Media and Values:
Issues of Content, Community and Intellectual Property

A Report of the 2007 Aspen Institute
Forum on Communications and Society

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</table>

Contents

APPENDIX

MEDIA AND VALUES:
ISSUES OF CONTENT, COMMUNITY AND INTELLECTUAL PROPERTY

Media and Values

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Introduction

For more than 30 years the Communications and Society Program has convened private, invitation-only forums, seminars, and conferences in the signature Aspen Institute roundtable format. Typically, 25 leaders from diverse backgrounds and perspectives address a particular communications policy topic in a moderated dialogue driven by a detailed agenda. They aim to arrive at new insights they can act on individually, in their organizations, through collective action, or by recommending change in government and business policies. These small, off-the-record meetings encourage trust, candor, free exchange among peers, and creativity of thought.

The Program convenes several projects in this format each year, culminating in our CEO-level dialogue, the Forum on Communications and Society (FOCAS). The idea of FOCAS is to consider a different issue each year, with the common theme of addressing the impact of information and communications technologies on societal issues and institutions.

At the urgings of Aspen Institute president and CEO Walter Isaacson, the Program undertook an experiment in 2007. We wanted to retain the best of this format and encompass more people and in a more public manner. Accordingly, we combined three distinct roundtables in consecutive fashion, added break-out sessions, two panel discussions, and a public audience (in person and through live streaming on the web) around an overarching theme: Media and Values.

The three roundtables in the 2007 FOCAS explored media and content values, media and (intellectual) property values, and media and community values. This report summarizes the results of these cross-pollinating roundtables.

Although the format was unusual, the results were encouraging. As this report documents, the dialogue was illuminating and produced some

important recommendations. Indeed, as a direct result of the 2007 FOCAS, the Communications and Society Program is very pleased to be partnering with the John S. and James L. Knight Foundation, senior sponsor of FOCAS, in organizing a national commission to address the local news and information needs of local communities in a time of great media change. Over the next two years, this commission will explore how communities in a democracy can meet their information needs.

An opening presentation by University of Southern California Annenberg Digital Media Center director Jeffrey Cole and two plenary panel discussions set the stage for the FOCAS dialogues. These presentations are summarized in three sidebars within the report. Cole described the media consumer of tomorrow; the new media panel presaged the issues inherent in a period of transformation—in this case, the revolutionary digital transformation. The panel on the future of newspapers provided a snapshot of how one important communications industry is looking at the new digital landscape and is attempting to adapt to it.

Although the report—written by rapporteurs Richard Adler, Drew Clark, and Kathleen Wallman and edited by Adler—captures the best of the exchanges and recommendations, I want to briefly highlight what I consider as some of the more significant results.

Media and Content Values

Tracy Westen, CEO of the non-profit Center for Governmental Studies, set the tone of the discussions of media and content values in his opening analysis of the issues. He divided speech of concern into three categories: harmful, offensive, and missing. Constitutional lawyers and scholars have placed much of their attention on the "harmful" category, and there is a settled body of law and policy on harmful or potentially harmful speech across all media. As a result, this category received the least attention in the discussion.

In terms of offensive speech, communications lawyers who have grappled with the intricacies of broadcast and cable law—and now Internet law—have focused attention on the "indecency" statutes and how to channel offensive speech in a way that protects children without reducing the entire population to their standard. This issue is almost exclusively raised by broadcasting, in fact (because of the regulatory

framework that governs it), although this report also describes efforts to expand to cable television and even Internet.

In seeking solutions in this realm, conference participants favored solutions that seek to involve measures at the receiving end rather than imposing censorship at the transmission end of a particular communication. Thus, the participants explored content tags and ratings for programming, filters for equipment, and—very significantly—media or digital literacy for users of media, especially children and their parents.

The third area of speech that Westen outlined—missing speech—particularly resonated with FOCAS participants. "Missing" speech is information from a variety of voices and perspectives that citizens need to govern themselves and conduct productive lives in society but too often do not have. Westen complained that much of this socially valuable content is missing from our public dialogue—a point that crossed over into the dialogue on "media and community" as well. Thus, participants explored ways to encourage getting more such missing speech into the public spheres. These approaches included greater attention to teaching civic literacy, increased accessibility to government information, and a national commission to explore the information needs of communities.

Media and Intellectual Property

Anyone who has witnessed disputes over copyright and other forms of intellectual property in the media industries during the past few decades understands the difficulty of finding common ground for agreement among factions in the debate. The advent of digital media has enabled more people to create high-quality copies of print, audio and visual media, and digital programming more easily. The ease of copying content from broadcasting or the Internet, combined with a culture that supports copying such product without permission or compensation, has turned business models on their heads. Tower Records is no more, and the CD may be right behind. The music industry and now the movie industry complain of piracy and thievery, while many users cannot understand why they should pay when the same products are so freely available.

Advocates for both sides often have taken strident positions. In recent years, for example, the doctrine of "fair use" has become more and more contentious. Fair use is the part of intellectual property law that recog-

nizes ownership of content but allows others to make use of that content without permission or compensation (e.g., an easement to walk on someone else's real estate) for limited noncommercial purposes. Digital technology has allowed copyright holders more precision in defining use and collecting for it; at the same time, the technology also has increased the ease of copying content. As a result, fair use has become more difficult to assert.

FOCAS invited advocates on all sides to discuss means to bridge the gap and find new models for resolution. Surprisingly, that is exactly what happened. A working group of diverse participants hammered out a list of principles for fair use, ratified by the entire Forum, that could be the starting point for real compromise on the issue. I urge readers who are interested in this topic to consider these principles as a first step in the movement to refine fair use for the digital era.

The intellectual property discussion also resulted in arguments for new business models to accommodate the realities of the new era, including a call for greater attention to personal identity as the new media expose so much of one's personally identifiable information to public record—with or without one's knowledge or acquiescence.

Finally, I want to call attention to the plea for copyright relief in the teaching of media literacy itself. If we want to see an increase in user awareness and media capability, especially as it can become an antidote to pressures for censorship, we need to encourage, enable, and fund efforts to teach media literacy at an early age. If teachers are afraid to reproduce and display media content in their classrooms, an important tool is removed from the process. For example, it is not clear that repeated use of the same clip, year after year, would be fair use under current law. Massachusetts Institute of Technology professor Henry Jenkins pleaded for copyright holders to address this issue.

Media and Community

The third roundtable topic focused on the role of media and information technology in local geographic communities. We know that new communities of interest are formed every minute online. What effect is the proliferation and fractionalization of media having, however, on community coherence and the ability of citizens to govern themselves and participate effectively in local cultural and political affairs? Many

news organizations, hit by declining revenues from the loss of advertising to the new media, are cutting back in their local newsrooms. At the same time, "hyperlocal" is a new buzzword for local media websites. These are challenging times for the health of local communities.

The John S. and James L. Knight Foundation, headed by Alberto Ibargüen (a former newspaper publisher), has paid particular attention to these issues in recent years. Their senior sponsorship of FOCAS enabled us to devote a full roundtable to the topic.

Dovetailing with the discussion on content values, the community discussion also addressed the issue of missing speech—speech that all citizens need to live, work, play and govern their local communities. Several suggestions were made during the discussion regarding ways to expand access to existing media to a broader spectrum of voices. In addition, new media representatives, such as Scott Heiferman of meet-up.com, argued that these the new channels—from computers to cell phones and smart phones—are providing new opportunities for citizens to communicate, organize, and act even as they are eroding the power of older media. EDventure Holdings CEO Esther Dyson even proposed an eBay for civic engagement.

To delve further into some of the ideas expressed in this third round-table, the Knight Foundation sponsored a follow-up workshop, held in Washington, D.C., in the fall of 2007. This workshop considered several proposals for strengthening local media in a time of rapid change. The summary of this discussion appears at the conclusion of this report. One of these recommendations, spurred by the comments of sociologist Eric Klinenberg and FCC Commissioner Jonathan Adelstein, was for creation of a national commission to address the information needs of communities. Although I always hesitate when participants in one conference call for another, in this case I believe the call is warranted. At the beginning of 2008, the Knight Foundation invited the Aspen Institute Communications and Society Program to partner in organizing the Knight Commission on the Information Needs of Communities in a Democracy. More information about this commission appears in the final section of this report.

Acknowledgments

I want to thank the continuing co-chairs of FOCAS, Marc Nathanson and Reed Hundt, as well as the other members of the convening committee: Lynda Resnick, Jon Diamond, and Julius Genachowski. We thank the John S. and James L. Knight Foundation for its senior sponsorship of this expanded FOCAS, as well as the other sponsors who made the event possible financially: Annenberg Foundation, ARTISTdirect, Credit Suisse Corporation, DivX, The Marc and Jane Nathanson Foundation, the Rendon Group, and The Resnick Family Foundation. In addition, we express appreciation to FOCAS members who also gave financially to the Program: craigslist, Emmis Communications, Google, the Entertainment Software Association, Washington Post Newsweek Interactive, Dean Singleton, Michael Klein, Arturo Artom, and Stacey Lawson.

Rachel Sterne talked us into streaming the FOCAS simultaneously with the conference on *www.aspeninstitute.tv* via groundreport.com, which she founded and runs. This real-time streaming provided the opportunity for international viewership and occasional interaction with remote viewers during the conference itself. We thank Rachel and GroundReport for their great work in making this happen.

We thank our keynoters, FCC Chairman Kevin Martin and European Commissioner for the Information Economy and the Internet Viviane Reding; our opening presenter, Jeffrey Cole, director of the Digital Media Center at the USC Annenberg School; Madeleine Albright, who agreed to a probing lunchtime interview by FOCAS co-chair Marc Nathanson; lead-off speakers Tracy Westen, Alberto Ibargüen, and Congressman Howard Berman; Jonathan Diamond, Michael Eisner, Arianna Huffington, and Lynda Resnick, for their participation on the new media panel; and Geoffrey Cowan, Caroline Little, Scott Moore, Craig Newmark, John J. Oliver Jr., Dean Singleton, and Arthur Sulzberger Jr. for their input on the future of newspapers. We give special thanks to our rapporteurs Richard Adler, Kathleen Wallman, and Drew Clark and to our project director Mridulika Menon, assistant director Patricia Kelly, and project manager and associates Kate Aishton, Cary Savage, and Sarah Snodgress for their work at the Forum itself, behind the scenes to make it happen, and afterward to bring this report to fruition.

Content Issues
for Old and New Media

Technological changes are undermining the traditional framework for regulating content in the United States. This country has long distinguished between the content rules that have governed electronic media—television and radio—and those that apply to print media. The Internet is making these disjunctions increasingly problematic as all traditional media—telephony, radio, video, etc.—seem to be converging onto the Internet.

Jeffrey Cole, director of the Center for the Digital Future at the University of Southern California's Annenberg School for Communication, described the attitudes and behaviors of typical 12- to 24-year-olds as a way to highlight some of the impacts changing technology is having on American Society. Cole reported that many of these young people, who have largely grown up in a digital environment, will never read a newspaper, will never own a conventional "land-line" phone (i.e., their only phone will be mobile), and may never own a watch (because their cell phones include a clock). These young people also are less interested in television than any previous generation, although Cole predicted that television "will remain significant and immensely popular" for many years to come. Perhaps the most striking impact of the Internet will be the blurring of lines between traditional media: "On the Web, newspapers and magazines become like TV and compete like never before. Television and Web will be terms only to distinguish where [content] originated," Cole observed.

> **"On the Web, newspapers and magazines become like TV and compete like never before."**
>
> *Jeffrey Cole*

Life of a 12- to 24-Year-Old, 2007

- Will never read a newspaper but is attracted to some magazines
- Will never own a land-line phone (and maybe not a watch)
- Will not watch television on someone else's schedule much longer
- Trusts unknown peers more than experts
- For the first time, willing (2005) to pay for digital content
- Has little interest in the source of information; most information is aggregated
- Finds community at the center of the Internet experience
- Believes oneself to be not interested in advertising or affected by brand, but is wrong
- Expects that everything will move to mobile
- Is less interested in television than any generation before
- Wants to move content freely from platform to platform, with no restrictions
- Wants to be heard (user generated)
- Uses IM; thinks e-mail is for their parents

Source: The Impact of the Internet—Year 6 Report, USC Annenberg School-Center for the Digital Future, 2007

What are the key content issues for the new media? Do any of the traditional distinctions between media still make sense in this new environment? We know that our sense of the world can be shaped by the media we consume. Video and audio content have the ability to shock sensibilities, and potentially cause harm, in ways that go beyond the capacity of the printed word in terms of immediacy and impact. This kind of graphic content can alter our views of and our attitudes toward violence and sexual behavior. How people are depicted—or not depicted—in media coverage can affect our perceptions of others who are different from us. The constant repetition of particular messages by "the media" can lead us into thinking that the values they reflect represent the norms of society.

Tracy Westen, CEO of the Center for Government Studies, framed the discussion of content issues by posing a series of questions:

As we face this onrushing avalanche of new media, with the Internet, Web 2.0, social networking, YouTube, video on demand, two-way instantaneous, mobile worldwide communication, what do we do about content in these new media? Should we simply end censorship, give up and say, "Let everyone say what they want, viewer beware, and protect yourself?" Or will older models of content regulation survive among the new?

Westen argued that the paradigm that is based on different regulatory schemes for different media must be reconsidered in the new media world. Instead of basing regulation on the medium of transmission, he proposed a three-part scheme based on the type of speech and its potential consequences:

Harmful Speech

Harmful speech is incitement and other criminal speech, sedition, obscenity, libel, or speech that presents a "clear and present danger." Perhaps the premiere example is Oliver Wendell Holmes's statement that the First Amendment does not entitle one to "shout 'fire' in a crowded theater." Such speech may be banned or at least punished after the fact.

> **The paradigm that is based on different regulatory schemes for different media must be reconsidered in the new media world.**
>
> *Tracy Westen*

Offensive Speech

Offensive speech is everything from the infamous 2004 Super Bowl halftime show involving Janet Jackson to the potential transmission of a pornographic movie such as *Deep Throat*. It also includes profanity, violence, and racial stereotyping. Such speech is offensive to some people (and potentially harmful to children) but acceptable to others. It generally is protected by the First Amendment, although restrictions on the time, place, and manner in which it can be viewed have been held to be constitutional.

Missing Speech

This is the speech that society wants, because it is considered to be socially valuable, but is not being produced in the quantity sought. Two examples are prosocial programming for children and informative programming involving our political system; another type is content created by or intended for a specific minority group in society. Such content could be promoted through subsidization or through regulation of the means of communication to encourage participation by a more diverse group of voices.

There was little disagreement among the FOCAS participants that truly harmful speech could and should be regulated. Most of the debate focused on issues related to more difficult issues raised by the other two categories of speech. The discussion of content regulation focused on three specific questions:

- What should be done about the government's inconsistent approach to media regulation? For example, should broadcasting and cable television continue to operate under different regulatory schemes, even if most viewers no longer distinguish between the two media on their television sets?

