing in  
21 American history, but should we now for the first time  
22 in history be eliminating government support, which is  
23 the truth of what's happening.

24           We do make a couple of suggestions. One is we  
25 think that there is strong argument for more money for

1 public broadcasting, which is the most trusted source of  
2 news and information despite the fact it has government  
3 support. Some people say if there's government support,  
4 no one will trust the news.

5 Well, everybody knows that the government  
6 supports broadcasting. In fact, according to CPB's  
7 filings, about 40 percent of all the costs of public  
8 broadcasting come from federal, state and local  
9 governments, and yet public broadcasting is the most  
10 trusted source of news.

11 We think an argument, a strong argument can be  
12 made to increase those findings, and secondly, we think  
13 that it might be time to remove the restrictions on your  
14 national broadcasting.

15 Susan didn't mention in my vitae that I also  
16 used to head The Voice of America, so I have a certain  
17 perspective on this, but from that perspective, I think  
18 there's great news gathering organizations all around  
19 the world of Voice of America, Radio Europe, Radio  
20 Liberty, reporters all around the world filing stories  
21 that can be heard everywhere in the world, except in the  
22 United States.

23 At a time when there is a reduction going on in  
24 foreign bureaus by news organizations all over the  
25 country, all over the United States, why wouldn't we be

1 allowing our citizens to have access to that  
2 information? By the way, to some extent they already do  
3 because Google News has VOA way print reports available,  
4 and you can actually get -- through the internet you can  
5 listen to the VOA.

6 We also want to propose this framework in terms  
7 of any actually dollars. What we think is, we suggest a  
8 three part method of analysis for policymakers. First  
9 of all, don't do any harm. There is a very exciting  
10 cycle of innovation going on right now due to the  
11 digital revolution, and so we think that the government  
12 should be mindful in anything it does not to do anything  
13 to disrupt the exciting invasions that are going on.

14 Secondly, we think that there ought to be a  
15 focus on innovation. Chairman Goldway mentioned the  
16 investment that's being made in reducing the cost of  
17 mailing periodicals. That's an important form of  
18 innovation. There are all kinds of innovations that are  
19 possible, and if you think about it, cable television is  
20 only possible thanks to the advent of satellites, of the  
21 kind of cable television we now think of, the cable  
22 television networks.

23 Who paid for satellites? The federal government  
24 did. Who put up the first satellites? Federal  
25 government funding. Or the internet, which has so

1 totally disrupted and changed information patterns in  
2 many good ways, who funded the creation of the internet?  
3 The federal government. So we think there is a strong  
4 argument for continuing to invest in innovation.

5           Then finally we think that to the extent that  
6 there are federal funds that go directly into  
7 journalism, we favor formulas, which the Postal  
8 subsidies were, which the CPB funding of stations offers  
9 and so forth, rather than large amounts of money going  
10 into funds that then decide who to back and who not to  
11 back in the journalistic area because we do think that  
12 runs the risk, if you have a big fund that decides, oh,  
13 we'll support this magazine and not that magazine or  
14 we'll support the reporting on this project or not that  
15 project, even though in the case of public broadcasting,  
16 and that's worked surprisingly well, we think that  
17 formulas are a better way to go rather than the kind of  
18 directive support.

19           Above all, and it's really the concluding point  
20 that I want to make in this report, and I think it's the  
21 reason, Susan, that you wanted me to talk here is, let's  
22 base this on fact, not myth. Let's not have additional  
23 editorials which say the world is coming to an end  
24 because there's talk about government funding of the  
25 media and of journalism.

1           Let's talk honestly about what the history is,  
2           about what the impact of that history is and what's  
3           happening today and frame it based on that reality, and  
4           if you want to know more about it, we invite you to  
5           visit our website at [www.fundingthenews.org](http://www.fundingthenews.org).

6           Thank you much.

7           (Applause.)

8           MS. DESANTI: Thank you very much, and our final  
9           presenter on this topic is Bob McChesney, who is the ,  
10          and I can never pronounce this so I'll just do my best,  
11          Gutgsell Endowed Professor in the Department of  
12          Communication at the University of Illinois at  
13          Urbana-Champaign.

14          He also hosts The Media Matters weekly radio  
15          program on NPR affiliate WILL AM Radio, and is cofounder  
16          of Free Press, a national media reform organization. He  
17          has authored several books, including a just published  
18          book that he coauthored with John Nichols entitled "The  
19          Death and Life of American Journalism, the Media  
20          Revolution That Will Begin the World Again."

21          That book is a fascinating book, and it includes  
22          some proposals at the end, and we've asked Bob to  
23          discuss those proposals today.

24          MR. MCCHESENEY: Thanks, Susan. Thank you,  
25          Susan, for the nice introduction and, thank you for



1 inviting me to be here. It's really an honor to appear  
2 before all of you, especially to be on this panel with  
3 Chairman Goldway and Professor Cowan. It's great to be  
4 here.

5 I think you took a lot of my thunder, so to  
6 speak, both of you. We're covering common ground, which  
7 I think means great minds think alike, let's hope so,  
8 not that we're all thrills. I will say the difference  
9 you will find between my presentation and that of  
10 Professor Cowan is that he did the acoustic. Set I'm  
11 going to turn up the volume a little bit now and take  
12 the logic of his argument and maybe make it go where I  
13 think the evidence leads us logically with that  
14 evidence.

15 I have a draft of my talk which is somewhere  
16 in the room Craig Aaron from Free Press will hand out to  
17 people because I'm not going to be able to cover the  
18 entirety of it in the time we have, and I do want to  
19 add, as he hands that out, that this is my talk with  
20 John Nichols based on our book. It's not a Free Press  
21 agenda by any stretch of the imagination. This is  
22 purely Bob McChesney scholar.

23 I think what we do in our book and what we try  
24 to demonstrate is probably where a lot of the people in  
25 this room have gotten to or are getting to rapidly,

1       which is that the commercial model as we've understood  
2       it for a long time to generate journalism in the United  
3       States is no longer working efficiently or effectively  
4       to produce a sufficient quantity, the question of  
5       quality aside, but merely quantity of journalism that we  
6       need in the United States.

7               It seems clear to us that there will be some  
8       journalism that comes through the market through  
9       commercial support, through advertising support, through  
10       subscriptions, in the coming years, but there will be  
11       much less than we're accustomed to on a per capita  
12       basis, and it will come nowhere near the amount that we  
13       need to have a satisfactory news media system.

14              Now, if we pursue the course that Professor  
15       Cowan warned against, which is to do nothing and  
16       basically let things proceed as they are, unfortunately  
17       it's not like we will just have a vacuum of a lack of  
18       journalism as newsrooms close down and newspapers cease  
19       to exist and local elections are no longer covered as is  
20       increasingly the case now.

21              Instead I think the evidence is coming in that  
22       what we will have is not much of  
23       traditionally-understood journalism or much less of it,  
24       but we'll still have news, but increasingly, what we'll  
25       have that will pass for news will be something we'll

1 regret exists.

2 In 1980, the ratio of public relations people to  
3 working journalists in the United States was roughly one  
4 to one. There was one PR person for every working  
5 journalist. This year the ratio is 4 to 1. There's  
6 four PR people for every working journalist, four people  
7 working for commercial or governmental agents trying to  
8 influence the news surreptitiously because something  
9 seemed like news for every person trying to cover it  
10 openly.

11 At current rates, and we document this in the  
12 book, the current rates of growth of PR and shrinkage of  
13 working journalists, the ratio in three or four years  
14 will be six or seven to one. So we're entering a world  
15 where we have a high amount of spin, public relations  
16 driven journalism. Basically people who can afford it  
17 will have the power increasingly to dictate what we talk  
18 about, how we think about it, and journalists will be  
19 left to play one on seven defense. It won't even be a  
20 reverse zone. It will be far from man-to-man defense as  
21 they used to play.

22 It's not a world I think that any of us should  
23 really want to live in. It's really a down world, and I  
24 think we have to really come to a recognition now of  
25 something that's increasingly clear, which is that

1 journalism is no longer going to be commercially  
2 lucrative enough to provide -- that the market will  
3 provide all the journalism we need to meet our needs.

4           Instead I think the more accurate way to  
5 understand journalism and to develop policies to address  
6 the current crisis we face is to regard journalism as a  
7 public code, what economists call public good.

8           Now, it's not a pure public good. It has  
9 attributes of a public good, and those attributes of a  
10 public good are being greatly elevated in this, the era  
11 of the internet, which has done so much to demolish the  
12 ability to sell their product and has pretty much ruined  
13 the advertising market for news media.

14           So what do I mean by public good? I guess the  
15 best way to put it is it's something that society  
16 requires to exist and to be healthy, but the market  
17 doesn't do a sufficient or satisfactory job of  
18 generating the sufficient quality or quantity.

19           The classic case of the public good that is  
20 always used in the United States, for self evident  
21 reasons, is military defense. Left to the market, we  
22 wouldn't have military defense because no one's going to  
23 pay for it if their neighbor is going to pay for it, and  
24 you just wouldn't have it, so the government organizes  
25 it, coordinates the payment. Everyone benefits by it.

1 It's a classic case of a public good.

2 There are many others, basic research, like  
3 Professor Cowan talked about, to give us the internet.  
4 That's a public good. Private industry won't do basic  
5 research because it doesn't make sense for them to do  
6 so, so that's why we have universities that do basic  
7 research for us.

8 The public good nature of journalism has been  
9 masked for the last hundred years because of the  
10 emergence of advertising, we contemplate provide between  
11 60 and 100 percent of the revenues for news media in the  
12 United States, depending on the medium, but of the vast  
13 majority of revenues, virtually all news media came from  
14 advertising.

15 Now as we document in the book, that is very  
16 much a phenomena that emerges pretty much from the very  
17 marginal position in the 1850s or '60s in terms of  
18 revenues from newspapers, to a dominant position by the  
19 beginning of the 20th Century. It's a skyrocket  
20 increase in advertising revenues for print media in the  
21 United States, and that era is now ending, and we will  
22 continue to have some advertising, but it's quite clear  
23 now that advertising support for journalism was always  
24 an opportunistic relationship.

25 Advertising had an intrinsic interest in news

1 media. It did so because that's who it had to support  
2 to accomplish its commercial aims. And now, especially  
3 in the internet era, advertisers, commercial interests,  
4 have many other revenues to accomplish their ends  
5 besides supporting news media. In fact, they don't have  
6 to use any sort of media increasingly to accomplish  
7 there commercial ends. That's the direction we're  
8 going.

9 We're going to have a lot less advertising, and  
10 that means there's going to be a lot less revenues to  
11 pay for journalism, and it's not going to come from  
12 anywhere else in the market. It's simply not  
13 imaginable. There's no coherent way to make that work.

14 That gets us down really to the point where we  
15 go back to public funding public good requires public  
16 funding to succeed, and I just want to amplify what  
17 Professor Cowan said: That's the logic here.

18 The most important thing I would want to say on  
19 that that Professor Cowan talked about is that this is  
20 actually, interesting enough, the actual American  
21 tradition because if you make the point that advertising  
22 is central to support of commercial journalism in the  
23 past hundred years, it only emerged in the late 19th  
24 Century, the logical question is: Well, how the  
25 heck did we have such a great news media, like Professor

1 Goldway -- I just gave you your next job -- Chairman  
2 Goldway talked about. How did we have such great news  
3 media the first hundred years of American history if  
4 there wasn't advertising benefit, if there  
5 wasn't commercial advertising?

6 Well, we now know. It had tremendous public  
7 subsidies, much larger than anything we've had in the  
8 last hundred years that supported it and called it into  
9 being. In our research for the book, what Nichols and I  
10 did is we had a chance to go back and look at the early  
11 history of American journalism and the First Amendment  
12 and the debates over how the role of freedom of the  
13 press and what freedom of the press meant, and we were  
14 struck by something that has been lost in the last  
15 century, which is that the notion of the freedom of the  
16 press to the Founders, to Jefferson, to Madison, to  
17 Washington, really quite across the board, even  
18 Hamilton, their notion of freedom of the press had two  
19 components.

20 One component was that the government -- and  
21 especially in this case Jefferson and Madison, the  
22 government should not sensor news media content or  
23 shouldn't regulate journalists. It shouldn't stop  
24 someone from starting a news media if they want. That  
25 was a commercial component of our freedom of the press

1 tradition from the beginning, and it's one that we all  
2 embrace today.

3 Most of us think it's the only part of the  
4 American free press tradition, but it's not. The second  
5 part of the American free press tradition to Jefferson  
6 and to Madison and to the framers, every bit as  
7 important as the first one, listed as the first duty of  
8 the Democratic state to see that an independent fourth  
9 state existed, that if you didn't have a free press  
10 system in the first place as it existed and was  
11 credible, the right method was a hollow right. It would  
12 mean nothing.

13 You have to actually have a press system.  
14 Jefferson could not have been more emphatic on the  
15 importance of this point. If you look at American  
16 history for the first hundred years, not just to mention  
17 the past hundred years, they put this philosophy into  
18 practice.

19 Jefferson and Madison didn't regard these as  
20 antagonistic values. They regarded them as  
21 complimentary and necessary for each other, values. You  
22 had the creative independent free press, the fourth  
23 estate, and then you couldn't censor it, and you could  
24 do in a Democratic society.

25 So how did they do it? Well, normally the big



1 surprise, as I mentioned, the Post Office. That's  
2 not going to surprise anyone in this room. I will say  
3 this about the Post Office. One of the things we did is  
4 we wanted to determine the extent of the postal  
5 subsidies for newspapers and periodicals in the United  
6 States, and we also wanted to add in the extent of the  
7 subsidies of the State Department notices, which were  
8 very important to supporting hundreds of newspapers in  
9 the United States in the first 75 years of our history  
10 as well as the printing contracts by the White House, by  
11 the House and the Senate, as well as states governments,  
12 which were very important for subsidizing newspapers.

