

Chapter 5

Business and Policy Issues

Given the central role of impartial news for democratic societies, the evolutions, its creation and distribution are a matter of public interest. A number of topics are arising which are increasingly at the heart of government attention, related enquiries but also specific actions. Discussions on new business models for monetising content, the role of non-profit foundations to support independent newsgathering and dissemination are ongoing in all OECD countries.

In many of these fields, news organisations, civil society and governments will have to balance objectives to sustain a healthy news industry, on the one hand, and to preserve the independence of the press, on the other hand. Moreover, given the increased convergence of the news environment, the regulatory equality across technological platforms or the lack thereof is at stake. The question is whether advantages, rules and obligations applicable to newspapers or even broadcasters should also apply to online news providers, and whether the latter should have a special status.

The final chapter of this study will put forward and elaborate on challenges and issues in question. It will start by providing an overview of traditional news and newspaper policies. Then it will assess current policy actions and options by reviewing concerns and activities in OECD countries. This chapter also assesses some policy topics in greater detail.

Before starting, it is important to recall a broader set of policy issues which were elaborated in previous OECD work on digital content and the participative web.¹ In particular, the OECD Digital Content Policy Guidance (see Annex 2), adopted by Ministers at the OECD Ministerial on the Future of the Internet Economy in June 2008 stresses the importance of *i*) an enabling environment, *ii*) enhancing the infrastructure, and *iii*) providing a sound business and regulatory climate – which are all equally vital to the Internet news context and the issues treated here in greater detail.

Policy overview for the news industry

The distribution of news on line cannot be considered as an entirely separate policy issue by member countries. It is necessary to take a broader view and to distinguish between existing policy measures consisting of two main pillars (Table 5.1), *i.e.*:

- a body of press policies and framework conditions (*e.g.* freedom of the press); and
- state support measures which are being reviewed in light of the current news context.

More recently these are being complemented by a set of specific challenges or policy areas which are more generally linked to online news or the Internet or by establishing a certain degree of equivalence between offline and online news providers or by targeting online issues.

Press policies and framework conditions. Some policies are shared by all member countries, such as rules on freedom of the press, rules on media diversity (*e.g.* limitations on cross-media ownership) and competition (*e.g.* exceptions to antitrust laws), rules concerning broadcasters or advertising regulations.

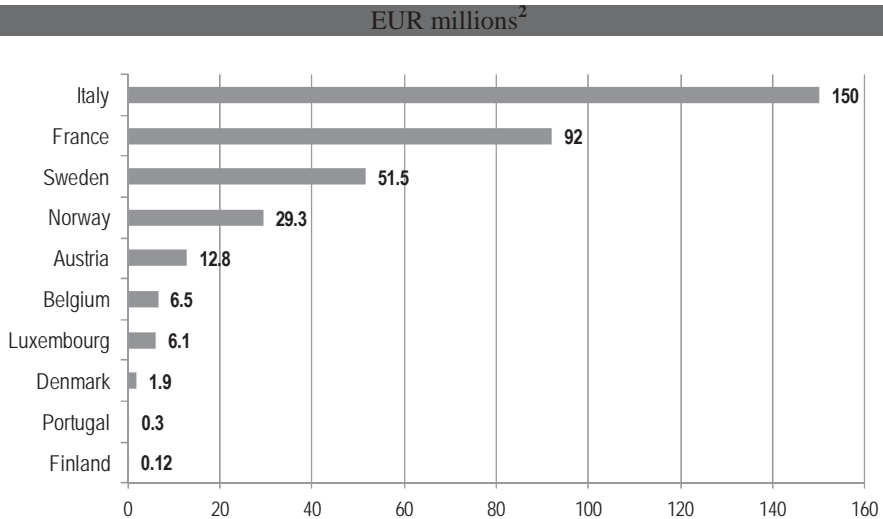
State support measure. In addition, mostly the Nordic and some of the Mediterranean European OECD countries more actively support newspapers, in the form of direct or indirect subsidies. These OECD countries spend several million EUR in direct subsidies, with Italy, France and Sweden being the most notable cases (see Figure 5.1). While comparable figures are not available, funds exist in Korea to aid regional newspapers as well as the newspaper industry (KRW 24.38 billion, around EUR 16 million).

Table 5.1. Policy overview

Press policies and framework conditions	<ul style="list-style-type: none"> • Rules on freedom of the press and freedom of expression • Rules on media diversity and ownership restrictions (mostly about avoiding cross-media ownership in the same locality) and on competition, <i>e.g.</i> antitrust laws limiting concentration • Rules on broadcasting and media policy, including advertising and direct marketing rules
State support measures	<ul style="list-style-type: none"> • Direct or indirect subsidies to facilitate the production, printing and/or distribution of news (including funds to support a national news agency, reduced postal or rail tariffs, reduced value-added tax or other tax measures, funds to promote news diversity or papers with weak advertisement revenues, funds to promote modernisation of newspapers and multimedia, etc.
Internet challenges	<ul style="list-style-type: none"> • Applicability of standard press policies to online news providers (including news actors such as pure players) • Online content protection and intellectual property (role of intermediaries) • Content quality and reliability (including offensive content) • Online (behavioural) advertising

Often these are linked to policy prerogatives such as preserving regional or other diversity, *e.g.* funds to promote media diversity such as in the Netherlands, or assistance to national dailies with weak advertising resources and circulation as in the case of Denmark. Sometimes they also support training for journalists, subsidies to cover costs of contractual foreign correspondents, and subsidies for reading newspapers at school, as well as press-related school research projects. In Korea, the funds also support public interest projects such as training for journalists and subscription subsidies for the underprivileged as well as digital infrastructure build-up for newspaper production and distribution systems.

Some OECD countries subsidise a press agency. However, *Agence France-Presse* (AFP) receives EUR 110 million in subscription revenues from the state to support the international provision of French-language news. *Lusa*, the Portuguese news agency, is state-owned (54.14% of its capital).

Figure 5.1. Direct subsidies to newspaper in OECD countries, 2008

Source: OECD, based on figures supplied by the World Association of Newspapers (WAN) and national sources.

OECD countries with no apparent direct subsidies for the press (excluding loans at low rates and favourable depreciation rules) are: Australia, Canada, Czech Republic, Germany, Greece, Hungary, Iceland, Spain, Turkey, the United Kingdom and the United States. Japan only has preferential exemptions from import duty on newsprint and a retail price maintenance system for newspapers. Few OECD countries offer neither direct nor indirect aid for newspapers (only Turkey and the United States).³

Table 5.2. Zero or reduced VAT rates for newspapers

Reduced VAT rates	Austria, Czech Republic, France, Germany, Hungary, Iceland, Italy, Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, Turkey
VAT at zero	Belgium, Denmark, Finland (on subscription sales), Korea, Luxembourg, Mexico, Norway, United Kingdom

Source: WAN and national sources.

Indirect subsidies such as subsidised postal rates and tax rebates are popular in most OECD countries. A majority of OECD countries give preferential tax treatment to newspapers (see Table 5.2). In general, the indirect government subsidies (in particular also for distribution) are less contentious than support for content. Governments of countries such as Belgium also have a policy of committing a large share or the total of their

government advertising budgets to the printed press, as an indirect support measure. Many OECD member countries also have statutory requirements to publish certain information, legislative changes or other via printed newspapers – which also act as an indirect subsidy.

Figures which combine direct and indirect subsidies are not readily available for OECD countries, but estimates for France, for example, put these at EUR 1 to 1.5 billion per year for national press, including about EUR 700 million for reduced postal rates, a reduced VAT rate at 2.1% (EUR 200 million) and other tax reductions. This is on the higher end of OECD countries with state subsidies.

In some cases, these subsidies were meant to decline over the coming years (in particular in the case of Denmark and Italy) but the crisis of the printed press has led countries to maintain these.

Also, as in the online news context public broadcasters play an important role in many OECD countries, it is important to consider that these organisations also receive significant government funding (mostly in Europe, Korea, Japan, but also including in the United States for the Corporation for Public Broadcasting/National Endowment for the Humanities).⁴ In the EU 27, state aid to public broadcasting is estimated at about EUR 22 billion per year. Some of these subsidies now indirectly also foster the online content of public broadcasters who compete one-on-one with commercial news providers.

Internet issues: In addition, a number of new policy issues are emerging which are exclusively related to online news provision: *e.g.* How to treat online news providers with respect to the above traditional news policies? How to redefine the role of public broadcasters online? And how to ensure proper compensation of news providers online?

Recent policy discussions and actions

In many OECD countries the current situation of the press and existing policies are being discussed or rethought in the context of the difficulties of the press and rise of the Internet. Table 5.3 provides an overview of recent activities. But most governments are still in the process of reflecting on these changes and on the look-out for best practises and innovative approaches. Many of the current activities are however focussed on helping traditional newspaper organisations, potentially missing out on very dynamic online news developments.

