The Internet and the Press

By Donna Coleman Gregg[1]

The Internet is revolutionizing nearly every aspect of life from commerce to education, delivery of medical care to government services, and mass media communication to personal interaction among family and friends. While the Internet has stimulated great progress and created unparalleled opportunity, these benefits have also caused considerable displacement and disruption. Today the traditional print and electronic press, on which people have long relied for news and information, are struggling with marketplace disruption, even as they enjoy the Internet's advantages. This article provides an analysis of how the Internet has redirected the evolution of the press, examines the opportunities and challenges the redirection presents for both the press and consumers of news and information, and considers some steps being taken to meet the challenges, both in the United States and internationally.

I. Origins and Evolution of the Press

While the term "the press" originated with the printing press, a 15th Century European invention, over time "the press" has come to encompass much more than the printing of ink on paper. Rather, as U.S. Supreme Court Justices from Hughes to Scalia have envisioned it, the press comprehends "every sort of publication that affords a vehicle for information and opinion."[2] "The press" also comprises journalism and the myriad associated activities and individuals responsible for gathering, assembling, and deploying the news. Today "the press" publishes information and opinion not only in print, but also electronically over radio and television broadcasting stations, cable and satellite TV, and, increasingly, the Internet. In fact, according to a recent survey, on a typical day, "46% of Americans say they get news from four to six different media platforms", and "six in ten (59%) get news from a combination of online and offline sources." Moreover, the Internet is now the most widely relied upon news source for Americans except local television and national network TV news as the most widely.[3]

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[2] *See, e.g.*, Lovell v. City of Griffin, 303 U.S. 444, 452 (1938); Citizens United v. FEC, 130 S.Ct. 876, 928 (2010) (Scalia, J., concurring)(endorsing Chief Justice Hughes's definition of "the press").

[3] Pew Internet & Am. Life Project & Project for Excellence in Journalism, *Understanding the Participatory News Consumer* at 3-5 (Mar. 2010), *available at* http://www.pewinternet.org/~/media//Files/Reports/2010/PIP_Understanding_the_Participatory_News_Consumer.pdf (last visited Aug. 19, 2010) (hereinafter "PEW INTERNET & PEJ").

The birth and evolution of the press in the United States provides a useful case study for examining the series of challenges confronting one nation's adaptation of legal principles designed for print media to the era of electronic mass communication and more recently, to an interactive, online environment. In order to create the informed electorate essential to democracy, the United States has always sought to protect its press from suppression by the government. Although freedom of speech and freedom of the press are enshrined in the First Amendment of the United States Constitution,[4] preservation of the press as a free and robust forum of discussion and debate has not always come easily. Assaults on press freedom in America date back to the nation's early history. In 1690, British officials shut down one of the first newspapers in the North American colonies – Boston's *Publick Occurrences, Both Foreign and Domestick"* – after publication of just a single edition, because the publisher had criticized Britain's alliance with hostile Indian tribes.[5] Although the American press nonetheless survived and expanded, not long after the American colonies won their independence, intense rivalry between the new nation's principle political factions resulted in passage of seditious libel laws to punish speech or publications critical of government officials.[6] The 250 U.S. papers published in 1801 increased to 2500 in 1860, and many cities hosted several competing newspapers. By the end of the 19th century, the United States had over 11,000 different daily newspapers.[7]

The advent of radio and television broadcasting during the first half of the 20th century soon began making inroads into newspapers' dominance of the press. Largely because of its ability to provide breaking news bulletins from the front during World War II, radio overtook newspapers as most people's major source of news and remained dominant into the 1960's.[8] As the television set became a fixture in most U.S. households, television news broadcasts eventually overtook both newspapers and radio in popularity and, in the U.S., remains the most widely relied upon source of news today.[9]

In the latter half of the 20th century, multichannel video program distribution services ("MVPDs") such as cable television and satellite TV introduced even more competition to

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4 U.S. Const. amend. I.