13 We wanted to calculate the percentage -- if the  
14 federal government supported journalism today as a  
15 percentage of GDP to the same extent it did in the  
16 1840s, what would we have to pay today? We actually  
17 went back and looked at the original postal documents,  
18 their own studies they did at the Post Office in the  
19 early 1840s. We talked to several postal historians and  
20 accountants and people to make sure we got the numbers  
21 right.

22 The figure we came up with, the same percentage  
23 GDP today if the government spent it, \$30 billion. It's  
24 an extraordinary expense our federal government made to  
25 subsidize journalism in the first 75 years of American

1 history, and it led at the time to the northern states  
2 the most Democratic nation in the world by a wide  
3 margin.

4           When you start talking about issues like  
5 government support, as Professor Cowan talked about, the  
6 first issue that comes up to mind is: Well, what about  
7 censorship? Doesn't this lead invariably to government  
8 having control over who gets the money, who doesn't?  
9 And rightly, that contradicts the first part of our  
10 tradition of freedom of the press, that we all have  
11 alarm bells that rightly go off. That's something we're  
12 deeply concerned with, and policies that don't deal with  
13 that first part like the Founders did are policies we're  
14 going to be skeptical toward.

15           One of the things we noticed and people were  
16 talk become this, invariably the nations that were  
17 brought up, this is the place you're going to end up if  
18 you do this, were places like Stalin and Pravda and  
19 Izvestia and Pol Pot's Cambodia, and you thought, maybe  
20 those weren't the right countries to look at, to try to  
21 really understand what the relevant options are for the  
22 United States.

23           Why don't we look at nations that are also  
24 democracy that have similar economies, that have  
25 legal political opposition parties. Countries like

1 Canada, Britain, Germany, Japan and Holland and Sweden,  
2 Demark, Norway, South Korea. And what we found say  
3 looking at 25 of those countries today and over the last  
4 decade is they all have extraordinarily large  
5 public media and journalism subsidies compared to the  
6 United States, extraordinarily large.

7           Again if we had their subsidies in the United  
8 States that all those countries have, we would have to  
9 spend at the low end \$7 billion a year federal  
10 government, at the high end 35 billion, so that's the  
11 range they're all in. What's striking when we looked at  
12 those subsidies, was you said, well, what does this mean  
13 for the democracy there, how free are these countries?  
14 And according to the economists' magazine in its annual  
15 rankings of democracies in the world, its countries that  
16 lead the pack every year for the last five years of the  
17 most Democratic nations in the world are the ones with  
18 the heaviest, largest public subsidies for public media  
19 in journalism: Norway, Sweden, Denmark, Germany well  
20 ahead of the United States.

21           Then we said, well, maybe they do that by  
22 crushing private media and putting private media in a  
23 difficult position to survive, so we went to Freedom  
24 House, a group that studies the private censorship of --  
25 a government censorship of private media, and they

1 monitor all the media governments in the world as to how  
2 free their private media are, and we were struck to see  
3 that Freedom House ranked as having the freest and most  
4 lucrative private news media in the world were in the  
5 country countries that had the largest press in  
6 journalism, public media subsidies: Norway, Denmark,  
7 Germany, Japan, Sweden.

8           So clearly these subsidies cannot only not  
9 damage democracy, not only not damage private media,  
10 they can be a boon for both of them. They can actually  
11 assist them, and I think if you look at other democratic  
12 nations, you can see that it's a solvable problem. It  
13 doesn't mean they give us the exact solution, but it's  
14 something they figured out, and we can learn from them  
15 and do the same.

16           So in that spirit, I will now give you some of  
17 the examples which I think, compared to what you just  
18 heard, are going to seem a bit extreme, but I think in  
19 view of the crisis we're facing, a bit necessary.

20           First of all, I think there are four what I call  
21 shovel ready funding propositions, an idea that we're  
22 losing journalism at too rapid a rate to do nothing and  
23 wait around for a long-term study, so one of the four  
24 things that I would recommend we look at in the near  
25 future to really try to do something about.

1           First of all, and this is something Professor  
2           Cowan mentioned, ramp up spending on public media I  
3           would say ten fold. I would say increase it ten fold,  
4           federal spending for public media, with the money to go  
5           almost exclusively towards local journalism, where we're  
6           losing journalists and local newsrooms all over the  
7           country, get them to bring these journalists back to  
8           work in covering their communities again, put it on the  
9           air, give them websites, but get journalists working  
10          covering their communities again. Do it through the  
11          mechanisms of public media.

12           I think we need to have competing heterogenous  
13          public media systems with NPR or PBS, community  
14          stations, university and school stations, LPFM stations.  
15          We don't stand for monopoly in a private sector. We  
16          shouldn't have monopoly in the public sector either.

17           Ten times sounds like a lot of money. Well, the  
18          United Kingdom spends 70 times more than we do on public  
19          broadcasting. Ten times doesn't even get us in the  
20          European first division. Ten times doesn't get us  
21          Canada. Ten times we're still in the bush leagues. We  
22          have a long way to go. So ten times, it seems like a  
23          lot but it's not much.

24           Now, the argument for a long time was we don't  
25          need to spend that money on public media in the United

1 States because the commercial guys are doing such a bang  
2 up job. Well, the commercial guys are leaving. It's up  
3 to us now, so we better get to it.

4 Secondly, one of the great crises we face in the  
5 United States is that we're about to lose an entire  
6 generation of young people that want to become  
7 journalists. They're about to go out, and as I put it,  
8 they're about to dive head first into a swimming pool  
9 that doesn't have any water. They're simply aren't any  
10 jobs there.

11 We cannot afford to lose this generation, and  
12 I've given talks all over the country, and I teach at a  
13 college. Anyone that teaches at a college of journalism  
14 knows this: We have thousands of very talented young  
15 people who really want to be great journalists. Don't  
16 believe anything anyone tells you otherwise.

17 We need to get them work. We simply can't  
18 afford to lose this generation. It's just not an  
19 option, so we need to come up with something like a  
20 right for America, a news America. I don't care what  
21 the term is, but we have to start thinking long and hard  
22 about something to put these young people to work coming  
23 out of school for a year or two, working, covering  
24 communities around the country, getting them employment  
25 and getting them in the game and keeping them there.

1           Third, we've got to come up with a plan to  
2 transition failing daily newspapers into viably local  
3 owned concerns, be they local private owners, be they  
4 nonprofit owners, foundation. I'm open minded. We can  
5 be experimental here, but find something that works. I  
6 don't think we can afford to lose newsrooms much more  
7 than we already have, and I think we want to reverse the  
8 process where we have lost our newsrooms.

9           I'm a big believer, and John Nichols, my  
10 coauthor, is a big believer that while it's great to  
11 have niche news media that appeal to cover one issue or  
12 appeal to one segment of the population, it's imperative  
13 in a free society to have some newsrooms where the buck  
14 stops for a whole community, some newsrooms where you  
15 learn about people who aren't just like you.

16           You learn about other people in your community.  
17 Newspapers, and they're going to be digital largely, if  
18 not exclusively play that role, so we need something  
19 like that to stay alive, so I think we need to have the  
20 Small Business Administration or some government agency  
21 have the funds to go in and quarterback deals so that  
22 when a paper is declining, they can -- before it goes  
23 under entirely, we can get into the hands of local  
24 owners or someone at the local level and give them  
25 enough money to get the thing going so that we have the

1 hope of getting newsrooms there.

2 Ideally, and this is one of the great advantages  
3 of the decline of advertising, we might be able to be in  
4 a situation eventually to have multiple newsrooms in  
5 communities again, like we used to have in the free  
6 advertising era of the late 19th Century where it was  
7 routine in mid sized American cities to have 7, 8, 9, 10  
8 daily newspapers, and in large American cities to have  
9 fifteen daily newspapers, and that died when advertising  
10 emerged. Now without advertising, maybe we'll get back  
11 to a more competitive environment like that.

12 Third, I think we need to lower postal rates for  
13 publications, and I know this will take an act of  
14 Congress for reasons that Chairman Goldway mentioned. I  
15 think oftentimes when we talk about postal subsidies for  
16 publications, we think of it in terms of "we're bailing  
17 out these old, dying media that don't really have a way  
18 to fit in", and isn't this sort of like bailing out the  
19 horse and buggy people.

20 It's really not accurate way to look at it. The  
21 Columbia Journalism Review has a new research report  
22 coming out very soon. I don't think it's been released  
23 yet, but I had a chance to see it, where they did  
24 research on 665 publications that get postal subsidies.  
25 What they discovered is that these 665 publications put



1 an enormous amount of free material on the web, not that  
2 they produce in a print publication, but additional  
3 material that their staff produces.

4 In almost all this material, not all of it but  
5 almost all of it is distributed for free. It's in the  
6 public domain virtually. Anyone can have access to it.  
7 Much of the bloggers live and feast off of this  
8 material. Well, this material would not exist without  
9 the postal subsidy, and if those rates go up, we're  
10 going to see many of these publications either go under  
11 or we can see them drastically cut back their operations  
12 to survive.

13 It's going to affect all of us. It's very much  
14 in our interest to keep postal subsidies alive so that  
15 not only these publications, but our democracy has a  
16 peaceful and successful transition from the analog to  
17 the digital era, however long that might take. So I  
18 think those four areas are the areas of the stuff where  
19 I think we have to go and where we need to put our  
20 attention.

21 If you buy the public argument though, even  
22 that's not going to be enough, even if you have a local  
23 owner of a newspaper. If the money is not there, the  
24 advertising revenues, they're not going to support  
25 themselves and still have a big newsroom like were

1 accustomed to, the major daily newspaper, 10 or 20 years  
2 ago, and then we still have the public issue of: How do  
3 we solve that problem?

4 One solution came from a gentleman named Ed  
5 Baker. Some of you may know Ed, the late Ed Baker. We  
6 lost him in December regrettably, the First Amendment  
7 scholar at the University of Pennsylvania, and one of  
8 the real visionary figures on this issue and on the  
9 First Amendment, and Ed proposed that one thing we could  
10 do is give in effect a tax cut for every journalist  
11 position up to the first \$45,000, the government pay  
12 half the salary in effect of every working journalist.

13 Now, Ed regrettably is not with us. He can't  
14 defend or articulate his position. He said it would be  
15 easy enough in his view to define what a journalist was  
16 to prevent fraud, a still not fully developed position,  
17 but I think the importance of that position in the real  
18 world in which we are just simply having fewer and fewer  
19 journalists and it's not commercially viable, this is  
20 one way to think of subsidizing the position that does  
21 not cherry pick one paper over another.

22 You have, as Professor Cowan put it, certain  
23 criteria that are uniform, across the board and  
24 transparent, and all news media qualified get the  
25 advantage of it, whatever their political viewpoint.

1           Then finally I think all the things we've talked  
2           about, and in some instances even the Ed Baker idea, are  
3           really all about transitioning old media and existing  
4           media to the new digital world. In a way that's good,  
5           and I think all the stuff we've done, if we implemented  
6           that, would go a long way towards really giving us a  
7           healthy, vibrant journalism.

8           I think in a way we need also to understand in  
9           this moment of severe crisis, that we really might want  
10          to think in even broader and bolder terms, much like the  
11          framers of this country had to think about when they  
12          were trying to deal with how you're going to have a  
13          viable press system.

14          And Dean Baker, the economist based here in  
15          Washington, came up with a plan ten years ago which I've  
16          liked a lot. We embellish it in our book. Others have  
17          embellished it. Bruce Ackerman from the Yale Law School  
18          has a proposal that is going to take of and is coming  
19          out in a few months, which goes in a different direction  
20          than mine, but I think it's definitely worthy of  
21          consideration, and I look forward to seeing it when it's  
22          in print.

23          But Dean's basic idea as an economist was that  
24          the old idea of news media industry, where you produce a  
25          product, you go to market and you sell it and you make

1 your money like another product is dying, and it's not  
2 going to work on the internet, especially with  
3 advertising gone, and what we really need to do is come  
4 up with an entirely new vision for this public good, how  
5 you can have the resources to have a stable news media,  
6 but also in a situation where the market won't generate  
7 it for you.

8 His idea was, and what we've adopted is what we  
9 like to call the citizen news voucher, and this that  
10 every American adult over 18 should have the right to  
11 allocate \$200 of government money to any nonprofit news  
12 medium of their choice. All Americans over 18 have the  
13 right to allocate \$200 of government money to any  
14 nonprofit news media of their choice, do it on their tax  
15 form, or if they don't pay taxes, some other form easily  
16 enough for them to get, purely voluntarily.

17 They don't have to do it if they don't want to.  
18 They can split the \$200 among as many qualifying  
19 nonprofit news medium as they want or give it all to  
20 one. They could go to public broadcasting or any other  
21 form of nonprofit medium that didn't accept advertising,  
22 and it could certainly go to certainly go to all those  
23 internet websites right now that desperately need money.

24 They're trying to do journalism. They're  
25 starved for money. They're begging for micro donations,

1 micro ads, micro grants, get them off the micro track  
2 and get them back to where they can actually do  
3 journalism and not worry about their funding raising.

4 I think that policy is a sort of big picture  
5 policy that we need to really think about long and hard  
6 as maybe the solution ultimately to our problems. Why  
7 not advertising? Why not allow commercial interest in  
8 this?

9 There's some debate. Bruce Ackerman thinks that  
10 advertising is fine and that commercial interests should  
11 be eligible for this \$200 grant, and I think that's a  
12 good debate to have. In my view, I want to have a  
13 healthy, vibrant commercial private news media, but I  
14 want to let them be the only ones that can have  
15 advertising then. I don't want this sector to take  
16 money away from people who don't want to accept  
17 donations or earn any money whatsoever so we can keep  
18 them independent.

