

A world map with a network of white lines connecting various points across the continents, set against a light blue background.

**REGULATORY CHALLENGES IN
TIMES OF DIGITAL
TRANSFORMATION: A VIEW ON
EUROPEAN PUBLISHING AND
PUBLISHERS**

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Preface

Media crisis are as old as media themselves. Throughout their history media have been subject to disruptive changes as well as to constant evolution imposed onto them by technological and cultural changes. Undoubtedly printed media are undergoing massive changes in all of Europe. These create anxieties and give room to widespread fears on what degree of quality journalism can be funded in the future. Should there be visible long-term changes, those will most certainly not be limited to media as an industry but would rather affect society as a whole. Democracy is unthinkable without strong independent magazines and newspapers.

Publishers and their governing industry bodies in nearly all EU member states paid given much attention to structural changes in their field over recent years. They have come up with a range of proposals to secure the independence of journalism. These proposals were relayed to national and European lawmakers and governments as well as to third party companies such as Google and Apple. These proposals are different from state to state but have in common a view that the issues at hand must be taken seriously now and dealt with in a comprehensive fashion to prevent the downward spiraling of the likes that other print markets such as in the United States have seen.

This paper attempts to give an overview over recent economic and political developments in individual countries that are characteristic for different avenues to tackling the problem. Even though the outlook might look a bit gloomy one must remember that publishing has seen many such challenges over the centuries.

The crisis is as old as the newspaper itself. One historic example illustrates this: When Johann Carolus published the first newspaper over 400 years ago in Strasbourg, it took only 12 days before he appeared before the mayor and complained about copyists who shamelessly exploited his work and sold reproductions for a fraction of the original price. Johannes Gutenberg, the inventor of the book, went broke and died before his shop broke even. So insurmountable was the complex economic task he had set out to tackle. Around the year 1900 a large media crisis centered on the fear of trivialization. Some 50 years later the existence of the newspaper was called into question by television. Creative publishers and journalists survived all of these disruptive events. While this is no indication that the bell will never toll for print media it does suggest that grimming

facts should be taken seriously and acted upon but should not lead to panic or premature death claims.

Indeed, numbers from the print business look sobering. In the period from 1964 to 2009 the number of newspapers in Germany for example fell by around 40 percent. While there were 573 independent papers in 1964, in 2009 only 351 could be counted. Circulation decreases slow but steadily: In 2000 about 30 million copies were sold in Germany on an average weekday. Today it is just over 25 million, and until 2014, according to the "Global Entertainment and Media Outlook" by PricewaterhouseCoopers will decrease to about 23 million. Print advertising will decrease accordingly with 2011 probably being 32 percent below the 2006 level.

In 2010 for the first time in history revenue from copy sales of German newspapers surpassed sales from advertising and promotion meaning that the ever-shrinking copy revenues are now even more stable than ad sales. The old rule of thumb that two thirds of the revenue will come from advertising and one-third from no longer holds true. Relations have reversed. Today the reader pays two thirds and the advertisers on third with overall sales declining. This trend increases budgetary pressure on newsrooms.

Nevertheless, the reach of newspapers in Europe still is at a high level. German newspapers for example reach 69.6 percent of the population on a daily basis. This means that just over 49 million Germans over 14 years of age read a newspaper every day. In the agegroup of 40 to 69 years the respective figure is 71 percent. People between 14 and 19 years reach 53. Seven out of ten Germans over 14 subscribe to or buy a regular newspaper. These numbers show that the industry slightly loses business but still is strong. Magazines and newspapers in Germany account for 12 billion Euros sales per year.

Regulatory framework and political agenda of European publishers

In defense of their industry European newspaper and magazine publishers are jointly promoting a political agenda that centers on the following statements. Listed with bullet points are the issues formally adopted by national associations and aggregated by the European bodies. They represent a broad consensus that is augmented by national initiatives at a national level. Comment by the author is provided in italic below the individual points.

- Respect for freedom of expression and freedom of the press on all platforms including digital media. Freedom of expression including freedom of the press is recognized as a fundamental right both by the Council of Europe and by the European Union. Any restrictions on the freedom of expression that may be necessary for reasons of public interest should be strictly limited by strong legal and democratic safeguards.

Comment: There have been numerous attempts to limit freedom of expression in various member states. In Hungary a highly criticized new media law passed in December 2010 that makes state licenses mandatory for online media and permits an executive media council to foray into editorial offices to claim material on editorial stories and sources. In most Eastern European states

oligarchs have acquired leading news media to serve their business interest. In Turkey (not an EU member) the government has served a multi-billion Euro tax claim to the country's leading media publisher in a move that was widely seen as revenge for critical reporting. In Italy the prime minister owns the largest media empire. In Spain and France the leading business papers have been sold from traditional publishers to widely invested entrepreneurs whose stance on independence still has to be proven. In Denmark a cartoonist and an entire newspaper are under a fatwa after having published a cartoon depicting Allah. In Germany tapping of editorial phones have been ordered by courts as well as searches of newsroom. While press freedom on a larger scale still is strong in most European countries with the western states leading that tradition, the respect for freedom of the press remains a value to be fought for. Without constant defense the degree of freedom would lessen.