5 See PAUL STARR, THE CREATION OF THE MEDIA at 55 (2004).

6 *See* ANTHONY LEWIS, FREEDOM FOR THE THOUGHT THAT WE HATE (2007) (discussing seditious libel legislation and prosecutions in late18th and early 19th century America).

7 Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970, Part 2*, 809-810 (1975), a*vailable at* http://www2.census.gov/prod2/statcomp/documents/CT1970p2-01.pdf.

8 GIRAUD CHESTER et al., RADIO AND TELEVISION 11 (1963).

9 *See id.* at 51 and PEW INTERNET & PEJ, *supra* note 3 at 3.

the news media marketplace.[10] By the 1980's, the combination of MVPDs' multichannel capacity and affordable satellite relay technology gave rise to 24-hour news channels such as CNN and Sky-TV as well as coverage of specialized news from the world of sports, entertainment, and other areas of interest.[11] With breaking news constantly available on cable or satellite TV, newspaper readers and broadcast news audiences were no longer content to wait for the arrival of the daily newspaper, the evening news broadcast, or even hourly news bulletins. Consumers of news began to shift to cable and satellite news coverage. Advertisers, which provided the principal revenue source for newspapers and broadcasters, began to follow. In accordance with its most recently released assessment of competition in the market for delivery of video programming, the FCC found, "[A]lmost all consumers are able to obtain programming through over-the-air broadcast television, a cable service, and at least two DBS providers."[12]

II. The Emergence of Online News and the Internet

With the close of the 20th century and the dawn of a new millennium, the emergence of the Internet has caused an even greater disruption in the news media marketplace. Interestingly, while the U.S. government eschewed establishment of a government-run press and deliberately consigned newspapers, broadcasting, and MVPDs to the private sector,[13] the Internet was developed almost entirely under U.S. governmental auspices. Significant private sector involvement and commercial applications for the Internet did not development until nearly 30 years later.[14]

Today, the Internet has assumed an important role in every aspect of commerce, including the press. In addition to online news provided by traditional newspaper, broadcast, and MVPD sources, new "online only" news sources such as Salon.com and Huffington Post have materialized, as has news generated by blogs and "citizen journalists." Because of the Internet, virtually anyone with access to a computer and the World Wide Web can be part of the press. In addition, instead of waiting for news to be delivered in a newspaper or on a

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10 *See* The History of Cable Television, NCTA.com, http://www.ncta.com/About/About/HistoryofCableTelevision.aspx?source=Resources (last visited July 27, 2010).

11 *Id.*

12 *See* Annual Assessment of the Status of Competition in the Mkt. for the Delivery of Video Programming, *Thirteenth Annual Report* 24 F.C.C.R. 542, para. 4 (2009).

13 *See* STARR, *supra* note 5 at 328-329.

14 *See generally* Brett Frischmann, *Privatization and Commercialization of the Internet Infrastructure: Rethinking Market Intervention into Government and Government Intervention into the Market,* 2 COLUM. SCI. & TECH. L. REV. 1, 8-11, June 8, 2001 (discussing the Internet's origin and initial development as a U.S. governmentally funded and managed activity to its transition to private, commercially managed operation).

radio, TV, MVPD channel's newscast, consumers of news can search the entire World Wide Web at their own convenience for news they find of particular interest.

III. Opportunities the Internet Creates for the Press

Without question, the Internet has created enormous opportunities for the press. As described by the Information Technology and Internet Foundation ("ITIF"), the Internet "enables new sources of information to be created by lowering barriers of publishing to allow anyone to contribute to the Internet's collective knowledge base."[15] Not only does the Internet vastly expand the amount and variety of information available; its vast data storage and instantaneous retrieval capacities dramatically accelerate and enhance the news-gathering process. Research, fact-checking, and frequent updating of stories as events unfold are possible to an extent never dreamed of before, allowing (but not guaranteeing) reporting in much greater depth and with much greater accuracy. Collaboration among reporters, experts, and editors working in different, often far flung places can occur with greater ease and speed than ever before.

