

>> Susan DeSanti: To begin this afternoon, we have three presentations that will address different forms of public funding, or subsidies, that have been used to support the gathering and dissemination of news. To the surprise of many journalists, there actually is a substantial history of government support for the news, and we have found three people who can really help us put that in perspective, and give us some real data to work with. First, we are honored to hear from chairman Ruth Y. Goldway of the Postal Regulatory Commission. She was first appointed by President Clinton in April 1998 to the predecessor agency, the Postal Rate Commission. She was twice reappointed by President George W. Bush, and in August 2009, reappointed by President Barack Obama. She is the longest serving, full-time, Senate-confirmed presidential appointee within the Executive Branch of the United States government, and that, in itself, deserves an award. I really can't imagine how you've done that, but it clearly speaks to your talent and perseverance. Chairman Goldway will discuss the history of postal periodical subsidies.

>> Ruth Y. Goldway: Thank you. Thank you, Susan. It's my pleasure to be here. I'm going to have to take that out of my bio. It just reminds me of how old I am. I've been around so long. I'm really delighted to be part of this workshop, and to have reconnected with Jon Leibowitz after many years, and to find many areas in which the FTC and the Postal Regulatory Commission can work together in the future. Today's workshop -- I feel a bit guilty, because I think the other two panelists know as much as I do about the history of postal subsidies, but for those of you who may not be as well briefed as they, I'll do my best to do a survey of some of the history of the nation's post, and its relationship to periodicals. The post and the press share an impressive common ancestry. They're both pillars of the founding democracy that we call our home. Both the U.S. Constitution's First Amendment, which requires freedom of the press, and article 1, section 8, which gives Congress the power to establish post roads and post offices. The Postal Service is the only nationally-owned government monopoly in federal government. We have some areas like the TVA or rural electric co-ops, but it's the only national government-owned monopoly. And it's as a result of the article 1, section 8. Of course, Ben Franklin is it is the personification of this relationship, a founding father, a signer of the Declaration of Independence. He was a leading publisher and printer in his day. And he was the first Postmaster General in 1775, when the Continental Congress was created. I like to say that because he was a magazine publisher, he made sure that the government would take care of his business in the future. But he also, I think,

recognized the unique value of both the content of communication, and its ability to be spread evenly and fairly through a neutral agency that created the symbiosis that we have in our nation's history. You need a full range of open ideas in a democratic society, and you need them to be distributed in a way that they will be available to everybody. So the post and the press are brothers in a commitment to having an educated, democratic, and participatory citizenry. The first major postal law heavily favored the press in 1792. Postage for letters ranged from 6 cents to 25 cents, which was a lot in those days, if you think that we now charge 44 cents for a first class letter. Postage for newspaper subscribers, however, was one cent up to 100 miles and 1.5 cents for distances of more than 100 miles. The law also let printers send each other newspapers for free. And the symbiotic growth developed throughout the nation's history. In 1800, there were 903 post offices and 200 newspapers. In 1850, there were 18,417 post offices and 2,200 newspapers. According to Alexis deTocqueville, when he visited the country, it appeared that Americans, spread out across half the continent, were better connected than the citizens of the single province of France. Through the mid-1800s, the postage deal for the press was often sweetened. One example we found is a New York City to Washington trip, a subscriber postage was 1.5 cents in 1850, 1 cent in 1852, and just a half cent if prepaid. That was a pretty good deal. In 1863, mail was divided into classes, an approach that still works today. And we had first-class letter mail, and second-class mail, which included periodicals. But for periodicals, the service they received was still first-class service. And that remains till today, that there is a preference for periodical mail and the delivery stream, as opposed to other second-class mail. We now call it standard mail. And also pricing by the pound was initiated, you differentiated between the piece rate and the pound rate. By 1911, second-class publishers paid one cent a pound, but post offices' costs were about five to eight cents a pound. So subsidies began to develop. There were congressional commissions in 1906 and 1911 calling for higher rates, but the system stayed the same. And in 1951, for instance, President Truman pointed out to Congress that 80% of magazine and newspaper postage costs were paid by the public, but the Congress was very reluctant to raise rates. They did it slowly They did a rate raise in '51 and '58. By the way, I'm wearing a little pin that I was given by one of my staff people today in honor of this. It's the Freedom of the Press stamp from 1958, a four cent stamp. And there were rate increases again in '62 and '67. But second-class rates, standard rates deficits, kept climbing, from under \$200 million in 1950 to \$435 million in 1968. By 1971, there were pressures from both postal unions and from Congress -- postal unions wanting raises and Congress not