- How effective are new filtering technologies and "labeling and rating" schemes for dealing with objectionable content?

- Can the problem of missing speech be addressed by focusing on the demand for such content rather than focusing directly on the "supply side" of the equation? For example, could teaching new media skills inspire individuals to become more engaged in civic life and thereby contribute to a more robust civic dialogue?

Offensive Speech: "Indecency" on TV

The Federal Communication Commission (FCC) is responsible for regulating both broadcast and cable television. The two issues related to content on television discussed at the FOCAS conference were regula-

tion of broadcast material deemed indecent by the FCC and a proposal that the cable industry be required to offer its programming to subscribers on a per-channel basis rather than as a single bundle of channels. In a presentation at the conference, FCC Chairman Kevin Martin discussed both of these issues. He vigorously defended the Commission's approach to regulating indecency on television and explained why he favored an "a la carte" approach to providing cable programming. Martin also announced a new proposal that would require cable operators to carry the broadcasts of designated entities, including minority- and woman-owned media companies that lease a portion of broadcasters' digital television frequencies. Martin supported this "leased access" proposal on the grounds that by encouraging greater diversity, it would address some of the "missing" speech issues Westen outlined.

In recent years the FCC has significantly increased the number of fines it has levied against broadcasters for airing indecency and, with the support of Congress, increased the amount of these fines. The FCC also has begun to sanction isolated instances of a single profanity. Martin defended the Commission's actions in this arena by referring to George Carlin's famous monologue about the "seven dirty words" that you may not say on the public airwaves, which was the subject of a 1978 Supreme Court decision, *Pacifica v. FCC*, that sustained the indecency ban. "The Commission has never had an action about anything besides the words that were included in that original monologue," Martin said. "We are down to enforcing only two to three of those words, and we actually take the context into consideration."

Rules governing broadcast indecency have existed since the passage of the Federal Radio Act in 1927, but over the past five years this topic has become a particularly live political and legal controversy. The controversy began when several prominent celebrities—including Cher, Bono, and Nicole Ritchie—used the "f-word" in awards ceremonies that were carried on live television. These instances raised the hackles of Congress. After Janet Jackson's breast was briefly exposed during the halftime show of the 2004 Super Bowl, political pressure increased for stronger indecency legislation. In 2006 Congress acted, raising the maximum fine the FCC could impose for each instance of indecency from $32,500 to $500,000.

Several FOCAS participants were dismissive about the amount of attention television indecency has received in public debate and in legislation. Referring to what he regarded as an excessive response to Janet Jackson's Super Bowl appearance, Georgetown University professor Michael Eric Dyson noted that "a nanosecond of black areola has initiated a change in American culture." Since the much-discussed event, Jackson, as an entertainer, has been virtually banished from the public eye. By contrast, Dyson pointed out, an X-rated bootleg video of Paris Hilton engaging in sexual activity that was widely circulated over the Internet effectively launched Hilton's career as a celebrity and even led to her own television show. The debate over indecency, Dyson said, has tended to "resurrect old codes, old habits, and old boys' clubs."

The second approach to dealing with objectionable content on television is Martin's proposal to require cable operators to offer programming to subscribers on a per-channel basis. Long promoted by consumer advocates as a way to curb the price of cable television, over the last three years this "a la carte" proposal has been promoted as a way to deal with the indecent content that is legally permitted to be shown on cable systems, but not on broadcast television, without having to resort to censorship. Martin argued that this a la carte approach would give parents more control over the programming their children could watch by allowing them to choose which channels are and are not available in their homes. Currently, he said, "there is little or no incentive for the market or programmers to respond" to parents' demands for less racy content.

The cable industry has countered that mandatory a la carte—particularly if it specifies certain types of programming that should be exempt from the per-channel requirement—would raise First Amendment issues. Cable operators also argue that they already offer subscribers the ability to block channels they deem objectionable.

Some parties regard Martin's support for an a la carte requirement as the core of a crusade against the cable industry. FOCAS co-chair Marc Nathanson, vice chairman of Charter Communications, a cable operator, joked that he supported Martin's positions but on an "a la carte" basis. He said that cable executives would be more likely to support Martin's a la carte proposal if the FCC could find a way to allow cable operators to revoke or nullify contracts with programmers that put them on the cable system's basic tier. For his part, Martin acknowledged that for all of his public sup-

port of per-channel pricing, the Commission lacks the authority to impose it on the cable industry. Congress has consistently failed to enact such a scheme. The debate over "a la carte" also may be superseded, technologically speaking, because a different form of a la carte is emerging: programming that is available to subscribers on demand (i.e., "pull" programming rather than "push" programming).

Martin also introduced a third proposal: a requirement that cable operators must carry programs created by minorities and small businesses that are distributed via excess digital broadcast spectrum leased from licensed broadcasters. This proposal recognizes that although gaining access to broadcast spectrum could expand the range of voices heard in each community, the reality is that most viewers receive TV programming via cable, and if leased access programming is not available on cable, its reach would be greatly reduced.

The New Media Paradigm

The FOCAS conference began with a panel comprising four innovative leaders from four different fields—video, music, news, and marketing—discussing the state of the media and their efforts to understand the implications of new technologies for content creation and distribution.

Michael Eisner, former long-time head of the Walt Disney Company, is now exploring the world of new media through his own company, Tornante. His goal is to prove that "old and new are all one media" and that "content is still king, even in the world of the Web 3.0."

What kind of content? Eisner's initial venture is Prom Queen, a video drama that consists of 80 short (90- to 120-second) episodes designed to be distributed initially over the Internet and then over cable television. Young viewers are the target audience for the series, which premiered in April 2007 on MySpace. To stimulate interest, each character in the series was given his or her own "page" on MySpace, and a forum was established to allow viewers to discuss the series (resulting in comments such as, "OMGSH!!!! WE NEED NEW EPISODES!!!!!"). Prom Queen also has been distributed on YouTube and on a website created specifically for the series (*www.promqueen.tv*).

Eisner acknowledged that, like many others, he is attempting to understand how to succeed in the new media and what business model makes sense, but he is concerned that "there are too few voices supporting the importance of copyright and patents"— which, he believes, still provide indispensable protection to ensure that content creators can benefit from their efforts.

Jon Diamond is a music industry veteran and is currently CEO of ARTISTdirect, Inc., a "digital media entertainment company" that operates an online music network. Like Eisner, Diamond is concerned about what he regards as the threat of uncontrolled digital distribution to the economic viability of the music business. He noted that there are 300 to 400 million people worldwide who now are actively involved in downloading music via peer-to-peer networks, without any benefit to the people who created and published the music. A popular song by a bestselling performer typically is downloaded (without payment) 8 to 10 million times a day. Although Apple's iTunes online music service has (legally) sold approximately 3 billion songs, that total is the equivalent of no more than three to four weeks of (illegal) file sharing activity.

To help counter this problem, in 2006 Diamond's company acquired MediaDefender, a firm that provides anti-piracy protection through various techniques to block unauthorized music downloading. According to Diamond, MediaDefender can track the downloading activity on the top 30,000 media titles. Although the company has gained a 95 percent share of the market for online music protection, some of its actions have generated controversy among the community of downloaders who are adamantly opposed to any efforts that will limit their ability to freely "share" music.

Other than music, the industry that has been most profoundly affected by the Internet is almost certainly the newspaper industry (see sidebar "The Future of the Newspaper"). Arianna Huffington is one of the best-known pioneers of this new medium. She explained that her goal in creating *The Huffington Post* is to invent "News 2.0"— which is not simply intended to provide another flavor of journalism, but to "create a civil community" through online forums that provide a new venue for meaningful political discussion and debate.

Although blogs initially were vehicles primarily for the expression of personal opinions and viewpoints, Huffington wants to expand the techniques of blogging into "serious" news gathering. She wants her "publication" to be a place where important news stories are broken, as well as a place for commenting on the news. To be taken seriously as a source of news, she recognizes that she must bring "traditional virtues of journalism" such as fact checking and quality control to the more freewheeling world of the blogosphere.

Huffington acknowledged that her effort to marry blogging and journalism is a work in progress. She characterized the traditional media as tending to suffer from an inability to pay attention to any single story for more than a short time. For example, she asked whatever happened to Elian Gonzales, whose story dominated the news media in the United States until he returned to Cuba and effectively disappeared. By contrast, she noted, the online news media suffer from obsessive-compulsive disorder—a tendency to grab onto one story and stay with it compulsively, even when the audience may have lost interest and wants to move on.

Off the Bus is an attempt by Huffington to provide a fresh perspective to the electoral campaign process. It provides reports by "citizen journalists" who are recruited specifically because they are not "on the bus" with other journalists and therefore presumably are less prone to reflect the conventional wisdom about the candidates and their campaigns. Huffington also is providing voters with the ability to make their own "candidate mash-ups" that allow them to compare and contrast candidates' answers to the questions that most interest them.

Finally, Lynda Resnick, co-owner and vice chairman of Roll International Corporation, which sells products ranging from Pom Wonderful pomegrante juice to Fiji bottled water, talked about the impact of new media on marketing. Resnick led off by explaining that as a marketer, she "looks at the new media with great joy." In fact, the new media offer so many opportunities for promoting her products that she "feels like a kid in a candy store." To be successful today, marketers must understand and embrace

the new media. The reality is that consumers today are "disinterested in advertising," which has been the traditional means by which marketers have been able to "buy a share of a market" (by spending heavily on advertising). Resnick has concluded that the old-line advertising agencies are no longer relevant to her needs. She has developed her own expertise and has taken all of her advertising and promotion activities in-house.

The biggest change in the marketplace, according to Resnick, is that consumers now have the ability to talk back to marketers—and marketers must learn to listen to their customers if they want to remain viable. Resnick carefully monitors online message boards to hear what her customers are saying about her products. After one of her products was being relentlessly attacked by an advocacy group, she went online, "told the truth," and the issue died two days later. More recently, she recognized that bottled water was being criticized for being environmentally irresponsible. Her product, Fiji Water, was under attack not only for its use of plastic bottles but for the energy used to transport it from the source to the marketplace. Resnick responded immediately to these criticisms and in short order took steps to make sure that her company was "carbon neutral." According to Resnick, the lesson from this experience was that in the digital age businesses must pay attention to what the public is saying and be prepared to respond to it quickly when necessary.

New Approaches to Offensive Content

FCC Chairman Martin's proposals were aimed squarely at the cable or broadcast media, which have had considerably fewer free speech protections than the printed press (which has benefited from First Amendment absolutism). None of the regulatory requirements that have been applied to electronic media—including restrictions on indecency, requirements to show three hours a week of children's programming, rules for "equal time" advertising for political candidates, or "must carry" mandates—apply to the print media.

As the Internet emerged as a major force in the 1990s, questions arose about what sort of regulatory regime should be applied to its contents. A

1997 Supreme Court decision held that the Internet should receive the level of protection accorded to the printed world and would not be subject to the restrictions that had been imposed on broadcasters. Martin's commitment to maintaining or even expanding the regulations on the cable and broadcast media contrasts sharply with the approach to content regulation described by Viviane Reding, Commissioner for Information Society and Media for the European Commission. Under the European approach, Reding explained, it is "not the infrastructure by which a program is distributed" that determines the form of regulation. If content is deemed to be offensive (because of the use of hate speech, for example) and is barred from being broadcast, it also may not be displayed on the Internet.

In the United States, the medium—not the message—is still significant in determining the extent of content regulation.

Leslie Harris, president and CEO of the Center for Democracy and Technology, challenged this approach as a rationale for "regulating content on the Internet, except for print." Reding conceded that in Europe, "We regulate TV-like programs even if it is on a personal computer." Martin, who spoke in a dual-keynote with Reding, responded that the American approach "distinguishes between a push medium and a pull medium," with greater regulation over "push" (cable and broadcast) versus "pull" (video-on-demand or the Internet). In the United States, in other words, the medium—not the message—is still significant in determining the extent of content regulation.

Part of the reason the Supreme Court struck down the application of indecency regulations to the Internet was that a "least restrictive means" existed for shielding children from offensive content: the availability of filtering software. Filters installed on personal computers as well as on Internet providers' servers can be programmed to automatically screen out unwanted content such as pornography and unsolicited e-mail "spam." Because the use of filters is less restrictive than other means of regulating content, the Supreme Court cited their existence as a rationale for striking down the Communications Decency Act (CDA) of 1996.[1] The Supreme Court also placed heavy emphasis on the value of filters in a 2004 decision that effectively undercut the Child Online

Protection Act of 1998—which, like the CDA, attempted to regulate objectionable material on the Internet.[2]

Having proven itself both legally and practically in the online world, filtering may begin to play a role in the controversy over indecency on television. Broadcasters are seeking to use the availability of filtering technology to justify why indecency laws can no longer pass constitutional muster, even for broadcast television. In a new case concerning indecency on television that the Supreme Court is currently considering whether to take (*Fox Television Studios v. FCC*), Fox relies heavily on the existence of the "V-chip," which all manufacturers have been required to build into television sets sold in the United States since 2000 and set owners have the option of activating. Cable already is exempt from indecency law because it is a subscription medium and because it can "filter" shows and channels the subscriber wants blocked.[3] Now broadcasters are claiming that the V-chip provides the same ability for viewers of their programming.

> **Technological abundance has made informational scarcity a thing of the past.**
>
> *Julius Genachowski*

The V-chip generally has not been regarded as a successful model for controlling content, however. Julius Genachowski, co-founder and managing director of Rock Creek Ventures and a technology advisor to Senator and Presidential candidate Barack Obama, spoke for many Americans when he said that technology both undermines the core rationales for previous restrictions on speech and "creates opportunities that are much more interesting and sophisticated than the V-chip that will really help parents do what they want to do…. We are in the early stages of this." Technological abundance has made informational scarcity a thing of the past, Genachowski said. The challenge and opportunity is to use "more speech as a solution to bad speech."

Beyond the V-Chip: Filtering, Labeling, and Rating Internet Content

Michael Gallagher, president of the Entertainment Software Association (ESA) and former head of the National Telecommunications and Information Administration (NTIA) under President George W.

Bush, said, "please, no V-chip for Web 2.0." Other approaches, generally based in software rather than hardware, have been developed that offer more sophisticated and flexible techniques for dealing with offensive content online.

Internet content can be filtered with stand-alone software or in a Web browser such as Microsoft's Internet Explorer or Mozilla's Firefox. According to Stephen Balkam, CEO of the Family Online Safety Institute (FOSI)—which succeeded the Internet Content Rating Association (ICRA) in promoting the use of filtering, rating, and labeling—ICRA had been pushing for incorporating such screening systems in Web browsers for more than a decade. In 1996 Microsoft included a filtering system in its browser but refused to turn the filter on as a default. Balkam explained that civil liberties groups argued at the time that any sort of filtering, even if under the control of individual users, was a potential form of censorship, and many online activists opposed voluntary as well as mandatory uses of filtering.