Cost, of course, is among the barriers of publishing which the Internet so effectively lowers. No longer are printing presses, reams of newsprint, and ink essential to conveying news and information. More important, online delivery of news eliminates the very high, recurring cost of fuel, vehicle maintenance, and labor required for delivering print publications.

The Internet also creates opportunities for the press on the revenue side. First, the online press has instant access to a global readership. While online news media are obviously competing with thousands of other news sources for news consumers' attention, the cost of reaching potential readers or viewers is very low. In addition, the Internet has given rise to the new form of targeted and behavioral advertising, through which promotional messages can be directed to those most likely to desire the product or service on offer.[16]

The Internet also creates tremendous opportunities for news consumers. In a speech in January 2010, U.S. Secretary of State Hillary Rodham Clinton observed that with the Internet, there are more ways to spread more ideas to more people than at any moment in history.[17] From a technological standpoint, neither time, space, nor in many cases cost can impede a person's ability to access up-to-the minute information on unfolding events or records and information from the distant past. Linked by satellite relay and other wireless

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15 *See* ROBERT D. ATKINSON et al., THE INTERNET ECONOMY 25 YEARS AFTER .COM: TRANSFORMING COMMERCE AND LIFE at 52 (Mar. 2010), *available at* http://www.itif.org/files/2010-25-years.pdf (last visited Aug. 19, 2010).

16 *Id.* at 41 (explaining concepts in on-line advertising).

17 Hillary Rodham Clinton, Secretary of State, *Remarks at the Newseum: On Internet Freedom* (Jan. 21, 2010) (transcript available at http://www.state.gov/secretary/rm/2010/01/235519.htm)(last visited Aug. 8, 2010).

technologies, even people in the most remote locations can access the World Wide Web. Services such as Google's e-mail news alerts provide periodic notice news or information tailored to a particular person's interests.

IV. Challenges the Internet Presents to the Press

The Internet is rapidly replacing books, magazines, newspapers, radio, and television as the primary source of news and information worldwide. During this time of transition from the traditional news media to online news and information, policy-makers and concerned people everywhere are wondering what the Internet-based "press" of the future will be. Although the Internet creates many opportunities for the press, it undeniably raises almost as many challenges. The remainder of this paper will focus on four of the most significant challenges: (A) Accessibility; (B) Infrastructure Reliability and Security; (C) Content Value; and (D) Sustainability of the Economic Base. After outlining each concern, the paper will highlight some efforts that are underway in the U.S. and internationally to meet that challenge.

A. Accessibility

The press cannot take full advantage of the opportunities created by the Internet until consumers of news and information have Internet access. Over the last decade, the Internet's underlying infrastructure has expanded. Although the expansion continues, there is still a long way to go. Data gathered by the International Telecommunication Union ("ITU"), a specialized agency of the United Nations responsible for information and communications technology issues, indicate that households in rural areas of developing countries increasingly rely on mobile telephony for communication. ITU research also found that in contrast to the increasing penetration of mobile technology, many rural households in the developing world still lack basic access to the Internet. In developing countries, the cost of computers and Internet and the lack of electricity present major obstacles to Internet access.

The number of people worldwide who do not have access to the Internet is far too large to be ignored. While 75% of the households worldwide have a TV, only 25% have Internet access.[18] Nearly two-thirds of people in the developed world have Internet access, but four-fifths of people in the developing world do not.[19] In the U.S. 200 of the country's 300 million people had broadband in their homes; 100 million did not.[20]

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[18] Int'l. Telecom. Union, STATSHOT, Issue 3 (June 2010) http://www.itu.int/net/pressoffice/stats/2010/06/index.aspx.

[19] *Id.*

[20] Federal Communications Commission, *Connecting America: The National Broadband Plan* March 17, 2010, *available at* http://download.broadband.gov/plan/national-broadband-plan.pdf [hereinafter *National Broadband Plan*].