Table 5.3. Recent domestic newspaper policy discussions and actions

Australia	Australia has engaged in consultations concerning news in the digital economy. The 2009 Australia's Digital Economy: Future Directions paper includes case studies of Australians who have successfully engaged with the digital economy including public broadcasters, content industries and citizen journalists.
Austria	The Federal Government plans to modernise press subsidy, especially by taking into account the digital media and expansion of 'Development of quality and securing the future' (especially training for journalists).
France	In December 2008 the government launched the « <i>Etats Généraux de la Presse</i> » – a series of expert group meetings to come up with recommendations to salvage the press industry. The government took a series of actions in February 2009 (see Box 5.2), e.g. EUR600 million in emergency aid for the newspaper industry.
Germany	The new German coalition government has pledged a legislative amendment to better protect the copyright and exploitation of newspaper publisher content. German publishers are calling for a weakening of merger and competition laws allowing for higher concentration ratios, the elimination of VAT on press products and special measures for the protection of their content online (Hamburg Declaration adopted on 8 June 2009 – see Box 5.6).
Italy	No government action, but Italian publishers are calling on the government to make emergency subsidies available similar to those in France.
Korea	As opposed to earlier plans, the National Assembly of the Republic of Korea Committee on Culture, Sports, Tourism, Broadcasting & Communications will continue to provide financial aid to regional and local newspapers (including Internet newspapers) (KRW 8.3 billion, EUR 3.3 million). Internet newspapers are eligible to receive funds as well. A debate on additional state support for newspapers took place at the National Assembly. But measures have not been pursued so far. The Korean government is actively helping to define an online news provider status and is involved in ensuring the protection of digital content of news providers. Legislative and regulatory initiatives are ongoing to increase the editorial responsibilities and obligations of Internet portals which diffuse news online.
Netherlands	The Dutch government put in place a special programme fostering the employment and training of young journalists. The Ministry for Education, Culture and Science is paying the salary of about 60 young journalists for two years who will be hired by the approximately 30 Dutch newspapers (cost EUR 4 million). Further measures are planned (EUR 8 million in total) under the header of a new Innovation Fund which will apply also to Internet initiatives. Reflections are ongoing whether the low VAT tariff (6%) applied to newspapers should also be extended to 'digital publishers products' – the debate has to be conducted at the level of the EU however. Publishers (including newspaper publishers) have criticised the fact that public broadcasters and public radio earn money with advertising which they regard as distorting competition. In this light, the Dutch government has pledged to investigate advertising-related income of the different media.
Spain	The Spanish government has been looking to provide direct aid to the country's press industry, mainly direct aid to the sector as well as expanded access to state credit. The government proposed EUR 60 million in low-interest loans for printing purposes, EUR 300 million in specific ICO actions (ICO = Spanish public bank), lower postal tariffs, training for journalists, creation of a centre for journalism excellence, and promotion of newspaper subscriptions of the public administration and embassies. Editors qualified these measures as not sufficient and the government then stopped their approval (August 2009). It appears that the Spanish government is trying to get a consensus to launch some new measures (including VAT reductions for advertisements launched in the printed press) but no decisions have been taken so far (December 2009).

Table 5.3. Recent domestic newspaper policy discussions and actions (continued)

Sweden	In reaction to the crisis, a proposed reduction in subsidies for a certain number of newspapers (<i>Svenska Dagbladet</i> , <i>Skånska Dagbladet</i>) has so far not been carried out.
United Kingdom	<p>The interim and final Digital Britain report (January and June 2009) made proposals to secure a range of high-quality public service content, particularly in news, but also suggested a re-assessment of the need for specific market intervention and the particular role of the BBC. The Report also made a particular case for intervention to prevent a decline in the provision of news in the Nations, locally and in the regions for all media. It raised the concept of Independently Funded News consortia (IFNC) where consortia would finance and generate news content that would be used on regional television.</p> <p>The interim Digital Britain Report of January 2009 tasked the UK Office for Fair Trading (OFT) to review the operation of the newspaper media mergers regime with Ofcom, to assess whether rules should be relaxed in the view of new online news developments and the struggles of the local press which it completed.</p>
United States	<p>At the request of the United States Congress, its Congressional Research Service published a study on the state of the US newspaper industry in July 2009. The Senate Commerce Subcommittee on Communications, Technology and the Internet held a hearing on The Future of Journalism in May 2009, while the Senate Joint Economic Committee held a hearing titled The Future of Newspapers: The Impact on the Economy and Democracy in September 2009. A bill has been introduced in the Senate ("The Newspaper Revitalization Act") proposing to consider news organisations as charities/non-profit institutions for tax purposes (Box 5.1).</p> <p>The US Federal Trade Commission (FTC) is looking at business and non-profit models for news organisations, the role of targeted behavioural and other online advertising, whether additional, limited antitrust exemptions may be necessary, the implications of online news for both copyright protection and the availability of broadband access. It is conducting workshops and has issued a Federal Registry Notice for comments in the second half of 2009.</p>
European Union	<p>No particular action for the newspaper industry is undertaken at the level of the European Commission – except for a letter of EC President Barroso to the European Federation of Journalists stating that the economic problems overwhelming much of the European press required public intervention (May 2009).</p> <p>Other ongoing policies are however relevant, for instance, the EU's application of state aid rules with respect to subsidies to newspapers and to public broadcasters (including its consultation on state aid to the broadcasting sector – see the following section on "The role of public broadcasters in a digital news environment"). In this light, the European Commission also recently asked Sweden to gradually cut subsidies to large metro newspapers. Activities of the EU fostering the media and digital content might also be relevant. The European Parliament on its side has been very active in the field of fostering media diversity and avoiding excessive media concentration.</p>

In the short-term, some OECD countries (*e.g.* France, Netherlands, Sweden) have put emergency measures in place to financially help the struggling newspaper industry. Calls for such assistance have been issued by the newspaper sectors in countries such as Italy and Spain. In Spain, for instance, the newspaper sector is demanding more newspaper subscriptions and advertising in newspapers from the public administration. More generally, the question of what potential roles government support might take in preserving a diverse and local press without putting the independence of the press at stake ("viewpoint neutral support measures"⁵)

is being debated. The question is also whether and how the production of high-quality and pluralistic news content can be left to the market alone. Interestingly this discussion is particularly acute in countries such as the United States which do not have a strong tradition of government support for the press, radio or public broadcasters.

In OECD countries which have support schemes to the printed press in place modifications are being discussed and proposed, sometimes in a very structured manner such as in France (see Box 5.2) whereas in others a more *ad hoc* reaction to the crisis is dominating. As part of these processes, new measures are being proposed, in particular also some which are targeted at the new multi-platform and in particular online news environment.

In OECD countries a few support measures and topics are being debated, the most important of which are the following: *i*) discussions on how to maintain high quality news in a changed context; *ii*) improvement or intensification of existing state support policies (direct or indirect subsidies, funds to support local journalism, etc.) and an extension to online news providers; *iii*) rules and funds enabling the modernisation of newspaper organisations – including the multimedia skills of journalists and better technology; *iv*) changing the finance of some of the press industry, *e.g.* to a non-profit status; *v*) relaxation of regulations which may improve the competitiveness and the financial health of the newspaper industries (tax reductions, relaxed competition and media diversity laws); *vi*) the new role of public broadcasters and their impact on commercial news providers, and finally; *vii*) more Internet-specific considerations about the status, role and code of conduct of online news providers and online policy challenges. There is also a significant interest in fostering the understanding of the creation and consumption of news through the creation of statistics, studies and observatories.

There has been an ongoing discussion and suggested legal amendments in some OECD countries (mainly in France and the United States) to consider affording newspapers the status of non-profit organisation or charity, for tax purposes. The idea is to secure financing from donations, foundations. This possibility had also been intensely discussed in France in the 1960s. Given the aggravated situation of the press, this debate has been most vigorous among academic and policy circles in the United States in recent months. It led to interesting thought experiments on what would happen if major newspapers such as the *New York Times* turned into a non-profit organisation.⁶ It has led to a proposed Senate bill (Box 5.1) and various related discussions in academia and in government (particularly also at the state level).

Box 5.1. United States Proposed Newspaper Revitalization Act of 2009

In the US congress, the “Newspaper Revitalization Act of 2009” (H.R. 3602 and S. 673) was recently introduced which would help community and metropolitan papers by allowing them to become non-profit organisations with corresponding tax breaks. The bill also implies a charitable tax deduction for contributions to such newspaper organisations. The status conferred would be similar to the one currently enjoyed by public broadcasting. The condition is that the organisation has to publish a newspaper on a regular basis for general circulation; that its newspaper contains local, national, and international news stories of interest to the general public, that the distribution of such newspaper is necessary or valuable in achieving an educational purpose; and that the preparation of the material contained in such a newspaper follows a methodology generally accepted as educational. Under this arrangement, newspapers would still be free to report on all issues, including political campaigns. But they would be prohibited from making political endorsements. Suggestions that the federal tax code clearly recognise independent news organisations devoted to reporting on public affairs as non-profit entities, allowing them to receive tax-deductible donations, along with advertising revenue and other income had been made in various reports in the last months.⁷

Critics contend that under this bill, newspapers may be indebted to the government or face regulation of content because of their non-profit status requirements. The Newspaper Association of America believes that this proposal has merit but does not see it as a comprehensive solution to the problems of the industry at this time.⁸ While the bill has currently not received much attention from congressional legislators, the need for such policy action is central to the public debate in the United States and the US States have picked up on the discussion.

Source: “Newspaper Revitalization Act of 2009” (H.R. 3602 and S. 673) and related press statements.

In the context of its policy revamp (see Box 5.2), the French government has already announced a related decision, namely that foundations can be created with tax-exempt donations which would help finance newspapers investments.⁹ In particular, French newspapers with a very loyal reader base (*Libération*, *Le Monde*, etc.) are expected to gain from this arrangement. In Australia, a non-profit Foundation for Public Interest Journalism was established in 2009.¹⁰

Box 5.2. The French *Etats Généraux de la Presse*

As of October 2008, the French government has set up working groups on the state of the newspaper industry to suggest policy actions. The process led to detailed proposals which were submitted to the French government in January 2009. Amongst numerous measures aimed at bolstering the newspaper industry, the proposals called for a renewed code of conduct (deontology) for the journalistic profession. One of the few recommendations relating to online news was the suggestion to create the status of an online news provider and with it a new framework environment for online news development.