19 I think that's a smart way to go, but I do think  
20 that the crucial thing we want to do is to prevent  
21 fraud. We want to make sure that there are stipulations  
22 that don't allow someone just to register and take the  
23 money so that he and his friends can go get drunk on it,  
24 and there's way to do that. We talk about it in the  
25 book and actually in the handout.

1           The most important thing to understand right now  
2           and what drove this from my experience, John Nichols and  
3           I advice dozens of internet news operations, the people  
4           are applying o the Knight Foundation for the grants,  
5           probably most people in this room are familiar with  
6           because they desperately needed them to survive if  
7           they're doing journalism, and what we've seen is  
8           literally hundreds or thousands of people who are trying  
9           to do journalism without any success online  
10          commercially.

11          Simply the money is not there, and it's not  
12          coming. It's simply not going to come. We're dreaming.  
13          There might some Jed Clampetts who hit a gusher, but  
14          they're still in the state of Arkansas that's untouched,  
15          and that's the situation we're looking at, and the Dean  
16          Baker proposal gets at that.

17          It basically says to any web site, if you can go  
18          out and get a thousand people in your community to give  
19          you the voucher, then that's \$200,000 in your  
20          neighborhood. You can hire three or four people to work  
21          full time, and if you do a lousy job, someone will come  
22          along next year and they'll put together a proposal and  
23          take it away. It will be very competitive. You can't  
24          guarantee it. It won't lock you in, and it promotes  
25          innovation.

1           So this is something that all these internet web  
2 sites -- this is exactly what we need. This is a chance  
3 we have to do the research into great journalism in a  
4 competitive environment, and as our libertarian friends  
5 like to say, it doesn't have the government play any  
6 role in who gets the money, and it trusts the judgment  
7 of individuals to make their own choices. People make  
8 their own choices. It doesn't tell you who you're going  
9 to have to give your money to.

10           You created the media system you get, but it  
11 understands in the public good if there aren't the  
12 resources, you aren't going to get a media system at  
13 all, and that's not acceptable.

14           Now, another advantage of this in our view is it  
15 gives foundations a role to play. Foundations basically  
16 now -- and the poor Knight Foundation gets how many  
17 hundreds of thousands of people trying to get money from  
18 them. They can only give them to seven or ten people,  
19 and the other people who don't get it are just ar out of  
20 luck.

21           That's just a ridiculous situation for the poor  
22 Knight Foundation or any other foundation that basically  
23 have the future of all these journalism programs on  
24 their hands. In this proposal, the citizen news  
25 voucher, foundations could start something for two or

1 three years, fund it, and if it takes off, then they'll  
2 get citizens news vouchers every year from people who  
3 want to support it, so it allows for innovation. It  
4 allows for competition. It's not ideological weighted,  
5 but it gives the resources to do journalism.

6 In our view, by making it non commercial and  
7 keeping the money out of it, you get the great advantage  
8 too that you're not really going to get a lot of people  
9 that are going to get a lot of people that are going to  
10 give their money to support something like the National  
11 Enquirer. So much of that is commercially driven.

12 We think that people might still read the  
13 National Enquirer, but that will be done by the National  
14 Enquirer. They give this money to nonprofit,  
15 non-commercial groups, more likely to be people doing  
16 journalism, since everything by it should go immediately  
17 to the public domain, so you lose any copyright  
18 advantages for it. That would be a condition of the  
19 deal too.

20 Now, I think it's a plan. This idea needs to be  
21 thought about or similar plans like that because it  
22 solves a problem in many ways if it works, and it leaves  
23 innovation untouched and encouraged.

24 There are two provisos about this I must say,  
25 and two things that would make it difficult beyond the



1 obvious political fights. One is we would have to get  
2 used to possibly having funding go to journalism we  
3 would detest or to media we would detest, and now  
4 Americans are very proud of the fact of how much we're  
5 open minded we are to diverse ideas.

6           When I read Jefferson and Madison and saw how  
7 genuinely open they were to diverse ideas in dissent, I  
8 realized how little we are today in America for all our  
9 talk about how much we love dissent. We love it as long  
10 as we don't have to hear it or see it, but I'm reminded,  
11 Jefferson -- at the exact same moment, Jefferson was  
12 putting dissident newspapers attacking him on the top of  
13 the pile outside his office when he was president of the  
14 United States, so visitors from other countries would  
15 see that he encouraged newspapers that would have gotten  
16 people in prison in any other country.

17           At the exact moment, he was encouraging getting  
18 rid of all postal cost whatsoever for newspapers while  
19 President of the United States. He also said the person  
20 who reads nothing at all is more educated than the  
21 person who only reads newspapers. He had a very  
22 critical view of the newspaper industry.

23           But in principle, he understood that was the  
24 price of freedom, the price of democracy, and we have to  
25 rebuild and rekindle that sense of open mindedness for

1 this to be successful.

2 I'll stop there. I'll only add that I do think  
3 we have a greater sense of urgency than sometimes is  
4 well understood. I don't think we have the luxury of  
5 five or 10 or 15 years to sort of work this through and  
6 solve it. I think the crisis -- we're beginning to see  
7 some of the signs of it with uncovered elections, with  
8 uncovered city and county governments.

9 We need to really move much more quickly. I  
10 think we should regard this much more like we would  
11 regard the country that attacked us militarily. We  
12 wouldn't appoint a commission and say, come back in ten  
13 years when we can afford to defend ourselves.

14 I think in many respects what's going on in  
15 journalism today is an attack on the foundations of self  
16 government and our Constitutional system, and we have to  
17 respond in kind, and if we do, we have the resources and  
18 we have the knowledge to build by far the greatest, most  
19 democratic, most open, most exciting journalism the  
20 world has ever seen. The choice is ours.

21 Thank you very much.

22 (Applause.)

23 MS. DESANTI: We're going to take five minute  
24 break.

25 (Whereupon, a brief recess was taken.)

1 PANEL 3: COMPETITOR COLLABORATIONS TO AID JOURNALISM.  
2 MODERATORS:  
3 SUSAN DESANTI, FTC  
4 WILLIAM J. BAER, Partner & Head of Global Antitrust  
5 Practice, Arnold & Porter, LLP  
6 KATHERINE I. FUNK, Partner, Sonnerschein, Nath &  
7 Rosenthal, LLP  
8 ALLEN P. GRUNES, Shareholder, Brownstein Hyatt Farber  
9 Schreck, LLP  
10 STEPHEN NEVAS, Fellow, Information Society Project, Yale  
11 Law School  
12 MAURICE E. STUCKE, Associate Professor of Law,  
13 University of Tennessee College of Law; Senior Fellow,  
14 American Antitrust Institute

15  
16 MS. DESANTI: Can I ask you all to take your  
17 seats and we'll start our final panel discussion on  
18 competitor collaborations to aid journalism?

19 I want to thank all of our panelists who have  
20 been waiting very patiently for us to begin a half hour  
21 late. We apologize, but you're worth it, to wait for.  
22 We're going to discuss competitor collaborations to aid  
23 journalism, and we're fortunate to have five experienced  
24 antitrust lawyers to inform our discussion and answer  
25 questions, and each will begin with some brief opening

1 remarks, and we're going to start with two speakers,  
2 Allen P. Grunes, a shareholder at Brownstein, Hyatt,  
3 Farber, Schreck, and Maurice E. Stucke, an associate  
4 professor of law at the University of Tennessee College  
5 of Law, and a senior fellow of the American Antitrust  
6 Institute.

7 Allen and Maurice work together at the Antitrust  
8 Division of the Department of Justice and have  
9 coauthored a number of articles on the role of  
10 competition in the news media, so I will let you guys  
11 start.

12 MR. GRUNES: Thanks, Susan. A few points about  
13 what DOJ has been up to and how antitrust applies in  
14 media markets, and then a few comments about proposals  
15 that have been floating around, which involve either  
16 relaxing the antitrust laws or creating new exemptions.

17 Although we're at the FTC today, I would be  
18 remiss if I didn't point out that the Department of  
19 Justice has primary responsibility for antitrust  
20 enforcement in traditional advertising supported media,  
21 including newspapers, television and radio.

22 And as both Maurice and I can attest from own  
23 experience at the Antitrust Division, the division has  
24 devoted substantial resources to efforts in these media.  
25 These tend to be the matters that touch most directly on

1 news and journalism.

2 In recent years, the division has investigated a  
3 number of newspaper mergers, including large  
4 transactions such as McClatchy's acquisition of Knight  
5 Ridder, and smaller transactions such as Hearst's  
6 acquisition of a partial stake in Media News.

7 The division has also investigated a number of  
8 terminations of joint operating agreements. There  
9 aren't many of those left anymore. In addition, a few  
10 years ago the division brought a case against the two  
11 largest chains of alternative news weeklys for market  
12 allocation. Very recently it settled a case against th  
13 owners of the two newspapers in Charleston, West  
14 Virginia, for conduct not immunized by the Newspaper  
15 Preservation Act.

16 How does DOJ analyze media markets? In general  
17 it is focused primarily on advertising competition,  
18 since that is where most of the dollars are spent and  
19 where the most direct competitive effects are felt. It  
20 applies the merger guidelines and looks primarily at  
21 price competition.

22 Joel Waldfogel, who I noticed this morning said  
23 that quality may be the main factor when it comes to  
24 competition in this area, but quality is notoriously  
25 difficult to measure and hard to get your hands around

1 from an antitrust standpoint, plus the fact that in  
2 newspapers and other media, there is quite a bit of data  
3 out there if you wanted to do price studies, so it's  
4 fertile ground for the economists.

5 In the case of a newspaper, the division tends  
6 to look at both advertising and readership since both  
7 markets may be affected, and in a few instances, it has  
8 also looked at and talked about editorial competition.

9 I think as antitrust lawyers, one thing  
10 certainly when you're with the government, people in  
11 this area raise the internet as a cure all sometimes or  
12 an attempt to grow the product market, so it's a fair  
13 question to ask whether the proliferation of sources on  
14 the internet should allay concerns about concentration  
15 in traditional media.

16 On the one hand, as we've heard in these  
17 workshops, the internet has done some good things. It's  
18 reduced costs such as news print and ink and delivery  
19 trucks. It's lowered entry barriers for bloggers and  
20 citizen journalists, and it's a place for experiments  
21 with online journalism.

22 On the other hand, the internet remains mostly a  
23 distribution medium and not a source of original  
24 content. We've heard that also in these workshops. The  
25 available survey data suggests most Americans still get

1 their news from traditional media, and in most  
2 communities, the local newspaper's website is by far the  
3 most visited internet source of local news. In other  
4 words, the internet is not a cure all to competitive  
5 problems.

6 So that brings us to the interesting question  
7 posed by the title of this workshop: How Will  
8 Journalism Survive the Internet Age, and for this,  
9 panel: What does antitrust have to say about that  
10 subject?

11 In view of the adverse changes to the newspaper  
12 industry, some have proposed the antitrust laws should  
13 be relaxed, specifically that the antitrust product  
14 market definition should be broadened to include other  
15 media.

16 In antitrust, of course, a market includes only  
17 that set of competing products that act as some kind of  
18 constraint on price, quality or service. In past  
19 newspaper mergers, the division has performed a factual  
20 analysis to determine whether other media outlets, such  
21 as radio, television and news media, are in the same  
22 relevant market as local daily newspapers.

23 In those past investigations, the DOJ found  
24 sufficiently strong competition among local daily  
25 newspapers to define these products as a relevant

1 market. These conclusions are perfectly consistent with  
2 the observation that newspapers have been losing  
3 subscription and advertising revenues to other media.  
4 In other words, product market is always a fact  
5 intensive inquiry, and there is no reason to relax the  
6 antitrust laws for newspapers.

7           The second proposal has been to create an  
8 antitrust exemption that would allow newspapers to  
9 jointly charge for content. There are various proposals  
10 along these lines, but I'll take one of the more extreme  
11 ones, create a broad antitrust exemption for newspapers.

12           So if you look at the range of proposals, you  
13 might say on the one hand, a blanket, nonexclusive  
14 license without an exemption could be procompetitive.  
15 On the other hand, there's significant antitrust risks  
16 that need to be considered with blanket nonexclusive  
17 licenses, and then once you get into the realm of he  
18 exemptions, you're in a very dangerous territory indeed.

19           There's a broad consensus within the antitrust  
20 community that exemptions are rarely a good thing.  
21 Exemptions may be created with noble intentions, but  
22 they can also impose significant costs and often end up  
23 being used to the detriment of consumers.

24           For this reason, the Antitrust Modernization,  
25 which puts the statement in the most blunt terms, so



1 that's why I'm quoting it, but the FTC has certainly  
2 said this, and DOJ has said it, and the ABA has said it,  
3 and the AAI has said it.

4           Anyway, the Antitrust Modernization Commission  
5 says, and I'm quoting, "While the beneficiaries of an  
6 exemption likely appreciate reduced market pressures,  
7 consumers, as well as non-exempted firms and the U.S.  
8 economy generally, bear the harm from the loss of  
9 competitive forces."

10           Newspapers have been living with an antitrust  
11 exemption in the form of the Newspaper Preservation Act  
12 for decades, so it's natural that they would enjoy  
13 having a new exemption, but an exemption likely would  
14 not be good for consumers and probably would also slow  
15 innovation.

16           MS. DESANTI: Maurice?

17           MR. STUCKE: Thank you. I want to thank the FTC  
18 for inviting Allen and me. To reiterate two points that  
19 you've heard throughout this two-day conference is that,  
20 first a democracy relies on healthy competitive  
21 marketplace of ideas, and second, newspapers play and  
22 continue to play an important role in a vibrant and  
23 competitive marketplace of ideas, and our recent article  
24 in the AAI's transition report goes into greater detail  
25 as to our proposals for the Obama Administration.