wanting to raise postal prices -- to set as an independent agency for the Postal Service to be independent of the federal government, but wholly owned by the federal government. And for a postal rate commission to bear the burden of the controversies of setting rates for different classes of mail. The Postal Service, as it was then called, as opposed to the Post Office, was given the mandate of breaking even. Its revenues had to cover all of its costs. So there were eliminations of direct subsidies for various classes of mail. Before the Postal Reorganization Act of 1971, you had direct tax payer subsidies for newspapers and magazines that had a history that went back to the founding of the country. But after 1971, what happened was that periodicals became part of a system where there were -- if there were subsidies, they would be rate-payer subsidies. And what we have now is a system where, to the extent that magazines and newspapers get subsidies, they are subsidized by other payers for the Postal Service, not by the general public. And that's a very fundamental distinction in the debate we have about future subsidies for the post. Under the new law of 1971, the Commission was directed to oversee a rate-setting process that would bring rates into balance over time so that all mail would pay its own way. And attributable costs, that's the basic cost of the actual handling of the mail and delivery of the mail, would have to be paid for by the rates. But different classes of mail would be allowed to cover a different percentage of what were called overhead or institutional costs, based on a series of factors that were provided in the law. We call them the ECSI factors. Educational -- what is the C? Scientific and -- cultural, scientific and informational qualities. And as a result, the Postal Rate Commission could say that while letter mail contributed as much as twice its rate into the overhead pool, that periodicals could simply pay only for their basic costs and didn't need to contribute to the operating overhead of the Postal Service. So even after the rates were stabilized, and that, by the way, didn't occur until about 1980, the Congress provided direct subsidies on a declining basis over time, so that periodicals wouldn't have a rate shock. But about 1980, periodicals were balanced, so that the rates they were paying pretty much covered the costs of -- that you could attribute to their operations in the mail. But periodicals got a free ride when it came to post offices, or institutional costs, or administrative costs, or the infrastructure of the system that they were relying on to use the mail. So there are three key points in the old law that I think are important to remember, and for the most part, they remain in the law that was enacted in 2006. The law recognized the historic value of the press. Periodicals wouldn't have to bear a proportionate share of their overhead costs. The key goal was to cover only attributable costs. They were given a subsidy that spread out over many years to

avoid a rate shock. And then the ECSI factors were institutionalized in the law, memorialized in the law, so that the rate commission would have to refer to them and make sure that those factors were in place whenever decisions were made about rates in the future. So until about the year 2000, periodical rates, more or less, covered their costs. 1996 was probably the year where periodical rates began to slip under that 100% coverage. But the postal rate commission was able to adjust the rates, and make a few changes here or there, so that at least, on the record, it looked like periodicals were covering their costs to about the year 2000. After the year 2000, there's only one year in which periodicals appeared to have covered their costs, and that was in 2003. Part of the reason is that the Postal Service actually created a system of great savings and efficiency for letter mail, and so letter mail became automated. But magazines, periodicals were not automated, so a greater share of the labor costs of the Postal Service, a greater share of the -- what would be overhead costs, were then attributable to the magazines and newspapers, because they still had to be handled manually, whereas the efficiencies were gained in letters. And letters -- even when rates were not going up, because of the efficiencies created, a great deal of revenue for the Postal Service, I think the other thing that I'd like to mention is that one of the reasons that the Postal Service and the periodicals did so well through the year 2000, was that they made a deal with the devil -- they agreed that most of the costs would be covered by advertising. And so the mail system in the United States grew exponentially from the mid-1980s through the mid-2000s years, because of expanding advertising. And the volumes could grow, and the relative amount of profit for each piece of mail could decline, because there were greater volumes. And we relied on a system that was coming to us because there was more and more advertising in the mail. And magazines did the same thing. You relied on advertising to cover your costs, for the most part. And advertising was the major cash cow for periodicals, as well. And it's -- so the real cost of the transportation and communication system of the Postal Service, and the real cost of newspapers and magazines was hidden by the subsidy that we were both getting from being used by the advertising world. For better or worse. But the recession of 2001 and the Anthrax scare put the first dent in that, what seemed to be a perfect devil's bargain, and there was a huge decline in volume. And as a result, the Postal Rate Commission allowed the Postal Service to have a rate increase that did not include any of the careful review that we would do to balance rates. We had what was called a settled rate case. And the only rate case we have after that was 2005. Another settled rate case -- which, in that case, was just a small percentage across the line for every rate. So by 2007, when we