In return, the French President has proposed an action plan for the next three years. In terms of emergency measures, the French President pledged EUR 600 million in aid to newspapers over the next three years – in addition to the existing allocations – continued reduced postal rates in 2009 and a doubling of the state advertising budget for newspapers. The aid for newspapers with very small advertising revenues would also double to EUR 14 million. The structural government measures are:

- Creation of an “online news editor” status (implemented in October 2009), increased monetary allocations for the development of online news, tax breaks for related modernisation investments and a review of moral rights of journalists facilitating the re-use of articles across different platforms.
- An improved newspaper distribution based on improved compensations and tax breaks for newspaper distributors.
- Acting as facilitator to achieve reduced printing costs (-30-40%) through reviews of the collective wage agreements.
- Development of journalistic skills. Training but also the elaboration of a code of ethics for journalists (*code déontologique*), norms which apply across the profession, also to differentiate credible sources of news (established in October 2009).
- Facilitating the development of non-profit, charitable support to news organisations (similar to the US);
- Free weekly newspaper subscription for 18 year-olds as of November 2009 and bolstering measures to support readership in schools.
- A process to reflect on the efficacy and efficiency of the public aid system and potential further reforms.

In July 2009 the government presented a report on how these measures have been put into practice showing progress on many of the above items (see below sections). Some newspapers (*MédiaPart, Le Nouvel Observateur, Les Inrockuptibles, Marianne, Rue89 et Charlie Hebdo*) had expressed their uneasiness about the process and the suggested measures fearing too much government interference with the media. Others have deplored that the measures are more focussed on reducing production costs and facilitating physical newspaper distribution rather than helping newspapers rethink business models. In particular, measures relating to the Internet were criticised as being minor. The European Federation of Journalists has criticised that some of the related statements seemed to indicate that the French government would soon put in place relaxed antitrust rules further increasing media concentration.

Source: Details of the reform process are at www.etatsgenerauxdelapresseecrite.fr¹¹. See also Virkar and Caraco (2009b).

Associations representing newspapers themselves have not taken uniform positions on the above issues. Depending on the country in question some newspaper publishers are more prone to ask for aid (*e.g.* France, Italy) while in other cases they are less inclined or even opposed (*e.g.* Germany, United States). Newspaper associations have however collectively pushed for a number of common issues, some of which are treated in greater detail in the following parts of the study.¹² Some of these points are:

- Calls for preventing restrictions on freedom of expression, independence from governmental intervention and increased access to information granted to journalists.
- Calls for further VAT tax breaks or zero VAT, or other forms of indirect subsidies such as lower postal rates or tax measures¹³, and making sure that different news media outlets (paper, electronic/other) are not taxed in different ways.
- Calls for a relaxation of existing rules on competition policy, such as limited antitrust exemptions or increased possibilities for cross-media ownership (and at the EU level rejecting calls for a directive on media pluralism and concentration in Europe).
- Supporting fair competition in the online environment between newspaper publishers and other players, in particular public service broadcasters.
- Calls for a better protection of the intellectual property of news organisations coupled with increasing criticism of online intermediaries that “free ride on the investments that newspapers are making in the creation of content” and the quest for compensation facilitated through new legal measures or technical means of protection.
- Preventing advertising bans or restrictions, as advertising revenues are an essential source of financing for independent newspapers in print and online and fund quality editorial content.
- Supporting efforts to improve media literacy.

Federation of journalists at the international and European level have mainly been interested in:

- Seeking help for the ailing newspaper sector.
- Protecting editorial independence.
- Securing the necessary time, resources and training to conduct high quality journalism.

- Obtaining just remuneration for journalists working for an increasing number of media outlets at the same time (offline, online, etc.).
- Defending the existence and funding of public sector broadcasting.¹⁴

The OECD Business and Industry Advisory Committee (BIAC) has expressed strong support for a policy framework that promotes private sector investment in journalism and acknowledges competitive interaction between various media platforms in a converged news eco-system, which requires changes in the media merger review standards and a relaxation of the cross-media ownership rules.

Federations of journalists have also voiced concerns about relaxed ownership and antitrust rules and have called for the maintenance of press diversity.

Selected policy issues

In the following, a few challenges and policy issue are treated in greater detail.

Fostering newspaper readership and multimedia skills

A majority of observers see the declining readership among young people as one of the biggest threats to the future of newspapers (World Editor's Forum, 2008). One of the government priorities in some countries has been to counter this trend and to foster newspaper readership – in particular in school and education projects. Visible announcements have recently been efforts to grant free newspapers to young readers, e.g. the German Land NRW considering a scheme to offer a number of 15 year-old high school students a newspaper for one year. In November 2009, the French government put in place the offer of handing one newspaper edition per week to young French between 18 and 24 years old. For a cost of EUR 15 million over three years, this age group can choose among 62 newspapers.¹⁵ In the United States, campaigns have been launched to improve “news literacy” levels amongst America's citizens, including in particular in news literacy courses in high school. In Japan, the Newspapers in Education (NIE) programme provides selected schools nationwide with free copies of newspapers sold in their respective communities. Also, the Japanese Ministry of Education, Culture, Sports, Science and Technology announced a new Education Guidance Outline in 2008 concerning the use of newspapers in education.

These efforts complement measures by newspaper associations to increase readership among young generations and sometimes also news projects where students are invited to draft articles which are published,

sometimes in the context of school activities (*e.g.* in France *Syndicat de la presse des jeunes* (SPJ) or in Germany the project “*Zeitung+Schule*”/ “*Schüler lesen Zeitung*” or “*Nationale Initiative Printmedien*”, which also encourage students to practise journalism research).

Furthermore, initiatives exist in various countries to increase the multimedia skills of online users (see also related recommendations in the OECD Policy Guidance on Digital Content in Annex 2).

Freedom of information, the press and expression

As mentioned earlier, newspapers play a vital role in upholding transparency, democracy and freedom of expression, mainly because of their editorial independence from governmental or other bodies. Any type of new governmental policy measure being envisaged will have to consider this important equilibrium.

The independence and freedom of the press is not guaranteed everywhere and at all times. In particular in non-OECD countries various measures impede press freedom. In countries which lack an independent press, access to independent news is being curtailed and sanctioned. Journalists who carry out independent reporting are at risk. The maintenance of the freedom of the press is however also a recurrent issue in OECD countries where measures can directly or indirectly imperil journalistic practices. Policies related to libel and defamation laws, the combating of crime and terrorism (*e.g.* wiretapping and other forms of surveillance) or the upholding of national security, the protection of data and informants, and other similar measures have to walk a fine line between achieving sound policy objectives and curtailing the freedom of the press.¹⁶ Concerns over concentration of media ownership (including in some OECD countries) are seen as possible risks to press freedom.

The Internet plays an important role in increasing transparency, granting improved access to a greater variety of news, opinions, original data and documents, and as an outlet of free and open self-expression, in particular in countries which lack an independent press. In fact, Internet freedom indexes, for instance, find that new media outlets are often freer than traditional media and have the potential to open more repressive traditional media environments in non-OECD countries (*e.g.* in Egypt, Russia, and Malaysia according to the Freedom House index).¹⁷ According to Freedom House, citizens are making use of ICTs in inventive ways in order to create and disseminate news and information, add to the diversity of viewpoints and opinions, perform a watchdog role, and mobilise civic groups “offline” in order to address particular political, social, and economic issues. Furthermore, previous sections have shown that transparency and educational messages become even

more powerful when advanced Internet tools can be put at the disposal of journalistic endeavours. Countries such as China, Cuba, Iran and Tunisia are however as restrictive on line as with traditional media.

The digital divide has to be overcome to make this tool available as currently about only 2 billion users worldwide have access to the Internet, out of six billion. Moreover, among those two billion many have restricted Internet access. Similarly to physical newspapers however, access to the Internet and online news is regularly curtailed in countries which do not allow for a free press and where sources of information are heavily controlled. The number of tools and practices to block Internet sites has evolved rapidly over the recent years with measures to control, regulate, and censor the content of blogs, websites, and text messages.¹⁸ These can include filtering (see the OpenNet Initiative for a systematic stocktaking of filtering activities), manual removal of content as a result of government directives, intimidation, requests from private actors, or judicial decisions. The blocking of participative web applications – such as the social-networking sites, video-sharing sites, and the blog-hosting sites – are particularly recurrent.

There are however also cases in OECD countries where access to certain content and Internet sites are prohibited. Sometimes this is done for good reasons (*e.g.* fight against online child pornography). But any such policies have to be considered for their potential impacts on access to diverse and reliable news and information. For instance, increasingly participative web sites (in particular search engines) or other online intermediaries stand in the cross-fire for issues related to copyright infringement, privacy violations, defamation and other practices and are asked to play editorial roles or take-down particular material (OECD, participative web study and OECD online intermediaries project). In these cases a balance has to be struck between allowing access to information and being able to maintain unrestricted access to news and information. Some stakeholders consider that cutting Internet access such as proposed in certain new copyright regulations (three-strike rules) might also deny access to essential information sources.

Journalistic skills and working conditions

The demands on journalists keep on increasing as they are expected to prepare news for a variety of platforms under increased time pressure. The complaints concerning understaffed newsrooms and overworked journalist with sometimes increasingly precarious contracts are on the increase.¹⁹ This is due to increasing job cuts, cuts in editorial resources and the elimination of certain types of professions from the news value chain (fact-checkers, freelance, copy-editors but also increasingly photographers who compete directly with citizen journalists). Journalists' unions are creating networks and

programmes to better protect employment rights and working conditions while launching a new debate about the need for ethical and quality content whatever the mode of dissemination of information. The European Federation of Journalists (EFJ) has expressed concerns about the lack of funds available for quality journalism, the deteriorating job conditions in journalism (and decreasing pay for some, although the work of journalists is increasingly used on multiple platforms) and called for more investment in education and training. More generally, in the face of more and more contributors to the generation of news (including citizen journalists) questions are raised about the status of journalist as a profession (Who is a journalist and who is not?).