- Respect for copyright and remuneration of content owners. Strong copyright and database protection is a vital pre-condition for ensuring that newspaper publishers can continue to invest in content production and develop financially sustainable business models. It is essential to preserve newspapers from third party using editorial content without prior authorization and remuneration.

Comment: Copyright is a key issue in transforming print into online business. While printed products were always well protected and easy to protect digital content is prone to copy and paste. High financial incentives are to be won by exploiting someone else's intellectual property.

In a landmark resolution signed on June 26th in Hamburg a wide number of European publishers have signed a paper calling for more respect vis-à-vis intellectual property. The paper which has come to be know as "Hamburg Declaration" has gained enormous attention and can be seen as a turning point in public debate on creative content on the internet. The declaration has since been signed by hundreds of publishers and publishing associations around the world.

The paper reads as follows:

Hamburg Declaration regarding intellectual property rights

"The Internet offers immense opportunities to professional journalism – but only if the basis for profitability remains secure throughout the digital channels of distribution. This is currently not the case.

Numerous providers are using the work of authors, publishers and broadcasters without paying for it. Over the long term, this threatens the production of high-quality content and the existence of independent journalism.

For this reason, we advocate strongly urgent improvements in the protection of intellectual property on the Internet.

Universal access to websites does not necessarily mean access at no cost. We disagree with those who maintain that freedom of information is only established when everything is available at no cost.

Universal access to our services should be available, but going forward we no longer wish to be forced to give away our property without having granted permission.

We therefore welcome the growing resolve of federal and state governments all over the world to continue to support the protection of the rights of authors, publishers and broadcasters on the Internet.

There should be no parts of the Internet where laws do not apply. Legislators and governments at the national and international level should protect more effectively the intellectual creation of value by authors, publishers and broadcasters. Unauthorized use of intellectual property must remain prohibited whatever the means of distribution.

Ultimately, the fundamental principle that no democracy can thrive without independent journalism must also apply to the World Wide Web.”

(End of quote)

Through this initiative publisher clearly signalled that in the longer term the division of labour will not work that is in place today: On the one hand there are people who create exclusive, quality content with great effort and high investment, and then there are people who take over the content and market it without paying for it. At some point there will be no more investment in content and, at the very end of the chain, search engines will not have anything attractive left to search for or market.

- Better legal protection of publisher rights. Under continental European law press publishers do not have an own right on their work which entitles them to follow illegal copies as well as to give out licenses to legal users. This discriminates them against publishers in music, film, performances, databases and numerous other creative industries. While this lack of legal protection can only be explained historically with no material academic justification whatsoever, publishers in the Anglo-Saxon countries including the United Kingdom enjoy the benefits of a very different legal construction. Legally, publishers in the Anglo-Saxon are authors of the work. They possess almost exactly the same legal protection that authors do on the continent. German publishers have started a widely noticed initiative to overcome this contrasting approach and settle in the middle. They propose to introduce a new so-called neighboring right for publishers which
 - a) enables them to follow up on copyright infringement on their on right
 - b) does not harm or limit the authors right.

Such a legal instrument does not have to be invented. It already exists on the form of neighboring rights in all other creative industries. German government

has promised to introduce such a publishers right¹ into the countries copyright law and is performing the necessary lawmaking proceedings right not. Publishers on the continent argue that their governments should follow this model once it is in place. The European Commission is following the project closely and mulls a European directive to this effect. While this is promising for publishers it remains to be seen whether lawmakers actually live up to their promise.

Comment: This important project needs to be detailed in more specific terms due to the complexity of the legal issues at hand and the potentially far reaching implications of the proposed change in law.

Historic background

Discussions about specific legal protection for publishers are not just a matter of recent time. In Germany, this issue has been discussed since the mid 1960s however without such a publisher right being implemented through legislation. In other states, especially in Great Britain publishers have long been in possession of a specific copyright protection.

A legal comparison of various EU member shows the differences in copyright laws:

1. Germany

The German Copyright Act ("Copyright Act") was passed in 1965. Then as now, it granted two categories of rights:

- Copyright: First, it gives the creators of works (ie the authors, journalists, composers, film directors, etc.) a copyright for their work*
- Neighboring rights: Second, it accords some people additional rights to their performances or collection of others' works even though they are not authors of the works themselves.*

The following list shows all currently existing neighboring rights including the date of their introduction:

¹ The legal terms „publishers' right“ and „neighboring rights“ are used as synonyms in this paper. They describe a legal concept attributing copyright protection not only to the author of a work but also to his publisher because without his investment, brand and organization the work would have not appeared on the market. An example from music illustrates the idea: A singer performing a song he or she did not compose would not be getting any royalties from radio play if it were not for his “neighboring right”. Since he is not the author of the work he cannot claim copyright fees for any distribution, copying or public display of the work. To be even more concrete: Madonna performing “American Pie” would not receive royalties as covering artist if it were not for the neighboring right. When the song is played by a radio station Don McLean receives royalties as composer of text and music while Madonna collects money as “publisher”. Without her contribution there would not be airplay of this cover version. Authors' rights and publishers' rights are designed in such a way that they do not interfere with each other. This is a classic example of a “positive sum play”. Most creative industries have been granted equivalents. The only major creative branch in Continental Europe without a publishers' right is the press.