were required to do the last rate case under the old regime, where we were looking at each rate to pay its cost, we had to make rather significant adjustments in the rates that periodicals were paying, and especially what flats were paying. Flats got a much bigger hit than periodicals. But both classes of mail that were still more or less handled by hand, that hadn't had the benefit of automation, had to have rate increases to cover their costs. So in 2007, there was a big rate increase for periodicals. And while periodicals were shocked by it and troubled by it, it was from the Rate Commission's point of view, the only fair thing to do, because, after all, we had single piece users of the mail, people who are paying bills and using correspondence, who are subsidizing other uses of the mail unwittingly. And under the law, that's our obligation, to try and spread the responsibility for the costs more fairly. After that rate case in 2007, we averaged that periodicals were covering about 97% of their costs. But with a CPI price cap in the new law, which we now have the Postal Accountability and Enhancement Act, PAEA, as we say -- not the Spanish rice dish, but the new law. The PAEA requires that the Postal Service have a rate setting process that gives them an increase each year, based on the cost of living, a CPI price cap regime. And that means that periodicals, as a class, can only go up by the price cap. However, periodical costs were going up far greater than the price cap, and now we're in a situation where we have a negative CPI, so the Postal Service can't raise prices at all. And we're in a situation where it appears that cost coverage for periodicals is now at 76%. So, there is a subsidy that periodicals now have, only 76% of attributable costs of magazines and newspapers is being paid for by magazines and newspapers. None of the overhead costs and 25% of the attributable costs. We believe in the current estimate of costs that we have that this amounts to six hundred and -- what did we say? \$641 million. That's a pretty big subsidy. And it is something that the letter mailers in the system are complaining about constantly. And they very much want the Postal Regulatory Commission to address this issue. So we have a complex problem here that has to be solved. Under the current rate regime, which we inherited from the Postal Rate Commission, periodicals have rates that are very complicated and set on a very wide range of characteristics. You have a rate that you're charged for the editorial content of your mail, a rate that you're charged for the weight of your mail, a rate that's charged for your advertising, and a rate that's charged for the distance that you send your magazines. Furthermore, you get discounts on your editorial rates, you get discounts if you work share, which means presenting the material to the Postal Service in some sort of package order, further discounts if you dropship, in other words, deliver the mail to a location where it's closer than it's supposed to

go. And for the editorial rate, you don't pay a distance fee. There's no distance surcharge. It's just a flat fee, but for the advertising rates, you pay a surcharge, and for the pound rates, you pay a surcharge. So it's a very complex matrix. What I can say fairly generally is -- and my expert on rates is sitting here with me, and you can ask her more later -- is that the higher the editorial content of the publication, generally the higher the subsidy. The more editorial content, the higher the subsidy. There are about 9,000 publications with what we call medium editorial content, somewhere between 51% and 85% as a whole. And that group, we think, costs the Postal Service about \$350 million a year. The lowest work sharing groups, those with the smallest circulation, and with the highest editorial content, actually, costs the Postal Service on average about 19 cents apiece. And those periodicals are often the ones that journalists are most concerned about, those are often the periodicals of opinion, and they're the ones who are distributed nationwide, as opposed to a particular region. So the cost -- so it's very difficult for them to do any work sharing or any dropshipping, so the cost of the postal service is greater. Even though their rates may be higher than some of the largest magazines. The subsidies they're getting, if you're looking at the costs to the Postal Service, are greater. That's another important principle that I think has to be addressed in any future discussion about what we do about supporting periodicals in the future. It's the classic periodicals that are the most expensive to the Postal Service that are the ones that are asking for the subsidy, but actually get the largest subsidy now. I think what we have to do about the future is to have a discussion that really comes to grips with the contradictions that are in the current law, and in the arrangements we now have for a relationship between post and periodicals. The postal -- the PAEA requires that all rates cover their costs and it also provides us with guidelines for the ECSI factor, but it provides a very limited way in which rates can cover costs. And it has also put this enormous additional financial burden on the Postal Service of prepaying its healthcare retiree benefit fund to the tune of \$5.5 billion a year, so that the Postal Service is now running enormous deficits. Last year, it was a \$3.8 billion deficit. It would have been \$7.8 billion if the Obama Administration had not forgiven \$4 billion of that payment, basically, tacked it on to a year later instead of what it is now. The Postal Service is estimating that we'll have losses of between \$6 billion and \$7 billion this year. So for us to be asking the Postal Service to absorb \$641 million of subsidies to periodicals, which are a very small portion of the volume of the mail, is it a very difficult proposition for us? And doesn't make sense financially if we're concerned about the overall financial survival of the Postal Service. And we have a dilemma. Now, there are some

things the Postal Service is doing. It's trying to cut its overhead costs. You read about all of that. They've cut 20% to 25% of their employees already. They want to cut delivery one day a week. They're talking about closing post offices. They also have a huge investment in an automation project for flats and periodicals which has been delayed for many years, but I think by next year, if not the end of this year will be up and running with 100 machines throughout the country that will be able to sort flats and periodicals much more quickly, and the system will be more like the system they have for letters. Now, they've been promising this automation improvement for many, many years, since I've been on the commission. So it's a long time. But we're hopeful that they will actually be able to have some really documented cost savings, so that there will be less of a cost overhead that the -- cost requirement for periodicals to meet in the future. And there may be reductions in their general overhead through these other cost savings that will save the Postal Service some money. But I think that it's only fair for both the periodical community and postal community to approach Congress with the notion that there is this symbiotic relationship and support for both parts of this communications network that supports democracy are necessary. And I think if the Congress understands this unique relationship, arguments can be made for finding financial support in one way or another, that may address both of our concerns. We've not been that successful to date in getting the Congress simply to focus on addressing the concerns of the Postal Service on its own. But I think together we have a case for what is an essential part of American infrastructure, and something that the Congress really does want to maintain if only for its own personal desire to get reelected every year, they want to make sure that there's a vibrant political dialogue in the country. So, I don't have answers for you, other than to say that I'm delighted to be here, and that you have my pledge in my role as a regulator to participate in these discussions and see if we can't find ways in which both the post and the periodicals can work together to ensure our future. Thank you. [ Applause ]