1           No doubt the U.S. newspaper industry is in  
2 transition, and so the issue then arises: How should  
3 the antitrust laws apply to such an industry? I agree  
4 fully with Allen that the wrong solution is to relax the  
5 competition laws and take, for example, the Newspaper  
6 Preservation Act.

7           In 1965 Hearst newspaper The Examiner entered  
8 into a newspaper joint operating arrangement with its  
9 primary competitor, the San Francisco Chronicle.  
10 Fearing antitrust liability, the Justice Department --  
11 began cracking down on these JOAs, Hearst's CEO, Richard  
12 Berlin, and other large media companies had lobbied  
13 Congress in the Nixon Administration for the Newspaper  
14 Preservation Act.

15           What the NPA does is it immunizes otherwise per  
16 se illegal price fixing and market allocation from civil  
17 and criminal liability. It also immunized then existing  
18 JOAs, including the one between The Chronicle and The  
19 Examiner, but in exchange for this antitrust immunity,  
20 the JOA partners have to maintain their newsrooms as  
21 independent.

22           In preparing for today, I thought that the most  
23 informative critique of the NPA came from the head of  
24 the Antitrust Division at that time, Dick McLaren. The  
25 DOJ was very much opposed to the NPA, and Dick McLaren

1 in his Senate testimony I thought very eloquently  
2 explained why antitrust immunity was unnecessary.

3 The first thing that he noted was that antitrust  
4 immunity was unnecessary because lesser restrictive  
5 alternatives existed. He noted how the newspapers could  
6 enter into procompetitive joint ventures whereby they  
7 can agree to joint printing and distribution, and that  
8 such ventures would be then evaluated under the rule of  
9 reason.

10 Second, he warned that antitrust immunity would  
11 raise other risks, other media industries such as  
12 magazines and television broad carries that would then  
13 seek antitrust immunity.

14 Third, he mentioned how the JOA creates a shared  
15 monopoly, and that can increase entry barriers into the  
16 market, and then fourth, how the JOA can affect the  
17 party's incentives because if there's a soft landing, if  
18 the parties compete fiercely, then at the end of the  
19 competition is immunized price fixing, because if one  
20 newspaper really thought that the other was going to  
21 exit the market, then it would be unlikely that they  
22 would enter into the JOA in the first place.

23 A fifth concern he raised is that the NPA  
24 confers too much discretion to the Attorney General and  
25 the government's involvement with the press. It's hard

1 to characterize today the NPA as a success.

2 On the one hand, if you look at the competitive  
3 impact statement in the West Virginia case that the DOJ  
4 recently prosecuted, it does mention the benefits that  
5 readers had from two competing newsrooms, but on the  
6 other hand, the NPA never yielded a better newspaper in  
7 San Francisco and in other cities.

8 In 1970, when the NPA was enacted, there were 22  
9 JOAs. In 2003 there were 12 that still publish two  
10 newspapers. Today there are five JOAs that still  
11 publish two newspapers. As the DOJ's recent prosecution  
12 in the Charleston, West Virginia, shows, JOAs are  
13 subject to abuse.

14 Some JOAs today exist in name only. The junior  
15 paper agrees to close in exchange for a percentage of  
16 the surviving newspaper's profits for a period, and that  
17 happened for example most recently in Tucson. The  
18 junior paper closed in 2009, but the JOA continues until  
19 2005.

20 So antitrust can play a very important role to  
21 preserve a vibrant and competitive marketplace of ideas,  
22 but the best anecdote is not to allow media firms to  
23 consolidate because they're too big currently to fail or  
24 that they need necessarily relief from the antitrust  
25 laws.

1           Antitrust analysis is I believe sufficiently  
2       supple to consider dynamic market factors, and antitrust  
3       -- Allen and I, in the evolution in our thinking, have  
4       come to agree that antitrust is not always easy to apply  
5       to media mergers. It's easier to look at a media  
6       merger's impact on advertising rates, but it's harder to  
7       look at the impact on editorial competition, but you  
8       can't ignore that editorial competition.

9           So our primary recommendation for the Obama  
10       Administration is more empirical work on how media  
11       markets work and ensure that any competition policy  
12       toward media mergers be in furtherance of and driven by  
13       a national medial policy as set by Congress. Thank you.

14           MS. DESANTI: Thank you very much. I apologize  
15       for interrupting, but, Chris, there are some lights here  
16       that are incredibly bright that weren't on yesterday,  
17       and I'm wondering if you can ask someone to turn them  
18       off.

19           Okay. Next we're going to hear from Katherine  
20       I. Funk, who is a partner with Sonnenschein, Nath and  
21       Rosenthal, LLP. She counsels clients on a variety of  
22       antitrust issues, including matters involving competitor  
23       collaborations in supplier distribution issues.

24           She has extensive experience working with  
25       clients in the healthcare, life sciences, energy, new

1 media -- and new media, and she has a unique  
2 qualification for this panel in that earlier in her  
3 career, she was a sports reporter for the Kansas City  
4 Star. Katie?

5 MS. FUNK: Thanks, Susan. I feel as though my  
6 professional career is converging here today because I  
7 was at the Federal Trade Commission, and then I went to  
8 be a sports reporter, and now I'm back to being an  
9 antitrust lawyer.

10 First I would like to thank the Federal Trade  
11 Commission and Chairman Leibowitz for convening these  
12 workshops, and in particular, I would like to  
13 acknowledge the efforts of Susan, who is my former  
14 partner at Sonnenschein, and her policy planning team  
15 for taking on the challenge of finding the answer to the  
16 question: "How Journalism Will Survive the Internet  
17 Age."

18 Also I should state that the views expressed  
19 today are my own and not made on behalf of any client  
20 or, and in particular, are not made on behalf of my  
21 firm.

22 We are here because mostly publicly traded  
23 newspapers and television news broadcasts, what I'll  
24 refer to as traditional media, are under siege. The  
25 siege is being laid by technology, people's habits in

1 response to the technology, and the changing routines of  
2 the American family.

3 Unlike a good newspaper lead, however, I will  
4 not give away my opinion at the top. Rather, in roughly  
5 the equivalent of a 25 inch story, I will discuss ways  
6 in which the journalism industry is adapting to these  
7 changes and whether the antitrust laws are impeding  
8 those adaptations.

9 It is unfortunate for traditional media that  
10 they cannot jump into the way back machine and go all  
11 the way back to 1994 when the internet first started  
12 creeping into people's lives.

13 Traditional media failed at that time to  
14 recognize that the journalism industry was undergoing  
15 seismic change. No longer would selling advertising be  
16 their core activity. In the information age, revenue  
17 would come from the end product of news gathering and  
18 distribution, in a word, information.

19 Presumably if they could go way back,  
20 traditional media, independent of one another of course,  
21 would choose to make users of their web content pay for  
22 it, but the way back machine is not available, so  
23 traditional media is faced with evolving or extinction,  
24 or the third way, in view of the former and in serving  
25 to only stave off the latter, they could get an

1 antitrust exemption.

2 An antitrust exemption, however, will not save  
3 traditional media. Rather, it would likely temporarily  
4 prolong an outdated business model of a monopoly paper  
5 that presided over a city and reliably turned out 25  
6 percent margins for its ownership.

7 The antitrust laws are not what ail traditional  
8 media. After all, the antitrust laws only prohibit  
9 anticompetitive agreements, exclusionary conduct and  
10 mergers that distort market outcomes. Everything else  
11 is pretty much fair game.

12 Rather, the antitrust laws stimulate innovation  
13 through competition. As Carl Shapiro, the Deputy  
14 Assistant Attorney General For Economics at the DOJ said  
15 last year: "This is especially true in industries  
16 experiencing technological change, where competition  
17 spurs innovation, including innovative business  
18 strategies and business models."

19 That is exactly what is happening in the  
20 journalism industry, a much larger universe than  
21 traditional media. Setting aside the non professional  
22 undertakings such as blogs, wickis and crowd sourcing,  
23 trained professional journalists are sourcing, reporting  
24 and distributing news in ways that both utilize  
25 technology and respond to the changed occurrence of



1 daily life.

2 For example, within just the past two years, all  
3 across the country, news organizations are collaborating  
4 on news coverage, allowing for better allocation of  
5 scarce resources. As was discussed in December at these  
6 hearings, the eight largest papers in Ohio have formed  
7 what's unfortunately called ONO, the Ohio News  
8 Organization, to share content, including sports  
9 coverage, state government and local events. Five  
10 newspapers in Maine launched a state wide alliance  
11 similar to that in Ohio.

12 The Miami Herald, the Palm Beach Post, and the  
13 South Florida Sun Sentinel entered into an alliance to  
14 shares stories including longer feature stories. The  
15 Dallas Morning News and the Fort Worth Star Telegram  
16 began sharing photos and features such as concert  
17 reviews. However, they're keeping separate their  
18 coverage of the Dallas Cowboys. The Washington Post and  
19 The Baltimore Sun have entered into an agreement to  
20 exchange some of their local Maryland reporting.

21 In television Fox and NBC News announced plans  
22 to share video taken at news events, like crime scenes  
23 and press conferences in Philadelphia, New York,  
24 Chicago, LA, Dallas and Washington. And here in  
25 Washington, WAMU, the public radio station at American

1 University, has entered into news gathering exchanges  
2 with various local papers in and around Virginia and  
3 Maryland to share content.

4 Two weeks ago, the Department of Justice issued  
5 a business review letter clearing the way for My Wire,  
6 Inc., to form Global News Service, an online  
7 subscription news aggregation service, and ProPublica, a  
8 nonprofit entity, is sourcing and reporting stories that  
9 are being published in outlets such as The LA times, The  
10 New York Times, NPR and everywhere inbetween.

11 In just a little while, Bill Baer will speak,  
12 I'm sure, to what seems to be the incubating idea with  
13 the Associated Press to begin a registry project. In  
14 Chicago and San Diego, independent news sites, staffed  
15 by professionally trained journalists, are reporting  
16 local news stories.

17 Importantly, from an antitrust perspective, the  
18 participants of all these collaborations are still  
19 competing with one another and with other traditional  
20 media outlets for readers and advertisers and revenue.

21 In short, the antitrust laws are not impeding  
22 the journalism industry. Instead, the antitrust laws  
23 are allowing these adaptations and innovations room in  
24 the marketplace to succeed or fail on their own merits.

25 That said, we are left with a nagging question:

1 With only one organization's reporter at city hall or  
2 the state house, what is the effect on exposing  
3 corruption, unlawful or just plain stupid behavior?  
4 Scandals such as Coingate in Ohio were exposed because  
5 beat reporters from different organizations competed to  
6 break the latest development.

7           Unfortunately, such non economic competition,  
8 while theoretically within the scope of antitrust, is  
9 not readily quantifiable with current analytical tools.  
10 In this regard, an antitrust exemption for the  
11 journalism industry is a glass slipper that simply does  
12 not fit the foot.

13           As both a former journalist and an avid consumer  
14 of news and information, I have a deep interest in these  
15 issues, and I very much appreciate participating in  
16 these discussions and look forward to your report.

17           MS. DESANTI: Thank you very much, Katie, and  
18 now we will here from Bill Baer, who is a partner and  
19 the head of the global antitrust practice at Arnold and  
20 Porter, LLP. He is very familiar at the FTC because  
21 from 1995 through 1999, he served as the director of the  
22 Federal Trade Commission's Bureau of Competition, and he  
23 won't go into the earlier positions he also held at the  
24 FTC.

25           He currently represents clients on a wide range

1 of issues, and his clients include the Newspaper  
2 Association of America and the Associated Press.

3 MR. BAER: Thanks, Susan. It's always good to  
4 be back. I am, as Katie indicated for herself, here in  
5 my individual capacity, as someone who's spent some  
6 years in and out of government dealing with interesting  
7 antitrust issues. Susan's already noted that I do, and  
8 want to make sure the record reflected, represent a  
9 couple of entities with very serious interest in these  
10 hearings, the NAA and the AP.

11 I should say that both have appreciated the  
12 opportunity to participate in these hearings, and both,  
13 I can speak on their behalf, have appreciated the  
14 opportunity to work with Assistant Attorney General  
15 Varney and DOJ in addressing some of the issues of  
16 competitor collaboration, consolidation that are very  
17 much the forefront of these hearings as well.

18 I'm going to make a slight variation on typical  
19 FTC staff disclaimer. I need to say that the views are  
20 my own and not necessarily anyone else's, but I think  
21 it's unlikely that the NAA or the AP will disagree with  
22 anything I have to say here today.

23 I wanted to make three quick points in opening,  
24 and then we can get to Q&A. A little bit about the  
25 nature and extent of the problems we're facing, you

1 covered that yesterday in some of the -- in the earlier  
2 hearings as well, and I want to talk about two ways in  
3 which I think antitrust enforcement can and should  
4 account for the changing nature of competition in the  
5 newspaper business.

6 The first point, and Professor Varian yesterday  
7 covered this pretty thoroughly, there are real  
8 challenges facing newspapers and others who are  
9 originating news content. Ad revenues are down  
10 significantly and don't look poised to recover any time  
11 soon.

12 Some of this can be seen as cyclical, a reaction  
13 to a depressed economy, but some of it is clearly a one  
14 way directional decline in advertisers turning to  
15 newspapers, their traditional source of communication  
16 with consumers. I don't think there's any doubt too  
17 that subscription costs aren't going to make up for the  
18 lost revenue and whether that distribution is by print  
19 or electronic means.

20 A large part of the problem, as Katie and others  
21 have said, stems from the fact that there are new  
22 sources of obtaining information for the consumer,  
23 largely the internet, and there's where some of the  
24 advertising dollars have gone, but there's a related  
25 problem in that those who are aggregating content for

1 the internet may not always be paying fair value or any  
2 value for the content that they are aggregating.