Today's filters are considerably more sophisticated and effective than earlier versions. Search engines such as Google and Yahoo! now incorporate filtering technology that offer a "safe search" option. For both companies, the default is that the "safe search" is off for text searches but on for image searches. Finally, a form of parental control "filtering" can be done through a cable or satellite set-top box, whether provided by the system operator or by an independent manufacturer such as TiVo.

For Balkam, these technological tools are essential to shielding children from exposure to pornography and other sexually explicit material that he believes to be genuinely harmful to minors. Balkam cited anecdotal evidence about the impact that hard-core pornography is having on a generation of Mexican kids who are being exposed to such material in cybercafes and in schools without filters. "They are finding it very difficult to get into intimate relationships," Balkam claimed.

Although filtering will continue to exist, it may be superseded at least in part by a "labeling and rating" regime that is emerging as a new Web 2.0 paradigm for dealing with objectionable content. Many of the recommendations from conference participants dealt with labeling and rating schemes as opposed to mandatory filtering. Under this approach, the act of labeling content is followed by the selection of a rating, which may (or may not) be followed by filtering of content based on that rating.

Labeling, also called "tagging," is used by bloggers to describe the subject matter of their own content. According to Peter Hirshberg, chairman and chief marketing officer of Technorati (a search engine for blogs), someone labels content to be found, not to be filtered. These tags are "metadata" that can be searched by Web users who are seeking content of interest to them. (Another instance of "positive" tagging is when bloggers mark material with a Creative Commons license.)[4] Because many bloggers tag their content, search engines such as Technorati can determine whether a particular blogger is being accurate about the subject matter of his or her tags. Hirshberg said this systematic labeling by bloggers creates a "self-cleansing mechanism." This is just one example of how the Web 2.0 is providing "lots of cues" on which Internet users are beginning to rely.

Whereas "positive" tagging and labeling may help people find and be found on the Web, "negative" tagging or labeling might provide an effective means for screening out undesirable content. This approach is based on the traditional liberal premise that different people have different value systems and should be free to make choices that are consistent with their values. As Balkam observed, the purpose of labels such as those provided by FOSI (see sidebar below) is to provide a neutral means of describing content. Once the content is described, others can do the rating and filtering.

Content Labeling Categories Used by
Family Online Safety Institute

- Presence or absence of nudity
- Presence or absence of sexual content
- Depiction of violence
- Language used
- Presence or absence of user-generated content and whether this content is moderated
- Depiction of other potentially harmful content such as gambling, drugs, or alcohol

Source: www.fosi.org/icra

For example, although violent speech and hate speech are not illegal in the U.S., many people object to both. Other commonly objected-to sorts of content include excessive commercialism and the promotion of products or services like drugs, alcohol, tobacco or gambling that are deemed undesirable. Labeling could make it easier for individuals to avoid the specific types of content that they find offensive without limiting others' access.

Rating is different from labeling. Whereas labeling merely identifies the subject matter, rating puts a value judgment on that content. Perhaps the best-known and most successful content rating system is that used by the Motion Picture Association of America (MPAA). This system's simplicity is widely regarded as its strength: Initially it included a "G" for General Admission, a "PG" for Parental Guidance, an "R" for Restricted, and an "X" (succeeded by "NC-17") for mature films. Eventually, a "PG-13" category was added.[5]

Labeling merely identifies the subject matter; rating puts a value judgment on that content.

With the introduction of the V-chip, television broadcasters began to emulate this system.[6] The TV rating scheme has more categories and more complicated ratings, however, which has contributed to its relative failure, according to several conference participants. The Entertainment Software Rating Board uses yet another system to rate video games.[7] Although it too is complicated, the ESA's Michael Gallagher said that its use of "descriptors"—brief explanations of the reasons a video game received a particular rating—has made the system more effective. The film and television industries have emulated this system.

The next step in the evolution of content rating may be the emergence of a diverse group of third-party raters to eliminate what now is an effective monopoly of industry trade associations. An example of an independent rating group is Common Sense Media, which provides labeling and ratings across a variety of media, including movies, TV programs, DVDs, games, music, websites, and books. Common Sense Media breaks its labels into four categories: sexual content, violence, language, and message. The fourth category encompasses three subcategories: "social behavior," "commercialism," and "drugs/alcohol/tobacco." After labeling content in this fashion, Common Sense Media takes the next step and provides a rating of red, yellow, or green for each of

its categories. It also offers three sets of ratings—by the organization itself, by adult users, and by child users.[8]

Conference participants focused on how filtering or a combination of labeling and rating could address objectionable speech across different forms of media.[9] They generally opposed any use of labels, rating systems, or filters as a means of government censorship and agreed that such efforts should be focused on protecting children. One group of participants went further, however, suggesting that tagging, or labeling, of content across media should be required.

> **Labeling represents a means of empowering parents and media consumers through "disclosure, not censorship."**
>
> *Robert Pepper*

As Robert Pepper, senior managing director of Cisco Systems, explained, labeling represents a means of empowering parents and media consumers through "disclosure, not censorship." The proposed system would operate across platforms: broadcast, cable, movies, stored media, games, mobile handsets, and the Internet. The group of participants working on these issues proposed that a technical standards group such as the Institute of Electrical and Electronics Engineers (IEEE) could develop a technology standard for labels or tags. More controversially, the working group proposed that nonlabeled content could be excluded by filters and that falsely labeled content could be tagged as "black list" and therefore also subject to filtering. Finally, the group proposed that the purchaser or user of any device with a filter—whether a Web browser, a TV set, a set-top box, or a mobile phone—should be required, on first use, to choose a filtering level. In other words, the filter would be neither "on" nor "off" by default. Gallagher compared this requirement to the Entertainment Software Ratings Board's point-of-sale model, which requires sales clerks to verify the age of the purchaser of its products to ensure compliance with age rating schemes. Such steps would compel consumers to make more conscious choices about content.

Harmful Content

Some FOCAS participants were concerned about the potentially harmful effects of violence or incitement to violence on television and radio. Among these was Geoffrey Cowan, dean emeritus of the USC Annenberg School who served as the director of the Voice of America under President Bill Clinton. Cowan described what he regarded as an extreme example of harmful speech: At one point in Rwanda's mid-1990s civil war, a radio station in Rwanda spread false—and dangerous—information by broadcasting reports that certain locations would be safe from violence. In fact, those were the very locations at which many of the nation's Tutsis were massacred.

Most of the discussion about objectionable content, however, dealt with it as "offensive" rather than "harmful," although the line between them is not always easy to draw. Parents go to the trouble and occasional expense of using filtering systems because they want to prevent their children from being exposed to such content. Yet if someone is physically attacked by an assailant who has spent 25 years playing violent video games, said Tracy Westen of the Center for Government Studies, that distinction is no comfort to the victim—whose injury may be attributable to harmful speech.

Missing Content

What about potentially "missing" content? FOCAS participants took note of the shrinking news hole within newspapers and cutbacks in overseas reporting, as well as the apparent decline in the number of tough investigative stories in comparison to previous decades. What participants found important about this issue, however, was not that content is objectively absent but that vital information is unavailable to citizens who need it or want it, even if the information exists somewhere. Tagging tools are becoming central to the ecology of Web 2.0 and can perform a salutary function. Yet these tools, and the Web itself, are not being used by everybody. A significant level of "new media" skills—education in the tools of digital literacy—are needed to enable citizens to find, understand, and make good use of all the content that is available. The discussion in Aspen focused on both sides of this equation: the "supply side," which involves strategies for increasing the quantity and quality of available information, and the "demand side," which involves creating more

skilled—and more demanding—media consumers (and helping consumers become producers of their own content).

Several recommendations that focused on the supply side emerged from the roundtable. For example, FOCAS co-chair Reed Hundt, a former Chairman of the FCC under President Bill Clinton, suggested—as an exercise to focus the analysis—that telecommunications companies should be required to return to being "common carriers" and that they be strictly forbidden from having any control over the content transmitted on their networks. Robert Pepper of Cisco Systems responded by noting that the service provider industry would argue that "keeping them out of the content business actually has costs, to them and to the consumer."

Hundt also argued for changes to tax policy that would enable non-profit organizations to get actively involved in making bids for newspapers up for auction. Andrew Kohut, president of the Pew Research Center for the People and the Press, supported reinstatement of the rule that all radio stations be obliged to broadcast five minutes of news on the hour.[10] "Getting people to eat their spinach is important," said Kohut. He claimed that the fragmentation of news and editorial content is dividing the nation into more-informed and less-informed segments. "The people who want to know have more material to access, they are smarter, they are better served." Those who are not watching television news or reading a newspaper, however, "don't pick up nutritious" information. The average American's grasp of knowledge hasn't increased from 1990 to 2007, Kohut said, "even though absolute levels of education are up." The problem is that "smaller and smaller niche audiences are doing what they want to do with information," while the average citizen suffers. Kohut's proposal to expand radio news coverage emanated from the notion that "people used to bump into the news when they went to do other things."

John Hart, president and CEO of the National Democratic Institute, countered that we may not be recognizing all the ways in which people are "bumping into" news today. Hart cited the role the somewhat less-visible medium of talk radio played in getting the Hispanic community involved in large peaceful demonstrations that took place around the country against anti-immigration provisions in proposed Congressional legislation in 2006. Arianna Huffington, co-founder and editor in chief of *The Huffington Post*, took issue with the notion that requirements to ensure an adequate supply of quality news were neces-

sary. She argued that American media consumers are "finding that information by themselves," including on blogs such as hers. Many people regard *The Huffington Post* as a model for a new kind of digital newspaper. "It is not about eating your spinach. You have to present [the news] in an engaging way," Huffington said. The loss of serendipity, or the fear that the Internet would evolve into a big version of the "Daily Me"—which some scholars predicted in the early days of the Internet—does not appear to be happening, at least so far, in the Web 2.0.

The notion that blogging will replace the reporting of traditional journalism struck some FOCAS participants as dangerous, however. Jonathan Alter, senior editor of *Newsweek*, worried, "We are moving out of a realm of fact toward a realm of opinion." Alter observed that in the ongoing debate about immigration, "passion and opinion have superseded reason and fact."

"There is an under-investing in the editorial content that most people are looking for," said Stacey Lawson, co-founder and senior fellow of the Center for Entrepreneurship and Technology at the University of California at Berkeley. To counter the cacophony of news and information in the Internet, Lawson argued for incentives to create "affirmative content"—the high-quality journalism that can be a "vitamin, if not the medicine" that is necessary for a healthy society.

Demand Side and Media Literacy

Other observers have been focusing on the "demand side" of the media equation. Henry Jenkins, professor of literature and director of the Comparative Media Studies Program at the Massachusetts Institute of Technology (MIT), is attempting to provide new media education. Among the skills Jenkins and others have identified as the most central to digital literacy are the following:

- The ability to search and find topics of interest: news, entertainment, or user-generated content,

- The ability to assess the credibility of a source, and

- The ability to create "cool mash-ups" that use and build on existing content to create new content and to publish these creations on the Web.

Jenkins's media literacy project is funded by a grant from the John D. and Catherine T. MacArthur Foundation. Elspeth Revere, vice president of the General Program at the MacArthur Foundation, said the foundation got interested in this area out of a concern about "how users deal with an abundance of information and technology."

The issue of how to motivate young people—particularly those from disadvantaged backgrounds—to become engaged in the use of these tools was a key focus of a working group on ways to encourage "prosocial content." Much of this group's discussion focused on finding ways to channel teenagers and young people, who tend to be the most adept in their use of new technologies, into understanding and creating media that promote civic engagement. The working group's most specific recommendation was that the federal government or the nation's educational systems should designate a week or a month, akin to Black History Month, that would focus on media and civic education.

Tucker Eskew, founding partner of ViaNovo and former head of global communications in the administration of George W. Bush, argued for the value of finding ways by which young people could link examples of leading historical figures into their own lives and make them more relevant in their world. Engagement in new media literacy could allow young people "to use the Web to create material that is both enlightening and empowering for them," Eskew said.

Eskew, who served as an emissary from the Bush administration to the United Kingdom immediately after the attacks of 9/11, said the British were captivated by the way Americans "celebrate and hyphenate" our diverse population (e.g., Italian-Americans, African-Americans, Muslim-Americans). Eskew related that an aide to then-Prime Minister Tony Blair exclaimed, "What we would not give to have Muslim-Britons!" as a way to incorporate individuals' ethnic identities into the central myths of the nation. Even if these "myths" oversimplify, they help to unite a nation. The new media, Eskew suggested, could provide the means by which individuals could explore and deepen their ties to their communities and the nation.

Encouraging examples of socially relevant "edutainment"—the combination of education and entertainment—can be found in places such as the new Abraham Lincoln museum in Springfield, Illinois. It also can be found in popular movies such as *Saving Private Ryan* that incorpo-

rate important themes and national events, such as World War II, in popular entertainment.

Amid all of the worries about content, there clearly are signs of hope. Tagging, new search tools, and social-networking sites that aggregate user-generated content are overcoming some previous tendencies toward fragmentation. Many FOCAS participants believed that among the key ingredients in avoiding this fragmentation are promotion of widespread digital literacy and universal broadband. This latter form of universal access will allow individuals to connect to the "Internet cloud" and access a great variety of new sources of news, education, information, and civic participation.

Media and Intellectual Property Issues

The tension in the debate over intellectual property in the digital age is easy to provoke into sharp definition. Just ask any group of people: Do recorded music and video receive too much protection, not enough protection, or just the right amount? Chances are good that there will be a lively debate within a matter of minutes. If there are participants under the age of 30, the discussion may quickly get heated.

Enjoyment of music and videos is a common bond among people everywhere. For many, however, paying for it rankles. As "sharing" digital content rather than buying or renting it becomes easier, listeners—especially young listeners—often advance the rationale that music and videos have been granted more protection than is necessary.

Yet the opposite view—that media need more protection—is just as strongly held by distributors of music and videos. Their businesses depend on controlling access to media products, and they worry about the losses they are incurring through the shift to digital downloads, much of which happens without payment or permission. In the first three months of 2007, for example, sales of music CDs were 20 percent below the previous year—accelerating the pace of a decline that *The Wall Street Journal* described as "the latest sign of the seismic shift in the way consumers acquire music".[11]

Some artists share this concern about the negative impact of digital distribution, although the positions of artists on protection of intellectual property have become more nuanced and diversified. Some performers—such as Pearl Jam, Guster, Phish, Chuck D, Limp Bizkit, and Maria Schneider—have made their music available via free downloads. In a closely watched experiment in 2007, the band Radiohead made its latest album available on the Internet before it was released commercially as a CD; then the band asked listeners who downloaded the music to pay what they thought was a fair price for it. Although many people downloaded the music without any payment, the CD quickly became the top-selling album in the United States after its release, which some observers attributed to the publicity generated by the band's online strategy.[12]

As actor and writer Stephen Collins observed, even though "copyright is sacrosanct, more musicians…are [now] willing to take the risk"

of making their music available online, convinced "that they will eventually, somewhere down the line, make a lot of money." Although some artists continue to regard file sharing and other forms of royalty-free distribution as threatening the core of their livelihoods, others have accepted the fact that digital copying and file sharing have fundamentally changed the distribution and consumption paradigm and protect-

Digital copying and file sharing have fundamentally changed the distribution and consumption paradigm; protecting intellectual property will never be the same.

ing intellectual property will never be the same. Countermeasures such as digital rights management (DRM) may stem the tide temporarily, but will never reverse the trend. A looming reality is that all parties to the copyright bargain will have to evolve in their expectations.[13]

Kevin Ryan, CEO and founder of Alley Corp and founder of DoubleClick, offered a trenchant analysis of where the shift to digital media is—and is not— having a negative impact: "No one has cited [as a problem] that people aren't listening to music anymore…no one is saying that bands aren't forming…merchandising is doing great…[music] publishing [companies are] trading at all time highs…touring is doing great. The big music companies just have the wrong end of this business model. There is just one component of the industry that is having a problem, and it is unfortunately disproportionately represented." EDventure Holdings CEO Esther Dyson agreed with Ryan's analysis and added, "The music industry has lost the sympathy of everyone by suing its customers."

