

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Examination of the Future of Media)
and Information Needs of Communities in) GN Docket No. 10-25
the Digital Age)

COMMENTS OF NEW MEDIA RIGHTS

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May 7, 2010

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INTRODUCTION

This proceeding's objective is "to assess whether all Americans have access to vibrant, diverse sources of news and information that will enable them to enrich their lives, their communities and our democracy."

New Media Rights' experience with creators and internet users indicates that empowering individuals to speak and participate in their culture is a cornerstone of having vibrant, diverse sources of content in the internet age.

The idea of course, is that social media such as Facebook, Twitter, and Youtube, though owned by private companies, are the new public square. Thus, our new public squares, participatory media, requires technology literate citizens, who are more likely to be able to engage these new public fora.

However, the internet and new media are not the telephone. While high speed, affordable connectivity is important, it is only one of the hurdles citizens must overcome to be a full participant in the information age. The FCC must keep in mind, in reviewing the future of media, that a citizen must also

- Have a device to connect them to the internet
- Technical equipment, support, education, and savvy to be creators as well as consumers
- Have Media literacy & storytelling training and education
- Have legal assistance and education to understand the various laws implicated when publishing online

The issues that we are particularly interested in, and have provided comments on, include the following:

- 1. Rebuilding of the San Diego and national media landscape to encourage participatory, citizen involved media that helps local communities identify and meet local challenges**
- 2. Potential legal reforms and legislative abstention that can effect the media landscape**
- 3. The role of the link economy and information middlemen, which are critical to future of finding and filtering through news and information**
- 4. Government data availability and usage of public media**
- 5. What types of Journalism are most in Jeopardy?**
- 6. The role of Public vs. commercial media, and the possibilities of government subsidies**

7. Should there be changes to Public Broadcasting Act? Are there examples from other countries to consider?

8. The future of public access channels (PEGs).

9. How foundations are supporting local news and journalism

10. User generated Journalism

11. Ensuring a free and open internet as well as universal broadband access

12. The role of mobile devices, their effect on the flow of communication, culture, and speech, and how they differ from previous information distribution media

DISCUSSION

1. Rebuilding of the San Diego and national media landscape to encourage participatory, citizen involved media that helps local communities identify and meet local challenges

Question 1

What are the information needs of citizens and communities? Do citizens and communities have all the information they want and need? How has the situation changed during the past few years? In what ways has the situation improved? Gotten worse?...

The media landscape in San Diego mirrors the challenges elsewhere in the United States. With regards to the more traditional mass media in San Diego, to our knowledge only one broadcast TV newsroom is producing any investigative news and there are significant layoffs in traditional media such as the San Diego Union Tribune.

Through direct work with producers at Public Access channels, our understanding is that local public access resources, particularly at Cox, are archaic.

Particularly missing from our media landscape is investigative and analysis journalism regarding local issues.

Positive signs do exist, however. There are many individuals, community and nonprofits trying to address the gap in news and information, and reinvent media in San Diego

Some of these, such as VoiceofSanDiego.org, have received significant attention, but many other experiments are taking place in San Diego. These include:

- Liberty One Radio who is working on bringing another voice to radio in San Diego¹,
- East County Magazine² which is a startup that gets significant traffic and provides basic news and info to East county in an entirely Internet based format,

¹ <http://www.libertyonemedia.com/L1home.html>

- Organizations like the New Media Rights³, our local public libraries, and the SD Media Arts Center⁴, who play a role in local media through digital storytelling and training events.

Citizens are meeting weekly at various organizations to learn about everything from DIY media to the legal issues regarding publishing online. New Media Rights, for instance, has led discussions around San Diego and Southern California to groups of filmmakers, bloggers, citizen journalists, musicians, web developers, nonprofits, and lawyers, regarding overcoming legal and technical hurdles when publishing online. Our comments to the Commission are informed by working on a one to one basis with these creators and Internet users.

As far as financial support for the many different projects that are attempting to fill San Diego's media gap, there has been some foundation funding from groups like Knight Foundation and J-lab. While this funding is welcome, it is often limited to startup funds and projects often end up being unsustainable. We must find ways to create sustainable outlets for quality news and information.

Anecdotally, our most respected local news sources are public media. This is troublesome because one generally trusted source of local news, NPR, only spends a fraction of its 24 hour programming on local and regional news.

2. Potential legal reforms and legislative abstention that can effect the media landscape

Question 11

How should other governmental entities consider the information needs of communities in the digital era? Are there changes in tax law, copyright law, non-profit law, noncommercial or commercial broadcasting laws or policies or other policies that should be considered?