- *Performers* 1965
- *Event promoters* 1965
- *Film producers* 1965
- *Record producers* 1965
- *Broadcasting organizations* 1965
- *Scientific publications* 1965
- *Editor posthumous* 1965
- *Database publishers* 1997

The introduction of the various performance rights was justified in many cases by technical innovations. This is particularly true for the protection of record producers. With the invention of the gramophone record in 1877 and the subsequent success of this medium in the early 20th century the new field of audio piracy flourished since it was technically easy to press new bootleg copies and sell them without paying royalties. German courts to which the record companies complained in 1910 recognized this. It argued on the grounds of a purely derivative right borrowed by the author. This approach quickly proved to be rather ineffective. This led to the creation of the Copyright Act in 1965 in which the record companies' own performance right is granted. Such a right is even the more justified today where the production of digital copies has become indefinitely more easy.

For much the same reasons it became evident in the beginning of the 20th century that the performing artist needed equivalent protection because his work was by no ways protected by existing rules. His performance is clearly not identical to the work of the author he performs. A neighboring right for performing artists was introduced as has been in place ever since.

The same applies to the database publisher. With the advent of digital technology collecting and providing of diverse data gained enormous economic importance. As digitalization brings with it the danger to make effortless reproductions the one who invests time and money into the collection and presentation of data is particularly vulnerable. For this reason, in 1997 the legislature created a corresponding right for the database publisher.

While press publishers fulfill most of the criteria of all other beneficiaries of neighboring rights are among they are also at massive risk seeing the unauthorized duplication of their products through third parties made possible through new technologies. Nevertheless, legislature had until recently failed to act in this pressing issue.

The debate around introducing a neighboring right for publishers had long been limited to book publishers. For their part book publishers rejected the

idea of a specific neighboring right since they are very well protected through a specific Publishing Act that puts them into a strong legal position and has made possible a thriving and highly diverse book market.

It was only recently that German publishers unanimously called for a publishers right and won the support of the ruling liberal-conservative government. A provision is expected to be introduced into the law during the current legislative period ending 2013.

To illustrate what a neighboring right for press publishers could look like, quoted below is the central clause of the record producer right which in many respects has legal parallels to the press publishers' case. The clause reads:

“The producer of a record has the exclusive right to copy the record, to distribute it and to make it available to the public. Has the record been produced by a company then this company is considered producer of the record. This right is not instituted through mere copying of the record.”

These three short sentences make clear that no one but the publisher may commercially exploit the record and that the sheer (and possibly illegal) copying of an existing record does not make the copyist a publisher in the legal sentence. Over the decades this paragraph in the law has proven strong and effective. It has set the frame for inception and growth of a thriving music industry which has only recently lost its step mainly due to the lack of control of illegal copies on the internet.

2. United Kingdom

Since 1956 in the United Kingdom a so-called publisher's right exists under which typographic design and layout of published editions are protected, Section 1 (1) of the UK Copyright, Designs and Patents Act states:

Copyright and copyright works

(1) Copyright is a property right which subsists in accordance with this Part in the following descriptions of work

(a) original literary, dramatic, musical or artistic works,

(b) sound recordings, films [F1or broadcasts], and

(c) the typographical arrangement of published editions.

A reason for the introduction of this right was the rapid expansion of illegal copies of original works the 19th century. Protected by the Publisher's Right are the reproduction and dissemination of works. Furthermore, protection is granted against certain acts of contributory infringement. The publisher's right expires after 25 years and is subject to certain barriers. An important example is the fair use of copies for the purposes of research or private

study or critical judgment or short reporting in news. Certain forms of use in libraries and public government are also privileged.

Unsolved in the United Kingdom is the neighboring right for digital editions. Since the neighboring right anchors on typographic design its application to the web has proven difficult because design there is a matter of frequent and easy change through aggregators and readers. Ways have to be found and are being discussed on how to solve this legal and practical problem. A European directive as an umbrella approach towards the fragmented legal situation throughout Europe might be a solution.

3. Other countries

French President Nicolas Sarkozy has recently recommended in a Green Paper comprehensive measures to strengthen press publishers in France. This involves the creation of a separate statute for online press publishers. The purpose of this statute is to create equality with traditional print publishers, in particular with regard to state subsidies and tax reliefs. In addition, the copyrights of the press publishers are to be strengthened.

In Finland, for a long time it has been debated whether to launch a legal protection for publishers. This was on the table in the 1980s and has resurfaced again now on demand of the press publishers. Parliament is in the process of drafting a neighboring right.

Greece and Portugal already have neighboring rights for press publishers even through its expansion to online media are disputed. There is a press levy that is being with collected with the electricity bills.

The influence of British law has also prompted Ireland, Australia, Bangladesh, India, New Zealand, Pakistan and Singapore to grant strong copyright protection to publishers.

- Fair competition in the advertising market. Given the fact that newspapers depend on advertising for a significant proportion of their revenues, fair rules and a level playing field are indispensable for enabling newspapers' financial sustainability. Publishers are especially concerned about unfair competition from online search engines.