3 Some of that content, maybe much of it, is  
4 copyright protected, obviously not all, but there are  
5 today no really efficient ways for the people who  
6 generate the content and those who aggregate it to reach  
7 a meeting of the minds about what appropriate  
8 compensation is.

9 In the face of this economic reality, newspapers  
10 have been forced to cut costs and adopt many efficiency  
11 measures. Maurice and Allen have talked about the  
12 nature of competition and the benefits of that.

13 One challenge though is that if, in fact, your  
14 revenues have gone down and you are cutting your  
15 newsroom staff to the bone, do you really have that kind  
16 of editorial and journalistic competition that we all  
17 see as a hallmark of the American Democracy?

18 So I think in order for newspapers to survive in  
19 light of the economic reality faced, there are going to  
20 be further cutbacks, in there is going to be some need  
21 for some creative efforts, whether they're mergers,  
22 joint ventures or other terms of competitor  
23 collaboration.

24 So what's the relevance of antitrust in this  
25 environment? Nobody is seriously arguing the

1 proposition that antitrust is the root cause of the  
2 challenges that newspapers are facing, and I don't think  
3 most people see a broad-based antitrust exemption as  
4 necessarily a magic bullet solution. A lot of the  
5 problems will remain with or without an antitrust  
6 exemption.

7           That all said, I think we ought to look at a  
8 couple of issues, both of which have been alluded to by  
9 the earlier speakers. The first is: Does the changing  
10 nature of competition for advertising dollars suggest  
11 that the traditional market definition that Allen talked  
12 about, that we employ a merger analysis -- is that still  
13 right? Is that the right model?

14           Antitrust has this problem in that it is  
15 predicting a future, but it's doing it based on past  
16 behavior, and one of the challenges in a rapidly  
17 changing environment is: Does past behavior,  
18 competitive interaction, adequately predict,  
19 appropriately predict what's going to be happening going  
20 forward?

21           Market definition, why does it matter?  
22 Obviously because, in two newspaper towns, if the  
23 economics no longer support two newspapers and they  
24 actually can demonstrate that the future is one where ad  
25 revenues are going to be generated in competition with

1 these alternative sources of advertising, then maybe  
2 market definition is too narrow or it needs to be  
3 broadened.

4 Second area where I think antitrust is relevant  
5 is in helping those who originate content understand  
6 ways in which they can collaborate without taking on  
7 undue legal risk. There are a lot of interesting ideas  
8 floating around. Adventures to better track how  
9 newspaper content is being used is something the  
10 Associated Press and others have talked about. They're  
11 collaborations being discussed to address free rider  
12 issues, perhaps by offering those who aggregate or use  
13 content some sort of option, not an exclusive option but  
14 option of a blanket -- of some kind of blanket license,  
15 which would be negotiated in advance.

16 There are ventures being discussed about ways in  
17 which print media can collaborate on classified ads,  
18 whether it's on the internet or otherwise. There are  
19 ideas out there.

20 Now, we've got a framework for analyzing these  
21 sorts of collaborative ideas, and Susan was one of the  
22 principal authors of the competitor collaboration and  
23 joint venture guidelines some ten, maybe a more few  
24 years more ago than that, and I know that both the FTC  
25 and the Department of Justice have pledged to work



1 cooperatively.

2 I'm one who's been in there interacting with DOJ  
3 on some of these issues in I can tell you, they're  
4 really trying to understand and make sure they are  
5 adequately predicting the future. In some ways, if you  
6 look at it in some, we obviously have some very, very  
7 serious problems, and what can antitrust do?

8 Maybe it's looked to that notion in the General  
9 Dynamics case out of the Supreme Court years ago where  
10 you don't necessarily assume that current competitive  
11 conditions adequately predict a future, and it may well  
12 be the right answer is that we need General Dynamics on  
13 steroids in order to adequately address what is a  
14 ridiculously rapidly changing environment.

15 MS. DESANTI: Thanks very much, Bill. Finally  
16 we're going to hear from Steve Nevas, who is a fellow at  
17 the Information Society Project At Yale Law School.  
18 Since 2003, he has also served as an attorney at the law  
19 firm of Nevas, Nevas, Capasser and Gerard, where he  
20 advises media and business clients about media law,  
21 privacy, right of publicity, trademarks, copyright and  
22 for profit and nonprofit business strategies.

23 Now, Steve has a proposal, and so we've given  
24 him a little extra time. Since we haven't put a time  
25 limit on anybody this afternoon, I hardly think I can

1 start here, but I'm going to hope that the panelists who  
2 have gathered here will actually stay a little past four  
3 o'clock, and we can actually have some discussion, so  
4 begging your indulgence, go ahead, Steve.

5 MR. NEVAS: Thank you, Susan. I'll talk  
6 quickly. I should say at the outset that most of my  
7 experiences as a First Amendment lawyer and as a  
8 journalist, I was an investigative reporter for many  
9 years as well, so it's hard to get that out of my  
10 bloodstream, I think it's important to start by thinking  
11 about the fact that very few of us here have to strain  
12 our memories to remember when we actually paid for news.

13 The paper boy, the paper girl collected on the  
14 weekend. In fact, I can even remember being a paper boy  
15 in my youth. We subscribed. We stopped at newsstands.  
16 We bought news one way or the other, but when the  
17 internet emerged, our favorite news media all migrated  
18 to the web because, without a presence there, without a  
19 robust and up to date presence, you just don't exist in  
20 this society anymore, and we have to face that.

21 The belief in the news business was that the  
22 advertising, which made journalism's economic viability  
23 possible, was going to follow that presence on the web,  
24 but what actually happened is that advertisers  
25 straggled. They paid less because the proliferation of

1 digital media led to a huge, largely unused and still  
2 largely unused inventory of advertising on the internet.

3 No one is willing to predict that the income  
4 that news organizations once enjoyed is going to come  
5 back any time soon. In fact, the Nielson company  
6 recently reported that overall media ad revenues were  
7 down 9 percent last year. According to the Nielson,  
8 these papers took a 26 percent hit, but I'm informed by  
9 the Newspaper Association that that number is likely to  
10 be closer to 25 percent.

11 That tells us a great deal about the economic  
12 impact it has had on the news business and the damage  
13 that has been done. Advertising on the web, according  
14 to Nielson, remains stagnant at 1 percent, 1/10th of 1  
15 percent, and that doesn't appear to be growing very much  
16 either.

17 While journalism's financial foundations have  
18 continued to crumble, the measurable value to readers  
19 and internet users of what journalism produces has not.  
20 The Pew Center found in Baltimore a few months ago that  
21 during a single week, while the news landscape had  
22 rapidly expanded, most of what the public continued to  
23 learn was still overwhelmingly driven by traditional  
24 media, particularly newspapers.

25 Nearly 50 percent of all original local

1 reporting was produced by print organizations and then  
2 reused or reversioned, with or without permission, by  
3 other media. 38 percent of web users made 78 million  
4 unique visits to newspaper websites in the third quarter  
5 of 2009, an upward trend according to a study by Nielson  
6 online for the NAA.

7           Pew also found that in Baltimore, The Baltimore  
8 Sun produced 30 percent fewer stories on any subject  
9 than it did in 1999, 73 percent fewer than in 1991, and  
10 that traces the trajectory of what has happened to  
11 journalism. News organizations, large and small, print  
12 and broadcast too, are increasingly unable -- and this  
13 is no secret from our discussions here -- unable to  
14 monetize what they gather in support.

15           David Carr wrote in the New York Times, the  
16 clock is ticking, and any of the news legacy businesses  
17 that produce it, that concept will not be able to  
18 continue to do so.

19           So what are we going to do? The question  
20 presented by Chairman Leibowitz in his opening remarks  
21 at the first of these workshops in December was whether  
22 or not journalism is experiencing creative destruction  
23 or simply destruction, to which one might add: Should  
24 we, can we afford to sit back and wait to find out?

25           What journalists produced can readily be

1 categorized as socially valuable public goods, and  
2 there's been some discussion of that here today.  
3 Professor William Fisher at Harvard describes them  
4 rather well. He says first they are non-rivalrous. In  
5 other words, enjoyment of them by one person does not  
6 prevent enjoyment of them by other people. Second, they  
7 are what he calls non-excludable.

8 In other words, once they have been made  
9 available to one person, it is impossible or at least  
10 difficult to prevent other people from gaining access to  
11 them, and Fisher goes on to point out that potential  
12 suppliers recognize that they would not be able to  
13 recover from consumers the costs of producing these  
14 goods, and into this category, he places lighthouses,  
15 roads. National defense was mentioned, inventions and  
16 recorded entertainment, to which I would add journalism.

17 News and information are the life blood of our  
18 democracy. Citizens, communities and their institutions  
19 depend on a steady supply of it to fuel and inform  
20 participation in day-to-day decision making and in  
21 elections.

22 So what are our options when it's now the  
23 significant -- the signs point to what I think is a  
24 market failure in journalism or a series of them or  
25 partial market failures?

1           If we look at our history, technology induced  
2 market failure has more than once led Congress to adopt  
3 contract neutral measures to protect the economic base  
4 for the production of public goods whose markets have or  
5 would otherwise fail.

6           101 years ago the player piano, the must have  
7 entertainment system of the day , threatened to deprive  
8 songwriters and publishers of the benefits of their  
9 creativity. Why? Why because piano roll manufacturers  
10 were reproducing their compositions without paying for  
11 the music. So Congress stepped in to assure that those  
12 whose work was taken without permission would be paid.

13           Lawmakers, when they considered the problem with  
14 the cold eye, realized it was not possible to prevent  
15 the reproduction of such public goods like news, but  
16 those who did could be made to pay under the copyright  
17 law, which had been enacted at that time, and so they  
18 passed a compulsory copyright license to allow anyone to  
19 use legally protected music but obligated those who  
20 reproduced it to pay royalties to those who wrote it.

21           In the years since Congress has adopted  
22 compulsory licenses to provide basic income streams, and  
23 I would emphasize basic income streams, not the entire  
24 source of the income, for the owners of content used by  
25 public broadcasting, re-transmission by cable television

1 systems, subscription audio transmissions and non  
2 subscription internet radio.

3 The primary beneficiary of these compulsory  
4 licenses, the music industry, has over the years  
5 organized itself through voluntarily performance rights  
6 organizations or PROs. They are BMI, ASCAP, CSAC and  
7 the Harry Fox Agency, and due to the rule of reason,  
8 they are viewed as not violating antitrust laws.

9 They negotiate. They grant licenses to those  
10 who use music. They collect and distribute the income.  
11 Could this model or a variant or hybrid of it possibly  
12 provide digital journalism with a financial floor, and  
13 if so, how would we go about it?

14 One of the most difficult challenges facing both  
15 news organizations, and individual writers is to track  
16 down and bring to account those website operators who  
17 regularly scrape, aggregate and monetize the headlines,  
18 and stories of others without permission, without paying  
19 anything, and sometimes without the scruples to  
20 attribute what they re-published to the copyright owners  
21 and original authors of that work.

22 Key elements of a solution have been under our  
23 noses now for some time, and they're falling into place,  
24 thanks in part to imaginative use and application of the  
25 same digital technologies that have created the problem

1 in the first place.

2 Two organizations in particular are responsible  
3 for this. The Fair Syndication Consortium, an alliance  
4 of 1,500 newspaper publishers organized by the software  
5 firm Attributor and using its special software to track  
6 the extent of the problem, found that during a single 30  
7 days period late last year, 112,000 full copies of their  
8 work appeared on unlicensed sites, some of which use the  
9 work of its members and others as many as 15 times  
10 without permission and without compensation.

11 The consortium has publicly announced that it  
12 hopes to use the information to press the advertising  
13 agencies who place ads on these sites to divert income  
14 from the sale of the ads that appear in conjunction with  
15 their work back to the creators of their content.

16 The Associated Press is beta testing a different  
17 approach, a software solution known as The News  
18 Registry. The AP has adapted a largely open source  
19 program, which had already gained acceptance in Europe,  
20 and has made it available to its own members. The  
21 software allows the users of it to attach a digital  
22 wrapper to each original work.

23 When someone downloads the content to which it  
24 is attached, a message is sent back to the publisher or  
25 to the AP via the web that a site may be using its



1 material, and a paid license may then be offered.

2 No one at the consortium or the AP has publicly  
3 announced that they will use their content tracking  
4 software as a digital cornerstone for voluntarily,  
5 broadly based copyright rights organizations who would  
6 act like BMI and ASCAP, like those performing rights  
7 societies, to identify and negotiate with unauthorized  
8 users of their work, but that is in fact what they  
9 appear poised to do.

10 Essential as these contributions by the  
11 consortium and the AP are to the future of digital  
12 journalism, the news and information universe of the web  
13 is much larger, and partial solutions that result in  
14 payments to some but not all who cover and report the  
15 news will continue to beg what I believe is a larger  
16 question: How can we fairly compensate all who create  
17 original content consumed by significant publics? In  
18 other words, who is going to pay and how?

19 Internet service providers sell access to free  
20 content but pay nothing for the privilege. Only in rare  
21 cases do web users pay for what they download. Just 3  
22 percent pay for what they use, according to recent  
23 Forrester research data. A plethora of findings at the  
24 same time discloses that web users have grown so  
25 accustomed to free news and information, that in a few

1 short years, many consider its continued availability  
2 without charge as a birthright.

3 Yet, if no one provides adequate compensation  
4 and the combination of internet and display advertising  
5 or commercials continues to meet only a small portion of  
6 the cost of content creation and distribution, the  
7 quality of news and information that has been identified  
8 as public goods will continue to erode, as it has been,  
9 or it will be accessible only to elite who can afford to  
10 pay for it or has already occurred in too many local and  
11 regional communities, it's just going to disappear.