Achieving the proper balance between producers and users of intellectual property is one of the thorniest and most contentious issues in the transition to digital media. This epic struggle is not really new. It predates the arrival of digital media and was nettlesome even during the earlier era of analog technologies such as audio recording and video cassette recorders. The debate accelerated sharply over the past decade, however, as the impact of digital media and the Internet began to be felt. Digital recording media are regarded as more threatening than analog media because they are easy to use and because digital copies do not degrade in quality from one generation of copy to the next. (Absent some form of

copy protection, a virtually infinite number of perfect copies of music or other digital content can be made easily from a single original copy.) Successive generations of digital media technologies, each more powerful and inexpensive than the last, have exacerbated this problem, and the global transmission capacity of the Internet has exponentially increased the velocity of unauthorized copying and distribution of copyrighted works.[14]

U.S. cultural exports in the form of music and movies in various formats generate $11 billion in revenues annually.

The Aspen Institute Communications and Society Program executive director Charlie Firestone observed that the established norms that protect tangible, physical property are accepted far more flexibly, if at all, by some users of intellectual property. The "non-rivalrous" nature of intellectual property—the fact that, by its very nature, it can be enjoyed by multiple users without lessening the experience of others or diminishing the "supply" of the property, as is the case with physical goods—accounts for this dichotomy. This tension is a significant problem, especially in a world in which building on the ideas of others and combining existing content in "mash-ups" is so culturally important.

Much is at stake in the outcome of this debate. U.S. cultural exports in the form of music and movies in various formats generate $11 billion in revenues annually.[15] Moreover, the impact of these cultural exports is more than merely financial. Former Secretary of State Madeleine Albright made a connection between the distribution of cultural materials and events and the United States' global image and reputation. Noting that American culture and music have remained popular around the world even in the midst of political tumult, she asked, "If we begin to limit the kinds of things that people still like about America, [such as] music and movies, are we undercutting what our policy could be about how America is viewed abroad?"

Framing the Debate

Clearly there is much at stake in finding the right balance between these competing views of intellectual property. Achieving a viable compromise is made more difficult, however, by the fact that positions on

either side of this issue are strongly held and tenaciously advocated. Productive, unifying discussion often is impossible, presenting a special challenge for the Aspen Institute format (which typically attempts to find a middle ground among disparate parties to an issue) and to the FOCAS participants. Howard Berman, a veteran leader in the U.S. House of Representatives as chairman of the subcommittee with jurisdiction over issues related to intellectual property law and policy, acknowledged the deep concerns of the content-producing communities about their loss of control over the use of their products in the digital age. He observed, however, that there is growing appreciation that (in an area such as patent protection) the norms of protection may have gone further than necessary to protect innovation and may even be having a counterproductive effect. Furthermore, he said, the threat of harm to the content-producing community from new media technologies has sometimes been overstated in the early parts of a cycle of innovation. For instance, the debut of the video cassette recorder, which the movie industry initially opposed as a purely pernicious development,[16] eventually evolved into a source of significant new revenue for the industry.

Noah Pepper, an undergraduate student at Reed College, representing the perspective of many young people, suggested that the differences in perspective about intellectual property issues are generationally related. Many college-age music fans firmly believe that the record labels and other middlemen in the music distribution process exact too high a price for their services, at the expense of artists. This argument may be an example of Charlie Firestone's observation that the norms of physical property do not command the same respect when translated into the realm of intellectual property. Appropriating physical property—a car from a dealership, for example—on the grounds that the dealer and other middlemen were making more profit than they should at the expense of auto workers or auto designers would be intolerable, yet the same argument often is made in the world of digital intellectual property.

The actions of copyright users in defeating copyright protection measures receive much attention; abuses by copyright holders get less attention. Gigi Sohn, president and founder of Public Knowledge, an advocacy group working "to defend citizens' rights in the emerging digital culture," cited intimidation practices by rights holders, who sometimes assert copyrights that they do not have. Even more common are cases in which copyright holders aggressively enforce rights they do

have, with results such as those reported by David Bollier in his 2005 book *Brand Name Bullies: The Quest to Own and Control Culture.* Bollier recounts a notorious case in which music copyright holders attempted to prohibit Girl Scout campers from singing campfire favorites such as "Blowin' in the Wind" unless the group agreed to pay thousands of dollars in royalties.[17] Such heavy-handed enforcement of copyrights also can be the death knell of business innovators because of the high penalties dictated by statutory damages, which Sohn argued should be abolished.

Toward a Fair Use Compromise

Despite these tensions, the conference participants were able to agree on a set of broad principles intended to clarify the fair use doctrine. The doctrine is a set of legal principles developed by the courts to allow limited use of copyrighted materials for purposes such as scholarship, criticism, satire, or commentary.[18] Users of copyrighted materials such as teachers typically make reference to a set of fair use factors that offer guidance about whether the fair use doctrine will shelter a planned use of the copyrighted material. Whether a particular instance actually constitutes "fair use" cannot be determined, however, until a copyright infringement is alleged and the parties go to court, where fair use may be raised as a defense. The court will then apply fair use factors to the case at hand and make its determination. This process is highly fact-specific, and a defendant's assessment before the fact may not match the court's evaluation after the fact. This lack of certainty and clarity in the fair use doctrine makes reliance on it uncomfortable at best and perilous at worst in all but the simplest circumstances.

This debate is about more than just individuals' risk and liability. The fair use doctrine is a safety valve that allows society to confer a limited monopoly on creators, to encourage continued creativity without entirely prohibiting free expression that relies on the use of that work. The debate is not only about the privileges and rights of producers and users, however; it also is about how copyright restrictions on speech can affect the content of debate and discourse. There are many creative expressions and possible contributions to the civic debate, Gigi Sohn asserted, that "don't see the light of day because people are scared to death" of heavy-handed or abusive enforcement of copyrights, which

are created automatically (i.e., a creator need not apply for a copyright for the copyright to exist).

Given the contentiousness of the debate and the fact that many of the FOCAS participants have roles that are at polar opposites to one another in the debate, it would not have been surprising if the participants had agreed on little or nothing except the importance of the issues at stake. Yet the discussion led to agreement on a set of principles intended to provide clarity in the fair use doctrine:

1. **A privilege for personal use.** Uncertainty about the application of the fair use doctrine has chilled personal creative expression and challenged First Amendment liberties. Therefore, the fair use doctrine should extend a broad privilege to personal use that would offer protection against infringement allegations and liability.

2. **For noncommercial uses, liberalize sampling.** Application of the fair use doctrine should recognize that new creative works build on their predecessors. To support the creation of new works, current strict limits on sampling of existing works should be liberalized for noncommercial uses. In one case mentioned by Gigi Sohn, for example, an individual who had made an amateur home video set to popular music and posted it to the Internet for amusement received a cease-and-desist letter from the music copyright holder. Such a response is generally disproportionate.

3. **For commercial uses, reduce transaction costs.** The process of legally acquiring the right to use protected material from a copyright holder can be so expensive and cumbersome that it discourages valuable work commenting on and incorporating existing works. It is essential to the continued vitality of the creative process to systematize and streamline the process by which rights are acquired.

4. **Orphan works.** In some cases, it is impossible to identify who owns and controls the rights to a work. Such "orphan works" pose a special problem for authors and artists whose efforts are

stymied by the inability to acquire proper permissions because they could face liability without such rights.

5. **Transparency for Digital Rights Management (DRM).** Such systems (typically software designed to restrict copying of digital materials) sometimes embrace restrictions not strictly necessary to the protection of the content and have been criticized as being more about "restrictions" than rights. Rightholders who invoke DRM should be transparent about what the DRM does and should be called out in cases in which, according to Reed College student Noah Pepper, DRM has been used to conceal defects in the intellectual property, such as software, that it protects.

6. **Avoid conditions that permit widespread distribution for commercial use.** Clarifications to the fair use doctrine must not be misconstrued or hijacked to evade proper copyright responsibilities in instances of widespread distribution of intellectual property for commercial use. Such practices merit no defense.

7. **Common standards beyond fair use.** All of the proposed clarifications relate only to the fair use doctrine. Developing clear and systematic ways of clearing rights for more extensive or intensive uses of intellectual property that fall outside the boundaries of fair use is essential to ensure that new creative efforts are not frustrated.

These principles are intended to be a starting point, not a roadmap or a strategy for implementation. Implementing them would require new legislation. As Representative Berman acknowledged, legislative action in the area of intellectual property is difficult because of the complex competing interests involved. Often these interests fight their way to equipoise, so unless there is broad consensus on a particular change, no movement is possible. The long lead-up to the passage of the Digital Millennium Copyright Act (DMCA) is an example of the difficulties that must be overcome to accomplish legislative change.[19] (Moreover, despite the protracted effort that was required to pass this legislation, the result has been widely criticized as embodying the wrong compromise.)

Although there is little reason to be optimistic about legislative adoption of these changes, alternative means of implementation would appear to rely excessively on voluntary restraint by copyright holders, which may not be forthcoming. Implementation of this approach also relies on compliant and consistent interpretations of the fair use doctrine by the courts; fair use precedents are generated by individual federal district courts across the country, however, so achieving a clear, consistent, and widely understood interpretation of the principles of the doctrine is a daunting task.

A worthwhile future project would bring academics in the field of media studies together with industry decisionmakers to develop a more efficient system for rights clearances.

A further limitation is that fair use principles may not go far enough to protect some important legitimate educational purposes. Professor Henry Jenkins of MIT pointed out that media studies curricula—which the FOCAS participants regarded as important contributors to the goal of teaching media literacy—typically make heavy use of copyrighted materials to provide students with objects of study. Such use tends to be so extensive, intensive, and repetitive that it may be disqualified from fair use protection. Jenkins noted, however, that no good system exists for obtaining the necessary clearances at a reasonable price. A worthwhile future project would involve bringing academics in the field of media studies together with industry decisionmakers to develop a more efficient system for rights clearances.

How Long is Long Enough?

The length that copyright protection is effective has been extended over time and now stands at a term calculated as the duration of the life of the author plus 70 years; in the case of corporate authorship, the protection term is 120 years after creation or 95 years after publication, whichever occurs first.[20] Esther Dyson of EDventure asserted that this extensive term of protection is disproportionate to the shortening half-life of intellectual property as it is overtaken in increasingly rapid cycles by the arrival of new creative works delivered in different media.

Representative Berman acknowledged "pangs" over this situation and reflected that with the benefit of hindsight, he might have been less willing to support the extension.[21]

Shortening the period of copyright protection would be difficult to accomplish. As Noah Pepper observed, however, some users of intellectual property cite the very long period of protection afforded copyrighted works as justification when they evade DRM protections.

Heath Terry, director of Credit Suisse Corporation, predicted that the norms assumed by younger users of intellectual property will become more influential over time. Perhaps jurors informed by this wider perspective might have decided an infringement case such as *Napster* differently.[22] Aspen Institute president, CEO, and author Walter Isaacson suggested that authors who are concerned about the unintended consequences of an overextended copyright protection period might take the bold personal step of insisting that their publishers cooperate to allow them to "renounce" copyright protection after a period of five years.

> **The extensive term of copyright protection is disproportionate to the shortening half-life of intellectual property. . . .**
>
> *Esther Dyson*

An International Perspective

Intellectual property rights do not exist solely within national protection regimes. Intellectual property attorney Eric Smith called attention to the ways in which national protection regimes, including that of the United States, are bound by international treaties such as the Berne Convention. In this context, discussing the issues as though U.S. actors have free rein to change copyright terms may be too facile because these commitments are recorded and harmonized in the intellectual property treaty structure.

Even within that harmonized structure, however, there are notable differences, beginning with the words used to describe the rights. Viviane Reding, European Commissioner for Information Society and Media, noted that the European Community places greater emphasis on the moral rights of creators and that the vocabulary in its regulations refer to

the rights of the actual authors of creative works. This approach is in contrast with the greater emphasis in the United States on "copyright"—which focuses on the right to make copies and therefore speaks more directly to the rights and concerns of publishers and intermediaries.

The Need for New Business Models

Teymour Boutros-Ghali, co-founder and managing partner of Monitor Ventures, suggested a different approach to intellectual property in the digital era. He suggested that rather than changing or expanding legal norms that define the balance between production and use, businesses whose profit model depend on intellectual property must find ways to monetize the use of that intellectual property and eschew what Esther Dyson of EDventure later referred to as "antediluvian business models." According to Boutros-Ghali, publishers can no longer control intellectual property in a way that excludes unauthorized or unintended uses: "In the digital world, the traditional protections of content are no longer there"—which means that publishers can no longer count on traditional legal and rights management approaches.

> **"Content creation is not a commercial act; it is a social act."**
>
> *Marissa Mayer*

Some publishers of digital content have begun to respond to this challenge. For example, video game maker Electronic Arts decided to distribute the next version of its highly popular Battlefield series of games on the Internet at no cost, rather than selling it at retail, with the intention of making money from "advertising and small in-game transactions that allow players to spend a few dollars on new outfits, weapons, and other virtual gear."[23]

This example points to a new model that offers incentives and rewards that are premised not on commercialism but the inherent attractiveness that people find in social interaction. As Marissa Mayer, vice president of Google, observed, "Content creation is not a commercial act; it is a social act." Mayer offered the success of YouTube (which Google purchased in October 2006 for $1.65 billion) as an early example and validation of this viewpoint.

The market does not serve traditional content producers alone, however. Arturo Artom, president and CEO of Your Truman Show, pointed to a case in which a relatively crude but dramatic amateur video shot on a safari in South Africa and posted on YouTube earned remunerative attention.[24]

Walter Isaacson, president and CEO of the Aspen Institute and author of several recent best-selling biographies, noted that although publishers remain doubtful about the wisdom of digitization of their books, he readily agreed to the digitization of his book *Benjamin Franklin: An American Life* (Simon & Schuster, 2003) to make it more accessible to readers and scholars. Isaacson advocated greater flexibility than traditional relationships between publishers and authors and other creators typically provide. "It should come down to empowering…individual creators" to make decisions about how to distribute their works, he urged.