Fostering the skills of journalists who increasingly have to be multimedia journalists is central to maintaining a high-quality news environment (World Editors' Forum, 2008). News organisations have to invest heavily in the creation of a versatile workforce. The role of the universities (and the teaching of journalism, namely entrepreneurial journalism) in the new media ecosystem is also large and growing.²⁰

Some governments have supported such training (for example, the Netherlands and France). The Dutch government just put in place a special programme fostering the employment and training of young journalists. The Ministry for Education, Culture and Science is paying the salary of about 60 young journalists for two years to be hired by the approximately 30 Dutch newspapers (cost about EUR 4 million). The selection of journalists is left to the newspapers. This measure is meant to redress the danger of unemployment of young journalists. Further measures are planned under the header of a new Innovation Fund totalling EUR 8 million. The Austrian Federal Government plans to increase the training for journalists in the digital context as part of its newspaper subsidy modernisation. In the United States, State funds have been incidentally used to help teach journalists multimedia skills.²¹ In Australia, the Media, Entertainment and Arts Alliance has been working with academic researchers on considering the online future of journalism.²² In the United Kingdom a commission made recommendations to improve science journalism.²³

Quality, reliability and governance of online news

Today the number of entities, actors and individuals who participate in the news production, distribution and commenting process has grown significantly. Increasingly new actors are competing with the traditional news outlets such as newspapers and broadcasters. Given the multiplicity of news providers, and in particular on the Internet, the question arises which sites are reliable news providers and which sites are not? A broader discussion is ongoing concerning professional standards and ethics of journalism: Who

deserves to be called “journalist”, and how to maintain the independence and quality of news?

This debate applies more generally and across platforms. The French policy debate calls on the elaboration of a code of ethics of journalists (*code déontologique*), norms which apply across all the profession, also to differentiate itself from other news sources. Associations of journalists such as the IFJ encourage the debate about ethics of journalism. It also promotes professional standards, such as the Declaration of the Principles of Conduct of Journalists.

This discussion is particularly acute in the online context; also to make sure that online news actors operate under the same kind of rights and obligations as offline providers. In this light, studies have concluded that the status of who is an “Online news provider/editor” has to be defined (Mercier *et al.*, 2009). Such a label may help online newspaper sites and others to differentiate themselves as trusted brands from other sources. Legal and policy implications arise from this status. On the side of rights, sites recognised as online news providers should be eligible for any form of protection and support (including direct or indirect subsidies) otherwise only afforded to physical newspapers; including the status of “journalist” for its writers and “news organisation” for the institution. On the side of obligations, online news providers would, however, also operate under a set of obligations common to official news sources.

This discussion is advanced in France via a law which created the status of online news provider (*La création d'un statut d'éditeur de presse en ligne*) which was validated in November 2009 and applies to the online site of newspapers but also to online-only news providers. By this act, which is meant to foster online news distribution, online-only news providers will be on the same terms as newspaper organisations, with the same rights (state aids) as well as editorial responsibilities. To obtain this status, news sites have to publish original and independent news content (mainly text, as the diffusion of videos alone is not sufficient). Blogging sites and user-created content sites are excluded from the scope of this status however. A special commission will be put in place which will decide which sites conform to these rules and are henceforth eligible for funds to finance online news site equipment and modernisation. In a next step these sites could see their VAT obligations fall to the preferential level of physical newspapers (from 19.6% to 2.1%), formally establishing tax neutrality between these different technological supports at the EU level. In Korea, the Newspaper Act states that paper and Internet newspapers are eligible to receive funds. The newspaper act in place since February 2009 extends funding to Internet news services and magazines as well. Furthermore, in Korea other legislative and regulatory initiatives are ongoing to increase the editorial responsibilities and obligations of Internet portals which diffuse news online (Box 5.3).

Box 5.3. Korean regulations on online news providers

Amendments and acts were proposed to strengthen Korean regulations on Internet portals and Internet newspapers in Korea, most notably to increase their liability for producing false information. Some have been reflected in the current Korea media policies while others are still under debate.

One of the main reasons for the amendment of the Act on Press Arbitration and Remedies etc. for Damages Caused by Press Reports which came into force on 7 August 2009 was to make ‘Internet portals, Dot.com press, etc. who provide news services’ subject to the same laws as other news providers, in particular in areas such as redress, *i.e.* when these sites diffuse information which has an impact but which may turn out to be wrong. The law defines ‘Internet news service’ as an electronic publication that continuously provides or mediates articles from the press (Internet newspapers, Internet multimedia broadcasting, and those excluded under a presidential decree have independent categories).

For background, the Act on Press Arbitration and Remedies for Damages caused by Press Reports provides the guidelines for the Press Arbitration Commission which was founded with the purpose of settling legal controversies (defamation, etc.) caused by media. The current Act on the Protection of Freedom and Function of the Press Including Newspapers was enacted for the publication of printed and online newspapers which make reports and comments as well as defining their social responsibility as the press. In Korea, users consume news services mainly through Internet portals which – according to the Korean government – led to the social need to stipulate the legal status and responsibility of Internet portals providing news. In a previous court libel and defamation case between the large online portal Naver and a member of the Korean National Assembly it had been determined that the Internet portal comes under the category of the press, because it is involved in distribution, editing, and posting news.

Moreover, the Act on Development of Newspaper which was amended on 31 July 2009 (and comes into force on 1 February 2010) also affects Internet News Services (*e.g.* Internet portals). One of the main amendments made specifically for Internet news portals again concerns regulations on the arrangement of articles, modification of article headlines, and the concrete division between the actual article and reader opinions. In case of modifying headlines and contents of any article which is not produced independently, the Internet News Service Provider shall obtain consent from the actual provider of the article. Internet News Services Provider shall indicate separately the article and the reader’s opinion, to avoid confusion among them. In case of receiving retransmission of revised article headlines and contents, portals shall replace the former article with the retransmitted article on their site. Since 2007, Korean web portals have not been allowed to display news content for more than one week in accordance with an agreement among major domestic newspaper companies. That is, seven days after the news items were provided to Korean web portals, users cannot access the items on the portal sites. Instead, users need to directly visit newspaper companies’ websites.

Sources: www.law.go.kr and information supplied by the Government of Korea to the OECD.

The role of public sector broadcasting

In some OECD countries, the role of public service broadcasters (PSBs) (or as some would call them: public service media organisations, PSMO, to reflect their increased role across platforms) and related state aid is an increasing topic of debate in the context of online news creation and distribution. As evidenced by chapter two of this study, public service media organisations can be prominent actors in the online news ecosystem. This topic is important and complex and can only be introduced here and requires more in-depth study.

On one side, PSBs are seen as reliable and pluralistic news providers – in particular when commercial news providers face difficulties. In difficult times for public service-oriented commercial journalism, the role of publicly-financed news provision could actually increase, provided, of course, that their independence can be guaranteed. Governments and societies could decide that it is in their best interest to maintain and potentially increase the role of publicly-financed news and content provision across all platforms, including the Internet since restricting PSBs to the broadcast space alone would limit their reach and effectiveness. Related ideas are now being raised in particular in the context of the United States which traditionally devotes relatively modest financial support to PSBs.

On the other side, and in some OECD countries, the criticism is that as PSBs enter the online space they are directly competing with commercial news providers on the basis of tax payers' money and are potentially crowding out the latter, in particular when they also raise advertising revenues. The question is raised whether the online expansion of PSBs is desirable and how it is compatible with their public service mandate. Rules for fair competition between commercial and publicly-funded players in the media business are called for by commercial news providers. Newspaper associations such as the ENPA, for instance, assert that today's media and communication landscape, and the role of a state-funded "public service" within it, require major changes in order to redefine the remit of PSBs, in particular in the light of the challenges that commercial newspapers may face in the Internet environment with PSB activities. The strong cross-promotional advantages enjoyed by incumbent public broadcasters might otherwise be perceived as causing unfair competition to commercial news entities.

The debate is most pronounced in the United Kingdom, Germany, at the level of the EU legislation in general and in Australia. In the United Kingdom, the discussion about the impact of the BBC, its financing, its role and impact on commercial providers has been ongoing for some time and was one of the reasons for a Public Value Test being introduced into the

BBC's Charter that came into force in 2007, which was designed to create increased transparency and assess the market impact against the public value delivered before the approval of new BBC services. Other regulatory regimes have been moving in a similar direction (see below). The OFT review of media merger regulations also notes the broad concern amongst stakeholders about the potential impact on commercial publishers of local authority publications.²⁴ A proposal was also made at the start of 2009 to potentially use 3.5% of the BBC's revenue generated through the licence fee, about GBP 130 million, after digital switchover in 2012, to fund regional news broadcasts on TV channels, and possibly children's programmes. In other words, the idea is to potentially share some of the guaranteed BBC funding with other broadcasters. The BBC is currently rejecting such proposals as it fears this will lead to a loss of accountability and independence and will reduce its resources. The UK government is not currently pursuing this idea further (Box 5.4).

Box 5.4. Independently funded news consortia

The Digital Britain White Paper published by the Government in June 2009 considered the issues and challenges affecting the provision of local and regional news in the UK. The government set out a proposal to introduce independently funded news consortia (IFNCs) to bring together providers of news to produce news in the nation, locally and in the regions across a range of media platforms including the regional news service currently broadcast on Channel 3.

Following publication of the White Paper, the government consulted on funding options for IFNCs which indicated strong support for securing plurality of high-quality impartial local and regional news and that top-up public funding was necessary.

Since then, the government undertook a procurement exercise for three pilot IFNCs in Scotland, Wales and the Tyne Tees/Borders area of the UK and announced three preferred bidders in March 2010. These IFNC pilots are intended to test how a new and innovative form of local and regional news could be delivered using public funding to incentivise new commercial delivery models and provide greater syndication between news providers to secure plurality and enhance localness.

Following the general election, the future of the IFNC proposal will now be a matter for the new government.

Source: UK Department for Culture, Media and Sports and Department for Business, Innovation & Skills.