12 This suggests that whatever payment model is  
13 adopted, and choices are becoming increasingly  
14 unavoidable, it ought to be simple. It ought to be  
15 relatively painless, intuitive and universal. One that  
16 meets those criteria could be a content license fee to  
17 be paid by every internet service provider on each  
18 account it provides and passed on, in whole or in part,  
19 to the users of the internet.

20 The funds would be forwarded to a new division  
21 of the copyright office, which would operate under  
22 streamlined procedures, stripped of some of the onerous  
23 I must say and costly procedures, which have in the case  
24 of compulsory licensing of distant television signals  
25 and internet radio, made the collection of what

1 copyright others are entitled to more -- as if not more  
2 expensive than what they get in the final analysis.

3 Copyright owners who elect to participate would  
4 agree to periodically submit records of their downloads  
5 to the copyright office, those records to be cleansed of  
6 any personally identifiable information, and to prevent  
7 the gaming of the system, the copyright office would  
8 commission market by market sampling by organizations  
9 like Nielson and ARB to crosscheck the download records,  
10 and to, based on a formula, then decide on appropriate  
11 compensation to those who provide content.

12 Those funds should not, and I don't think we can  
13 hope to pay all of the news organization's expenses or  
14 assure a profit, but they could provide a financial  
15 floor that allows them to leverage additional income.  
16 This model, applied to digital journalism in all its  
17 forms, would help to create a level playing field  
18 between legacy and new media. It would encourage, not  
19 discourage, the operation of market forces and stimulate  
20 the kind of experimentation and innovation, which we  
21 must have if journalism is to continue to survive or to  
22 grow.

23 It could at the same time discourage the  
24 segregation of information elites who can afford metered  
25 news -- of information elites from those have nots, who

1 would be unable to pay for metered or pay wall  
2 information, information for which they would otherwise  
3 be denied.

4 Finally, I think it's important to consider that  
5 there is both legislative and judicial precedent for  
6 amendment of our copyright laws to authorize either a  
7 compulsory statutory blanket or hybrid licensing model  
8 for news and information, which would be distributed  
9 digitally, particularly when the purpose is to assure  
10 the continued production of public goods.

11 The application of these concepts to journalism,  
12 when distributed digitally, is part of a discussion we  
13 ought to have, and I think it's one we ought to have  
14 before it's too late.

15 Thank you very much.

16 MS. DESANTI: Thank you very much, Steve. We  
17 have plenty on the table to discuss. I first want to  
18 introduce my co-moderator, Jessica Hoke, who has helped  
19 pull all of this together. I also want to make it clear  
20 that we, as the FTC, recognize that DOJ gets to decide  
21 the cases. This is not a surprise to us.

22 What we are doing is taking a policy look at  
23 this, and I should also mention that we are  
24 traditionally very simpatico with DOJ on the whole idea  
25 of antitrust exemptions. I'm not aware of any antitrust

1 exemption that the FTC has ever vigorously supported.  
2 We've traditionally opposed antitrust exemptions for the  
3 reasons that Maurice and Allen so eloquently described.

4 What I would like to do with this discussion is  
5 start with the existing exemption and see what purposes  
6 it has served and get people's reaction on the extent to  
7 which it's really worked, and then go into some specific  
8 types of competitor collaboration, some of which have  
9 been raised here including Steve's idea.

10 So Allen and Maurice, could you just -- Allen or  
11 Maurice, could you just explain the basic rationale and  
12 the rules of the current exemption?

13 MR. STUCKE: The Newspaper Preservation Act is  
14 codified at 15 USC 1801, and it basically has two  
15 tracks. One was for preexisting newspaper joint  
16 operating arrangements. This was at the time that  
17 citizen publishing happened, and so it provides them  
18 immunity, and second were for any new JOAs then that  
19 would be then sought. They would then have to go to the  
20 Attorney General for approval.

21 The statutory framework is not very well laid  
22 out in terms of what the DOJ's oversight is, given that  
23 there is this sort of immunity. Basically the Attorney  
24 General has a role at the beginning in order to judge  
25 whether or not the new JOA qualifies, and it's a very

1 broad standard, whether one is not failing under the  
2 failing firm defense or something approaching that, and  
3 secondly, whether or not it would serve the purposes of  
4 the act.

5 Then, secondly, is when there are amendments to  
6 preexisting JOAs that they would then be filed with the  
7 DOJ, but it doesn't really spell to what extent then  
8 that the DOJ has an obligation to ensure that the  
9 parties are conforming to their side of the agreement  
10 and having two competing and independent newsrooms.

11 One of the things then that we see then is that  
12 JOAs, since the act was enacted in 1970, have been  
13 modified in terms of the JOA, which can then also affect  
14 the parties' incentives, particularly when they go let's  
15 say from a jointly run JOA to a post tenant situation  
16 where the dominant partner then takes over many of the  
17 obligations.

18 This was clearly seen in the Charleston, West  
19 Virginia, case where Media News essentially cashed out  
20 of the JOA, and received a small sum to continue with  
21 it.

22 That's in essence the statute. There are these  
23 JOAs that are in existence. Now they're down to five,  
24 and the DOJ will open investigations to look into  
25 whether or not they satisfy it, but it's not statutorily

1 well defined.

2 MR. GRUNES: The only thing I would add to that  
3 is just in general for people who aren't familiar with  
4 JOAs, they were sort of a Faustian bargain where the  
5 circulation and advertising functions could be combined,  
6 but the editorials and reportorial functions would be  
7 kept separate and would continue to compete.

8 MS. DESANTI: Yeah, and I think that's a crucial  
9 kind of issue because in a sense, the price competition  
10 from sales of advertising was in a sense given up in  
11 order to preserve the editorial content, so when I think  
12 of the NPA, I think of it in terms of preserving  
13 competition in content rather than competition in prices  
14 offered to advertisers. I think that's relevant to  
15 think about as we think about, heaven forbid, the  
16 potential for antitrust exemptions for the news.

17 Let me ask you both, because you've seen this,  
18 and I welcome others who have opinions on this: How  
19 well do you think it worked?

20 MR. STUCKE: I think it's hard to say that --  
21 one argument in favor of the NPA is that it helped  
22 preserve a newspaper that would have ceased to exist  
23 earlier. On the other hand, you may look like in  
24 situations such as Denver, did it then change the  
25 parties' incentives in such a way that if they compete

1 too fiercely, but both of them are unsure which one is  
2 actually going to exit, that there could be then the  
3 soft landing of antitrust immunity?

4 Then the second component is, and this was the  
5 point that Dick McLaren raised, is: To what extent  
6 would the marketplace have been better off, had the  
7 assets actually exited the marketplace, and then that  
8 would have left an opening perhaps then for someone else  
9 to come in, rather than trying to then block them, for  
10 example the morning and afternoon space? Okay. That's  
11 the first part.

12 The second part is once you have the antitrust  
13 immunity, how can you make the best of it, and here the  
14 DOJ, a very dedicated staff in the past ten years, have  
15 taken a hard look at these antitrust immunities, not for  
16 the sake that they thought necessarily that JOAs were a  
17 great thing but that antitrust immunities aren't going  
18 to be abused because of the susceptibility for abuse  
19 here.

20 MS. DESANTI: Anything else anyone wants to add?  
21 Oh, Steve, go ahead.

22 MR. NEVAS: I have a question, but I don't want  
23 to derail the course of the discussion.

24 MS. DESANTI: Is it about the Newspaper  
25 Preservation Act?



1           MR. NEVAS: It is not. It's about a related  
2 topic though, but I can wait. Go ahead.

3           MS. DESANTI: Okay. All right. Anything else  
4 people want to add on the Newspaper Preservation Act?

5           What I then wanted to move into were  
6 collaborations to share content. NPA preserves  
7 competition in content. Now we're looking at the  
8 potential for collaborations to share content, and I  
9 just need to note at the beginning, I had a conversation  
10 with someone very early on in this process, it was  
11 probably last May, about a request for an antitrust  
12 exemption for newspapers.

13           I said, A collaboration to do what, and they  
14 said, We're not really sure, so I'm really hoping that  
15 we can talk the specifics of collaboration to do what  
16 because each raises different antitrust questions to  
17 some extent, so that's the reason for framing it this  
18 way.

19           So, Katie, you mentioned some collaborations  
20 involving the sharing of content or, as in the case of  
21 Ohio newspapers, whereas Dayton, there might have been a  
22 reporter from Akron who was covering Dayton News.  
23 There's no longer that person because Dayton is going to  
24 be providing Akron with the news. I'm not sure I have  
25 got it exactly right, but that's the basic concept.

1           Do these kinds of collaborations raise antitrust  
2 issues, and if so, what do you think are the most  
3 significant?

4           MS. FUNK: First of all, it's interesting that  
5 the JOA or the Newspaper Preservation Act got rid of  
6 competition on the revenue-producing side, but tried to  
7 maintain the competition on the content side, and now  
8 what we're seeing is the reverse.

9           The newspapers, on their own, maybe because of  
10 the antitrust laws, are maintaining separateness with  
11 respect to subscribers and advertising and are trying to  
12 collaborate or use scarce resources reporters more  
13 efficiently by sharing them essentially.

14           As to whether or not that raises an antitrust  
15 issue, I think theoretically it does. I think, for  
16 instance, in the West Virginia case two months ago that  
17 the Department of Justice got a consent decree in, in  
18 addition to the higher rates for advertising, and  
19 subscription services, et cetera, one of the points they  
20 raised was the lack of or the resulting lack of  
21 competition with respect to content.

22           My question would be back to that is: If the  
23 only concern -- take away the rising of the advertising  
24 rates, and the subscription rates, et cetera.

25           If the only concern is that merger would have

1     been to reduce competition in reporting, would the  
2     Department of Justice have brought the case? I doubt it  
3     because how do you measure quantitatively what the harm  
4     is?

5             So to answer your question, Susan, I think  
6     theoretically these collaborations raise antitrust  
7     issues. Quality is always one of the considerations  
8     when looking at a merger or a joint venture or whatever,  
9     but I don't know how you would bring that case in court.

10            MS. DESANTI: Maurice?

11            MR. STUCKE: A couple courts actually have  
12     addressed that issue. Well, is the editorial  
13     competition within a JOA competition that's cognizable  
14     under the antitrust laws? And the answer is, yes. The  
15     courts have recognized that.

16            Secondly, there is -- the DOJ in its Amicus  
17     brief in Hawaii in 1999 talked also about end game  
18     competition, that in some JOAs, it's unsure when the JOA  
19     would end, so each partner would have an incentive to  
20     invest in its paper, not sure exactly how then the JOA  
21     may end or if one party may want to terminate it earlier  
22     than the other, and in order to ensure that they have  
23     better position against the other, they will then invest  
24     in terms of quality.

25            But, I mean, you see in terms of editorial

1 competition, all the data all the time with respect to  
2 alternative news weeklys. They compete on two facets.  
3 One, they compete for advertisers, but they also compete  
4 for readers, and the way they compete for readers is  
5 through their content.

6 So in markets where you have two alternative  
7 news weeklys, which are essentially for free, you still  
8 have a cognizable form of competition to attract  
9 readers, which in turn can sell them to advertisers, and  
10 courts have historically recognized a readership market  
11 in connection with an advertising market.

12 MR. GRUNES: Yeah. The only thing I would add,  
13 as an interesting footnote, the debates that led to the  
14 seller act in 1950, the question specifically came up  
15 about whether that act would prevent the merger of the  
16 two daily newspapers in a particular town, and the  
17 response was, no, we want clash of opinions, so the  
18 antitrust laws would actually prevent such a merger.

19 Now, I agree with Katie's point, which is if  
20 editorial competition were the only type of competition,  
21 leaving aside the JOA situation, if all we were  
22 interested in is editorial competition, then my guess is  
23 that the division would probably not bring a case based  
24 solely on that, without some other form of economic  
25 competition attached to it.

1           MR. BAER: Well, it's time to go back to General  
2 Dynamics on steroids.

3           MS. DESANTI: I think there is a theme.

4           MR. BAER: I think the judicial precedent here,  
5 which it's absolutely clear, cognizable competition  
6 includes content. No doubt about it, but the new  
7 reality is I think you've got these huge fixed costs  
8 that newspapers incur, and their revenues are declining,  
9 subscriptions, circulation and advertising revenues, and  
10 if you look forward, the notion that and there is going  
11 to be -- and, Steve, this is somewhat what you were  
12 getting at, that there really is going to be meaningful  
13 competition in the local area.

14           And to your earlier point, I think you have to  
15 look at that probably the content competition is mostly  
16 local regional. You're not going to get much of a  
17 diminution in international or national news stories  
18 Superbowl coverage, that sort of stuff, but it's local  
19 sports, local news. That really is where you  
20 traditionally have seen the most risk of a diminution in  
21 editorial competition.

22           But is that really going to be there anymore,  
23 given that the economic model appears not to be  
24 sustainable in the absence of new sources of revenue,  
25 which we don't see necessarily as happening or happening

1 in sufficient scale scope to allow people to maintain  
2 competing newsrooms? It may well that accelerating or  
3 at least appreciating the need to move to newspaper  
4 consolidation facilitates -- it spreads the costs over  
5 more units, and also facilitates that kind of  
6 traditional newspaper reporting competition with the  
7 local radio, the local cable provider, which does do  
8 some news.

9 And you look at WTOP competing against The  
10 Washington Post, that is actually aggressive head to  
11 head content competition, and so appreciating that three  
12 to five years out from now, we're probably not going to,  
13 in most medium sized and even some large towns, have the  
14 circulation and the ad revenue to sustain two  
15 traditional newspapers. Looking at a merger or some  
16 kind of joint collaborative in that context suddenly  
17 takes on a very different appearance.