Internet availability has lagged in part because deployment of the underlying wireline broadband infrastructure is very costly, particularly in remote or sparsely populated areas. Advances in wireless broadband technology and allocation of more frequency spectrum for wireless Internet service create hope that broadband deployment to unserved areas will accelerate and more people will have Internet access.[21] Even where Internet access is available and affordable, low adoption rates exist among people who lack awareness of the Internet's usefulness or adequate training in its use. Based on its analysis of the FCC's most recent Annual Broadband Deployment Report, the Information Technology & Innovation Foundation observes that "the lack of adoption is by far the greatest barrier to universal broadband use in the United States. The number of Americans who choose to purchase broadband services is much lower – approximately 70% by the latest surveys – than the number to whom such services are available, well over 95%."[22] Finally, even where people have access to the Internet, they may not have access to all Internet content. Just as Internet technology makes opportunities available, it also allows repressive governments to engage in blocking of online content they deem objectionable. Although government blocking of access to Internet websites recently has been seen as a problem in China, Google estimated that during the last half of 2009, it received a total of over 1000 requests for data or removal of content from over 40 different countries.[23]

In the U.S., broadband deployment is one of the principal policy goals of the Obama administration. In response to a 2009 directive from the U.S. Congress, the Federal Communications Commission promulgated a plan for broadband deployment to all Americans within ten years.[24] Since issuing the plan in March, 2010, the FCC has published a list of 64 items including seeking public comment, holding workshops, creating task forces, and other activities during 2010.[25] On June 28, 2010, President Obama issued a memorandum calling for doubling the current amount of airwaves available for wireless within the next 10 years.[26] In addition, the Federal Communications Commission and the National Telecommunication and Information Administration of the U.S. Department of Commerce are conducting an inventory of existing spectrum usage with the goal of

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21 Id. at 75.

22 RICHARD BENNETT & ROBERT D. ATKINSON, ITIF ANALYSIS OF FCC BROADBAND DEPLOYMENT REPORT (July 21, 2010), *available at* http://www.itif.org/publications/itif-analysis-fcc-broadband-deployment-report (last visited Aug. 20, 2010).

23 *Government requests directed to Google and YouTube*, Government Requests, http://www.google.com/governmentrequests (last visited Aug. 20, 2010).

24 *See generally, National Broadband Plan, supra* note 20.

25 *FCC Broadband Action Agenda*, http://www.broadband.gov/plan/national-broadband-plan-action-agenda.pdf (last visited Aug. 20, 2010).

26 Presidential Memorandum: Unleashing the Wireless Broadband Revolution (June 28, 2010), http://www.whitehouse.gov/the-press-office/presidential-memorandum-unleashing-wireless-broadband-revolution (last visited Aug. 20, 2010).

reclaiming spectrum for more efficient uses.[27] The U.S. is also exploring options for repurposing Universal Service Funds originally established to deploy telephone service to rural areas and dedicating economic stimulus funds for broadband deployment.[28]

International organizations also have taken action to promote broadband deployment around the world. In 2001, the United Nations General Assembly adopted a resolution calling for a World Summit on the Information Society.[29] At the Summit's initial session in Geneva in 2003, over 11,000 participants from 175 countries took initial steps toward establishing and Information Society for all people. A second session attended by over 19,000 participants took place in Geneva, and resulted in adoption of an Action Plan and financial commitments for broadband deployment.[30] More recently, the ITU, through its Development Sector ("ITU-D"), designated the task of spreading information and communications technology to the developing world as a major priority. At the most recent of its periodic World Development Conferences in Hyderabad, India in June, 2010, the ITU-D launched a number of "Connect the World" Initiatives including deployment of broadband to schools and villages in the developing world, mobilizing financing and planning for wireless broadband deployment by key stakeholders.[31] The European Commission is also actively pursuing spectrum policies and other approaches related to broadband deployment and connectivity.[32]

B. Infrastructure Reliability and Security

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[27] John Eggerton, *Genachowski, Strickling Talk Spectrum*, Broadcasting & Cable (June 14, 2010). http://www.broadcastingcable.com/article/print/453752-Benachowski_Strickling_Talk_Spectrum.php (last visited Aug. 20, 2010).