> **"It should come down to empowering…individual creators" to make decisions about how to distribute their works.**
>
> *Walter Isaacson*

Although some authors might choose to distribute their work widely via the Internet, without the protections of traditional distribution (through mechanisms such as the Creative Commons license that provides a more liberal and more flexible framework for protecting intellectual property)[25] and would be willing to make a monetary tradeoff for doing so, others might not. Thus, some FOCAS participants suggested, anxiety about the disruptiveness of the increasing ease of sharing intellectual property may be overblown. The freedom of alternative distributions systems might be affirmatively attractive to some authors and creators.[26]

Finally, the market's digital transition is creating a new opportunity to empower consumers "to change the terms on which [they] deal with institutions," as Esther Dyson of EDventure described it. The personal information that consumers are asked to surrender in online transactions, which they often readily do surrender, is a form of valuable intellectual property. Esther Dyson suggested that controlling this informa-

tion—how it is collected, where it goes, and how and by whom it is used—should be a paramount concern. "Control is king," she asserted. Yet few tools are available that empower consumers to control their own information, to know what marketers know about them, to opt out of such a system, or to exert leverage vis-à-vis marketers.

> **The market's digital transition is creating a new opportunity to empower consumers "to change the terms on which [they] deal with institutions."**
>
> *Esther Dyson*

Reporting back from a breakout session in which this topic was taken on as a challenge, Dyson offered two proposals. One was for a broad educational campaign to help people understand exactly how information about them is being used. A YouTube-style contest for videos that effectively communicate this information could be a component of such a campaign. Another approach would be to form a new nongovernmental organization to create and validate best practices, standards, and tools to facilitate consumers' understanding of how their personal information is being used. An enforcement regime that protects consumers' rights would be an important part of making such an organization work.

Future of the Newspaper

During the FOCAS conference, a panel of newspaper publishers and new media executives participated in a discussion about the future of the newspaper. Newspapers are experiencing what may be the most severe economic challenges they have ever confronted. Yet none of the panelists believed that the newspapers' demise is imminent. In fact, the digital media offer traditional journalists new opportunities for gathering and reporting the news, as well as access to new audiences and new sources of revenue.

New York Times Company chairman and publisher Arthur Sulzberger Jr. observed that the new digital environment is forcing journalists to develop new skills. Reporters who have become used to filing stories to a daily deadline have had to learn to file more frequently because news can be posted online at any time: "Journalists must get out of the mindset that we take a picture of the world once a day and present it [the next day]." He also noted that the new media have enabled the *Times* to become "ubiquitous," delivering news where and when readers want to get it—in print, online, or on a mobile phone. He summed up this new, broader perspective by explaining that "we define ourselves not by the word *paper* but by the word *news* in newspaper."

Caroline Little, CEO and publisher of Washingtonpost Newsweek Interactive, described several ways in which the new media have improved the quality of traditonal journalism. For example, the new digital media have allowed journalists to provide a "more intimate experience of the news" for their audience by incorporating more images, including video, along with their written reports—in a sense, allowing print journalists to tap into some of the power that television has used to make news stories more vivid and immediate. The same characteristics that have enabled nonjournalists to use digital video—low cost and ease of use—also have enabled traditional journalists to incorporate video in their news-gathering activities.

Newspapers also have been adapting to and are beginning to take advantage of the emergence of blogging as a new form for

delivering and commenting on news. Blogs provide reporters and editors with a new, more interactive means to communicate with readers. Little noted that bloggers can play a useful role in "keeping journalists on their toes" by questioning and following up on stories in traditional media. She cited the example of how the response of bloggers to the "60 Minutes" story about George Bush's alleged attempts to evade his National Guard responsibilities led to the downfall of Dan Rather and forced CBS to issue an apology for errors in the story. William Dean Singleton, vice chairman and CEO of the MediaNews Group, added that bloggers can provide useful information and leads to stories to which professional journalists would not otherwise have access.

New distribution channels created by the Internet also are enabling newspapers to become "hyperlocal"—to report on events that may be important to one part of the community, or a single neighborhood, but have not been deemed of wide enough interest to merit inclusion in the finite space for news in a printed paper. Such local content can inspire a higher level of interest and engagement by local residents because the content is immediately relevant to their personal interests. Little noted that the *Washington Post* is heavily committed to a hyperlocal focus in its online efforts, and Singleton pointed out that "online, you can get down to [reporting] Boy Scout awards that a newspaper [such as the Media NewsGroup's *Denver Post*] could never run." He also argued that newspapers, as community-based institutions, have a singular advantage in the new digital environment: "Our [print] franchises for the future are going to be local, local, local. And on the Web, [we will be] local and hyperlocal. Because that's what we can do that no one else can do." Scott Moore, head of news and operations for Yahoo! Media Group, agreed with the importance of local content, noting that whereas "national and international news has been commoditized…[newspapers] can distinguish themselves by covering the communities that they operate in much better than anybody else can cover them."

Ironically, while the Internet is enabling newspapers to serve increasingly local audiences, it also is providing opportunities to

aggregate audiences on an ever-wider basis. According to Jake Oliver, publisher and CEO of the Baltimore-based *Afro-American* newspaper, the Internet offers him the ability to expand the advertising base for his publications: "National advertisers are more interested in placing ads with local papers because of the larger readership they can reach due to Web access."

Finally, there are some positive synergies between the old and new media. For example, Scott Moore explained how his company is now selling advertising for a consortium of 18 publishing companies representing 400 newspapers, while the newspapers are selling advertising for local Yahoo! pages—a partnership that provides economic benefits to all parties.

The Downside

Of course, the challenges to newspapers posed by the rise of the Internet are at least as great as the opportunities it has created, if not greater. Foremost among these challenges is the competition between traditional and new media for readers and advertisers. In fact, the newspaper business has been experiencing considerable turmoil marked by an ongoing wave of mergers, consolidations, and painful staff cuts at many major publications, triggered in large part by the impact of new media.

As dean emeritus and professor Geoff Cowan of the University of Southern California's Annenberg School for Communication pointed out, newspapers have lost hundreds of millions of dollars in advertising revenue to alternatives such as craigslist, which has provided a more efficient and less expensive (i.e., mostly free) alternative to newspapers' classified advertising. Singleton graciously noted that he didn't blame fellow panelist Craig Newmark personally for harming newspapers, noting that craigslist is an example of innovation at its best. Singleton added that newspapers are beginning to recapture some of the revenue they lost by creating their own online classified ads.

The newspaper business clearly is experiencing tough times. Singleton, whose company publishes more than 50 newspapers across the country, acknowledged that "we are losing revenue from

our print products that we have always depended on, and we are losing it in big lumps." He added, however, "We are also generating all kinds of new revenue that we never dreamed we could create. For the moment we are losing more revenue [from print publications] than we are generating new revenue. We think they will catch each other by 2009." Singleton noted that newspapers currently are experiencing a "perfect storm" of problems that includes the negative effects of the downturn in the economy—which inevitably impacts advertising sales—along with the longer-term impact of technology. The former is cyclical, and ad revenue can be expected to rebound as the economy improves, whereas the longer-term trend will continue to erode newspapers' readership and ad revenues.

If newspapers are going to survive, according to *New York Times* publisher Sulzberger, they have little choice but to keep cutting costs on the print side of their business and investing more in their online efforts. They cannot afford to be sentimental about their heritage: "We can't care. We are not in the business because of paper; we are in the business because of journalism. So we will keep printing on paper for as long as it makes economic sense, and at that point we will not print on paper anymore. Our customers will have been telling us to stop [because] they will have been getting that same news and information from different delivery vehicles."

William Dean Singleton of MediaNews concluded the discussion with an equally positive but unsentimental statement: "Don't feel sorry for the newspaper business. This is not a dying business."

Media Policy and Community Values

Local Media and the Future of Democracy

Alberto Ibargüen, president and CEO of the John S. and James L. Knight Foundation, began this portion of the conference by stating some fundamental premises about media and society. The first premise is that democracy is based on an informed public. If citizens are not informed, democracy is jeopardized.

The new Internet-based media may be increasing our ability to learn about what is going on anywhere in the world, but how well are they informing us of what is happening in our own neighborhoods? To what extent does the World Wide Web support local communities? The potential of the Internet to foster dialogue is encouraging. Yet even though new media promise to support "hyper-localism"—news not just about my city or town but about my particular part of town—will they fulfill the need of citizens to stay informed about the important developments in their communities?

Democracy is based on an informed public. If citizens are not informed, democracy is jeopardized.

Newspapers historically have played a key role in defining and building community through timely sharing of information. Newspapers have played a unique role in helping communities "cohere," but that role is being challenged by new media.

In his book *Fighting for Air: The Battle to Control America's Media,*[27] New York University sociology professor Eric Klinenberg points out that even in a globalized world, the physical communities in which we live remain profoundly important. We are all affected by the quality of roads, parks, hospitals, police, and city agencies in our communities. In fact, compared to many other countries, the U.S. political system allocates a great deal of power to local governments. Local media need to play a role that reflects this importance

Klinenberg argued that local newspapers—at their best—have served as "watchdogs over the powerful political and corporate interests that

shaped American cities." They have played other vital roles as well. They have helped to keep local governments honest and functioning well. They have helped create a sense of community by providing a shared platform for diverse interests. In many metropolitan areas that encompass multiple municipal jurisdictions, the local newspaper provides a unifying voice and vision for a region. Good local reporting—such as the early coverage of the AIDS epidemic in San Francisco or the initial reporting of sexual abuse by priests in Boston—often has been the first step in uncovering what turn out to be important national stories.

Klinenberg underscored these concerns by asserting that giving people the ability to see only the information that interests them is creating a real crisis for news. As it becomes easier for people to focus on just the content they want, news organizations run the risk of losing support for the important, and costly, tasks of gathering and reporting hard news. We could end up with a plethora of sports and entertainment news—an "*US Weekly* world," as one FOCAS participant described it—at the expense of hard news that a healthy community needs.

Several FOCAS participants cautioned against over-romanticizing the virtues of traditional newspapers. Michael Lomax, president and CEO of the United Negro College Fund (UNCF), recalled that minority communities were largely invisible in the mainstream media when he was growing up. Not until the civil rights movement in the 1960s did big city newspapers and other major media begin to hire minority journalists who provided coverage of their communities. National Public Radio (NPR) senior correspondent Juan Williams also recalled that when he was growing up in New York, local coverage left much to be desired. In fact, until the 1960s, Williams suggested, local media often were effectively controlled by big city mayors.

Although newspapers can serve important civic functions, they also are businesses. For much of the 20th century, they were highly profitable businesses. The proliferation of 24-hour news channels and the rise of the Internet have sharply increased the competition facing the newspaper industry, however. Circulation of printed papers has been stagnant, and one of the most important sources of newspapers' revenues, classified advertising, has begun to be eroded by new, mostly free online competitors such as craigslist (see sidebar "Future of Newspapers").

Signs that newspapers and other local media are under stress are increasingly evident. Several major newspapers have announced cost-cutting measures that have included closing foreign bureaus as well as cutting local staff. In 2007, for example, the Hearst-owned *San Francisco Chronicle*, which had eliminated 100 staff positions two years earlier, announced that it was eliminating another 25 percent of its editorial staff. *The Philadelphia Inquirer*, which cut 75 newsroom staff less than two years ago, recently eliminated another 70 positions after a change in ownership. Over the past five years, the "news hole" in many major metropolitan newspapers has been reduced by 10 to 20 percent.[28]

Newspapers are not the only local media cutting back on expenses, particularly in their coverage of news. Radio stations have eliminated the jobs of hundreds if not thousands of reporters, and local television news operations in many markets also have experienced cutbacks.

The New Media Landscape

The new media landscape clearly is very different from the old environment, and more changes are in the offing. Today's readers have shorter attention spans and want shorter stories. The pace of news also is much quicker than in the past. As Jeff Cole of USC's Annenberg School for Communication reported in his opening presentation, many young people today who are growing up in a digital world may never read a printed newspaper.

The new media have brought benefits as well as problems for traditional media. Arthur Sulzberger Jr., publisher of *The New York Times*, pointed out that his company has doubled the readership of its newspapers by putting them online. On the other hand, the company is still attempting to figure out how to "monetize" these new readers. In fact, in September 2007, two years after it had begun charging for online access to some of its content, the *Times* announced that it had decided to make access to virtually all of its content free. A spokesperson for the *Times* explained that even though the company was generating money from paid access, it decided that advertising was a more promising source of revenue than subscription fees, and the best way to keep readership growing was to provide free access to virtually all of the newspaper's current content and archives.[29]

Sulzberger also expressed concern about the continued ability of newspapers to support expensive news gathering. He noted that when the Iraq War started in 2003, the invading troops were accompanied by more than 1,000 reporters. By the summer of 2007, however, there were only 50 non-Iraqi journalists left in Iraq, and half of them worked for either *The New York Times* or the Associated Press. Caroline Little, CEO and publisher of Washingtonpost Newsweek Interactive, concurred, noting that local advertising was largely responsible for supporting newspapers' big newsrooms, but that type of advertising does not exist yet in the online world. Like *The New York Times*, the *Washington Post* has gained many readers through its online presence, most of whom are outside its local circulation area. For better or worse, Little noted, the Post is still primarily a local paper—its metro desk is the newspaper's largest editorial department—and it is concentrating its online efforts on providing "hyperlocal" news coverage to build local readership that will, she hopes, eventually attract enough local advertising to replace the revenue lost on the print side of the business.

William Dean Singleton, vice chairman and CEO of the MediaNews Group (which owns 57 daily newspapers in 12 states with a combined circulation of more than 2.5 million readers), noted that not all newspapers were in trouble. In fact, business actually is getting "better and better" for the 800 newspapers in smaller communities with circulations of under 20,000. As a group, these papers have not been losing circulation or advertising, and the Internet is providing "another pipe" for them to distribute news. Papers in medium-sized cities are holding their own. Only papers with circulations of more than 100,000 are having problems. Singleton acknowledged that for the largest newspapers— those in major markets with circulations of more than 250,000— declines in circulation and the loss of advertising revenue do represent "a bloodbath." These newspapers will have to adjust to a new reality, but Singleton warned that their condition is likely to get even worse before it begins to stabilize or get better.

Radio also is going through major changes that have reduced the amount of local news available in that medium. Jeff Smulyan, chairman and CEO of Emmis Communications, which owns and operates two dozen AM and FM radio stations in seven local U.S. markets (as well as several stations in Europe), lamented that "the AM band is being abandoned to aging white conservatives" and that with the exception of sta-

tions in a few large cities, AM radio is becoming "a sea of conservative talk," while liberals are relegated to listening to public radio. William Kling, president and CEO of American Public Media, agreed that public radio was one of the last bastions of in-depth broadcast news. The "Clear Channelization" of broadcast radio, in fact, has led to the elimination of much local news. As commercial broadcasters have given up on news, however, the audience for public radio continues to grow.