18 MS. DESANTI: I think that's a crucial issue  
19 you're raising, Bill, both in terms of the local,  
20 regional focus, and also in terms of, really what you're  
21 saying is if the competing newspaper wouldn't have  
22 covered the story in any case, if the competing  
23 newspaper or news organization is not going to be there,  
24 then what you are looking for?

25 This is similar to the issue that you described

1 in the Newspaper Preservation Act, that it's not quite a  
2 failing firm defense, but it's along the same notion of  
3 saying: We have to look at the likelihood that the  
4 competition would be there in the first place before we  
5 can say, No, that's not a good idea to allow newspapers  
6 to share content.

7 I also wanted to get from you, Katie, you  
8 mentioned a number of new types of news organizations.  
9 We've looked, and so far we really haven't found any  
10 that have found a way to sustain themselves into the  
11 future. That's not to say that they haven't been able  
12 to get advertising. A number of them have been able to  
13 get advertising.

14 It's not to say that they don't have foundation  
15 grants or donations. They do, but we had a panel on  
16 this in December which really highlighted that every  
17 year for them, it's a different mix, and every year it's  
18 a struggle, and I'm wondering, and you've clearly looked  
19 around a bit: Have you found any that are sustaining  
20 themselves?

21 MS. FUNK: Let me sort of take the chicken way  
22 out, right? A lot of these collaborations and different  
23 types of reporting and distribution have really just  
24 come up within the past couple of years, so I think it's  
25 first too early in the evolution of this type of

1 enterprise to say whether or not it can be sustained.

2 If you think there's some static that says one  
3 out of every hundred businesses that has started in a  
4 year, only one out of a hundred survives, so why should  
5 news organizations be different from the restaurant  
6 business or anything else?

7 I think it's going to be trial or error, trial  
8 and error, and I think that at some point somebody is  
9 going to find a way to make it work, and then like the  
10 newspaper industry that grew up in the 20th Century,  
11 that model will then be replicated until the next great  
12 meteorite hits, and they're faced with extinction.

13 But there are these independent websites in  
14 Chicago and San Diego that are actually staffed by  
15 professional journalists, and while I don't know that  
16 they're going to say they're going to be there in five  
17 years, they have been somewhat successful in attracting  
18 a leadership, and at least sustaining themselves in the  
19 short-term.

20 MS. DESANTI: Steve, we were going to move on to  
21 collaborations that enable charging subscribers in some  
22 sense, and I think your proposal fits in that category.  
23 Basically you would end up charging the people who are  
24 consuming the news with your proposal, but I wanted to  
25 give you a chance to raise your question first, if you



1 don't want to discuss your proposal first.

2 MR. NEVAS: I'm glad to discuss either, but I  
3 have a question for anyone on the panel who wants to  
4 answer it, and that is: When you look at the BMI, ASCAP  
5 model from an antitrust point of view, is this an  
6 anomaly that people believe should not be repeated or  
7 has this proven to be, from an antitrust point of view,  
8 a workable one?

9 MR. BAER: From an antitrust point of view,  
10 workable, right? It is a classic way of getting a bunch  
11 of folks, who have some sort of rights that individually  
12 they can't really exercise, and collectively it becomes  
13 an efficient way of allowing people, efficient in  
14 quotation marks, recover on intellectual property.

15 I think the reservations about it, as a going  
16 forward model, that and royalty rights tribunal kinds of  
17 things, is how long it takes to get to a resolution and  
18 whether there are models that do not involve or that may  
19 involve arms like party to party negotiation as a more  
20 efficient way of getting from here to there.

21 So I don't know if --

22 MR. STUCKE: We covered this case in our class  
23 two weeks ago, and one of the things we highlight with  
24 ASCAP is there were 22,000 members with 3 millions  
25 compositions, and BMI had 10,000 publishing companies

1 and 20,000 authors and composers with 1 million  
2 compositions, so just look at the transaction costs  
3 there.

4 Imagine having each person trying to then  
5 monitor the market to see if their products were being  
6 used and also to negotiate with the various entities.  
7 The transaction costs there would be phenomenal, and to  
8 what extent do we have those sort of transactional costs  
9 with newspaper owners?

10 There are 389 newspaper owners as of 2005, the  
11 study you mentioned, the articles from the larger  
12 national newspapers were reused as many as 15 times  
13 whereas only one to two articles from smaller papers,  
14 and I believe it was a study of 157 newspapers, so to  
15 what extent are the transaction costs as significant in  
16 the newspapers industry as they would be in BMI and  
17 ASCAP?

18 MS. FUNK: I think because the newspaper  
19 industry mostly publishes on a daily basis, I think very  
20 quickly you could get to those significant transaction  
21 costs. I actually think BMI and ASCAP is a good  
22 framework, and apparently so did the publishers and  
23 Google, although they soft of we want a few steps  
24 farther, maybe a bit too far.

25 The thing that would have to change of course is

1 Congress would have to change the copyright laws as they  
2 relate to newspapers and to publishing generally, and  
3 frankly, good luck getting Congress to do anything. I  
4 don't know how this issue gets back before Congress in  
5 such a way that Congress is motivated to take those  
6 steps.

7 So, yeah, theoretically it's a great idea.

8 MR. NEVAS: Our argument would be that the  
9 economic viability of the web of as a provider of high  
10 value news and information going forward, because what's  
11 happening now is arguably unsustainable. A lot of  
12 people have taken a flyer at it. Legacy news  
13 organizations are in it because they think they have no  
14 choice, but they also know they can't keep it up.

15 So we're sort of headed for a wreck, I think you  
16 could say, and the question is: How do we avoid it and  
17 is in the political will to do something about it,  
18 particularly if you characterize what journalism does?

19 It's not just newspapers. It's a lot of  
20 websites, a lot of struggling collaborative, nonprofits,  
21 for profits, all trying to produce what are arguably  
22 public goods.

23 I think the real bottleneck and what experience  
24 has shown is the current copyright royalty board system.  
25 It's a nightmare. You basically only have, what, three

1 judges hearing all of these cases? It is very  
2 expensive, and the way it's structured, it's an  
3 invitation for people to basically hold the system up  
4 for relatively small claims.

5 So I think that there has to -- if there's an  
6 appreciation of that, arguably we have to fashion a  
7 solution that doesn't allow people to gum up the works  
8 that way.

9 MS. FUNK: Welcome to Washington.

10 MR. NEVAS: I've been here for awhile. Actually  
11 20 years worth.

12 MS. DESANTI: Steve, I wanted to ask you a  
13 couple of questions, and by asking you questions, I  
14 don't mean to at all to seem to criticize your proposal,  
15 but the fact is, there are serious issues here, and we  
16 need as many proposals to be discussed as possible, so  
17 this is just in the spirit of probing.

18 One of the possibilities, and this was discussed  
19 on a copyright panel that you were here for yesterday as  
20 well, is that various interest groups, as soon as you  
21 take copyright legislation into Congress and say, okay,  
22 this is a better way to protect the appropriatability of  
23 news that we value because it's a contribution and  
24 necessary for Democracy to function, what can happen is  
25 there will be a lot of people who are providing

1 information on the internet who may want to also argue  
2 that they are public goods and also get a share of  
3 whatever it is that the ISPs, under your proposal, would  
4 collect and then would be redistributed.

5 So have you thought about that, and have you  
6 thought about potential ways to distinguish the news  
7 from other types of information because basically  
8 information is a public good?

9 MR. NEVAS: Yes, but I don't have a perfect  
10 solution at this point. If we look at the second class  
11 postal regulation as a way of attempting to define the  
12 press, it's generally true that a publication is a  
13 general circulation. That's not going to work in this  
14 case.

15 I think we might begin -- and we have to be very  
16 conscious of the First Amendment problems that can  
17 result if we discriminate between media, and with this  
18 court, discriminating on the basis of who the speaker  
19 is, although I think that if we were to exclude  
20 501(c)(6)s from the benefit of this, and organizations  
21 that are of that type, that we would begin to solve the  
22 problem.

23 It remains: What is a journalistic news  
24 organization, and part of it may be in terms of  
25 attempting to distinguish, and I've begun to work on

1 this, between those who are protected under the press  
2 clause of the First Amendment and those who are merely  
3 protected of the speech clause of the First Amendment.

4 It is not an easy distinction to make, but I  
5 think arguably it might work, and it is a problem. Do  
6 we include every blogger? The answer is those who would  
7 contribute significantly, and the sampling services  
8 could help us do that because when we rate circulation,  
9 very small audiences are what are known as BMS, below  
10 measurable standards, and we would exclude that way a  
11 large number also.

12 That is not to say that there would not be some  
13 who would claim that they are journalists, and part of  
14 the problem as well is that we now have, as Yochai  
15 Benkler said yesterday, a party press in this country,  
16 the re-emergence of a party press who would have to be  
17 included as part of this.

18 MS. DESANTI: Let me ask you another question on  
19 the other side of the equation. Well, let me start --  
20 let me actually get to the middle, the ISPs. This is  
21 obviously going to -- if your proposal were enacted, it  
22 would impose administrative costs on the ISPs. Are you  
23 presuming that those are also passed on to consumers?

24 MR. NEVAS: Yes. The ISPs currently collect  
25 other money for the government. They collect money that

1 goes to an FCC fund for educational purposes, so in  
2 terms of their ability to administratively collect it,  
3 it shouldn't be a large problem.

4 The distinction would have to be made between  
5 simple individual accounts and those that are  
6 institutional. The provider for the Federal Trade  
7 Commission, for example, provides a number of users and  
8 therefore that would have to be computed as part of it  
9 or for a large business versus a home user.

10 MS. DESANTI: So then we get to the copyright  
11 royalty tribunal problem, and how do you figure out how  
12 the money should be allocated and who should decide and  
13 how on earth do you get those issues resolved in a  
14 relatively speedy manner?

15 MR. NEVAS: Well, I think there are a couple  
16 criteria. First of all, you begin by compelling -- and  
17 this is a proposal that Terry Fisher at Harvard made in  
18 connection with something he wrote in 2004 pertaining to  
19 the Napster problem at the time.

20 What you would do is require that downloaders  
21 who wanted to participate voluntarily would be obligated  
22 to periodically forward records of their downloads, both  
23 numerically and the length of the downloads so that if  
24 somebody obtained a lot of information, it would account  
25 for more, to a new division of the Library of Congress,

1       which what be operating separately than the CRB does  
2       now.

3               Second, the Library of Congress would commission  
4       sampling, basically rating studies, which it now  
5       does for broadcasters and which it does -- which they do  
6       in terms of circulation studies for newspapers, so  
7       they're experienced at that, to measure the audience and  
8       then crosscheck the download records against the  
9       sampling mand this would discourage the kind of gaming  
10      that might occur if someone set up a bot to download  
11      their own site.

12              So we would prevent that, and then on the basis  
13      of a predetermined formula, to decide what percentage of  
14      each of these sites would be entitled to against the  
15      pool of money that would be available.

16              MS. DESANTI: Any other questions or comments?

17              MR. GRUNES: I'm curious about how the price  
18      would be set. Given some of the concerns about  
19      coordination that DOJ has had in the past or conduct by  
20      dominant firms just to maintain their position, how  
21      would you address those issues?

22              MR. NEVAS: Well, I think -- and I would confess  
23      that the economic study has not been done against this  
24      proposal, and it would have to be done, but I think in  
25      terms of what both the market could bear and what would



1 be fair, and I would refer to some work that Terry  
2 Fisher did in 2004 and '05, the fee could not exceed \$5  
3 to 7 per month certainly. I think based on some back of  
4 the envelope calculations that have been done to date,  
5 that it would provide a rather substantial sum of money  
6 for distribution to content providers.

7 The idea would be to create a floor, not to --  
8 in other words, to give them something that they could  
9 use to leverage additional income rather than assuring  
10 them of the full compensation, and I don't think the BMI  
11 ASCAP system attempts to do that either.

12 MS. DESANTI: Maurice?

13 MR. STUCKE: I'm curious as to, Bill, you've  
14 raised a -- the instrument that you talked about,  
15 tracking the system, would that be in addition to or  
16 would that necessarily be a lesser restrictive  
17 alternative to having a fee imposed on the ISP?

18 MR. BAER: Well, first of all, you can't really  
19 decide what to charge for appropriation of content  
20 unless you know who's using it, so that's a prerequisite  
21 to anything, right? Then the question is: What's the  
22 next step?

23 You have Congress impose -- clarify what the  
24 intellectual property rights are and to set up a  
25 mechanism so that those can be enforced, collected,

1 distributed, all that kind of stuff, but there are other  
2 potentially private party competing solutions, and Steve  
3 talked about the Associated Press and the other internet  
4 providers' options as alternatives.

5           So I think the first step is obviously tracking  
6 use, and then the question is: Could you, through  
7 private parties, basically offer up various kinds of  
8 licenses? For example, if someone had set up the  
9 tracking mechanism, got the buy in from the content  
10 providers, they could then turn to offer a blanket  
11 license with some sort of formula that would be set for  
12 distribution?

13           That has some antitrust issues associated with  
14 it, but depending on who's going to be deciding on what  
15 the license is going to cost, whether it is a non  
16 exclusive option for a content user, that is, I could go  
17 directly to you as The New York Times and negotiate  
18 something if I wanted to, there may be ways I think to  
19 do this that, again balancing benefits in an appropriate  
20 ASCAP BMI kind of way of tracking and aggregating.

21           There may be ways to do this that deal with free  
22 rider issues, and while there may be some modest  
23 competitive risks, it may be modest, and we may have  
24 ways to address the risk, and that's the way I see it.