[28] *See National Broadband Plan, supra* note 20 at 145-156.

[29] UN General Assembly Resolution 56/183 (Dec. 21, 2001), *available at* http://www.itu.int/wsis/docs/background/resolutions/56_183_unga_2002.pdf (last visited Aug. 20, 2010).

[30] Int'l. Telecom. Union Press Release, *World Information Society Summit Hailed as Resounding Success* (8 Nov.8, 2005) and *Global Information Society Summit Spurs Solidarity, Alliances But Hard Work, Action Ahead* (Dec. 12, 2003), http://www.itu.int/wsis/newsroom/index.html (last visited Aug. 20, 2010).

[31] Int'l. Telecom. Union Press Release, *Road map set for global development of telecommunications and ICT: Hyderabad Action Plan agreed at ITU World Telecommunication Development Conference* (June 4, 2010) http://www.itu.int/net/pressoffice/press_releases/2010/28.aspx (last visited Aug. 20, 2010).

[32] *See* European Commission, *A Digital Divide (Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions) at 7, (May 2010).* http://ec.europa.eu/information_society/digital-agenda/documents/digital-agenda-communication-en.pdf (last visited Aug. 20, 2010).

Each report of a new Internet virus creates new concerns regarding the vulnerability of a means of communication on which not only the press but so many other important components of daily life increasingly rely. Results of a 2005 survey of technology experts, scholars, and other knowledgeable and interested stakeholders revealed a widespread expectation that attacks on network infrastructure would occur within the decade.[33] These concerns became reality in 2007, when deliberate cyber attacks interrupted Internet use in Estonia in 2007, and predictions of cyber attacks targeting social networking sites such as Facebook and Twitter are increasing.[34]

Governments everywhere take the threat of cyber attacks very seriously. The U.S. Congress is considering legislation to stimulate research and development activities focusing on workforce and training needs to combat cyber attacks, technical standards for minimizing security risks to computers used in the federal government, and strategies for addressing infrastructure weaknesses.[35] Measures to improve cyber security and combat cyber crime are also a top priority in the European Union. Its European Network and Information Security Agency ("ENISA"), provides reports, conducts workshops, and recommends practices for preparedness in addressing cybercrime and attacks [36] Since 2007, the ITU Global Agenda for Cybersecurity has provided a framework for international cooperation in promotion of cybersecurity, and the recent ITU-D's Connect the World Initiatives included partnering with ITU member states and other organizations to address cyber threats.[37]

C. Content Value

For many years the U.S. and many other countries, have enacted laws to prevent the press from publishing falsehoods or other material harmful to people's reputations, privacy or property interests. Many of those laws were written long before the Internet existed not only in reality but even in theory. Over the past several years, U.S. courts have grappled with the task of interpreting existing libel, defamation, and privacy laws in the online context, and Congress has been considering legislation to protect individuals against misuse

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[33] Pew Research Center, *Report: Future of the Internet I* (2005) http://www.pewtrusts.org/our_work_report_detail.aspx?id=17132 .

[34] Clark Boyd, "*Cyber-war a growing threat warn experts"* (June 17, 2010) http://news.bbc.co.uk/2hi/technology/10.

[35] *See, e.g.*, Protecting Cyberspace as a National Asset Act of 2010 (H.R. 5548, S. 3480); Cybersecurity Enhancement Act of 2010 (H.R. 4061); Cybersecurity Education Enhancement Act of 2009 (H.R. 266).

[36] *See* http://www.enisa.europa.eu (discussing ENISA's responsibilities and activities).