Mark Lloyd, senior fellow at the Center for American Progress, pointed out that the consolidation of radio station ownership and the resulting loss of local content did not happen in a vacuum; it came about as the direct result of federal communications policy. FCC Commissioner Jonathan Adelstein affirmed that federal policy is an important tool in ensuring the quality of media available to the public. He noted, however, that the FCC has backed away from holding broadcasters responsible for serving the public interest in recent years. Despite the inroads made by new media, broadcast licenses still are very valuable and generate substantial cash flow; nevertheless, he asserted, broadcasters are no longer being required to give anything back to the public in return for their licenses.

Several leaders of new media ventures commented that trying to judge these new media by the standards of older media is misleading, and by focusing on what is being lost, critics are losing sight of what is genuinely new. Scott Heiferman, CEO of meetup.com, asserted that his company is not in the "media" business at all and that "the Internet is not about media"—at least in the sense of mass media. The Internet is more like the telephone than like television: What people are doing on sites such as MySpace or craigslist is talking to each other, not passively consuming content created by others. These sites are about supporting friendship and commerce and building neighborhood connections. The new civic society that is emerging will "look like the Internet—decentralized and Napsterized." Rather than providing an overarching external structure that people can relate to (a "sense of community"), these sites are providing people with the means to self-organize—to create their own communities. In Heiferman's view of the world, *contact*, not *content*, is king.

Craig Newmark, founder of craigslist.com, agreed, explaining that the goal of craigslist is to "provide a platform that allows people to con-

nect with each other about what is important to them, then get out of the way." The Internet serves as a "force multiplier" for individuals rather than supporting the power of existing institutions.

Second Life also is a platform—but it enables people to experiment with "building new identities." Cory Ondrejka, chief technology officer (CTO) of Linden Lab, the creator of Second Life, suggested that most of the participants in the FOCAS conference may be too old to fully grasp what is going on with the Internet. Responding to those who are calling for greater regulation of the media, Ondrejka noted that the Internet has grown and created a tremendous amount of value without regulation.

Acting Locally

Several local communities are acting entrepreneurially to expand access to broadband networks for their residents. At the time of the Forum, Graham Richard was the mayor of Fort Wayne, Indiana, which he described as a Rust Belt city that has been losing many of its large employers. He noted that several surveys of local businesses found that having access to a high-speed network was an important factor in whether those businesses were willing to expand. In response, he has been actively promoting development of a municipal broadband network in Fort Wayne. Now he is concerned with how this capability can be used to strengthen community connections. Kevin Greenberg, a former attorney for the city of Philadelphia, noted that his city also has been attempting to develop a municipal wireless broadband network to counter a flight of people and jobs to the suburbs and outlying areas. Simply providing Internet access is not enough, however; useful or interesting content is needed to give people a reason to go online. Government typically has not been good at doing this, however.

NYU professor Eric Klinenberg sounded a note of caution about getting overly enthusiastic about the power of the new media to replace the role played by traditional media. He reminded participants that uncovering major news stories often requires the investigative skills of professional reporters and the ability to pursue a story over time that has been supported by major news organizations. Although amateur bloggers may be a source of some news, most of them still depend on professional reporters to uncover the stories they pick up and comment on.

In summing up the session, Eric Newton, vice president of the journalism program at the Knight Foundation, noted that local media are shrinking while almost everything else is growing. The question is whether the new media can fill the role that local media have played in sustaining local communities, which are critical components of our democracy. Although no one really knows where the new media are taking us, reporters and the traditions of journalism they stand for must be able to survive.

Policy Options to Protect the Public Interest

Although there was little disagreement among the FOCAS participants about the fact that new media are posing a serious challenge to traditional media, there was less agreement about what should be done about it. Participants considered a range of possible policy options to respond to the challenges posed by the transition to the new media environment, particularly perceived threats to the key historical role of local media in building and sustaining local communities.

One proposal that generated considerable interest was creation of a national commission that would examine the information needs of local communities and identify actions that would ensure that these needs continue to be met in a time of rapid technological and economic change. Dean Singleton of MediaNews Group agreed that the print and electronic media have been struggling to find a new business model that can sustain the news gathering and news reporting process and suggested that these industries would be open to help in finding a sustainable model.

There also was general agreement about the need for some sort of national broadband policy that would ensure wider if not universal access to a high-speed, two-way Internet connection, particularly for residents of poor and rural communities. Participants noted that the United States continues to lag behind many other countries in terms of the level of broadband access and the quality of broadband service.[30] (Immediately after the Forum, the Aspen Institute convened its 22nd annual Aspen Institute Conference on Communications Policy, which led to the report titled, *A Framework for a National Broadband Policy*, by Philip Weiser.)

Participants cited the example of low-powered FM (LPFM) broadcasting as both a precedent and a cautionary example of the limits of

mandating media access. Although there are approximately 3,000 LPFM stations currently in operation in the United States, their overall listenership generally is considered to be miniscule because of the limited reach of these stations' signals. An alternative option for expanding community access to local news that might be more successful is the relatively new HD radio service. Current AM and FM radio license holders have been given the right to transmit up to four separate digital signals in the bandwidth they have been historically assigned for their analog broadcasts. Some of this expanded channel capacity could be allocated to community groups that are interested in providing local news coverage.

Another proposal was establishment of a public trust fund to support creation of local content.[31] Although some participants were concerned about the implications of public support for journalism, which is based on principles of independence and impartiality, Arthur Sulzberger Jr. of *The New York Times* noted that journalists who work for NPR and for the BBC have not had many problems with being publicly funded.

There also are likely to be opportunities for innovative hybrids between old and new media. William Kling of American Public Media explained that his organization concluded that it did not have enough resources to do better journalism by using traditional models of reporting; it subsequently launched its Public Journalism Initiative, which has recruited a group of 30,000 volunteer "citizen journalists"— who do not replace professional reporters but do help suggest topics that should be covered and act as sources for stories about which they have some expertise.

In terms of content, participants also proposed that the government must do a better job of ensuring that all of the (nonclassified) information it controls is readily available online. The new media can empower citizens, but only if citizens have access to critical information about what their government is doing. People have come to expect that important information is instantly available; the fact that much supposedly "public" government information remains offline therefore is increasingly anachronistic. For example, Eric Newton of the Knight Foundation noted that one can easily find online reviews of restaurants from Zagat and many other sources, but finding out which restaurants have been cited for public health violations—information that is of obvious interest to the public—is more difficult.

In the wake of this discussion of means to maintain or improve the quality of information available to the public, several participants questioned whether the real problem was on the "supply" side of creating and distributing content or the "demand" side of audience interest in that content (the same distinction that arose during the discussion of "missing content"). At the least, some far reaching changes appear to have taken place in how a substantial part of the audience wants to get access to news and information.

Mobile phones empower users to be producers as well as consumers of content.

For example, some participants questioned whether young people who have grown up in the new interactive media environment would ever consider radio (or newspapers) as an important source of news. The current generation is more likely to connect with content that is delivered to their cell phones, which are increasingly ubiquitous and more engaging than traditional one-way broadcast media.

Scott Heiferman of meetup.com suggested that young people equipped with a "$29 iPhone with connection speeds five times faster than today's phones with service costing $15 per month" (the sort of technology that presumably will be available in the not-too-distant future) will be far more civically engaged than those in any previous generation. The most promising alternative for providing universal access to important community information may be in the form of mobile phones that empower users to be producers as well as consumers of content. Mobile blogs, or "moblogs," are an early manifestation of this trend.

Participants generally agreed that the most fundamental issue was not technology but citizen's engagement—a point Arthur Sulzberger Jr. summarized by asking, "How do we make people feel that it is important to know about civic information?" Although there was general consensus about the importance of engagement and real concern that children today are "growing up civically illiterate," there was a lively debate about the most effective means for encouraging greater engagement.

One proposal called for initiatives that would "educate and entice" young people into become more engaged. Schools obviously have an important role to play in educating students, but more effective strate-

gies may involve using the new technologies that young people have already embraced—including the Internet, entertainment media, and interactive games—to entice them into participating. There may be a useful role for philanthropy to support the development of innovative strategies to promote engagement.

Several advocates of new technology argued that engagement is not something that can be "planned" or promoted in a systematic, top-down way. Instead, civic engagement will be the result of a robust participatory architecture created by the new media. Scott Heiferman summarized this perspective by asserting that "engagement will come from a foundation for self-organizing that will allow people to engage with each other in ways that we can't predict." Participants cited several notable examples of ways in which this process is already taking place. Fort Wayne mayor Graham Richard noted that the new media already are playing some important unanticipated roles in fostering grassroots democratic communications: When the shootings occurred at Virginia Tech, Facebook was an important platform for students to communicate with each other; in the aftermath of Hurricane Katrina, craigslist played a key role in helping people stay connected and find the information they needed to survive. Jordan Greenhall, chairman of DivX, noted that Senator and presidential candidate Barack Obama created an "online platform for participation" that quickly attracted 75,000 young people who began to actively communicate with each other. Esther Dyson, CEO of EDventure Holdings, challenged the participants to imagine "an eBay that encourages civic engagement rather than commerce."

> **Civic engagement will be the result of a robust participatory architecture created by the new media.**
>
> *Scott Heiferman*

Michael Lomax, president and CEO of the United Negro College Fund (UNCF), reminded participants that not all young people have the same access to or ability to use new technologies. Lomax argued that efforts need to be made to equalize access for disadvantaged kids and that public schools continue to be an important mechanism for providing the skills young people need to function fully in a democracy.

Initiatives to Strengthen Local Media

Initiatives to Strengthen Local Media

To provide a further opportunity to explore some of the ideas and recommendations made at the FOCAS conference for initiatives to preserve and extend local community media, the John S. and James L. Knight Foundation (a senior sponsor of FOCAS) sponsored a follow-up meeting that was held in Washington, D.C., in November 2007. Highlights of this meeting are presented in this section.

The purpose of this follow-up meeting was to discuss three specific policy proposals that came from the FOCAS discussion in Aspen in August. The three proposals, which were intended to preserve and extend local community media in a period of rapid technological change, were as follows:

- Financial support for developing new ventures in locally based digital technology and media,

- Providing increased access to existing media, including leased access to digital broadcast channels, and

- Creation of a national commission to consider strategies to ensure quality and local relevance in media content.

Financial Support for Developing New Ventures in Locally Based Digital Technology and Media

High-quality journalism may be critical to the health of a community, but supporting it is expensive. Newspapers and broadcasters were able to pay for local news because they were profitable businesses. Although the new media offer the exciting promise of expanding the range of local voices and encouraging new forms of community dialog, it is not clear whether these new media will fulfill the important roles that professional journalists have traditionally played. Many interesting experiments have been launched in local media, but finding business models that generate the income required to sustain these efforts has proved difficult.

In this period of transition, funding that would underwrite the costs of creating and disseminating local content could be useful. This funding would not be designed simply to preserve old media models; it would be intended to encourage development of new models that would play a useful role in providing access to the kinds of information local citizens need to be active, informed participants in the lives of their communities.

Government Initiatives

There are a few notable precedents for such a fund. The most prominent example is the proposed Digital Opportunity Investment Trust (DOIT). The concept originally was formulated by Newton Minow and Lawrence Grossman (see sidebar "The Digital Opportunity Investment Trust (DOIT) and the Digital Promise Project"), who envisioned a fund of $20 billion derived from spectrum auctions to support projects that would use new digital technologies to produce valuable educational and cultural content. As Mark Lloyd, senior fellow at the Center for American Progress, pointed out, however, the funds that have been generated by federal spectrum auctions to date have gone directly into the U.S. Treasury to help reduce the deficit, rather than being earmarked to support worthy public purposes. The Digital Promise Coalition (*www.digitalpromise.org*) has continued to advocate for the broad goals of DOIT but more recently has focused its efforts on relatively modest proposals.

The Digital Opportunity Investment Trust (DOIT) and the Digital Promise Project

The Digital Promise Project was launched in 1999 when former Federal Communications Commission (FCC) Chairman Newton Minow and then-Public Broadcasting Service (PBS) President Lawrence Grossman were invited to serve as co-chairs for a project to "recommend public policy for utilizing the dramatic new information technologies in the public interest."[33] The project initially was supported by grants from the Carnegie Corporation, the Knight Foundation, the MacArthur Foundation, and the Open Society

Institute. In 2003 a Congressional appropriation provided funds to the Federation of American Scientists (FAS) to support preparation of a report that would contain the project's recommendations.

The report, submitted to Congress in 2004, called for creation of a Digital Opportunity Investment Trust (DOIT) that would provide funds to "help digitize library and museum collections…develop advanced interactional educational software and content and research and invest in new educational and training technologies." DOIT would be funded by the federal government with revenues derived from future spectrum auctions. The report recommended total funding of approximately $20 billion, which would generate enough revenue from interest to support an annual budget of about $1 billion.

DOIT was envisioned as "an independent trust fund, a government originated non-governmental organization [that will] partner with corporations, foundations, and other sponsors in undertaking projects, the vast majority of which will be carried out by qualified outside organizations."

The Digital Promise Coalition (*www.digitalpromise.org*), operating under the umbrella of FAS, has continued to advocate for these ideas and seek to get them funded. In 2003 and 2004, the Coalition received federal grants totalling approximately $2 million to support development of three prototypes intended to demonstrate the potential of new educational and training software. The Coalition introduced the three prototypes at a Congressional briefing in May 2006.

Legislation to create DOIT has been introduced in Congress on several occasions but has not been enacted. In September 2007 Rep. John Yarmuth (D-KY) introduced HR 3631, the Digital Investment Act of 2007, which calls for creation of a National Center for Learning Science and Technology Trust. The bill calls for funding to come from Congressional appropriations and does not explicitly identify spectrum auction fees as a source of funding.

A second precedent is the Telecommunications Development Fund (TDF) (see *www.tdfund.com*), which was authorized by the 1996 Telecommunications Act. The Fund is a quasi-public organization that received approximately $50 million from interest earned by deposits made by bidders in upcoming spectrum auctions. The TDF acts as a venture capital fund that has made investments in several media-related small businesses. According to Jane Mago, senior vice president and general counsel of the National Association of Broadcasters (NAB), the Bush administration has proposed to eliminate funding for the TDF, although that has not yet happened.

> ## "Media literacy depends on having strong media."
>
> *William Kling*

Several FOCAS participants raised concerns about having the government provide funding for the creation of content. James Gattuso, senior research fellow at the Heritage Foundation, cautioned that focusing on the "problem of local media" from a national perspective can be dangerous when the most appropriate solutions to local problems are likely to come from those localities. Gattuso also asked whether the problem being addressed is really a "supply side" issue of "missing speech"—the lack of enough high quality local journalism—or whether the fundamental issue is on the "demand side": the public's declining interest in hard news. If the latter is the primary driver, it is problematic for the government to get involved in attempting to correct people's decisions about what they are interested in. Gattuso also noted that media critics seem to worry both that the media are getting too concentrated and that the media are getting too fragmented. He challenged critics to be clearer about how these two viewpoints relate to each other.