Copyright law

Though largely outside the FCC's purview, copyright law plays an important role in governing the flow of communication, culture, and speech in our society. Never has the overlap between copyright law and our society's ability to communicate been so clear.

As an example, the Fair use doctrine, section 107 of U.S. copyright law, allows the public under limited circumstances to reuse copyright protected content without permission. As is clear from a cursory visit to social media websites, the fair use doctrine is implicated daily in citizen media, yet it is a notoriously nebulous doctrine. Many of the creators we meet are speaking back and commenting on their culture and society in one way or another. We support proposals such as that of Public Knowledge and others regarding fair use reform, including any proposals that

² www.eastcountymagazine.org

³ www.newmediarights.org

⁴ www.mediaartscenter.org

acknowledge and account for fair use as it exists today. Particularly, we support efforts to protect:

- incidental uses of content
- non-consumptive uses of content, which have been defined as uses that “do not directly trade on the underlying creative and expressive purpose of the work being used.”
- personal, noncommercial uses of content

We also encourage Congress to provide stronger punishment for frivolous complaints and bullying on the internet that result in content and speech being taken down. We have assisted creators and new media outlets that have been the victims of repeated frivolous abuses of the DMCA takedown procedures.

3. The Linking economy is a new communications middle man (also in response Question 35 "Are there search engine practices that might positively or negatively affect web-based efforts to provide news or information?")

The internet has changed the availability of information. We have gone from a world of information scarcity to a world of information saturation. The linking economy, which includes everything from automated search engines to human curation of information (twitter, digg, facebook, etc), and every kind of aggregator and filtering technology in between (though we exclude spam blogs and sites that pilfer content wholesale in this comment), is a new middle man in terms of how we obtain content and find our way online. Just as is competition needed in content creation itself, there must be competition in this filtering space to create more efficient retrieval of relevant information.

Certain proposals, such as federalizing the hot news doctrine which protects time sensitive information, as well as various other proposals that invoke copyright law and other doctrines to deal with this alleged "problem" should be avoided.

To this end, New Media Rights recommends that the federal government should likely abstain to act in this area, and avoid adopting proposals such as a federal hot news doctrine.⁵ Copyright & first amendment law will need to be repeatedly reinforced to protect citizens' rights to the free flow, use, and reuse of basic facts and public domain information. This will contribute to development of the diverse and vibrant marketplace of speech and ideas the FCC is interested in fostering.

4. Government data availability and usage of public media

Question 6

What are the best examples of Federal, state and local governments using new media to

⁵ “Respecting the linking economy and information aggregators,” New Media Rights.
http://www.newmediarights.org/blog/respecting_linking_economy_news_information_aggregators_part_1_three_on_line_rights_battles_need_fighting_decade

provide information to the public in a transparent, easy-to-use manner? When has this public information been provided directly to consumers and when has it been used as the basis for lower-cost reporting? In what formats should such data be provided? Should the laws on government provision of information to the public be changed?

The ease of access to government data is critical. Government agencies should strive to make data available in easily accessible, open formats so that citizens, businesses, and non-profits can then repurpose it to the benefit of the public. As discussed, public use of basic facts and information is critical to development of vibrant and diverse voices, and governments are only scratching the surface of the possibilities.

The positive externalities of making data accessible and easy for citizens to reuse are tremendous. A few positive examples of Government entities making their data accessible enough to enable innovative uses in new media include:

- The Library of Congress and numerous public libraries and universities, which have made many photos in their archives available through flickr (<http://www.flickr.com/commons/>)
- Social media websites such as www.OpenCongress.org that are built around accessible legislative information.

One of the worst examples is the federal court system's Pacer system for documents filed in federal courts. Despite the importance of the information contained in court documents to our civic life, the federal court system's .08c per page charge for public documents retrieved through its website, along with its archaic technology, make it more difficult to access for the average citizen to access important public information, let alone innovatively repurpose the information.

As an example of the potential for reuse and repurposing of government data, New Media Rights is part of a larger consumer group, Utility Consumers' Action Network, and if more data were available through regulatory agencies such as the California Public Utilities Commission and the Federal Communications Commission (without personal identifying information of course), UCAN could more easily identify and address trends in consumer abuses.

5. What types of Journalism are most in Jeopardy?

Question 12

In general, what categories of journalism are most in jeopardy in the digital era? What categories are likely to flourish? While much is still to be determined as media companies test various business models and payment approaches in the coming years, based on what is known now, are there news and information needs that commercial market mechanisms alone are unlikely to serve adequately?