[37] *See* Int'l. Telecom. Union Global Cybersecurity Agency, http://www.itu,int/osg/csd/cybersecurity/gca/index.html; Report on WSIS Implementation; ITU Press Release, *supra* note 33.

of online communications.[38] Laws of the U.S. and nations of the world also protect intellectual property, to encourage an abundance of worthwhile content of high quality by providing for compensation of writers, reporters, and publishers who produce such content. The World Intellectual Property Organization, another United Nations specialized agency, has led worldwide efforts to adopt international copyright treaties for the online environment.[39]

D. Economic Base

The print and electronic press organizations on which people have long relied for news and information are struggling to sustain operations in the face of fierce competition for readers, viewers, and revenues from the online press. Venerable newspaper publishers in major world cities increasingly are closing their doors.[40] The traditional electronic news media has been feeling the impact of Internet competition for the last decade, forcing local stations and major broadcast networks to respond with cutbacks in coverage and newsroom staffing.[41]

Preserving the best traditions and highest standards of the "old press" while developing a sustainable revenue base for the 21st Century news media presents a major challenge for all nations. Notwithstanding America's longstanding preference for reliance on the private sector and marketplace forces, calls for government assistance to the press akin to federal bailouts of the U.S. financial and automotive industries have increased.[42] While such

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[38] *See, e.g.,* Ben Quarmby, *Protection from Online Libel: A Discussion of Legal and Extrajudicial Recourses Available to Individual and Corporate Plaintiffs*, 42 N.ENG. L. REV. 275 (2008) (comparing and critiquing possible responses by victims of online libel).

[39] *See* Tiffany N. Beaty, *Navigating the Safe Harbor Rule: The Need for a DMA Compass*, 13 MARQ. INTEL. PROP. L. REV., 207, 219-227 (2009) (discussion of recent U.S. online copyright infringement litigation and legislative approaches).

[40] Organization for Economic Co-operation and Development Directorate for Science, Technology and Industry Committee for Information, Computer, and Communications Policy, *The Evolution of News and the Internet* at 7-8 (June 11, 2010), *available at* http://www.oecd.org/dataoecd/30/24/45559596.pdf (discussing the impact of the Internet on newspapers and news reporting in OECD member states); Linton Weeks, *Chronicling the Death of the American Newspaper* (Mar. 2, 2009), *available at* http://www.npr.org/templates/story/story.php?storyId=101237069.

[41] *See* Pew Research Center for People & the Press, *Internet Sapping Broadcast News Audience (June 2000* http://people-press.org/report/36/internet-sapping-broadcast-news-audience*;* Hillary Atkin, *Cutbacks Roil Major TV News Operations*, TV Week (June 5, 2010), www.tvweek.com/news/2010/04/**cutbacks_roil_major_tv**_news_op.php.

[42] *See, e.g.*, Leonard Downie, Jr. & Michael Schudson, *The Reconstruction of American Journalism,* Columbia Journalism Review (Oct. 19, 2010), *available at* http://www.cjr.org/reconstruction / the-_reconstruction_of_american.php?page=all&print=true at 29-33 (last visited Aug. 10, 2010) (recommending, *inter alia*, that the Internal Revenue Service or Congress establish a new class of

proposals at first may seem a practical approach for dealing with the current transition, looking to the federal government to provide direct or indirect financial support to troubled U.S. press organizations raises the possibility of increased government control of the press in violation of the First Amendment guarantees. Other countries may face different but equally difficult challenges.

V. CONCLUSION

As ITU Secretary General Dr. Hamadoun I. Touré correctly points out, "We are at a time when a brave new world is being shaped by key technological developments: wireless broadband; voice over IP and network rationalization on an IP layer; distributed low cost information storage; mobile Internet; ad hoc self-organizing networks. We must be proud to be part of this change. We are shaping a future in which Information and Communications Technology plays a catalytic role not just in accelerating local economies but in meeting key development goals in every facet of human life."[43] Nevertheless, as governments seek to harness the Internet's tremendous power and promise, they must proceed with wisdom and caution, exercising the restraint necessary to ensure that the press of the future remains free.

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nonprofit news organizations entitled to special tax advantages or provide increased funding and support for local news reporting through reform of the Corporation for Public Broadcasting).

[43] Dr. Hamedoun I. Touré, Secretary General, Int'l. Telecommunications Union, World Telecommunication Development Conference 2010 Closing Ceremony (June 4, 2010), *available at* http://www.itu.int/en/osg/speeches/Pages/2010-06-04.aspx.