Tony Riddle, executive director of the Alliance for Community Media, agreed that the government should not be directly involved in supplying "missing content." Riddle asserted, however, that the government already is deeply involved in determining the structure of media and the "rules of play" that shape what content is and is not available in communities across the country. Current rules, he said, favor "larger companies serving larger areas." Rules that will protect local voices that are the product of local businesses are needed. Mark Lloyd of the Center for American Progress added that channeling government funds into an independent trust fund would provide a well-established way to "get the

government out of the content business." He cited the Corporation for Public Broadcasting and the National Science Foundation as examples of government-funded entities that are able to function independently.

William Kling, president of American Public Media, argued that "media literacy depends on having strong media." Without access to high-quality media, there will not be much of a basis for media literacy. Kling worried that we need to take some action to support "what is left of strong media institutions" to ensure their survival.

In response to the objections raised to government getting directly involved in subsidizing missing speech, several participants argued that encouraging the survival of (or the creation of) a literate, informed citizenry is a legitimate role for government. Kevin Greenberg, former chief deputy solicitor for the City of Philadelphia, argued that "enhancing citizenship is a valid aim for government."

Private-Sector Initiatives

Although efforts to secure federal funding have had a mixed record, several promising ventures have been launched with private funding. ProPublica (*www.propublica.org*) is a new "non-profit non-partisan newsroom [that is intended to] produce journalism in the public interest." When it begins operating in 2008, ProPublica will have a staff of 24 reporters, which will make it "the largest staff in American journalism devoted solely to investigative reporting." The project has received approximately $10 million in funding from a coalition of private foundations.

The John S. and James L. Knight Foundation (which also sponsored these Aspen meetings) believes that there is a role for private foundations in seeding community media projects. The foundation has established a $25 million program called the Knight News Challenge (*www.newschallenge.org*) that is providing support "for innovative ideas using digital experiments to transform community news." The first round of grants under this program was announced in May 2007. One grant under this program was made to *everyblock.com* to create an easy way for citizens in a neighborhood to find information (e.g., crime reports, health notices) that is already publicly available but is rarely found or accessed by ordinary citizens. The Knight Foundation also is attempting to raise the awareness of community foundations about the importance of local media to the health of the communities in which they operate.

The Knight Foundation also is interested in supporting "news literacy" (as opposed to literacy about entertainment or commercial media). According to Eric Newton, vice president of the foundation, this kind of literacy involves knowledge of the First Amendment as well as broader education in civics.

Providing Increased Local Access to Existing Media, Including Leased Access to Digital Broadcast Channels

Television broadcasters are in the midst of converting from analog transmission to digital transmission, with cutover scheduled for February 2009. Because of the greater efficiency of digital technology, each local broadcaster will have the ability to transmit as many as four separate over-the-air channels of programming in place of a single analog channel.

How broadcasters will make use of this capacity remains unknown. Some broadcasters may use one or more of their additional signals to provide specialized programming. For example, NBC is providing its affiliates with a Weather Channel designed to be carried on a digital channel. A portion of this extra digital capacity, however, may go unused, at least initially.

One way to bring new voices into broadcasting and to expand the number of viewpoints being heard in local communities would be to allow community groups to lease broadcasters' unused digital channels. According to Monica Desai, media bureau chief at the Federal Communications Commission, FCC Chairman Kevin Martin has indicated interest in having the Commission create rules that would govern this kind of access. Under Martin's proposal, broadcasters would be authorized to lease access to their excess digital capacity to "qualified entities," which might include minority groups or other disadvantaged community groups that would not have access to the kind of capital needed to acquire a regular broadcast license. Martin's plan would give these entities the ability to broadcast at the same power as licensees. They would have the same privileges and responsibilities as regular broadcasters, including "must carry" provisions that would require cable operators to include their programming on their systems, just as they are required to include other local stations. Desai emphasized that the process of crafting a detail rule that would govern such leased access still is in the relatively

early stages. The next stop would be for the FCC to publish an initial description of the concept and invite public comment on it.

Several participants noted that earlier attempts to expand access to electronic media have had only modest results. The Communications Act of 1984 included provisions creating a channel-leasing scheme for cable television that required cable operators to set aside up to 15 percent of their channels for leased access and required them to set "reasonable" rates for such access.[33] In January 2000 the FCC created Low Power FM (LPFM) radio service, which enabled noncommercial community groups to operate FM radio stations on frequencies that were not being used by conventional stations; these LPFM stations were limited to a relatively low-powered signal that could be received over a limited area.[34] In both instances, the amount of new programming that has been created has been relatively small, and the audiences attracted by this programming also have been small.

> **Barriers to entry for any individual or group wishing to create new programming are "going to zero."**

Jane Mago of the NAB commented that broadcasters are "intrigued" by the concept of leased access to digital channels. If broadcasters do have excess capacity, options for generating additional revenue would be attractive. Broadcasters will have concerns, however, about issues such as what their liabilities would be for programming they carry that is provided by other parties.

One way to provide a positive incentive to broadcasters to support leased access would be to leverage the public interest requirements on them. FCC Commissioner Jonathan Adelstein suggested that the Commission could agree to credit any content carried via leased access against a requirement that broadcasters provide a minimum amount of "local content." On the other hand, Adelstein warned, adding such a requirement could undermine judicial support for the Commission's "must carry" rules imposed on cable systems. In a 1994 decision on this subject, the Supreme Court upheld the FCC's rules by a narrow 5-4 margin.[35] Any further expansion of the scope of "must carry" requirements could tip the court balance against the Commission's rules.

John Kneuer, assistant secretary of commerce for communications and information at the National Telecommunications and Information Administration (NTIA), pointed out that in this new media environment, barriers to entry for any individual or group wishing to create new programming are "going to zero." On the Internet, anyone can now create and distribute content simultaneously. Given this reality, Kneuer observed, any attempt to mandate access to an existing medium is likely to be overwhelmed by the continuing evolution of technology.

John J. Oliver Jr., publisher and CEO of the *Afro-American Newspaper* in Baltimore, stated that he gets excited whenever he hears of opportunities such as this to expand the reach for the information his company generates. He is aware, however, that under a scheme such as this, what he would be getting access to is "surplus spectrum." He asked how well he can really compete with established broadcasters that have much larger budgets and larger audiences. Would leased digital access just be "another electronic ghetto," or would it have real potential to grow into a viable medium?

> **Any attempt to mandate access to an existing medium is likely to be overwhelmed by the continuing evolution of technology.**
>
> *John Kneuer*

William Kling of American Public Media noted that he runs a production company and that in his business, "it is always about the audience." The main reason public access television has failed is that it has lacked the money to create the kind of high-quality programming that will attract an audience. Even if digital channels are made available, finding the money needed to create content that people will want to watch will remain a challenge. Kling pointed out that in Minneapolis (where American Public Media is based), Channel 17 has been available for leasing, but it has had very little impact.

Tony Riddle, executive director of the Alliance for Community Media responded by noting that programming targeted at specific niche audiences works better than programming for general audiences. For example, he said, there are 25,000 Hmong (an ethnic group of China and Southeast Asia) living in the Minneapolis area, and they are watching programming that is being created for them in their own language.

Somalis also are responding positively to content that is aimed at them. Even though the absolute size of the audience for this kind of narrowly targeted programming may be small, it can provide a valuable service and achieve a respectable level of penetration within these communities.

Julius Genachowski, co-founder and managing director of Rock Creek Ventures (an investment firm that focuses on new media), agreed with the general proposition that in a fragmenting world, the cost of producing quality programming is a problem for traditional media and new media alike. Providing leased access may be a useful for specific niche communities, but it is not likely to have an impact on the broader problem of encouraging greater civic engagement among the general population, particularly among younger people. The good news is that although this group may not be reading newspapers or watching television, they are actively engaged in reading blogs, and participating in Web-inspired "meet-ups." Blair Levin, managing director and telecom and media analyst for Stifel Nicolaus, added that although leased access may promote the concept of "letting a thousand flowers bloom," the Internet already is on the way to "letting a billion flowers bloom."

Several participants returned to the point first raised in Aspen in August—that the underlying problem is promoting civic engagement.

Creation of a National Commission to Consider Strategies to Ensure Quality and Local Relevance in Media Content

Twenty years have passed since a major national commission was convened to examine the state of public media and explore opportunities for strengthening them. Two Carnegie Commissions—the first in the 1960s and the second in the 1970s (see sidebar "The Carnegie Commissions on Public Broadcasting")—played important roles in calling attention to the potential of public broadcasting and making the case for increased funding.

The Carnegie Commissions on Public Broadcasting

In 1965 the Carnegie Corporation of New York sponsored the creation of a national commission to "conduct a broadly conceived study of noncommercial television" in the United States and make recommendations for its future. The commission was headed by former Massachusetts Institute of Technology (MIT) President James Killian; its 15 members included presidents of major colleges and universities, corporate heads, union leaders, and distinguished artists such as Rudolph Serkin and Ralph Ellison. The commission report, *Public Television: A Program for Action* (New York: Harper & Row), was released in January 1967. Among its recommendations, the commission called for creation and federal funding of a Corporation for Public Broadcasting (CPB) to support creation of new programming. Within a year, with support from President Lyndon Johnson, Congress acted on the commission's recommendations and passed legislation that created the CPB.

In 1977, a decade after the original commission issued its report, the Carnegie Corporation created a second commission (Carnegie II), chaired by Columbia University President William J. McGill, to re-examine the state of public broadcasting and recommend needed changes. The commission's report, *A Public Trust*, called for a substantial increase in funding for public broadcasting and creation of a trust fund to secure its long-term stability. In a different economic and political climate, the recommendations of Carnegie II failed to attract the same level of support as those of the original commission and have remained largely unfulfilled.

(For a summary of Carnegie I, see *www.current.org/pbpb/carnegie/ CarnegieIMembers.html.* For a summary of Carnegie II, see *www. current.org/pbpb/carnegie/carnegieIImembers.html.*)

According to Eric Newton of the Knight Foundation, now is the time to expand the conversation about the information needs of communities in a democracy. Healthy democracies (at all levels) will continue to require active, engaged citizens who, in turn, need vigorous media to keep them informed about their communities. We do not know, howev-

er, what kinds of media will provide the vital functions for communities in the 21st century that newspapers performed in the 20th century.

The foundation is interested in sponsoring a national discussion that would examine the kinds of information communities need to function well, assess current trends in information flows, and recommend actions and policies that would help ensure that communities get the information they need. Newton added that this process should not focus on any one industry or a specific rulemaking, but rather would look broadly at questions such as how local governments work, how public media are evolving, what the role of private foundations in supporting community media might be, and how educational policy might support more active citizen involvement.

> **In an interactive world, literacy is not just the ability to understand media messages; it is the ability to create them as well.**
>
> *Graham Richard*

Mayor Graham Richard of Fort Wayne, Indiana, agreed that there is a real need to think about how best to support civic engagement at the local level. He noted that even the largest global issues have a local dimension and can spark local responses. For example, his community is one of several hundred across the country that have joined in participating in a new initiative on climate change.

Mayor Richard also emphasized the importance of educating young people not only with traditional civics lessons but in the language of new media. In an interactive world, literacy is not just the ability to understand media messages; it is the ability to create them as well. The "skill set for the 21st century" still includes the traditional "3Rs," but it also should include "the ability to produce journalistically viable communications." In fact, everyone from kids to seniors now can be "citizen journalists."

Jane Mago of the NAB warned that there are dangers in "trying to think nationally about what is needed locally." She also acknowledged that the tendency of the new media to let people listen only to others with whom they agree is problematic. Any new commission should address the topic of how to maintain true community dialog in this kind of environment.

Several participants discussed the need for having the right balance among commission members. Julius Genachowski of Rock Creek Ventures called for inclusion of representatives of the new media as well as traditional media and suggested that the basic perspective of the inquiry should be "up from communities, not down from media." FCC commissioner Jonathan Adelstein added that the commission should be headed by a corporate leader and perhaps a prominent educator (as the Carnegie Commissions were). Kevin Greenberg, former attorney of the city of Philadelphia, noted that involving a prominent figure who could serve as a spokesperson and attract attention to the commission's findings would be helpful.

Charles Firestone, executive director of the Aspen Institute Communications and Society Program, concluded the discussion by citing a statement made 40 years ago by newspaper pioneer Jack Knight about the role of newspapers:

> "We seek to bestir the people into an awareness of their
> own condition, provide inspiration for their thoughts,
> and rouse them to pursue their true interests."[36]

At the beginning of 2008, the John S. and James L. Knight Foundation invited the Aspen Institute Communications and Society Program to organize the Knight Commission on the Information Needs of Communities in a Democracy. This Commission, co-chaired by Theodore B. Olson, Former Solicitor General of the United States and Partner with Gibson, Dunn & Crutcher LLP, and Marissa Mayer, Vice President of Search Products and User Experience at Google, will work in the coming year to assess the information needs of communities, understand the trends in how these needs are being met, and make recommendations designed to enhance the meeting of those needs.

Notes

1. *Reno Ashcroft v. American Civil Liberties Union*, 542 U.S. 656 (2004).

2. The Supreme Court also upheld the Child Online Protection Act of 2000, which required the use of filters in schools and libraries that receive federal funding.

3. See *U.S. v. Playboy Enter. Group, Inc.,* 529 U.S. 803 (2000).

4. Creative Commons licenses allow copyrighted material to be shared more broadly than if their owners retained full copyright rights. Hence the reason for its slogan: "Some rights reserved."

5. See http://www.mpaa.org/FlmRat_Ratings.asp.

6. See http://www.tvguidelines.org/ratings.asp.

7. See http://www.esrb.org/index-js.jsp.

8. See http://www.commonsensemedia.org. FOCAS participants Julius Genachowski and Geoffrey Cowan serve on the board of Common Sense Media.

9. The two groups were "Objectionable Content: Technology and Market Solutions" and "Objectionable Content: Enforcement across Media." Given that obscenity and child pornography are the two types of speech that are addressed primarily through law enforcement action, however, both groups converged on a similar mission: addressing how material that is indecent, harmful to minors, or otherwise objectionable would be dealt with through a labeling/tagging/filtering system. The third group discussed "pro-social content."

10. Actually, this requirement took the form of staff processing guidelines for broadcast liscense renewal applications prior to 1980. If an FM station reported less than 6% of its programming to be non-entertainment, the renewal application would receive heightened scrutiny. For AM stations the amount was 8% and TV was 10%.

11. Ethan Smith, "Sales of Music, Long in Decline, Plunge Sharply," *Wall Street Journal,* March 21, 2007. Available at http://online.wsj.com/article_email/SB117444575607043728-lMyQjAxMDE3NzI0MTQyNDE1Wj.html.

12. See, for example, Greg Sandoval, "Don't Miss Lessons Radiohead, Trent Reznor Offer," CNET News.com, January 18, 2007. Available at www.news.com/8301-10784_3-9853174-7.html?tag=nefd.top.