>> Susan DeSanti: Thank you very much, Chairman Goldway for really enhancing our record and our understanding of these issues. Next, we're going to hear from Geoffrey Cowan, who is a professor and holder of the Annenberg Family Chair in Communication Leadership at the University of Southern California's Annenberg School for Communication, as well as Dean Emeritus of the Annenberg School for Communication and Journalism. He also recently completed service as a fellow of the Shorenstein Center on the Press, Politics and Public Policy at Harvard's

Kennedy School of Government. And, I would be remiss if I did not mention that he is also a well-known playwright who just had a play opening in New York. So, please welcome Geoffrey Cowan. [ Applause ]

>> Geoffrey Cowan: Susan, thank you and I have to say, it's a pleasure to be on this afternoon series of discussions with Chairwoman Goldway, who I have known since before she was in this role, so it doesn't seem to me so long ago and with Bob McChesney, whose work I've admired for so long, so it's really nice to be on this panel and I think, Susan, when you asked me to talk about-- to be a part of this panel, you wanted me to talk about this report that David Westphal and I wrote and we have copies of that report for anybody who wants to see it. I also wanted to start off by mentioning that from the discussion that I heard this morning, I think that maybe the FTC should think in a slightly broader context what you're considering here, which is not just the future of journalism but what sometimes is called news or information of the public interest, because many of the panels this morning actually were about how information of the public interest gets disseminated and it's not only through any form of traditional journalism, for example, the Center for Responsive Politics was just mentioned, is its own form of news as well as providing news for journalists and I think that's important to keep in mind. What we do at our center involves several things that are not specifically on my agenda to talk about today but I just I want to mention because they may prove to be relevant. One is we've also been doing a lot of work, displaying the role of foundation-funded journalism. We've been reporting on the status of web-based community journalism, which is also an exciting innovation, and we've been incubating some new kinds of news outlets and if the FTC's interested in our work in those fields, we're happy to talk about them. But what I want to do today is to talk about the report that we have presented on government funding of the news, which I think is quite interesting and the postal subsidy discussion, that Chairwoman Goldway just talked about, is certainly an important part of it. It seems that whenever a proposal is advanced for some kind of government support for the media or for journalism, cries of horror arise, in which people say this is a break with American past. This is something that would be a violation of all that we hold true about the notion of the first amendment and they often act as though there's some kind of a press/state wall, like the church/state wall that's in the constitution, but it's not so. There never has been, as Chairwoman Goldway has suggested, and there is no, in our view, strong argument for it. So, we decided to conduct the study that I'm going

to talk about today, in order to try to help to reframe the debate, because while there might be some people who do think it's good to have such a wall, there never has been, and the government support has taken many forms. Chairwoman Goldway talked about the fact this concept really began in large part in the earliest days of the republic, when George Washington and James Madison both thought that there ought to be huge subsidies for the press. George Washington thought the press should be delivered for free. James Madison had said -- have a little bit of a cost. You just heard some of the figures about how large the subsidies were in those early days and about the Postal Act of 1792. We think that the founders were right and that there is good argument for the government to be able to support journalism in important ways, but at least we think that as the debate moves forward on this subject, it should move forward on the basis of an honest discussion of what history is and of what the true facts in the ground are. So, we did was to look at three areas, and there are many other, we looked at three areas in which the government currently, in one way or another, supports journalism or the press. What we found was that the government, of course, has always supported the press at the local, state and federal level. But we also found something else that I think comes as a surprise to people and that is that the level of that support is declining and that, without a new approach, the level of support will continue to decline; it seems almost inevitable that it will. So, we think that instead of debating whether the government should start supporting commercial journalism, we really should think about whether the government should, as it's now doing, continue to reduce the level of funding for commercial journalism, because that's the truth of what's happened. It's gone down, it's going down and the debate ought to be of whether it continues to go down or whether we restore some kinds of support we've had before. Now, those findings came as a surprise for many people who worked on the study, including my colleague, David Westphal, who spent more than 30 years working as a journalist, including most recently, being the head of the McClatchy Bureau, in Washington. But they surprised the journalists who covered our report. One of the top media reporters, who called me up after reading the report said, "Who knew?" Well, in any case, we hope that they now know and that the debate will be an honest one. And one of the things that David suggested is that maybe there's a kind of mythology here that's gone around, that's gotten in the way of an informed debate. Maybe it's a mythology that served a lot of people's interests. Maybe journalists didn't quite want to know the fact that they were being supported by the government. Maybe their publishers, who were getting these forms of support didn't really want the journalists to soil their pretty little heads