Comment: A number of European publisher associations including the German newspaper and magazine publishers have filed a formal complaint with the European Union against Google for abuse of a market dominant position in regards to "fair search". This move reflects deep concerns about Google's consistent business practice of favoring their own products from other markets such as maps, movie listings, price comparison or travel information by giving them undue and unjustified high ranking in search result. Google's Search Engine does not only dominate the search market. It is an essential facility for participation in online markets. It cannot be duplicated. Google operates this bottleneck facility and at the same time offers services that depend on the bottleneck (adjacent markets). This vertical expansion creates an economic incentive for Google to rank its

products higher than competitor offers. Publishers demand that Google must in particular offer its indexing service to all website operators at the same terms as for its own services. Google may not display its own content in a better position than those of equivalent content providers. Furthermore Google should ensure a search that is objective, transparent and free of arbitrariness in every respect. The preferential treatment of Google's web pages constitutes unequal treatment of other content providers. Examples: Icons and OneBoxes, Universals, news agency reports etc.

The arguments of the publishers' complaint in more detail:

1. Google earns over five times more than all publishing houses combined with online advertising. With AdWords advertisements placed next to organic searches alone, Google generates revenues in Germany in excess of EUR 1 billion annually. These revenues are five times higher than the EUR 200 million generated by all German press publishers combined from any form of advertising on their online news portals.

2. Google's income is derived from content produced by third parties. The basis for Google's business model and the profits generated under this model is the showing of content that has been produced by other companies – including press publishers – and placed on the Internet for Internet users with the aim of acquiring advertising customers for their own web page and strengthening their own brand. Google hinders press publishers in achieving these objectives because Google appropriates their work and places it in the service of Google's own financial objectives. By exploiting third-party work, Google has succeeded in acquiring the most advertising customers worldwide and establishing the world's strongest brand. Google did not ask the press publishers for permission to adopt the content produced by them. Nor does Google offer them any share in the advertising revenues generated from using their content.

3. Google's search service was initially acceptable for content providers, since Google limited itself to acting as a complementary and neutral traffic intermediary. The monetization of content providers' work by Google was acceptable for them as long as Google limited itself to a complementary role as a neutral intermediary between content providers and Internet users and did not offer any own content. Navigation of Internet users – controlled by a neutral algorithm – to the content sought by them without substituting such content also benefited the content providers. The expected "intermediary services" for traffic for a long time prevented many content providers from resisting the monetization of their content by search engines. One reason for this was also the premise that search engines do not compete with content providers since the former operate on the market for search-based online advertising and the latter operate on the separate market for non-search-based online advertising.

4. The complementary nature of search engines in relation to content providers was the basis for the copyright approval of search engines in the Paperboy judgment by the German Federal Court of Justice (BGH). When

one publishing house actually did bring proceedings against the adoption of its data by a minor news aggregator called "Paperboy," the German Federal Court of Justice (BGH) refused copyright protection and fair trading protection in 2003 in a judgment of the same name . The BGH emphasized the complementary relationship between news aggregators and content web pages. Its judgment was based on the explicit premise that: "Use of the database [by content providers] is not substituted by [the aggregator], but, at most, stimulated."

5. Today, Google no longer complements the work of content providers, but instead substitutes it with its own content and content portals, which Google even ranks higher. Today, Google therefore has little in common with the role of a neutral intermediary that is only complementary and operates between Internet users and content providers. The basic model underlying the Paperboy judgment of a search engine in general and a news aggregator specifically has nothing whatsoever to do with the manner in which the Google platform operates today and the financial aims pursued by Google with this model. Google moved on from the basic model under the Paperboy judgment a long time ago and has begun to continually expand its proprietary content portals in order to integrate itself vertically into the content markets and to substitute content providers. The development of the Google platform from a (complementary) content intermediary into a (substitutable) provider of content and content portals reveals an aspect that is of great importance when assessing this matter under antitrust law. By the preferential treatment of its own content and portals through Web Search, the entrepreneurial development of competing content providers is being hindered. At the same time, Google consistently continues to monetize content produced by third parties.

6. Due to Google's market power, content providers today can in actual fact no longer avoid hindrance and exploitation by Google. Google's expansion into content markets largely using content produced by third parties is suited to deprive content providers and content producers not only of the financial basis for their own Internet presence, but also to damage any financial potential to produce content. This conclusion by no means applies exclusively to press publishers, but also to the entire content-producing media industry. Despite this situation, most companies do not believe they are able to avoid the damage by the Google system under their own steam. As a consequence of the extreme importance of Google Web Search as a standard gatekeeper on the Internet, they are instead dependent on the inclusion and fair reproduction of their web addresses in the Google index and therefore dependent on Google.

7. Google refuses to adjust its conduct in line with the framework conditions that it changed itself. The financial framework conditions – which were largely changed by Google itself (also and in particular in antitrust law terms) – require a reevaluation of the relationship between content providers and Google. The interests of the content providers must be re-weighted and the adverse effects caused by Google must be reduced. This

reevaluation is not only in the interests of individual press publishers or media companies. Rather, it has a fundamental dimension. The Basic Law (Grundgesetz) guarantees freedom and diversity of opinion based on orderly economic competition amongst media companies. Google's current business model, which has changed radically compared to the initial one, adversely affects undistorted competition and will in the medium term have adverse consequences for diversity of opinion, whose Common Market law basis is functioning economic competition between separate publishing houses and media enterprises.