Furthermore, the British government, through Digital Britain, proposed the introduction of independently funded news consortia (IFNCs) and carried out a corresponding public consultation on sustainable independent and impartial news, inviting views on the importance of choice and plurality of news sources in the nation, locally and in the regions, on the need for public funding to sustain plurality, and on possible long-term public funding

sources (Box 5.4). Its starting point is that rapid changes in the media industry, including new technology, falls in advertising and the shift in advertising from traditional public service broadcasters to other channels and the Internet are making the economics of providing regional news and news in the nation increasingly difficult. Unless action is taken, the UK government sees a high risk that high quality, professional regional news in England and news in Scotland, Wales and Northern Ireland will not be provided other than by the BBC. Plurality would be lost, or severely reduced.

In France, public broadcasters have recently been asked to renounce advertising revenues – initially only in peak time and then from 2011 across all hours - in return for financial compensation from other sources. In Germany, newspaper associations and other private media organisations are also putting on pressure to limit the expansion of the Internet offers of public-funded radios and broadcasters, in particular relating to the two main German public broadcasters, ARD and ZDF. Concerns are raised about ideas of the latter to bring about a public-service electronic press. According to a new law and in compliance with EU regulations (see below), German PSBs will be required to undertake a three-step test with respect to their online offerings to check whether they are compatible with the PSBs' mandate and to what extent they (unnecessarily) damage the commercial offerings (*Drei-Stufen-Tests für Telemedien der öffentlich-rechtlichen Rundfunkanstalten*). In Germany the application of this *ex-ante* test is now being applied to PSBs' online offerings.

In this context, the European Commission has been reviewing state aid to broadcasters at the EU level (Articles 87 and 86(2) of the EC Treaty).²⁵ The related Amsterdam Protocol calls upon Member States to exercise a certain restraint in the use of public money for funding broadcasting services. The Protocol says that the State funding must not 'affect trading conditions and competition in the Community to an extent which would be contrary to the common interest' and the new guidelines advocate some form of the above-mentioned three-stage test. Newspaper publishers and their associations are engaged in individual cases regarding publicly funded broadcasters' activities before the EU Commission. They have also been asking for an independent control of the PSBs obligations concerning the extent of their online and mobile offerings and raise renewed concerns regarding the maintenance of a level playing field.

Recommendations of the Council of Europe concerning media pluralism and diversity of media content, and the remit of public service media in the information society call on member countries to "guarantee public service media (...) in a transparent and accountable manner" and to "enable public service media to respond fully and effectively to the challenges of

information society, respecting the public/private dual structure of the European electronic media landscape and paying attention to market and competition questions". The European Parliament has voiced similar concerns and ideas.²⁶

A broad consultation of Member States and stakeholders took place at the beginning of 2008, to assess the EU Communication on the application of state aid rules to public service broadcasting. In July 2009 the revision of the 2001 Broadcasting Communication was adopted. It gives further guidance to Member States on how to ensure compliance with state aid rules to public broadcasters.²⁷ The goal of the revision was to allow public broadcasters to take advantage of the development of digital technology and Internet-based services to offer high quality services on all platforms, without unduly distorting competition at the expense of other media operators.

Accordingly, EU member states now have a major role to play in order to better define the remit of the publicly funded broadcasters in detail in national legislation to combine effective delivery of public service content while preventing unnecessary distortion of the media market. The main changes include an increased focus on accountability and effective control at the national level, including an *ex ante* control of significant new services launched by PSBs (balancing the market impact of such new services with their public value), clarifications concerning the inclusion of pay services in the public service remit, more effective control of over-compensation and supervision of the public service mission at the national level and increased financial flexibility for public service broadcasters. European citizens and stakeholders will be able to give their views in public consultations before any new services are put on the market by public service broadcasters.

The relationship of public service media organisations to the digital news environment has been the subject of some discussion in Australia. The ABC Managing Director has argued that the ABC will be the key provider of online news to Australians if other commercial providers, most notably News, go to a pay model.²⁸ In 2008, the Australian government undertook a review of the public service broadcasters.²⁹ Its recommendations were implemented as part of the May 2009-10 Federal Budget, essentially leading to increased funding of AUD 185 million over three years to the national broadcasters³⁰ to expand the range and quality of their Australian programming and online content. The importance of the ABC's information services was particularly prominent in submissions to the review, with over 1 600 respondents stating that public broadcasters should provide credible, independent news and current affairs programming.

In the light of the European best practices, commentators in the United States interested in high-quality news provision have looked at whether increasing resources for public service broadcasting or creating funds for local independent news gathering should be considered.³¹ Suggestions include the creation of a national fund, using receipts collected by the Federal Communications Commission (FCC), to finance local news reporting. To further encourage local reporting, reports call for “urgent action by and reform of the Corporation for Public Broadcasting” to challenge public radio and TV to invest in a significant expansion of news coverage of their communities.³² The non-profit model of the National Public Radio (NPR) is often mentioned in the US context, where a small core of highly involved users makes above-market-price donations to support the provision of a universally accessible good.

Other options are to increase public service criteria when attributing broadcast or other operating licences to commercial providers. For instance, when attributing mobile TV licences or conferring the status of online news providers to certain entities (see example of France in previous sections), this could be contingent on meeting a number of public-service criteria with reference to the production and diffusion of local and other news.³³

Media diversity and competition

Media concentration in the context of the digital age is an important and complex topic which can only be introduced here and requires further in-depth analysis, potentially in conjunction with the OECD Competition Division.

Most OECD countries depart from the idea that having a greater number and more diverse media sources in place will guarantee greater freedom of the press and diversity. As a result, most, if not all, OECD governments have rules in place to foster media diversity, *e.g.* via rules that avoid a high concentration of ownership in any given (local) market, a prohibition of cross-media ownership in any given market (broadcast, radio or paper) and special antitrust rules aimed at media mergers.

These measures may have slowed down but did certainly not halt the increasingly high media concentration which is present today in most OECD markets (Le Floch and Sonnac, 2005). In the case of the news industry, the recent years and months have only seen an increase of concentration in the regional and other press, with some localities only served by one local newspaper for example.

Yet, in a converged context with multiple media platforms such as the Internet, arguments can be made that current rules to foster media diversity and avoid media concentration in geographic markets are outdated and fail

to appreciate that local markets may not be able to sustain various independent media, in particular given the current economic crisis. Given the significant economies of scale in producing Internet-based news, larger news organisations may be better positioned to invest in news production and in fact to guarantee high quality journalism. The argument is that plurality in the local press is becoming an increasingly outdated concept owing to the impact of the Internet (see the UK's Digital Britain Interim Report). According to this argument, geographic and product markets may need to be assessed in terms of where and how consumers get their news and whether substitution between regional newspapers and other media, particularly Internet news provision, is greater than perhaps has been assumed so far.

In this context, newspaper associations have called for a relaxation of existing rules on competition policy, media diversity, allowing for easing of restrictions on mergers & acquisitions (need for additional limited antitrust exemptions) or allowing for cross-media ownership. Newspapers are interested in seeking flexibility to produce innovative content and come up with cost-saving arrangements which might conflict with competition rules. According to the European Newspaper Publishers' Association, the distinction must be made by policy makers between media pluralism, media concentration and changes in ownership structures of newspaper publishing companies. Governments should look more favourably on mergers, or joint operation, between newspapers and broadcasters, so long as they are willing to maintain certain levels of news coverage. According to this view, this should enable publishers to better develop their business to remain innovative and competitive.

In the United States, the newspaper industry has long called for an antitrust exemption. In the absence of such an exemption co-ordinated actions on the business model is considered illegal. This is particularly relevant with respect to meetings such as the one in May 2009, when newspaper industry executives met under the auspices of the Newspaper Association of America on the topic of "Models to Lawfully Monetize Content" to discuss the future of news and ways to charge for content on line. If newspapers want to set up partnership agreements or decide to unify their approaches to online pricing, archiving and access by third parties, this might well involve meetings and agreements which might be considered anti-competitive by current competition and anti-trust rules.

The German newspaper association has called for increased means to allow for possible co-operation between newspaper business (including in fields such as the sale of advertising) and for relaxed merger rules (*i.e.* to increase the threshold value of a merger for which the competition authorities have to be notified). In related discussions, it was suggested that

newspapers should be able to more actively co-operate with local or regional TV or radio.

In the United Kingdom, regional and local press owners have expressed the urgent need to consolidate in order to make a successful transition to the digital environment. These organisations argue that they face a major obstacle in the form of a restrictive media merger control regime, which is not taking into account the potential for competition between newspapers and the new media and hence blocking mergers which would actually improve regional and local news coverage and quality. The National Union of Journalists in the United Kingdom, in turn, raised concerns about a relaxed ownership system, warning that cost savings were unlikely to be re-invested in financing high-quality journalism.

In the Digital Britain interim report of January 2009, the UK government asked for such arguments to be tested against the evidence. It invited the Office of Fair Trading (OFT) to review the merger laws currently preventing consolidation in local media. The OFT was asked to look at the merger regime three years after the telecoms and media regulator Ofcom had concluded that no changes should be made. A relaxed media merger regime would give the regional press more freedom to consolidate, trade assets and rearrange the current ownership map. Large media groups argued that due to the changing media landscape and the rise of the Internet there is no longer a danger of newspaper monopolies.

In June 2009, the OFT decided against a major reform of the rules governing local media mergers (*i.e.* the existing merger regime under the Enterprise Act 2002), calling for only modest changes.³⁴ The decision by the OFT is to give Ofcom a bigger role in deciding whether future mergers should go ahead. In media mergers involving newspaper publishing and/or commercial radio or television broadcasting, and raising competition issues, the OFT will ask Ofcom to provide views (by carrying out a “local media assessment”), arising from its understanding of media markets, on factors relevant to the OFT’s decision. As a result, the OFT studied the matter, publishing its results in June 2009 and deciding against large-scale changes to the current media merger control regime and thus essentially stating that the request for modifications of news organisations were unnecessary.