13. A recent study estimated that the recording industry is losing $5.33 billion dollars per year due to music piracy and retailers lose another $1.04 billion annually. See Stephen E Siwek, *The True Cost of Sound Recording Piracy to the U.S. Economy*, Center for Technology Freedom at the Institute for Policy Innovation, August 2007. Available at www.ipi.org/ipi%5CIPI Publications.nsf/PublicationLookupMain/D95DCB90F513F7D78625733E005246FA.

14. In his book *The Future of Ideas* (New York: Random House, 2001), Lawrence Lessig uses this example to explain the differences between rivalrous and nonrivalrous resources: "Einstein's theory [of relativity] is fully 'nonrivalrous'; the streets and beaches are not. If you use the theory of relativity, there is as much left over afterwards as there was before. Your consumption, in other words, does not *rival* my own. But roads and beaches are different. If everyone tries to

use the roads at the very same time (something that apparently happens out here in California often), then their use certainly rivals my own. Traffic jams; public beaches crowd. Your SUV, or your loud radio, reduces my ability to enjoy the roads or beach."

16. See *Recent Trends in U.S. Services Trade, 2007 Annual Report,* United States International Trade Commission; TradeStats Express—National Trade Data, International Trade Administration, U.S. Department of Commerce. Available at http://hotdocs.usitc.gov/docs/pubs/332/pub3925.pdf.

17. See *Go-Video, Inc. v. Motion Picture Association of America* (In re Dual-Deck Video Cassette Recorder Antitrust Litig.), 10 F.3d 693, 695 (9th Cir. 1993).

18. David Bollier, *Brand Name Bullies: The Quest to Own and Control Culture* (Hoboken, N.J.: John Wiley & Sons, 2005). Bollier reports that in the face of public furor and ridicule over its position, the American Society of Composers, Authors, and Publishers (ASCAP) relented and declared that it would not seek payment of royalties after all. He points out, however, that this outcome was an "indulgence" by ASCAP; it did not agree to any curtailment of rights that would permit similar assertions in the future.

19. The fair use doctrine is codified in U.S. law in Section 107 of the Copyright Code. It strikes a balance between the rights and interests of those who create content and the public's interest in making use of copyrighted content for scholarship, criticism, and other uses permitted by the First Amendment. In the event of a dispute, whether a particular use is a "fair use" is determined by the court against four factors enumerated in the statute:

    1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

    2. The nature of the copyrighted work;

    3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

    4. The effect of the use upon the potential market for or value of the copyrighted work.

Whether these factors point to a protected fair use or an infringement is highly case-specific. Although these factors are valuable to scholars, instructors, and critics as a guide, it is impossible to say in advance how they will be applied and evaluated by a court in the event of a particular dispute. For more on this topic, see Kathleen Wallman and Albert A. Gonzalez, "The Future of Fair Use: Fair? Futuristic? Usable?" in Colleges, Code, and Copyright: The Impact of Digital Networks and Technological Controls on Copyright and the Dissemination of Information (Adelphi, Md.: Association of College & Research Libraries, 2005).

20. See Jessica Litman, *Digital Copyright* (Amherst, N.Y.: Prometheus Books, 2001).

21. The copyright term was extended to these limits in the Sonny Bono Copyright Term Extension Act of 1998, Pub. L. No. 105-298.

22. The day after he made this comment, Congressman Berman reported that some supporters of copyright extension had heard his remarks, which has been webcast live on the Internet, and called his Congressional office to register their concern about his public reflection upon his earlier support of the term extension legislation.

23. *A&M Records. Inc. v. Napster. Inc.,* 114 F. Supp. 2d 896 (N. D. Cal. 2000), *aff'd*, 239 F.3d 1004, 1013, 1020 (9th Cir. 2001). Napster was a peer-to-peer Internet service that allowed free sharing of copyright-protected (as well as nonprotected) materials among users; it was forced to shut down after the adverse court decision.

24. Seth Schiesel, "The Video Game May Be Free, but to Be a Winner Can Cost Money," *The New York Times*, January 21, 2008.

25. See Battle at Kruger, http://www.youtube.com/watch?v=LU8DDYz68kM.

26. See http://creativecommons.org.

27. Walter Isaacson cautioned that the lessons and problems of the music industry might not translate directly into lessons for other forms of intellectual property. He observed that the incentives for creative artists who can count on their music producing other streams of revenue, such as concert tours or product sales, or psychic income, such as the adulation of fans and groupies, do not easily translate into other realms such as nonfiction authorship.

28. Erik Klinenberg, *Fighting for Air: The Battle to Control America's Media* (New York: Metropolitan Books, 2007).

29. Joe Strupp, "As Jobs Fade and Demands Grow—What Gets Lost?" *Editor and Publisher*, June 3, 2007. Available at www.editorandpublisher.com/eandp/news/article_display.jsp?vnu_content_id=1003588833.

30. Richard Perez-Pena, "Times to Stop Charging for Parts of Its Web Site," *The New York Times*, September 18, 2007. Available at www.nytimes.com/2007/09/18/businessmedia/18times.html?_r=1&oref=slogin.

31. With a broadband penetration of 21.4 percent, the United States ranks 19th on a recent listing of countries with the highest broadband penetration (www.internetworldstats.com/dsl.htm).

32. The John S. and James L. Knight Foundation, which sponsored this Roundtable, also has established a $25 million program called the Knight News Challenge that is providing support "for innovative ideas using digital experiments to transform community news." In May 2007 the Foundation announced the first round of grants under this program. (For more about the program, see www.newschallenge.org.)

33. Digital Promise Project, *Creating the Digital Opportunity Investment Trust: A Proposal to Transform Learning and Training for the 21st Century*, October 2003. Available at www.digital-promise.org/newsite/about/Report/Executive_Summary.pdf.

34. "Commission Adopts Order and Further Notice of Proposed Rulemaking Regarding Rules for Cable Television Leased Commercial Access" (MM Docket No. 92-266 and CS Docket No. 96-60) March 21, 1996. Available at www.fcc.gov/Bureaus/Cable/News_Releases/nrcb6004.txt.

35. Low Power FM Broadcast Radio Stations, Federal Communications Commission. Available at http://www.fcc.gov/mb/audio/lpfm/index.html.

36. *Turner Broadcasting* v. FCC, 512 U.S. 622 (1994). Available at www.oyez.org/cases/1990-1999/ 1993/1993_93_44.

37. Alberto Ibargüen, "Strengthening Communities and Democracy in the Digital Age," *Philanthropy News Digest,* October 10, 2007. Available at http://foundationcenter.org/pnd/ commentary/co_item.jhtml?id=191700009.

APPENDIX

Aspen Institute Forum on Communications and Society

Media and Values

Aspen, Colorado • August 13-15, 2007

Forum Participants

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Note: Titles and affiliations are as of the date of the conference.

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Mark Lloyd
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Mayor
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Note: Titles and affiliations are as of the date of the conference.

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Communications and Society
 Program
The Aspen Institute

Note: Titles and affiliations are as of the date of the conference.

Aspen Institute Roundtable on Communities and Media Policy

Shaping Policy for Stronger Local Media

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About the Authors

Richard Adler is a Research Associate at the Institute for the Future, Palo Alto, where he is currently co-leading a research project on Baby Boomers: The Next 20 Years. He is also president of People & Technology, a consulting firm located in Silicon Valley. Richard has written a number of Aspen Institute reports including *Minds on Fire: Enhancing India's Knowledge Workforce* (forthcoming); *Next Generation Media: The Global Shift* (2007); and *Information Literacy: Advancing Opportunities for Learning in the Digital Age* (1999). Richard's report on *Healthcare Unplugged: The Evolving Role of Wireless Technology* was recently published by the California HealthCare Foundation. Richard is Fellow of the World Demographic Association and serves on a number of local and national boards. He holds a B.A. from Harvard, an M.A. from the University of California at Berkeley, and an MBA from the McLaren School of Business at the University of San Francisco. He can be reached at radler@digiplaces.com.

Drew Clark is Executive Director of BroadbandCensus.com, which is designed to provide publicly-available information about broadband availability, competition, speeds and prices. He also writes frequently on the politics of telecom, media and technology at DrewClark.com, and is Assistant Director of the Information Economy Project at George Mason University School of Law. Previously, Clark was Senior Fellow and Project Manager at the Center for Public Integrity from August 2006 - October 2007, where he headed the Center's telecommunications and media project. From 1998 to 2006, Clark was Senior Writer at the National Journal Group. He was also Senior Editor of *National Journal's* Insider Update: The Telecom Act, and Contributing Editor of Congress Daily. Clark earned his B.A. with Honors from Swarthmore College, and received an M.S. degree from the Columbia Graduate School of Journalism in New York City. He lives in McLean, Virginia, with his wife and two children, and is a member of the McLean Community Center Governing Board.

Kathleen Wallman is Senior Adviser to The Brattle Group, a global economic consulting firm based in Cambridge, Massachusetts. She writes and consults in the field of technology policy. Formerly, she served on the faculty of Georgetown University, teaching in the Communication, Culture and Technology Program. Previously, at the Clinton White House, Wallman served as Deputy Assistant to the President for Economic Policy and Counselor and Chief of Staff of the National Economic Council. In that capacity, she was responsible for mass media and domestic and international telecommunications issues including cable, broadcast, satellite, wireless and wireline matters and for coordinating policy decisions with Cabinet agencies. She also served as Deputy Counsel to the President. Wallman began her government service in 1994 at the Federal Communications Commission as Deputy Chief of the Cable Services Bureau. From that position, she was promoted to serve as Chief of the Common Carrier Bureau in 1994-1995. Wallman was the senior staff authority on the country's telecommunications policy, including long distance and local competition, service to rural areas, and interconnection of wireless and wireline networks. Wallman came to the Commission from the Washington, D.C. law firm of Arnold & Porter, were she was a partner in the Legislative and Intellectual Property Practice Group, representing clients before Congress and Executive Branch agencies.

Previous Publications
from the Aspen Institute
Forum on Communications and Society

Next-Generation Media: The Global Shift (2007)

Richard P. Adler, rapporteur.

This report examines the growth of the Internet and its effect on a rapidly changing area: the impact of new media on politics, business, society, culture, and governments the world over. The report also sheds light on how traditional media will need to adapt to face the competition of the next-generation media. 76 pages, ISBN: 0-89843-469-6, $12.00.

Soft Power, Hard Issues (2005)

Shanthi Kalathil, rapporteur.

In this compilation of two reports, the author explores the growing importance of soft power by looking at two crucial areas of international tension: the U.S. role in the Middle East and Sino-American relations. The role of information and communications technologies in American public diplomacy in the Middle East and American's relations with China is a central theme in the reports. 70 pages, ISBN: 0-89843-447-5, $12.00.

Opening the Realm: The Role of Communications in Negotiating the Tension of Values in Globalization (2005)

Michael Suman, rapporteur.

This report addresses how communications media and information technologies can be used to ameliorate or exacerbate the tensions among the values of peace, prosperity, and good governance or among the forces of security, capitalism, and democracy. That is, can the media help a society gain the simultaneous benefit of all three values or forces? How does one prioritize how the media go about doing that in a free society? What is the role of the new media, which has so much promise to involve the individual in new ways? 51 pages, ISBN: 0-89843-432-7, $12.00.

Media Convergence, Diversity and Democracy (2003)
    Neil Shister, rapporteur.

    In the summer of 2002, chief executive level leaders from the public and private sectors met at the Aspen Institute to address the underlying role of media in a democratic society and policies that may improve the ability of citizens to exercise their roles as informed sovereigns in that society. This publication, authored by journalist Neil Shister, examines the concern of many over the shrinking electorate in American elections and the possible role the mass media play in that trend, the debate over whether consolidation in old and new media raises "democratic" as opposed to antitrust concerns, and opportunities for new media to enable citizens to communicate—both in terms of gaining new information and exchanging their own opinions with others. He also addresses the concern that new media will become bottlenecked rather than continue the open architecture of the Internet. 56 pages, ISBN: 0-89843-374-6, $12.00.

In Search of the Public Interest in the New Media Environment (2001)
    David Bollier, rapporteur.

    This report examines public interest and the role of the marketplace in redefining this concept with respect to educational and cultural content. It suggests options for funding public interest content when all media are moving toward digital transmission. The publication also includes afterthoughts from an international perspective by British historian Asa Briggs. 61 pages, ISBN Paper: 0-89843-333-9, $12.00.

Information Literacy: Advancing Opportunities for Learning
in the Digital Age (1999)
    Richard P. Adler, rapporteur.

    This report explores the barriers that impede acquisition of the knowledge and skills needed to effectively manage information in its myriad forms, especially digital. It explores six concrete initiatives that individuals and institutions might develop to remedy this problem. The report includes a background paper on information literacy by Patricia Senn Breivik, former dean of libraries at Wayne State University and chair of the National Forum on Information Literacy. 45 pages, ISBN Paper: 0-89843-262-6, $12.00.

Jobs, Technology, and Employability: Redefining the Social Contract (1998)
Richard P. Adler, rapporteur.

This report examines the changing nature of the employee-employer relationship and whether the economic, technological, demographic, and social trends driving the global economy will lead to the development of a new "social contract" between employer and employee. 62 pages, ISBN Paper: 0-89843-241-3, $12.00.

Reports can be ordered online at *www.aspeninstitute.org* or by sending an email request to *publications@aspeninstitute.org*.

About the
Communications and Society Program

www.aspeninstitute.org/c&s

The Communications and Society Program is an active venue for global leaders and experts from a variety of disciplines and backgrounds to exchange and gain new knowledge and insights on the societal impact of advances in digital technology and network communications. The Program also creates a multi-disciplinary space in the communications policy-making world where veteran and emerging decision-makers can explore new concepts, find personal growth and insight, and develop new networks for the betterment of the policy-making process and society.

The Program's projects fall into one or more of three categories: communications and media policy, digital technologies and democratic values, and network technology and social change. Ongoing activities of the Communications and Society Program include annual roundtables on journalism and society (e.g., journalism and national security), communications policy in a converged world (e.g., the future of video regulation), the impact of advances in information technology (e.g., "when push comes to pull"), advances in the mailing medium, and diversity and the media. The Program also convenes the Aspen Institute Forum on Communications and Society, in which chief executive-level leaders of business, government and the non-profit sector examine issues relating to the changing media and technology environment.

Most conferences utilize the signature Aspen Institute seminar format: approximately 25 leaders from a variety of disciplines and perspectives engaged in roundtable dialogue, moderated with the objective of driving the agenda to specific conclusions and recommendations.

Conference reports and other materials are distributed to key policy-makers and opinion leaders within the United States and around the world. They are also available to the public at large through the World Wide Web, *www.aspeninstitute.org/c&s.*

The Program's Executive Director is Charles M. Firestone, who has served in that capacity since 1989, and has also served as Executive Vice

President of the Aspen Institute for three years. He is a communications attorney and law professor, formerly director of the UCLA Communications Law Program, first president of the Los Angeles Board of Telecommunications Commissioners, and an appellate attorney for the U.S. Federal Communications Commission.