- Fair access to digital distribution platforms. Digital marketplaces providing sales opportunities for publishers should be open for all participants, ask for a reasonable profit share and should not try to monopolize customer data in order to break up the direct relationship between publishers and their audience. Publishers are especially concerned about Apple Inc.'s changes in their AppStore rules that are to come into effect this summer.

Comment: Due to Apple's recent announcement to modify the contract terms while introducing a new subscription service for apps, publishers throughout Europe have discussed and reviewed their relationship with Apple. Various associations and individual publishers have submitted wish lists to Apple on how further business relations should be shaped. They have also sent copies of these lists to their national legislature and to the European Union. The following list comprises most of the points that have been made to keep this critical infrastructure fair and open to everyone.

1) Payment

The one-click-buying via iTunes payment represents without doubt an attractive way to buy apps and in-app-content. Regarding customer satisfaction, publishers prefer giving their customer the choice, which way he wants to choose for paying – and would encourage Apple to search for a possibility for a payment decision that clearly lies on the side of the customer. A possible model could be a way that offers options both in publishers' iOS-Apps and corresponding publishers' websites: iTunes or payment via the publisher (direct debit, credit card, voucher...etc.). Thus, the customer would have on both ways a clear choice, which payment system meets his expectations.

2) Data

Publishers welcome plans to invite App Store customers to opt for data sharing with publishers. Under most European data protection laws the check mark cannot be set as default but has to be actively clicked and represents a barrier which will be activated by only a small percentage of the customers. But publishers know from other businesses that consumers are willing to share even more data than name and e-mail address once they have decided to do this in the first place. Publishers therefore suggest to let consumers calibrate their data opt-in. In order to increase the attractiveness of activated opt-ins, it should be possible to connect functionalities of the App (comments to articles, for example) to the User's agreement. A second

important aspect for customers lies on services: regarding questions and problems raising through our apps – especially the activation of subscriptions – publishers are not able to understand which products they have bought without asking them extensively by several times. Removing this obstacle would enhance the app-experience for AppStore-Costumers.

3) Pricing

Publishers have deep knowledge of customers and of that they are willing to pay for each product and subscription scheme. They would like to share this knowledge with the iOS world. In order to do so, they should be allowed as publishers to have the full flexibility in pricing. The limitation by pricing points (“Apple Pricing Matrix”) is cumbersome for publishers. If for strategic or technical reasons Apple does not want publishers to differ from the matrix, they suggest to introduce additional points. Moreover, under European law it is not mandatory to terminate subscriptions automatically in case of a rise in prices. Customers are used to receive information about the increase, which they can disagree by a missing consent. This legal opportunity should be used to increase the lifetime of subscriptions.

4) Promotion

Publishers understand that Apple has an interest in AppStore prices that are similar with those on websites. This scheme, which is comparable with fixed retail price for books, newspapers and magazines is well known by publishers and generally speaking, they support price identity on different marketplaces representing an important element of customers’ satisfaction and confidence. But flexible pricing is important for growing subscription business. The pricing matrix does not accommodate neither special rates for timely and geographically defined offers nor discounted bundles for new customers, special rates for students, existing subscriptions, employees etc. Apple could also benefit from allowing more flexibility in pricing; it is possible for publishers to offer promotions only in the App Store, but not on their websites. With the existing pricing scheme, this would not be feasible.

5) Revenue Share

Publishers are generally open for cooperation that open their apps/publications to the customer base and honor these activities of partners. Therefore, there is no doubt that Apple, as the operator of the marketplace iTunes/App Store, should generate an attractive revenue share as mediator and partner who creates reach to our apps and brings new customers to us. But from a publisher’s perspective, there is a need to differ between new and existing customers. The first purchase of an app, respectively an in-app-subscription, should be paid by a 30% revenue share to Apple. Every following payment within a subscription does not present the same intensive acquisition efforts by Apple comparable with new customers. In existing print models publishers do not pay any revenue share to any marketer or platform when a costumer prolongs his subscription. But as publishers honor the iOS-world’s achievement and we are willing to

support further investments, they see a fair share for returning business at 10% for Apple.

6) B2B-business

The newspaper and magazine business consists to a significant part of B2B-businesses. A number of business costumers such as airlines or hotels approached publishers asking for large quantities of apps. These customers are differing from B2C-customers by two important aspects: (i) they purchase large quantities and therefore rightly demand a discount and (ii) they want to do this fast and easy. At this moment publishers cannot satisfy this demand via the iTunes store since they cannot offer bulk pricing. Moreover, the clients have to buy a subscription for every single iPad by iTunes. This is very cumbersome when done for large quantities. Publishers are looking forward for a solution, for example, by buying one code, which can be activated for x devices for a limited time.

7) Bundles

Publishers would like to bundle apps with other products of our brands, but as well with the iPad for attractive offers for our customers. An example for such a bundle would be an offer that combines iPad tablets, subscriptions of our print titles and apps. Such bundles can evolve into interesting ways of distribution for publishers and for Apple. Publishers understand the new rules for in-app-subscriptions in this way that publishers can offer the same conditions via their traditional distribution channels, if they offer the same conditions in the app via iTunes. However, referring to such a bundle mentioned above, the highest amount falls upon the monthly rates for the iPad's hardware costs. If publishers have also to pay 30% revenue share on these bundling rates to iTunes, these offerings could never be refinanced. And should such bundles be only possible, if they were also offered in the App Store, the 30% revenue share should only apply to the app part of the bundle.