The biggest gap is in investigative and analysis reporting from an independent perspective on local issues.

New Media Rights is trying to address this gap by working on grants to connect independent journalists with nonprofits in a decentralized network that would shine a light on issues rarely covered in the current local media. We ran a pilot of this project having journalist work with our parent consumer advocacy organization, Utility Consumers' Action Network, to produce a series of consumer related stories on issues not covered by mainstream media.

6. The role of Public vs. commercial media, and the possibilities of government subsidies

Question 23

In general, how, if at all, should noncommercial television and radio licensees change to meet the challenges and opportunities of the digital era? How does the role of public media differ from that of commercial media? If there is a greater role for public media in meeting the information needs of local communities, how should that be financed? What role, if any, should government subsidies play? Should legal requirements regarding underwriting and advertising be changed?

On the one hand, government shouldn't censor content, it shouldn't regulate journalists, and it shouldn't prohibit anyone from entering media. These are all obvious, first amendment based principles.

On the other hand, with the atrophy of local media, organizations such as ours are trying to forge new partnerships (in our case with journalists and nonprofits that serve our communities) and attempting to create sustainable sources of news and information. These trailblazers are HUNGRY for funding and support.

Government subsidies of news and information should be sufficiently buffered to avoid meddling in the specific content produced. Targeting grants for infrastructure, technology, training, and content neutral pursuits will be a necessity.

7. Should there be changes to Public Broadcasting Act? Are there examples from other countries to consider?

Question 24

Should the Public Broadcasting Act be amended to restructure and augment investments in noncommercial media? Are the experiences of other countries instructive on this question?

We must beyond NPR and PBS and think about public media in a broader way. We agree with Free Press that public media should include community media centers, and that

"Increased state and local financial support for such centers would offer citizens the opportunity to create audio, video and print media for their neighborhoods, towns and cities. Not only are

community media centers an excellent source of local news and culture, they serve as a nexus for civic life, a public meeting place that fosters social capital."⁶

As for as examples from other countries that are worth considering, it is important to see what other countries are doing in terms of subsidies. In a recent interview on his new book, Robert McChesney commented on a review of public subsidies in Europe and Asia, and even in third world countries that are democracies. McChesney described their findings as follows

"what we discovered is, all of them, or almost all them, have significantly large public media, community media and journalism subsidies. They vary from country to country, but they're all enormous compared to the United States. And if you look at northern Europe, for example, this average country up there in Scandinavia or Holland or Germany, in US terms, if you put it to per capita basis and put it in the United States, we'd have to spend between \$20 and \$35 billion a year to subsidize public media and journalism to be equal to those countries."⁷

8. The future of PEGs, public access channels

Question 27

With regard to cable television, local franchising authorities can require a cable operator to provide channel capacity for Public, Education and Government (PEG) channels and some facilities and funding for such channels. Are these channels being used as effectively as possible for the provision of useful news and information to communities? How has the role of PEG channels changed over time, and how could their effectiveness be improved? Does statewide franchising change the number and composition of PEG channels? Does it serve to promote the intended benefits from PEG channels or undermine them? Are there other ways to provide for the benefits from PEG channels in the digital age? How should operators of PEG channels work with noncommercial television and radio licensees, as well as with other non-profit media entities?

New Media Rights works with PEG channel producers. Our understanding is that the facilities and equipment at such channels, such as Cox in San Diego, is archaic. Producers have shared their frustrations, including that the stations still make use of equipment that uses Beta tapes. PEG channels are important distribution outlets, and equipment and facilities should be modern, accessible, and welcoming to the public.

Localities such as the City tax officer in Chula Vista, have spoken to New Media Rights directly, and lamented the coming statewide franchising rules could directly affect funding of city services, including the Chula Vista public library, which the officer stated could be affected to the order of \$500,000 a year.

9. How are Foundations supporting local news and journalism

⁶ "New Policies for Public Media," Free Press. <http://www.freepress.net/node/37321>

⁷ Robert McChesney and John Nichols on "The Death and Life of American Journalism: The Media Revolution that Will Begin the World Again." http://www.democracynow.org/2010/2/4/robert_mcchesney_and_john_nichols_on

Question 29

How are foundations helping in the provision of local news and information? How much has been given toward local news and information experiments? What is the focus of the efforts? What is the likelihood of long-term commitments? In general, how much journalism and other forms of information provision can be supported by private-sector non-profit sources?

We believe that foundation funding is a very important source of future content production. However, the nature of much foundation funding is project oriented, and this results in many unsustainable projects.