with that information. Maybe government leaders who were doing this didn't necessarily always want the public to know, but the fact is, it has been true throughout and we think that it's important to get some fundamentals right. So, we think it's clear that there's never been a time when the government didn't support the press and we think that there are at least these three important areas where we want to talk about them. The three areas, which we're going to talk about, are postal subsidies, which Chairwoman Goldway's talked about and then, we're going to talk about a couple of others that are very important, but first, I want to mention that both postal subsidies and public notices, which we're going to spend some time on, go back actually to before the founding of the republic. These are concepts that were brought over. They in were in the colonies and they were brought over from old Europe, that there was that kind of support. It was true from the earliest eras as Chairwoman Goldway said, "Ben Franklin and others, who was both the postmaster and the publisher, all believed that this was important." And that history laid the groundwork for high postal subsidies, and there's a very similar story for the paid public notices, which was an idea that also came from old Europe. And public notices are required and some people may wonder just what we're talking about when we say public notices. We're talking about notices for municipal zoning changes, school district budgets, bankruptcy notices, seized property actions and the like. Governments impose these requirements on themselves, but importantly, they also impose them on private actors who have to do certain things because of government regulations and laws that affect what they do. Just for an example, foreclosure notices, which often have to be taken out by banks. And I thought it would be interesting to look -- I'm going to talk a little later about the "The Wall Street Journal," but I thought it might be fun -- I know you all brought with you, your classified section of the paper, of today's "Washington Post" to read, in case anything got boring here and it'll be interesting, I've got some copies of this to share with you too, but you can take the section out of your "Washington Post" today and look at it. Look at the first section and you think this is a section that's all about automobile advertising. There are only automobile ads on the front page. Every other page here is a public notice. Many of the public notices that are by banks or trustee sales, again, are required by law and you'll have a great time reading them, if you have a magnifying glass with you, because they are, let's say, and this is easier to read than the stuff that generally appears in "The Wall Street Journal." They are very small type. But they are required as advertisements and they continue, in an important way, to support the press. And in each case, the impact is the same. For commercial journalism, it means money in the bank. It's a particularly

important source of support for community newspapers. The national trade association of community newspapers, and that includes rural papers, which is something that I think is of special interest, is the National Newspaper Association, and in the year 2000, The National Newspaper Association estimated that public notices represented between 5% and 10% of all revenue. It may well be much higher today, as other revenues have gone down, but public notices, to this point, have remained pretty much the same. But it's not just small newspapers that benefit. As I mentioned, many others do, including "The Wall Street Journal," which I think is interesting because "The Wall Street Journal" has often editorialized against government support for the commercial media. But look at the truth of "The Wall Street Journal" itself, which my guess is that its editorial page writers who never looked at. We did a study over a one month period in which we tried to analyze the amount of space in "The Wall Street Journal" for public notices. And the amount of space for other advertisers during that one month. And, as far as we can determine, the single largest advertiser in "The Wall Street Journal" during that one month period was the government. And it's not that "The Wall Street Journal" only -- and I don't mean to picking on "The Wall Street Journal," I just picked on "The Washington Post" if you want to think of it that way. Or identify them, don't mean to be picking on them. But "The Wall Street Journal" is in court right now, arguing for the right to expand public notices in other states. They're arguing in Virginia that they should be able to compete with the local Virginia papers for Virginia public notices and be able to compete with "The Washington Post" for Virginia public notices. And, in fact, they've made it part of their business plan to compete for public notices wherever they can. If you look at the cumulative effect of all of these things together, we think the following is fairly true. Now, we have some slightly different statistics than the ones that the postal rate commission just distributed, and I want to explain why. And, actually, Chairwoman Goldway had an exchange about this. And I think we now understand it. What we think is, that by the late 1960's, postal subsidies were worth nearly \$2 billion in today's dollars. But we were looking at the postal rate costs of a couple of years ago. If you look at the page in front of you, you'll see how between -- in 2006, the total cost -- the total subsidy was about \$245 million. Today, by their figures, it's \$241 million. So, it's more than doubled during that time. Probably the same thing is true of the subsidy today. So, the subsidy today would be more like \$4 billion in today's actual dollars, because the cost of mailing had gone up so much. And public notices at that time brought in hundreds of millions of dollars of revenue. State and federal tax breaks also were worth hundreds of millions of dollars. It's a little hard to