8) Approval of apps

The amazing customer satisfaction of the App Store/iTunes relies on the fact that all content is checked by Apple regarding its technical compatibility ('app review'). At the same time professional app publishers need to frequently release updates for purposes of debugging and amelioration. The review process sometimes proves to be a bottleneck. Publishers therefore suggest a faster, more transparent and documented method available key account customers. This could translate into a faster/or no review of updates of 'trusted developers'.

- Freedom of commercial communication. Any bans and/or restrictions on advertising can have serious and negative impacts on newspapers' financial sustainability, as they push potential advertisers into finding alternative ways to market their products. EU decision makers must therefore prevent any advertising restrictions or bans in the interests of maintaining a free and pluralistic press.

Comment: An upcoming review of the Car Labeling Directive, which is foreseen for 2011/2012, poses again the threat that the existing information requirements in advertisements will be further expanded. It is quite sure that in the review energy efficiency classes and labels for cars will be introduced. One can be equally sure that these labels will have to be displayed to all car buyers before the purchase decision (in the showroom, manufacturers brochures etc.) The question at stake is whether such labels will as well become obligatory in media advertising.

Publishers argue that European lawmakers should oppose any future attempts to impose further restrictions on media advertising. Their support is crucial for safeguarding the conditions necessary for a free and vibrant press. In the course of the digitization the press is confronted with challenges of so far unknown extent. Even though new online business models are very successful when it comes to attracting readers it is still unclear how the technology-neutrally disseminated press in print and online can be sustainably financed. Advertisement restrictions threaten the financing of the free press and are counterproductive for a successful climate policy.

Furthermore, the free press is an indispensable element of fighting climate change in Europe. Magazines and newspapers in Europe report every day about all aspects of climate change, energy efficiency and other environmental topics. They raise consumer awareness with regard to protecting the environment and are a major engine for behavior change. Advertising is indispensable for financing the free and independent press. Revenues from advertising constitute about 50% of the income of the printed press and even up to 100% of the income of the online press. With regard to the technological developments and the increasing readership of the online press advertising revenues are getting even more important. Advertising restrictions are a severe threat to the financing of the press. If the advertising message has to be linked with negative information about the product – like a negative energy efficiency label, maybe even an eye-catching one – the advertising message will be damaged or lost. Advertisers will not place adverts that have to highlight negative aspects of the product. Negative advertising is a contradiction in itself.

Advertisement restrictions are counterproductive for a successful climate policy. The decrease of revenues from advertising leads in the end to a loss of editorial content, also about climate change and other environmental issues. As a result a vital element of a successful climate policy would be lost. An informed purchase decision can be guaranteed without damaging media advertising. This is possible through mandatory information in the showroom. Furthermore there are already various channels through which consumers are informed about the energy efficiency, like for example manufacturer's brochures, test reports etc. Compared to these channels the task of advertisement is limited. Advertisements cannot provide all information necessary for a purchase decision. Publishers therefore hope for your support against an expansion of the existing information

requirements in car advertisements but also regarding other proposals that foresee mandatory information in media advertising.

- Balanced approach to data protection. Newspaper publishers take very seriously the need to protect the data and respect the privacy of their users and customers. ENPA recommends that the EU institutions, rather than seeking to change the relevant EU legislation, should instead focus on ensuring that existing rules are respected equally by all actors. Selfregulation can also be an effective means to address users' concerns.

Comment: In light of various data theft scandals national regulators as well as the European Union have passed legislation demanding strong opt-ins from consumers before being solicited by mail or phone. Publishers criticize that these issues are completely unrelated: Data theft which has for long been illegal does warrant stronger rules for opt-in nor do more opt-ins help to solve data security problems. Under political pressure to act lawmakers did nevertheless pass opt-in regulation with Germany leading the movement. Publishers now have to ask even their own subscribers before they can send them additional offers i.e. for prolongation of subscriptions, books or any other commercial activity they conduct under their own brand.

This has – contrary to what regulators had hoped for – led to an increase rather than a decrease of marketing activity because publishing companies still have to reach their business targets even under more difficult circumstances. Consumers obviously do not forget to approve further marketing approaches even if they are willing to receive them. By rule of thumb it might be said that every layer of mandatory opt-in reduces potential consumer feedback by 80-90 percent. This has dire consequences on the economies of newspapers who are already fighting various structural problems. National quality newspaper such as DIE WELT (Berlin) now spend the cost equivalent of 10 editorial staff positions per year just to maintain their number of incoming subscriptions to make up for cancellations. Publishers have ever since argued that data protection laws should a) be closely targeted at the problems they are trying to solve, b) be handled by self-regulation wherever possible and c) take into account the economic difficulties print media encounters already. EU and national governments have signaled sympathy and claim wanting to support free press for the sake of a functioning democracy but have not yet walked their talk. Consumer protection and anything that looks like it enjoys more political support.

- Zero VAT rate for newspapers on all platforms. Ideally, newspapers should be under a zero VAT rate, whether in their printed and digital versions. Newspapers foster the democratic debate and press freedom, contribute to education and media literacy, promote pluralism and diversity. In order to be able to fulfil this mission, all citizens should be able to buy newspapers at the lowest price. This is only possible if the VAT rate is maintained to the lowest level, ideally zero.