25           I share Katie's concern that given what is a

1 serious economic problem for the newspaper industry is  
2 the legislative solution going to move quickly enough to  
3 really address the issues. It may or may not, and are  
4 there other measures that can be taken by more than one  
5 entity to try to get from here to there that basically  
6 addressed some of the market failures that we're seeing?

7 MR. NEVAS: If I could quickly say one thing.  
8 The problem is that unless we find a relatively all  
9 encompassing solution, all of the metered kinds of uses,  
10 the pay walls, invite someone to go over, under or  
11 around the wall, and given the habits that have been  
12 infiltrated on internet users, that's what they are  
13 going to do.

14 So the question may come down to: What is the  
15 value of the news and information that journalism  
16 provides, and how important is it to act, to protect it  
17 because otherwise, I think we're going to continue to  
18 see this kind of desolation of the muscle and the  
19 infrastructure of journalism in the process of being  
20 unable to monetize the content.

21 MR. BAER: Katie, can I just respond to that? I  
22 know you're -- it seems to me that one of the issues we  
23 haven't talked about a lot, although your proposal  
24 implicitly recognized it, is clarifying the intellectual  
25 property rights that are at issue here.

1           Once they're clarified, over and under the pay  
2 wall may not be possible because you'll be subject to  
3 injunction if you're screwing around, and so that really  
4 is one of the issues legislatively you could clarify.  
5 Also judicially you can clarify, what's the continued --  
6 where does fair use stop. Is hot news really something  
7 that has universal application?

8           MR. NEVAS: I don't think the news business  
9 wants to repeat the experience of the recording  
10 industry.

11          MS. FUNK: But why not? Why doesn't The New  
12 York Times sue a blog and say, "You guys are using our  
13 content and we believe that you owe us money for it and  
14 we're going to sue you?" I mean, there's a difference  
15 between doing that and suing a 12 year old, but rather  
16 than -- which is what the recording industry mistakenly  
17 did.

18          But at some point in time -- and no offense, I  
19 used to work at a newspaper, at some point in time,  
20 newspapers, news gathering organizations are going to  
21 have to stand up and say go to court essentially and say  
22 these are my -- this is my property and you're stealing  
23 it, and I want my money, and until I think somebody is  
24 willing to take that risk, I think you're going to get a  
25 hard time getting anybody in Congress to pay attention,

1 getting anybody to feel sorry for you.

2 But I also wanted to point out that two weeks  
3 ago, the DOJ gave a business review letter to My Wire,  
4 which is essentially going to set up or is proposing to  
5 set up an internet media subscription news aggregation  
6 service, so I think that's just two weeks ago.

7 So I think that there are -- and AP is thinking  
8 of doing something. My understanding is the New York  
9 Times is working on something similar. McClatchy is  
10 working on something similar, given their wide network  
11 of newspapers. There are many ideas out there, and I  
12 guess the point I'm trying to make is the news industry  
13 is going to have to start thinking of ways to protect  
14 itself, and coming up with creative ideas.

15 These guys in Ohio, there's an interview in the  
16 American Journalism Review with I think it was the  
17 editor of the Toledo Beacon or Akron Beacon, and the  
18 interviewer said, Well, this is great, you guys are  
19 putting together all of these stories, and you're  
20 sharing stories, have you ever thought about packaging  
21 the stories and selling them to other papers in the way  
22 that AP does.

23 And the editor said, wow, that's a great idea,  
24 and to me, having been inside of a newspaper, that sort  
25 of sums up the problem is that these guys -- they're

1       journalists. They're not business people. They're not  
2       entrepreneurs. They grew up in a certain system, and  
3       they're having a difficult time thinking their way out  
4       of that system.

5                So I think it's going to take entrepreneurs from  
6       outside of news or who have escaped the big paper to  
7       come up with the solutions, and I don't think the news  
8       industry should wait around for Congress.

9                MR. GRUNES: I have a question if I could,  
10       Susan. My Wire -- and I'm interested in the views of  
11       the panels on this. My Wire is identified in the  
12       business review as primarily a technology company. That  
13       fact highlighted, that it was not owned by any content  
14       providers, and that it itself is not a source of  
15       content.

16               Is the AP a closer call?

17               MR. BAER: Absolutely not.

18               MS. DESANTI: This is why we were so sorry when  
19       Bill Baer left.

20               MR. BAER: Did you get that down?

21               MS. DESANTI: The best advocate you could know.

22               MR. BAER: That business review letter  
23       appropriately noted distinguishing factors, and I mean,  
24       candidly I do think it is a tougher call when you have  
25       people who are competing at the same level. It's not a

1 third party, but it doesn't mean it's a non starter.

2 That was why I referred to Susan in the  
3 competitive collaboration guidelines. In fact, that's  
4 the whole notion of looking to do a realistic balancing  
5 of antitrust risk versus output enhancing benefits of  
6 allowing competitors to get together and talk about  
7 doing something.

8 So I suspect and I'm confident that there are  
9 ways that you can do this and be antitrust compliant.  
10 The challenge is basically going to be getting the  
11 comfort that the Antitrust Division gives or is willing  
12 to give in a timely enough fashion so that folks can go  
13 forward.

14 MS. DESANTI: I wanted to get to what I see as  
15 an even tougher question here, and I think it speaks to  
16 one of the things you were raising, Katie, you were  
17 saying why doesn't The New York Times just go sue a  
18 blogger, et cetera.

19 There are it seems to me -- to some extent in  
20 the news industry there are incentives and disincentives  
21 for picking individual or collective action, and  
22 sometimes litigation is disincentivized when you have a  
23 lot of people who are in basically the same position,  
24 and if they could, in fact, all get together and do  
25 something about the problem they have, they would, but

1 they don't necessarily want to. They're waiting for the  
2 other guy to step in first, and then they're going to  
3 free ride on what the other guy does.

4 There's a similar kind of issue, it seems to me,  
5 on this notion -- and I am not implying that the AP is  
6 going here, but I can see a scenario in which the AP  
7 identifies for its members where their content is being  
8 used. The members of the AP go individually say, here,  
9 we're proposing this license, and the other people --  
10 the people on the other end of the bargain saying, no,  
11 we really don't want to get that license.

12 Would it then be okay -- would each individual  
13 member then have a sufficient incentive simply to say  
14 no, then don't come to our site, when robots.txt or  
15 whatever the new system would be shows up, you cannot  
16 have a content? Does that apply equally if the person,  
17 if the entity that denies a license -- that says they  
18 don't want a license is Google?

19 MR. BAER: Well, the answer is for -- my answer  
20 is that I don't actually have a clear answer. It seems  
21 to me there are steps in what can be done collectively  
22 that involve less and potentially more antitrust risk.  
23 Tracking very little risk. Licensing, you've done on  
24 the right terms, that is non exclusive and as a consumer  
25 of content or as an appropriate aggregator of content, I



1 have some rights to -- I don't have to deal with a  
2 single even entity. I can deal with individual  
3 providers of content.

4 I think there are ways to deal with that. Then  
5 the question is: But if you have -- is it appropriate  
6 for content providers to get together and collectively  
7 enforce an intellectual property right or copyright  
8 against somebody who is refusing to pay, denying the  
9 right exists?

10 That's a different issue. I think there may be  
11 instances where that can be done and done in an  
12 antitrust compliant way, but I do recognize that the  
13 different kinds of collective action may involve  
14 different kind of antitrust risk, and you're always  
15 trying to strike the balance between benefits and the  
16 costs.

17 MR. NEVAS: Susan?

18 MS. DESANTI: Yes, Steve.

19 MR. NEVAS: I think we should also begin with  
20 the idea and the truth that this material is and will be  
21 copyright protected, so there is that level of statutory  
22 protection right out of the gate.

23 The question then becomes tactically: What is  
24 the best solution? And part of the problem is that this  
25 material is perishable. If it has a useful life for

1 most purposes of 72 hours, that's a long time, so the  
2 question is to what extent are you chasing butterflies  
3 versus trying to discourage a pattern of behavior which  
4 violates your statutory rights?

5 MS. DESANTI: Well, I think we should clarify  
6 for the record. We had an extensive discussion of  
7 copyright issues yesterday, and there were a number of  
8 problems raised with defining exactly what is fair use  
9 and what is not, and for example, it stuck in my mind  
10 from December, the report from Ken Doctor of OutSell who  
11 did a survey finding that -- and depending on how this  
12 is reported in different areas, it's either 40 percent  
13 or 50 percent of the people who go to Google News, never  
14 click through. Never click through.

15 MR. BAER: By click through, you mean go to the  
16 provider's site?

17 MS. DESANTI: Never go to the original news  
18 stories, and the whole notion of how you get  
19 advertising -- how you get revenue from aggregators  
20 relies on the principle that the aggregator is going to  
21 send the person who sees that headline or whatever to  
22 your site, to your original news site, and at that point  
23 the reader will see the advertising on your site and  
24 that's how you get compensated. Well, if they never go  
25 from the aggregator to your news site, that doesn't

1 work.

2 On the other hand, we had a relatively clear  
3 discussion yesterday from one side saying headlines in  
4 the first sentence; that's not copyright protected.  
5 That's where facts and ideas merge, and it's just not  
6 copyright protected, that is part of the deal.

7 Then we had testimony from others who weren't  
8 quite saying it was copyright protected, but were  
9 arguing for more of a permission based system, which  
10 sounds a lot more like what, you know, voluntarily  
11 licensing.

12 So I think it's not at all clear where the lines  
13 are on the copyright protection here, and I think that  
14 does tend to complicate the analysis. So in one sense,  
15 it is relevant to what you were talking about, Bill, in  
16 terms of ways to have nonexclusive but collective  
17 action, and it might not, and if it's in protection of a  
18 legitimate copyright protected article, that might seem  
19 to an lawyer a more important efficiency on one side  
20 than if it's not copyright protected.

21 Nevertheless, I'm confident that there are  
22 potential efficiencies, and so I thought I would ask you  
23 about the potential efficiencies in that kind of a  
24 situation where there might be collective action in  
25 terms of enforcing, no, we don't -- we really don't want

1 to deal with people who are not paying for our content.  
2 We don't really want people who are not paying for the  
3 content. We don't want aggregators who are not paying  
4 for the content to come to our sites and take that  
5 content, but we're not arguing that that's not  
6 necessarily -- some of it is copyright protected. Some  
7 of it is not.

8 MR. BAER: Well, the key efficiencies or one of  
9 the key efficiencies is, Katie cited appropriately, the  
10 fact that there are big boys and girls out there that  
11 can take care of themselves, who have the resources to  
12 sue, to protect, but if you had originated some hot news  
13 in South Carolina about a governor hiking on the  
14 Appalachian Trail, and you originated that and you were  
15 a small town reporter, a small town paper, you lack the  
16 resources to go in and enforce that right.

17 And as Steve says, that may be the scope of a  
18 lifetime that has real value to it, and you get zippo  
19 for it because it's misappropriated, so there are I  
20 think examples like that where collective enforcement is  
21 a much more efficient way of addressing the problem, and  
22 then you got to balance off whether it's too many  
23 content providers ganging up on little content users, I  
24 mean, the consumers.

25 So you need to look at how you would structure a

1 right of collective action to make sure you minimize the  
2 antitrust risks, but maximize those collective  
3 efficiencies.

4 MR. NEVAS: The only other thing -- and I think  
5 it would bear further study, is in relation to Ken  
6 Doctor's report yesterday that 40 percent don't click  
7 through on any story, people may simply look at a page  
8 and say, I don't see what I'm looking for today,  
9 goodbye, or they may be reading those headlines as a  
10 study or a summary of the news, which is what they came  
11 for.

12 I think it would take some further research to  
13 find out exactly what the purpose of the user was in  
14 going to that page in the first place. I know I go to  
15 Google sometimes, and I have the wrong search terms, and  
16 I'll go five or six pages before I find myself in the  
17 right place. It takes awhile sometimes.

18 Now, that's not really a use. Other people may  
19 want to look at the Google headline page, for example.  
20 And that's essentially a newscast or a summary of the  
21 news that has value to it, and the people who write  
22 those headlines, headlines are not titles which would be  
23 exempt under copyright law. They are intellectual  
24 property. They are more than just words.

25 MS. DESANTI: They're facts.

1 MS. FUNK: Not necessarily.

2 MR. NEVAS: They're more than facts.

3 MS. DESANTI: We should not have a copyright  
4 panel. We did have that yesterday.

5 It's getting to be very late, and I very much  
6 appreciate all of your patience with further probing and  
7 trying to better understand all of these issues. Let me  
8 ask: Are there any of our panelists who have one last  
9 comment you want to make?

10 MS. FUNK: Thank you.

11 MS. DESANTI: Thank you very much, and please,  
12 for those of you who have sturdily stayed with us,  
13 please join me in thanking the panelists.

14 (Applause.)

15 (Whereupon, at 4:48 p.m. the workshop was  
16 concluded.)

17

18

19

20

21

22

23

24

25

## 1 CERTIFICATE OF REPORTER

2

3 DOCKET/FILE NUMBER: P091200

4 CASE TITLE: WORKSHOP ON "HOW WILL JOURNALISM SURVIVE  
5 THE INTERNET AGE?"

6 WORKSHOP DATE: MARCH 10, 2010

7

8 I HEREBY CERTIFY that the transcript contained  
9 herein is a full or accurate transcript of the steno  
10 notes transcribed by me on the above cause before the  
11 FEDERAL TRADE COMMISSION to the best of my knowledge or  
12 belief.

13

14 DATED: 3/18/10

15

16

17 \_\_\_\_\_  
DEBRA L. MAHEUX

18

## 19 CERTIFICATION OF PROOFREADER

20

21 I HEREBY CERTIFY that I proofread the  
22 transcript for accuracy in spelling, hyphenation,  
23 punctuation or format.

24

25 \_\_\_\_\_  
ELIZABETH M. FARRELL