know just how much they were worth, but probably, in today's terms, at least a billion dollars. So, we thought, at the time that we issued this report, that there's probably a cumulative amount of money of something like \$4 billion. I think given we now understand to be a very sharp increase in the postal mailing costs, it might be as much as \$6 billion in 1969 dollars, 1970 dollars, that were going into the commercial press. Now, that's a small, but significant, chunk of the news industry's business. And it's the first key finding of this report. Government backing for the commercial press has always been with us, and it adds up to very large amounts of money. But here's the second finding. This support is in the midst of a long-term decline that's destined to continue unless policy makers take a new tact. Now, we know that that's already played out in terms of postal subsidies. Pre-1970, the amount of the postal subsidy, as we understand the figure, was about 75%. Today, it's about 11%. Today, the subsidy that they have is 25%. If the figures are right, as we understand it, it's gone from maybe \$4 billion down to maybe \$500 or \$600 million today. It would be good for somebody actually, maybe the postal rate commissioner, maybe the FTC, could sort out these actual figures. We had a doctoral student do it. All of our findings are available to everyone here to be able to study. But, in any case, it's a drop of several billion dollars and, frankly, it seems to me that it's likely to continue still further. And so, here you see these -- the numbers as we understood them. Federal and state tax breaks are also almost certain to fall. Because, for one thing, they're often tied to old media forms of distribution. That is, to circulation and to ink and to other specific print models. And secondly, everybody's looking for places to gain revenue at every level of government. And so, we think it's likely that that will also happen. So, the amount of tax breaks is likely to continue to fall. And when you look at the public notices, there are many people who no longer think they really make sense. There are efforts in 40 states to move public notices to the web, which most people have done with their other classified ads. Which is one reason that the classified advertising section mainly consists now of public notices, or heavily consists of it in some papers. So, we think a shift to the web is basically inevitable. And it's hard to completely argue against it. Imagine that you're in a school system where it cost you \$100,000 to advertise in the local newspaper because your school budget has to be advertised or because you're making a zoning change. And you're firing schoolteachers right and left, and you could retain two of those school teachers for that \$100,000 and have the information be available on the web. It's a very compelling argument in each of these communities. So, we think that a shift to the web is almost inevitable. And the result is that this is going to be -- and it's particularly going

to be true for these community newspapers in rural communities, and we think it's going to be a crushing loss for them. And we think it's also unexamined up until this point. So, we think this is a very important direction things are going in. So, basically, all of this raises a question. Knowing this history, that the government has always supported journalism and always know that it was doing so because journalism was essential to this democracy, at this time when journalism is in some trouble, should the government now continue to reduce the amount of money that goes into the press, or should it rethink it and find some ways to support the press? And we think that's what the debate should be. In our report, we don't really make specific recommendations for policies. I think that Bob McChesney probably will have some that he wants to suggest. There are many suggestions that have been made that are very interesting. Again, we think they should be discussed against the backdrop not of "Should there be government support? Oh, it's a whole new thing in American history," but, "Should we now, for the first time in history, be eliminating government support," which is the truth of what's happening. But we do make a couple of suggestions, one is we think that there is a strong argument for public broadcasting, which is the most trusted source of news and information despite the fact that it has government support. Some people say, "Oh, if there's government support, no one will trust the news." Well, everybody knows that there's government support in public broadcasting. In fact, according to CPB's filings, about 40% of all the costs of public broadcasting come from federal, state and local governments. And yet, public broadcasting is the most-trusted source of news. We think an argument stronger can be made to increase those funds. And secondly, we think that it might be time to remove the restrictions on international broadcasting. Susan didn't mention that I also used to head the Voice of America, so I have a certain perspective on this. But from that perspective, I think there are great news gathering organizations all around the world, with Voice of America radio, Radio Liberty. Reporters all around the world, filing stories that can be heard everywhere in the world except in the United States. At a time when there is a reduction going on in foreign bureaus by news organizations all over the country, all over the United States, why wouldn't we be allowing our citizens to have access to that information? And by the way, to some extent, they already do because Google News has VOA print reports available, and you can actually get, through the internet, you can listen to VOA. But we also wanted to pose this framework in terms of any actual dollars. What we think is, we suggest a three part method of analysis for policymakers. First of all, don't do any harm. There is a very exciting cycle of innovation going on right now, due to the digital revolution. And so, we