- Ensure application of competition rules as regards the digital activities of public broadcasters. It is the task of the EU institutions to ensure that the revised Communication on State Aid to Public Service Broadcasters is properly implemented and respected by public service broadcasters in all Member States. However, publishers call for increased awareness at EU level as the situation in certain EU countries has not changed: public service broadcasters keep on extending their activities, especially in the digital environment, at the detriment of the private media sector, including newspaper publishers. The role of public service broadcasters should be clearly defined and limited.

Comment: Public television in Germany is funded by a mandatory levy paid by every household of around 18 Euros per month. The public broadcast system employs 24.000 people and has a yearly budget of some 8.5 billion euros. For this money ARD and ZDF as the main public broadcasters send around half a million minutes of annual TV program to the transmitter only on their main channels. An additional 4 million minutes is provided by regional services. Each 24-hour day of the year sees a feed of 456 hours public programming. It would take 19 parallel lives to see all of this simultaneously. Public radio airs over 32 million minutes a year. This accounts to 60 parallel lives needed to consume all of this.

The United Kingdom is among the first European countries to rigorously try to trim public radio and television. Much less money is spent on the system. Only 1,8 billion Pounds flow to TV programming. A smaller number of stations allows to concentrate on quality and key stations. BBC operates only BBC One, BBC Two, BBC Three, BBC Four, and 4 special interest channels. German ARD and ZDF operate more than 20 national TV channels plus 22 regional services. BBC radio carries 16 channels, ARD alone six times as much. The BBC has elected “Less is more” as its new motto. Publishers throughout continental Europe thrive to convince regulators to put similar constraints on their public broadcasters in order to fight squeeze-out effect on private press. This is all the more pressing because public broadcasters have long since decided to aggressively enter the online market and fight private websites for audiences. Public broadcasters today are powerful competitors on online markets even though they do not have to refinance their efforts through advertising but rather levy all costs on the general public if they like the program or not.

Publishers the following propositions to regulators to help find a new balance between the private and the public sector:

1. Fees should exclusively finance public radio and television. All advertising and sponsorship should be banned.
2. Mobile services such as apps should be offered for a price, not for free. New markets like mobile should not be developed with public money for public companies. Public broadcasters should be allowed to enter the mobile arena but should charge for their content.

3. *On the open web public broadcasters should develop paid content models. They cannot ask the general public to pay for all online expansion with a forced levy.*

4. *Public broadcasters should decrease their number of channels.*

5. *Public broadcasters' budgets should not rise above general inflation rate.*

6. *Strict corporate governance should be imposed on public broadcasters. Members of governments, administrations and public service should not be part of the governing bodies to avoid political dependencies.*

- Balanced approach to responsibility for user-generated content. Newspaper publishers are legally responsible for the editorial and professional content available on paper and digital versions. However, publishers also rely on the balanced approach of the E-commerce Directive, especially when user generated content is posted on their website. The new EU Digital Agenda should not question or increase publishers' liability for content posted by users on which they have no control.
- Promoting media literacy in the digital environment. Newspapers are essential actors of the knowledge economy because publishers actively participate to young people education through media literacy programs and provide a platform for public debate to the young generation, whether in the paper or in the digital environment. The EU 2020 strategy which focuses particularly on education and knowledge as factors for growth should reflect the newspapers' role in this area

Implications of technology on the development of European media

David Gelernter, Professor of Computer Sciences at Yale University, reminded the media and technology industries that revolutions are far from over when their contemporaries think they are. He illustrated this with an example from history: In 1791 most people were convinced that the Industrial Revolution was over. According to general understanding, it was already part of history. People at the time believed that the world had already changed in a radical way. Machine-driven spinning-wheels and weaving looms, coal-fired forges and James Watt's steam engines were revolutionising production. In 1791 William Hutton wrote: "The changes are so impressive that a truth-loving author can scarcely believe them". Arthur Young marvelled at "the progress that Britain has made in the past 20 years" – progress above all in freedom. And Adam Smith had already recognised what was happening fifteen years earlier, when he raved about the "general prosperity" that industrialisation had brought with it. But in truth, the real revolution was still to happen. When people thought it was all over, there were still no trains running, Manchester was still an insignificant little town, and mass production and the industrial division of labour had still not been invented. Most people were economically tied to their hometowns and the number of products they could choose from was severely limited. "At that time the Industrial Revolution was only just building up steam", wrote Gelernter. "The big bang came later. 1991 is like 1791".

Changes are that technological developments will come more quickly and be more radical than we expect today. The changes in content and habits, on the other hand, will be slower and less radical than many people predict. Machines change quickly, people slowly. It is clear that technology is becoming faster and cheaper. In 1990 a 3.5-inch hard drive could store around 100 megabytes of data. By the turn of the 21st century it could hold around 50 gigabytes. In 2005 it was 500 gigabytes and today the same size of device can store 2 terabytes. At the beginning of the 1990s a device with a 1-gigabyte capacity still cost over £1,000. In 1995 it cost around £100, below £10 in the year 2000 and nowadays it costs between 1 and 2 pence.