Advertising and direct marketing rules

Given that these are important sources of revenue, newspapers are increasingly susceptible to regulations which relate to direct marketing, product placement or offline and online advertising (including behavioural advertising). Newspapers increasingly find themselves in a position to lobby against advertising regulations and to propose self-regulation schemes –

together with associations representing other publishers, direct marketers or advertisers. The result is that efforts aimed at strengthening advertising regulations (*e.g.* the prohibition of advertisements for alcohol, the inclusion of mandatory information on energy consumption in advertisements for household appliances and other energy-related products) are met with opposition by newspaper associations.

Newspapers rely heavily on solicitation to win new subscribers (trial subscriptions, etc.) – on line and off line. They are particularly susceptible to any legal changes which affect these direct marketing practices (rules on unsolicited ads or marketing letters). In this context German newspaper associations have, for instance, complained about a suggested strengthening of data privacy provisions which would make such unsolicited letters difficult.³⁵

These debates are also extending to the online environment where possibilities for new generations of more targeted advertising are emerging. New technical means such as cookies allow for greater control of the activities and preferences of the user (mixing of data bases, study of behavioural pattern of users, etc.) (OECD, 2007b). Increasingly publishers use third-party advertising networks and technologies to build online advertising revenues on the basis of their loyal and increasing online audience. According to newspaper associations, online behavioural advertising shows much promise for newspapers seeking new ways to support local journalism and answer consumer calls for fewer irrelevant and distracting ads.

However, some of these technological means conflict with privacy and other rights and there is an ongoing debate about limiting these technical means or creating “opt-in” systems and making sure that users are informed about the use of their data and can opt out. The interactions between online advertising and privacy are part of an ongoing debate in many OECD member countries.³⁶

Suggestions for new regulations (*e.g.* informing users when a cookie is placed or asking for consent as in the discussions about the EU Telecoms Reforms Package) are being opposed by European or US newspaper associations. In a filing to the Federal Trade Commission on “behavioural advertising”, for instance, the Newspaper Association of America has defended behavioural advertising as an important means to fund independent news. The United States Federal Trade Commission conducted a workshop on: ‘How Will Journalism Survive the Internet Age?’ in December 2009 which looked at the role of targeted behavioural online advertising.

Increased blending of editorial content and advertising

Off line and on line there is an increased concern that the line between editorial content and advertisements is being diluted. First, an increasing amount of advertisements look very similar to editorials ('advertorials'). Second, the increased pressure on newspapers to generate advertising revenues may also lead to a weakening of editorial standards with respect to praising products and the practice of product placements. On the Internet these problems are of concern as digital advertisements often interweave marketing images with editorial content and respected journalism brands.

Some European newspaper associations are concerned about the trend to possibly more product placement and a dilution of editorial standards. In Europe, under certain conditions the new Audiovisual Media Services Directive allows for product placement on TV and online audiovisual services if the particular EU member country does not choose to maintain related restrictions (Box 5.5). Newspaper associations such as the German BDVZ are concerned that such increased product placement will lead to pressures on newspaper publishers to allow for similar ads.

Box 5.5. Audiovisual Media Services Directive and product placement

The new Audiovisual Media Services Directive of the EU covers all audiovisual media services (including on-demand services) in the digital age. While it does not cover electronic versions of newspapers, it may well apply to other forms of Internet sites carrying news (online only news providers, blogging sites, news aggregators, online video sites). The fear of the German newspaper association is that the presence of such advertisements in other media will increase the pressure to tolerate such product placements in news media.

Specifically, the Directive allows product placement under certain conditions, and thus opens up new revenue sources for Europe's audiovisual providers and producers. The new rules define the conditions under which product placement is permitted. Product placement shall be admissible unless a Member State decides otherwise in different forms of audiovisual services, but excluding in children's programmes and for certain products such as tobacco. Programmes that contain product placements shall meet at least all of the following requirements: *a*) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider; *b*) the product placement shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services; *c*) it shall not give undue prominence to the product in question; *d*) viewers shall be clearly informed of the existence of product placement, meaning that programmes containing product placement shall be appropriately identified at the start and the end of the programme, and after advertising breaks.

Source: Audiovisual Media Services Directive, COM/2009/0185 final - COD 2009/0056, Article 3g.

There have been various recent moves to extend certain regulations on bloggers as well. Most recently, the US Federal Trade Commission revised its rules about endorsements and testimonials in advertising that had been in place since 1980. Bloggers in the United States who review products must henceforth disclose any connection with advertisers, including, in most cases, the receipt of free products and whether or not they were paid in any way by advertisers, as occurs frequently.³⁷

New business models, intellectual property rights and technical standards

Newspapers are clearly pursuing a wide range of new business models to monetise their content and ensure returns on their investment, and experimentation with and adoption of new business models is likely to continue.

As part of these strategies, newspaper organisations and other Internet actors are interested in increasing revenues derived from online news, in part by protecting their content online from infringing / unlawful use by third parties, and encouraging new business models to emerge. In particular, they are concerned that headlines or content of their articles are used on third-party web pages without consent or compensation. According to newspaper associations, automated news sites aggravate the financial problems of the press by “skimming off some of their profits” or reducing the opportunity to generate profits in different ways (see examples of related policy actions in Box 5.7). The question is to what extent headlines, bylines facts and news and full articles are copyrighted and/or benefit from other legal protections and to what extent limitations and exceptions to copyright are applicable (*e.g.* ‘fair use’ and ‘fair dealing’ and related copyright exceptions and limitations for personal use).³⁸

Many concerns evolve around services such as Google News which offer free access to newspaper headlines, snippets of text, thumbnail pictures and direct links to newspaper articles.³⁹ Danish newspaper publishers have, for instance, renewed their effort to stop websites like Google News from linking to individual articles rather than a newspaper’s homepage. In 2005, *Agence France Press* (AFP) launched a law suit against Google for showing pictures and news alerts without consent or compensation to AFP. The Associated Press threatened to sue Google in 2009 (*Note:* in the meantime, AFP and the Associated Press have entered into related commercial agreements with Google). A similar dispute is ongoing in Belgium where in 2006 the Belgian publishers’ association went further by requesting Google not to include headlines and links to news articles in its services. Organisations such as News Corporation are also currently weighing whether to remove their content from Google and other organisations which

aggregate and/or provide links to their content without authorisation or compensation. In some cases News Corporation subsidiaries have removed their content from certain aggregation services such as NewsNow and Meltwater. The tensions grew further when Google started to generate advertisement revenues through the US version of its news aggregator without sharing the benefits with news providers. Similar concerns have been raised in relation to the news services of other major search engines, such as Yahoo! and MSN (Microsoft). Since then, operators such as Google have developed partnerships with some news publishers and operationalised other news-related services such as FastFlip or LivingStories which are delivered in conjunction with newspaper publishers.

There are many other related legal disputes which involve the use of news organisations' headlines, bylines in verbatim fashion on other websites and news services (*e.g.* Australian Fairfax Media against Reed Elsevier, claiming that the latter had breached copyright by reproducing *Australian Financial Review* headlines and bylines verbatim in its news service; Associated Press against AHN Media in the United states for infringement of the AP's copyrights and trademarks by republishing its headlines with attribution but without remuneration). Links to particular news content may give rise to disputes. Increasingly online news providers, be it newspaper websites or online-only news providers, but also bloggers, use linking to other articles to use the powerful archiving and repository functionalities of the web and create structured, informed discussions. Although news providers have some ability to limit crawling and linking to their content (*e.g.* by only allowing registered users to view content, by attempting to detect automated access to their sites, requiring users who have viewed more than a specified number of articles in a time period to pay for continued access, or by only accepting certain "referrers"), implementation of these measures is technically challenging and non-compliant aggregators will frequently actively seek to circumvent such measures. News providers must weigh the challenge to their business models free availability of their content poses, against the costs of implementing technical measures and the benefits of exposure and traffic that certain crawling and linking provides. To reconcile these goals, some have asked whether the practice of linking to a news story should trigger compensation to news providers (in particular when a direct link to the story and not to the home page of the news institutions is involved) or should otherwise be subject to terms and conditions in a similar way to the use of "analogue" content.⁴⁰

Box 5.6. German “Hamburg Declaration” and *Leistungsschutzrecht*

On 8 June 2009 a large group of German publishing organisations publicised a document called the ‘Hamburg Declaration’ which is supported by very large German media groups such as Axel Springer. In this declaration, German news publishers made clear that they are not in need of state subsidies. Yet, they called on the German government to help protect their content from unlawful use. The Declaration posits that the Internet offers immense opportunities to professional journalism but only if the basis for profitability remains secure on the Internet as well. According to the Declaration this is currently not the case, as numerous Internet intermediaries are using the work of journalists, publishers and broadcasters without paying for it. This threatens the existence of independent journalism.

For this reason, the Declaration advocates “urgent improvements in the protection of intellectual property on the Internet” and stresses that “universal access to websites does not necessarily mean access at no cost”. It makes clear that publishers are not willing to give access to their content without consent or compensation and calls on governments to protect newspaper content. Since, the Declaration has received the support of an increasing number of European and global publishers (e.g. support from the World Association of Newspaper and News Publishers).

Separately, in Germany, publishers have called for the introduction of a new so-called neighbouring right *Leistungsschutzrecht* – i.e. a new, potential right of newspapers to exclusively control the use their content beyond the time of publication and to be remunerated for the content; possibly via the creation of a special collecting society to administer the use and payment of news content on third party web pages (similar to the music and film industry). The new German government made this proposal an integral part of its coalition pact in October 2009. While the exact consequences of this proposal are unclear, it is likely to mean that search engines, news aggregators and other commercial operators have to seek permission to access and re-use parts of newspaper content. Potentially it could also mean that articles can only be shown or re-used in full length, after consent and payment. In the past months, publishers have collaborated closely in creating another tool to enable any content provider to communicate their copyright terms and conditions on line in a machine-readable way via ACAP (see Box 5.7).