think that the government should be mindful in what it does not to do anything to disrupt the exciting innovations that are going on. Secondly, we think that there ought to be a focus on innovation. Chairman Goldway mentioned the investment that's being made in reducing the cost of mailing periodicals. That's an important form of innovation. There are all kinds of innovations that are possible. And if you think about it, the cable television is only possible thanks to the advent of satellites. The kind of cable television we now think of, cable television networks. Who paid for satellites? The federal government did. Who put up the first satellites? Federal government funding. Or the internet, which is so totally disrupted and changed information patterns in many good ways. Who funded the creation of the internet? The federal government. So, we think that there is a strong argument for continuing to invest in innovation. But then, finally, we think that to the extent that there is a -- that there are federal funds that go directly into journalism, we favor formulas which the postal subsidies were, which the CPB funding of stations offers and so forth, rather than large amounts of money going into funds that then decide who to back and who not to back in the journalistic area, because we do think that runs the risk, if you have a big fund that decides, "Oh, we'll support this magazine and not that magazine." Or, "We'll support the reporting on this project or not that project." Even though, in the case of public broadcasting, that's worked surprisingly well, we think that formulas are a better way to go, rather than that kind of direct support. But above all, and it's really the concluding point that I want to make in this report. I think it's the reason that Susan even wanted me to talk here is, let's base this on fact, not myth. Let's not have additional editorials which say, "The world is coming to an end because there's talk about government funding of the media and journalism." Let's talk honestly about what the history is, about what the impact of that history is and about what's happening today. And frame the debate based on that reality. And if you want to know more about it, we invite you to visit our website, [www.fundingthenews.org](http://www.fundingthenews.org). Thank you very much. [ Applause ]

>> Susan DeSanti: Thank you very much. And our final presenter on this topic is Bob McChesney, who is the -- and I can never pronounce this, so I'll just do the best. Gutsell endowed professor in the department of communication University of Illinois at Urbana-Champaign. He also hosts the "Media Matters" weekly radio program on NPR affiliate WILL AM radio. And is co-founder of Free Press, a national media reform organization. He has authored several books, including a just-published book that he co-authored with John Nichols entitled "The Death and Life of American

Journalism: The Media Revolution That Will Begin the World Again." And that book is a fascinating book, and it includes some proposals at the end. And we've asked Bob to discuss those proposals today.

>> Robert W. McChesney: Well, thank you, Susan, for that nice introduction, and thank you for inviting me to be here. It's really an honor to appear before all of you, especially to be in the panel with Chairman Goldway and Professor Cowan. It's great to be here. I think you took a lot of my thunder, so to speak, both of you. We're covering common ground, which I think means great minds think alike. Let's hope so. Not that we're all fools. I will say the difference you'll find between my presentation and that of Professor Cowan is that he did the acoustic set. I'm going to turn up the volume a little bit now and take the logic of his argument and maybe make it go where the evidence leads us logically with that evidence. I've got a draft of my talk, which is somewhere in the room, that Craig Aaron from Free Press will hand out to people. Because I'm not going to be able to cover the entirety of it in the time we have. I do want to add, as he hands that out, that this is my talk with John Nichols, based on our book. It's not a Free Press agenda by any stretch of the imagination. This is purely Bob McChesney, scholar. And I think what we do in our book, and what we try to demonstrate is probably where a lot of the people in this room have gotten to or are getting to rapidly, which is that the commercial models, we've understood it for a long time, that generate journalism in the United States, is no longer working efficiently or effectively. We're just this deficient quantity, question of quality aside, but merely quantity of journalism that we need in the United States. It seems clear to us that there will be some journalism that comes through the market through commercial support, through advertising support, through subscriptions in the coming years. But there will be much less than we're accustomed to on a per capita basis, it will come nowhere near the amount we need to have a satisfactory news media system. Now, if we pursue the course of that Professor Cowan warned against, which is to do nothing and basically let things proceed as they are, unfortunately, it's not like we'll just have a vacuum of a lack of journalism as newsrooms close down and newspapers cease to exist and local elections are no longer covered, as in increasingly the case now. Instead, I think the evidence is coming in that what we will have is not much of traditionally understood journalism, or much less of it, but we'll still have news. But increasingly, what we have that will pass for news will be something we'll regret exists. In 1980, the ratio of public relations people to working journalists in the United

States was roughly one to one. There was one PR person for every working journalist. This year, the ratio is four to one. There's four PR people for every working journalist. Four people working for commercial or governmental agents, trying to influence the news surreptitiously. You have something that seems like news for every person trying to cover it openly. At current rates, and we document this in the book, at current rates of growth of PR and shrinkage of working journalists, the ratio within three or four years will be six or seven to one. So, we're entering a world where we have a high amount of spin, public relations-driven journalism. Basically, people who can afford it will have to power, increasingly, to dictate what we talk about, how we think about it. And journalists will be left to play 1 on 70 defense. It won't even be a reverse zone. It'll be far from man-to-man defense, as they used to play. It's not a world I think any of us should really want to live in. It's really a down world. And I think we have to really come to a recognition now of something that is increasingly clear. Which is that journalism is no longer going to be commercially lucrative enough to provide -- that the market will provide all the journalism that we need and meet our needs. Instead, I think the more accurate way to understand journalism and to develop policies to address the current crisis we face is to regard journalism as a public good. What economists call public good. Now, it's not a pure public good. It has attributes, though, of a public good. And those attributes of a public good are being greatly elevated in this era of the internet, which has done so much to demolish the ability of news media to sell their product, and has pretty much ruined the advertising market for news media. So, what do I mean by public good? I guess the best way to put it is that it's something that society requires to exist and to be healthy, but the market doesn't do a sufficient or satisfactory job of generating the sufficient quality or quantity. The classic case of the public good that's always used in the United States, for self-evident reasons, is military defense. Left to the market, we wouldn't have military defense, because no one's going to pay for it if their neighbor's going to pay for it. You just wouldn't have it. So, the government organizes, coordinates the payment, everyone benefits by it. It's a classic case of a public good. There are many others. Basic research, like Professor Cowan talked about, that gave us the internet. That's public good. Private industry will not do basic research, because it doesn't make sense for them to do so. So, that's why we have universities that do basic research for us. Now, the public good nature of journalism has been masked for the 100 years because of the emergence of advertising become to play -- provide between 60% and 100% of the revenues for news media in the United States, depending on the medium. The vast majority of revenues for