Experts assume that in five years' time it will be cheaper to manufacture electronic paper than to produce a single copy of a newspaper. A computer chip for such a reading device only costs 2 cents now. Will there soon be disposable electronic paper? Will we be able to roll up this electronic paper and place it in a jacket pocket, like a ballpoint pen? Will there be giant screens as thin as transparencies that we can use like wallpaper, to cover the walls of our studies, living rooms and bedrooms? Will we write emails, watch television, write texts and read newspapers on these giant, almost omnipresent screens? Will there ever be glasses that let us see and process things in 3D all the time, everywhere we go? Will there be a time when implanted chips take charge of everything in our brains and on the surface of our eyes? These are questions that have to be asked and at least partly answered by media.

Devices are becoming much flatter and can perhaps soon be flexible to fold or roll up like a traditional newspaper. According to a recent forecast by hardware manufacturers, in five years electronic paper will be cheaper than producing a single newspaper edition today.

Particularly rapidly the development of mobile internet is taken place. Mobile telephony is the fastest growing technology in the history of communication. Twenty years ago the world had only 16 million mobile phones, today there are over 4 billion, more than 60 percent of the world's population. In three years time a third of all mobile phones will be smartphones with fast Internet access. Mobile internet leaves his sister – the landline – far behind. Today are as much data each month going through mobile phones and laptops as 2006 in an entire year. The global market for mobile data services increased from 36 billion dollars in 2008 to 94 billion in 2014 – now it makes up almost as much as the gross national product of New Zealand. Mobile web on its way to the mass market.

These innovations and trends open a new chapter in journalism:

1. In the nineteenth century, the journalist was superior to the reader. He decided what was important. He told the reader how to understand the world. Journalism had a deeply pedagogic, top-down impulse. The way in which content was presented only strengthened this attitude. The layout was spartan and the reader had to fight his way through a forest of small-print. Headlines seldom revealed what the article was actually about. In order to reach the truth, the reader had to 'work his way through' the newspaper. The editor

showed his readers the way. The intellectual hierarchy was like the relationship between a worker and a boss.

2. In the twentieth century, journalists and readers were equals. Editors realised that there was no more benefit to be gained from indoctrination or from making the reading of newspapers a spiritual exercise. They began to adapt the reader's interests. The news was emotionalised and personalised, in short: it was tabloidised, even in the so-called quality press. Layout became increasingly important. Visual effects, photos, caricatures, drawings and step-by-step diagrams were used to aid the reader's understanding. Headlines had to be as engaging as possible, and sometimes even sensational. The goal was to grab the reader's attention. In the second half of the century more and more importance was given to 'user-value': to information that had a practical use for the reader or even created so-called 'added-value'. The editor gave up his position in the preacher's pulpit or at the front of the classroom and became the reader's equal. Everyone was on the same footing, to a certain extent.
3. In the twenty-first century, online journalism suddenly made the reader the editor's superior. The reader now tells the editor what he is interested in. Real-time market research is possible by constantly measuring clickthrough rates. The editor can find out immediately what his audience want more of and what they want less of. The reader can interact with the editor and voice his opinions. In fact, it is not unusual for the editorial staff to tell the reader what he wants to hear. The editor and the reporter become service-providers. At the click of a mouse, the reader can determine the direction of the journalist's gaze. In the digital world the old hierarchy has been turned on its head. The reader is now the chief and the editor is his subordinate.

The new digital media and channels have multiplied the number of people that are reached with press products every day. Previously, readers were reached exactly once a day: at the breakfast table. Even today the print edition is read mainly in the morning at home and on the way to work. Online usage is different. After a brief peak in the early morning, the numbers rise sharply in the first office hours. During lunch break they reach their absolute peak. With the advent of tablet computers a new peak was made possible. People check PDF version of tomorrow's papers on their iPads before going to bed. All of this was unthinkable in the print age and has led to a vast expansion of reach and readership.

New devices, growing digital reach and creative business models have built the bases for fresh content that comes in other forms and frequencies than in print-only times. High-quality and entertaining journalistic content is key to success on Internet and mobile today.

How should publishers adapt to this new environment? Ten key learnings derived from various European press media are:

- Reorganize newsrooms and let one team cater to all media. Overlapping usership and fast evolving technology leaves no room for compartmentalizing within news organizations.

- Do not define media products by technology but rather by the situation the reader will read in.
- Emphasize traditional values like quality, research, readability, balanced view and trustworthiness. Readers feel much less attracted by flashy superficial websites than it seems at first glance.
- Accept that technology blends industries. The division line between press, television and radio is blurring. Offer all media in order to protect the brand core.
- Add many-to-many communications to the traditional sender-receiver model without giving it up. The authority of a competent sender is still valued and accepted.
- Integrate search engines and social referrers into the editorial processes but do not rent out content production to unknown individuals. The key value propositions of quality media work even better in the future than in the past.
- Think of media as navigators through the sea of information. They are curators of the vast information masses at the audience's fingertips. Without curators the internet cannot work.
- See blogosphere, Internet, social networks and the likes not as enemies but rather as integral parts of your value chain. Absorb their ideas and accept their help with marketing.
- Try to monetize content. Do not give all of it away for free.
- Do not expect to transfer existing sales into the Internet with producing content websites alone. Invest in marketing platforms and online ad markets. Publishers have always been strong in marketing, display ads and classifieds.

Author

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