While private, non-commercial use of news articles is likely to remain unrestricted under the proposals, opponents of the plans say the distinction between commercial and private use would be difficult to define, making enforcement of the plan a challenge. This applies particularly to non-profit online news sites or the great number of bloggers who might make money out of advertising. In this light critics of this proposal suggest that this move would actually limit the access to a free press and speech while undermining the open architecture of the Internet which is based on a network of links which help to locate and make accessible information and a diversity of opinions.⁴¹

Publishers are still negotiating with journalists’ unions on a plan to present to the government, and not all journalists are in favour of the idea.⁴² Some have voiced the concern that copyright must not be misused as a lever to protect outdated distribution methods. The Declaration and this more specific proposal come at a time when new consultations are expected on the follow up to the Green Paper on Copyright in the Knowledge Economy and the post-i2010 strategy.

Source: Hamburg Declaration http://www.axelspringer.de/downloads/153453/Hamburg_Declaration.pdf and related press accounts.

More complex business models are being developed, in which news organisations may only want to show more limited parts of their content in certain search engines and certain services or to limit the period for which full article content is available. Newspaper associations such as ENPA insist that individual publishers should be allowed “to fix the price or compensation” for inclusion on news aggregators as a matter of principle – in the same way as they do when their content is exploited or sold in other ways - involving the right holders’ prior consent and opt-in. As far as collective administration of copyrights and related rights is concerned, publishers would like to have the option to manage the rights pertaining to their own content. Based on an initial Declaration of German publishers (see Box 5.6), European newspaper and magazine publishers have presented the European Commission with a call for more copyright protection as a way to lay the groundwork for new ways to generate revenue on line. Essentially this potentially also involves limiting the access to newspaper content and putting a collecting society in place which would administer newspaper’s neighbouring rights and collect revenues when third parties link to or use news items.

To further this goal of greater control, compensation and new business models, news organisations and wire agencies have started to put in place technical tools and initiatives to better control access to and use of their members’ content online (see Box 5.7). There is an ongoing argument between various parties whether the existing REP standard does not allow for sufficient control, whether it is sufficiently complied with by crawlers and search engines, and whether it is practical and useful to introduce new standards.

There is extensive and heated debate over how to apply technical standards in such a way that they increase access while protecting original news content. The two sides of these arguments from the point of view of Internet companies and of news publishers are presented extensively in the endnotes.⁴³

The OECD Civil Society Information Advisory Council (CISAC) has also argued that mandated compliance with specific technical standards would require Internet search engines to redesign their technical protocols at the request of one set of information society stakeholders. Amongst other concerns, CISAC argues that technical standards could potentially be used to set conditions for accessing copyrighted content that are more restrictive than national copyright laws. This would harm students and researchers who currently have lawful access to information on the Internet via national copyright law exceptions and limitations.

Box 5.7. Technical standards for indexing online content: REP and ACAP

Created in 1994, the REP (Robots Exclusion Protocol) is a web-wide standard by which publishers communicate with search engines and other web crawlers. REP is accepted by all major search engines and used by website owners to give instructions about their sites to “robots” that crawl and/or index them. The protocol allows publishers to create directives in either or both of two forms, firstly a file at the root level of the site (`robots.txt`) which indicates which parts of the site can be crawled or secondly metatags in individual pages which indicate how the content of that page should be indexed. These directives can be used to indicate whether and how these robots should crawl and index their sites or parts of their sites. For example, by using REP directives, publishers may indicate to crawlers that they cannot index their site altogether or include specific pages or file types, or certain defined limits as to how that content is displayed, such as using additional, widely recognised, directives to instruct search engines to show headlines only or no images.

ACAP is a non-proprietary protocol, developed by a cross-sectoral group including publishers and certain search engines, designed to ensure that any automated process, including but not limited to the web “robots” used by search engines and other online aggregators, can read and understand the terms and conditions of access and re-use of that particular content. For example: *i*) it is OK to show headlines, but not full text; *ii*) it is OK to show full text for a fixed period of time but afterwards payment is required; *iii*) it is OK to include the content in your general search product but not your news search product or *iv*) it is OK to include the content on your own search site but not on search services you provide to other sites, and so on. In other words, it is a technical standard conveying rights management information which, although voluntary, allows publishers to decide which parts of their content are accessible and which content can be used in which way by third parties (including the wide range of services offered by search engines and extending to other uses of content online). ACAP provides for a broader set of permissions than REP and extends to uses beyond the scope of just crawling and search engines. It has a formally governed ongoing process of development and extended implementation and ACAP 2.0 is currently under development to address new content types, delivery mechanisms and commercial models. ACAP, like REP, is open and free to use. It has been deployed by over 1 900 websites, mainly produced by publishers of high value content. ACAP is not a replacement for REP and they are not mutually exclusive so site owners can decide which protocol is the most appropriate for their site and business model.

A new trend which has emerged in other business sectors is that website properties no longer allow for linking directly to content on the webpage but only to the home page (thereby reducing the possibility for Internet users, bloggers or others to link and discuss particular subsites).

In the Asian context, the role of portals and their re-use of newspaper content is the particular target of discussions and new policies. The Korean Ministry of Culture, Sports and Tourism has been actively co-developing a so-called ‘Standardised Agreement on Digital Content’ since 2008.⁴⁴ The standardised agreement specifies that the receiver of digital content is obliged to pay a fee to the provider of the content; either an agreed fixed amount or a fee which depends on the revenues derived from the digital content. Other conditions include the necessity of prior agreement before the content of third party providers is altered (see Box 5.4) and an agreement specifying the duration for which the third-party content can be used. Subsequently, the Korea Online Newspaper Association (KONA)⁴⁵ finalised ‘Rules of Use for Content’ which it started to enforce with Internet portals in 2008. The guidelines which are only a model template *i*) limit news search and storage of portals to seven days, *ii*) prohibit the modification of the original news content by portals and aggregators, and *iii*) prohibit the unauthorised distribution and reproduction of news content by Internet users or bloggers. Portals such as Naver reacted sceptically to the rules claiming that the issue had to be solved with each separate company (and not the KONA which merely represents rights holders). The member companies of KONA have a preference for allowing Internet portals the use of their headlines only while the full content of articles should be provided via a direct link to their respective website (and not on the Internet portal itself).

In Korea, news content providers have formed a copyright holders association in order to protect their IPR against portal sites. The Korea Press Foundation also took over the copyright management of online news content and launched www.newskorea.or.kr, an all-in-one news content distribution site.

In general, publishers are increasingly availing themselves of new third-party enforcement services such as Attributor, which scour the Internet for such unauthorised content, and negotiate commercial agreements with the unauthorised re-posters on behalf of publisher copyright owners in situations where authorisation is necessary. To the extent infringing copies are available on third-party websites, existing mechanisms like the US safe harbour regime are meant to enable rights holders to notify those who link to infringing material.

Authors' moral rights in a multi-platform context

In the context of ever-increasing numbers of news outlets, journalists are more and more producing for a variety of media and creating new forms of content (e.g. blogs) without necessarily receiving additional remuneration. As opposed to other creative professions where creators are remunerated separately for different “releases” over different media, journalists are expected to let go of control of their works and variable remuneration which could depend on the distribution channel. In this context, an increasing topic of debate is how to remunerate journalists for their intellectual property (authors' rights). This is particularly prevalent in continental Europe where journalists have moral rights over their content and where the use of journalistic content over various platforms has been a source of conflict. Journalists ask to be recognised as authors of the work they create, have control on further use of their work (including the right to be named as the author and the right to protect their content from being used in a detrimental way) and receive an equitable remuneration for it. The situation is particularly precarious for photographers or other producers of images or videos as they increasingly compete against free content, but also see their content used without remuneration or attribution.

As part of its wider policy revamp (see Box 5.4), France has recently adopted a law (*Loi Création et Internet*) which grants news organisations the right to exploit journalistic content throughout various news outlets for a set period of time, meaning that journalists waive their rights and do not receive extra remuneration during that time period (*le premier cercle d'exploitation de l'information*). Beyond this period, journalists will receive additional remuneration, depending on collective agreements or contracts.

Notes

1. Many of the policy issues raised in the OECD participative web study (OECD, 2007a) are also relevant in this context, in particular matters related to information and content quality, copyrights and fair use.
2. Text in French: « La plus grosse part est constituée d'une aide postale pour un total de 700 millions d'euros. Viennent ensuite les avantages fiscaux consentis sous la forme d'un taux de TVA réduit à 2,1% (200 millions) et de l'exonération de taxe professionnelle (200 millions). Les aides directes se montent à 280 millions d'euros, dont 110 millions d'abonnements de l'Etat à l'Agence France-Presse, 10 millions d'aide aux journaux à faibles ressources publicitaires tels que L'Humanité, La Croix et Libération, 44 millions d'aides à la modernisation de la presse d'information politique et générale. »
3. In the 18th and 19th centuries, the US federal government supported newspapers through cheap postal rates, but this indirect aid was later dropped. See the statement of Paul Starr, Woodrow Wilson School, Princeton University, hearing before the Joint Economic Committee "The Future of Newspapers: The Impact on the Economy and Democracy", 24 September 2009.
4. Statement by Steve Coll, US Senate Committee on Commerce, Science and Transportation, 6 May 2009,
http://commerce.senate.gov/public/_files/SteveCollTestimonyFutureofJournalism.pdf.
5. Paul Starr, Woodrow Wilson School, Princeton University, hearing before the Joint Economic Committee, "The Future of Newspapers: The Impact on the Economy and Democracy", 24 September 2009.
6. Penelope Muse Abernathy, "A Non-profit Model for the New York Times", at the Duke Conference on Nonprofit Media, May 2009.
7. "The Reconstruction of American Journalism", report by Leonard Downie, Jr. and Michael Schudson, October 2009.
8. John F. Sturm, Newspaper Association of America, hearing before the Joint Economic Committee, "The Future of Newspapers: The Impact on the Economy and Democracy" 24 September 2009,
http://jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore_id=451e8a45-ffb1-4e2d-8e3e-7e00cba1487b.
9. Donations of this type would be sent to a French state bank and would be earmarked by donors for distribution to a newspaper organisation of their choice.
10. *<http://blogs.crikey.com.au/contentmakers/2009/08/17/the-foundation-for-public-interest-journalism-board-announced/>*.
11. *Ibid.*