Knight foundation and J-lab are good examples of much needed startup funding. However, funding typically doesn't continue past the second year of such .

An example of grant funded project was San Diego Community Technology Project (SDCTP) which connected diverse technology and digital literacy resources for a short time in San Diego, but was a short lived experiment that simply lost its funding and whose work and resources disappeared.

10. User generated Journalism

What role will and should user-generated journalism play? In what ways can it improve upon traditional journalism, and in what ways can it not substitute for traditional journalism? How can the quality and effectiveness of citizen journalism be further improved?

As stated throughout these comments, empowerment of the individual will be key to having vibrant and diverse sources of news and information. Technical, legal, and access hurdles can exclude large numbers of citizens from today's public fora. Access to equipment, technical assistance, how-to education, legal assistance and education will be fundamental to a functioning democracy in the 21st century.

11. Ensuring a free and open internet as well as universal broadband access

Question 35

How would policies related to “open Internet” or “universal broadband” or other FCC policies about communications infrastructure affect the likelihood that the Internet will meet the information needs of communities?

An open Internet that provides for maximum accessibility, a level playing field, and freedom to all to innovate for the platform, is critical to meeting information needs of our communities. FCC policies concerning communication infrastructure affects the number of consumers who have

access to the internet. Ubiquitous, universal access offers communities the potential of new methods of participation.

The Internet is more than just a communication tool, as it often serves to replace traditional meeting places, in ways other communications platforms such as the telephone (i.e. conference calls) have not been able to achieve. Achieving universal broadband cannot be left to the marketplace as the market will exclude communities where the costs of service exceed the potential revenues. The growing importance of the internet to communication and democracy depends on the adoption of policies requiring build out to all communities, reducing the cost of connection, and educating those who have not had the opportunity to learn how to use the internet and its supporting technology.

12. The role of mobile devices, and how they differ from previous information distribution media

Question 38

With regard to mobile devices, what role will mobile communications services and devices play in meeting the news and information needs of communities during the next five to ten years? What is the impact of those trends for consumers, businesses and policymakers? Should that role be reflected in the Commission's regulation of the industries involved?

Mobile communications devices, particularly advanced devices such as smartphones, will likely become the primary medium through which community members obtain news and information. Mobile devices and services are not created equal, and many do not have the same kind of flexible, "generative" technology as the computer and the Internet. In the case of the PC and the Internet, each individual was allowed great freedom to innovate and alter the device to their specifications, including by installing software and applications of their choice. The new devices, such as the Iphone, Kindle, Ipad, etc. restrict individuals' ability to manipulate, customize, and alter the device by greater centralization of development of applications.

Mobile communications services are primarily delivered via apps on mobile devices. The wealth and strength of news and information provided will depend upon the usability of the developed apps, the manner in which news and information providers attempt to generate revenue through apps, and the app approval mechanisms adopted by the owners of the operating systems and devices through which the apps perform. News and information organizations will have the option to provide access to those apps for free, for a small fee, or require a subscription based model. The owners of Mobile operating systems (OS's) (such as Android, Blackberry OS, etc...) could have great impact on which apps become the primary vessels of news and information. They could limit consumer access to the Internet, they could decide what types of apps receive superiority or even access to the OS based upon content, they could develop certain exclusivity or engage in vertical integration with certain apps makers or apps their companies develop. The impact of these trends and decisions on consumers will depend on the technique ultimately adopted for receiving information through mobile devices.

Should the role of mobile devices be reflected in the Commission's regulation of the industries involved

The Commission should take steps to ensure that consumers have equal access to information through whatever means consumers choose to connect. The easiest way would be to ensure mobile devices maintain open connections to the internet for individuals to receive news and information through whatever information source they choose. A more complicated route could involve setting a standard for app development, allowing apps to work across various mobile operating systems, or placing restrictions on unreasonable app blocking. The Commission in considering how to approach regulating the industries involved needs to consider the relationship between the content creators and the access providers and the extent to which access providers are also content creators. As the number of consumers accessing news and information through mobile devices continues to increase, the Commission must be prepared to ensure that the industries involved do not unfairly restrict access. This proceeding can at least be a starting point for the Commission to review the state of the mobile devices and their affect on the flow of news, information, culture, and speech.

CONCLUSION

New Media Rights appreciates the Commission's efforts to include a wide variety of stakeholder organizations in this Future of Media proceeding. We look forward to an ongoing dialogue as this proceeding develops, and will remain available to share our experience with individuals and organizations who are operating at the cutting edge of the future of our world's media landscape.