12. Policy declarations and statements of the Newspaper Association of America, www.naa.org/Public-Policy.aspx, the European Newspaper Publishers' Association (ENPA) and in particular its resolution at the Autumn General Assembly meeting in Seville, Spain (6 November 2009) http://enpa.webfabriek.be/uploads/Presspercent20Releasepercent20Attachments/enpa_seville_declaration_6_nov_2009.pdf, the World Association of Newspapers and National Newspaper Associations.
13. According to the NAA, in his Fiscal Year 2010 Budget, President Obama proposed allowing businesses to carry back net operating losses for five years instead of two years under existing law. This would allow businesses to apply current losses to prior year taxable income, providing a much needed infusion of cash at a critical time. While Congress included this provision in the economic stimulus package, it was significantly scaled back in conference and applied only to very small businesses. Most businesses, like many newspapers, do not qualify for this assistance. Legislation has been introduced in the House and Senate which would correct this problem and expand the net operating loss provision for the benefit of all businesses.
14. <http://europe.ifj.org/assets/docs/221/190/e960add-177d2be.pdf>.
15. www.monjournaloffert.fr/.
16. www.wan-press.org/pfreedom/rubriques.php?id=304.
17. www.freedomhouse.org.
18. www.freedomhouse.org/template.cfm?page=383&report=79&group=19.
19. Federations of Journalists.
20. The Reconstruction of American Journalism, *op. cit.*, p. 59.
21. Two newspapers in Minnesota are concerned. Allocations are paid out of a fund which helps workers deal with industrial transitions. Papers work with the University of Minnesota's School of Journalism and Mass Communication to help staff adapt to an increasingly Internet-based industry.
22. www.thefutureofjournalism.org.au/life-in-the-clickstream.
23. "Science and the Media – Securing the Future", Science and the Media Expert Group to the UK government, January 2010, <http://interactive.bis.gov.uk/scienceandsociety/site/wp-content/uploads/2010/01/Science-and-the-Media-Securing-the-Future.pdf>.
24. www.oft.gov.uk/shared_of/mergers_ea02/oft1091.pdf.
25. <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/671&format=HTML&aged=0&language=EN&guiLanguage=en>.
26. Recommendation CM/Rec(2007)3 of the Committee of Ministers to Member States on the remit of public service media in the information society, adopted on 31 January 2007 at the 985th meeting of the Ministers' Deputies. In its Resolution on concentration and pluralism in the media in the European Union, the European Parliament has recommended that "regulations governing state aid are devised and implemented in a way which allow the public service and community media to fulfill their function in a dynamic environment, while ensuring that public service media carry out the function entrusted to them by

- Member States in a transparent and accountable manner, avoiding the abuse of public funding for reasons of political or economic expediency”.
27. <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1072>, Communication from the Commission on the application of state aid rules to public service broadcasting as adopted by the Commission on 2 July 2009, for full text see http://ec.europa.eu/competition/state_aid/legislation/specific_rules.html#broadcasting.
 28. “The Fall of Rome: Media after Empire”, A.N. Smith Memorial Lecture in Journalism 2009, Mark Scott, Managing Director, Australian Broadcasting Corporation, 14 October 2009, <http://blogs.crikey.com.au/contentmakers/2009/10/14/1300/>. See also www.abc.net.au/corp/pubs/documents/mark_scott_npc_address_10.09.08.pdf.
 29. Background paper at www.dbcde.gov.au/consultation_and_submissions/abc_sbs_review.
 30. www.minister.dbcde.gov.au/media/media_releases/2009/035 and “Strengthening Our National Broadcasters”, www.dbcde.gov.au/_data/assets/pdf_file/0016/112192/Strengthening_our_National_Broadcasters_web.pdf. The government’s national broadcasting review has affirmed the strong level of support for our two national broadcasters. The Australian public sees an important role for the national broadcasters over the coming decade – and the Rudd government shares this commitment. In this environment, the national broadcasters should – as they have done for decades – provide content and programming that engages, connects and inspires all Australians. The value and relevance of their services is based on the quality and diversity of their content. Importantly, the national broadcasters should be able to deliver this programming and content across various technology platforms in response to audience expectations. (refer page 19, in the section Conclusion).
 31. See note 23.
 32. *Ibid.*
 33. www.prospect-magazine.co.uk/article_details.php?id=10769.
 34. OFT, Review of the local and regional media merger regime, Final report, June 2009 www.oft.gov.uk/shared_of/mergers_ea02/of1091.pdf and www.guardian.co.uk/technology/2009/jun/16/digital-britain-oft-rules.
 35. BDVZ.
 36. Several countries are taking measures. For instance, in the US two House Energy & Commerce subcommittees, the Subcommittee on Communications, Technology and the Internet and the Subcommittee on Commerce, Trade and Consumer Protection, held a joint hearing on online behavioral advertising and privacy.
 37. www.nytimes.com/2009/10/06/business/media/06adco.html?_r=1&ref=global-home *Ethic*.
 38. In many OECD countries’ national copyright laws, copyrighted works may be lawfully discussed, excerpted, quoted, or parodied without the prior permission of the copyright holder (see a relevant discussion of copyright exceptions and limitations in OECD, 2007a).
 39. Newspaper organisations have a history in trying to prevent third parties from diffusing information services and preventing them to engage in electronic publishing (Boczkowski, 2005). In the 1990s, for instance, US newspapers lobbied against AT&T’s efforts to diffuse news.

40. The UK Newspaper Licensing Agency which has the mandate to authorise and gather licences from “paper and digital copying of press cuttings” has also emitted proposals to charge public relations agencies for links to newspaper sites. This suggestion has come under criticism.
41. www.internet-manifest.de/.
42. Eric Pfanner, “Germany Looks at Ways to Protect Online Journalism”, *International Herald Tribune*, 28 October 2009.
43. Some Internet companies (such as Google), argue that newspapers can use existing technical measures and long recognised industry standards such as REP (see Box 5.7) to provide sufficient control over the way their content is crawled and indexed by search engines. They argue that newspapers can use technical measures such as REP to indicate to search engines and other web robots that they should not crawl a specific page and/or list it. They also argue that it would fundamentally change the way the web works and that technical standards must be designed for the whole web (big publishers and small), not just for one subset or field. Furthermore, they argue that ACAP could have various unintended, adverse affects . For example, ACAP’s extensions that allow web publishers to determine what appears as a snippet could be misused to undermine users’ ability to find relevant information online and to facilitate distribution of spam and malware. By putting innocuous information in the snippet (e.g. a travel destination), someone could attempt to attract users to a website that includes unrelated, unwanted, or harmful content. They also are concerned that ACAP could not be as easily applied across various types of content providers as REP. Major search engines including Google have thus refused to redesign their systems to implement the more extensive ACAP protocols to index content online. Google is however working with publishers to design more granular ways of control of how search engines display content on the basis of REP.

Publishers, on the other hand, do not see REP as a sufficient solution as they believe that it does not provide for sufficient granularity, is overly ambiguous, leaves interpretations of the permissions to crawlers, does not apply to crawlers or processes other than search engines and is ignored by a considerable number of “rogue” crawlers which do not comply with any standards. Therefore, in their view, the broader set of permissions in ACAP provide for greater opportunities to specify how their content can be used by all crawlers and processes, including those not yet invented, and that it is more suited to developing automated machine-to-machine transactions which will lead to innovation in content licensing business models and capabilities – and in turn creativity and investment. Some publishers assert that many crawlers do not respect REP, or identify themselves properly to websites, as compliance with it is voluntary. These publishers also point out that the issue of websites “cloaking” their true purpose as described above is already a problem on the Internet. Rogue websites will try to detect a search engine crawler and serve an innocent page which will create a misleading listing in search engines. When a human visitor visits a site, the site will serve them different content frequently containing spam or malware. Search engines such as Google already deploy measures to detect and prevent this type of “cloaking”, including the use of special crawlers which masquerade as human visitors to check that the content is the same. In other words, publishers believe that this is not a new problem or a problem that is compounded by ACAP. Some publishers also argue that it is not a problem inherent to the capability within ACAP for publishers to specify the way in which they want their content to be treated. Publishers also argue that this problem should be addressed by joint initiatives to establish a framework to establish and manage trusted relationships between crawlers and websites. While ACAP is also voluntary, some

publishers are working with some search engines to continue the ongoing development and implementation of ACAP and believe that if ACAP permissions clearly acquire the legal status of licences that compliance, innovation and investment in content will markedly increase. Finally, publishers disagree with the assertion that ACAP will fundamentally change the way the web works. Indeed, compliance with ACAP's permissions functions in a manner similar to compliance with REP; the real difference being that there is a broader set of permissions. Publishers assume that the assertion refers to the fact that search engines will have to adjust how they crawl content, which publishers do not equate with the world wide web generally and argue that such adjustments are consistent with publishers' exclusive rights granted by copyright.

44. www.mcst.go.kr/web/dataCourt/ordinance/instruction/instructionView.jsp?pSeq=167.
45. KONA has 12 member companies which include Chosun Ilbo, JoongAng Ibo, Dong-A Ilbo, Kyunghyang Shinmun, Maeil Business Newspaper, Korea Economic Daily, The Hankyoreh, Seoul Shinmun, Kukmin Ilbo, Hankook Ilbo, Segye Ilbo, and ETnews.

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