virtually all news media in the United States came from advertising. And as we document in the book, that is very much a phenomenon that emerges pretty much from a very marginal position in the 1850's or '60's in terms of percentage of revenues for newspaper, to a dominant position by the beginning of the 20th century. It's a skyrocket increase in advertising revenues for print media in the United States. And that era is now ending. And we will continue to have some advertising, but it's quite clear now that advertising support of journalism was always an opportunistic relationship. Advertising had no intrinsic interest in new media. It did so because that's who it had to support to accomplish its commercial aims. And now, especially in the internet era, advertisers, commercial interests, have many other avenues to accomplish their ends besides supporting news media. In fact, they don't even have to support any sort of media, increasingly, to accomplish their commercial aims. That's the direction we're going. We're going to have a lot less advertising. And that means there's going to be a lot less revenues to pay for journalism, and it's not going to come from anywhere else in the market. It's simply not imaginable. There's no coherent way to make that work. And that gets us really down to the point where we go back to public funding. Public good requires public funding to succeed. And I just want to amplify what Professor Cowan said, that's the logic here. public funding to succeed, and I just want to amplify what Professor Cowan said, "That's the logic here." Most important thing I would want to say on that that Professor Cowan talked about is that this is actually, interestingly enough, the actual American tradition. Because if you make the point that advertising is central to the support of commercial journalism in the past hundred years, and it only emerged in the late 19th century, the logical question is, "Well how the heck did we have such a great news media?" like Professor Goldway, or Professor. Maybe your next job. Chairman Goldway talked about, how do we get such great news media in the first hundred years of American history if there wasn't advertising then. If there wasn't, of course, support. Well, we now know it had tremendous public subsidies, much larger than anything we've had in the last hundred years that supported it and called it into being. In our research for the book, what Nichols and I did is we got a chance to go back and look at their early history of American journalism and the First Amendment and the debates over how the role of Freedom of the Press and what Freedom of the Press meant, and we were struck by something that's been lost in the last century, which is that the notion of Freedom of the Press to the founders, to Jefferson, to Madison, to Washington, really, really, quite across the board, even Hamilton. Their notion of Freedom of the Press had two components. One component was that the government, especially in this case,

Jefferson and Madison, the government should not censor news media content. It shouldn't regulate journalists. It shouldn't stop someone from starting a news medium if they want. That was a crucial component of our Freedom of the Press tradition from the very beginning, and it's one we all embrace today. Most of us think it's the only part of the American free press tradition, but it's not. The second part of the American free press tradition to Jefferson and Madison and to the framers, every bit as important as the first one, was that it was the first duty of the democratic states to see that an independent system in place before the state existed. If you didn't have a free press system in the first place that existed and was credible, the right not have it censored was a hollow right. It would mean nothing. You have to actually have a press system. Jefferson could not have been more emphatic on the importance of this point. If you look at American history for the first hundred years, not just to mention the past hundred years, they put this philosophy into practice. And Jefferson and Madison didn't regard these as antagonistic values, they regarded them as complementary and necessary for each of their values. You had a creative, independent free press before the state, then you couldn't censor, and you could do it in a democratic society. So how did they do it? Well, normally the big surprise, as I mentioned, the Post Office. That's not going to surprise anyone in this room. I'm will only say this about the Post Office. One of the things we did is we wanted to determine the extent of the postal subsidies for newspapers and periodicals in the United States, and we also wanted to add in the extent of the subsidies of the State Department notices, which were very important for supporting hundreds of newspapers in the United States in the first 75 years of our history, as well as the printing contracts by the White House, by the House and the Senate as well as state governments, which were very important for subsidizing newspapers. We wanted to calculate the percentage. If the federal government supported journalism today, as a percentage of GDP, to the same extent it did in the 1840s, what would we have to pay today? And we actually went back and looked at the original postal documents, their own studies they did at the post office in the early 1840s. We talked to printing and postal historians and accountants and people to make sure we got the numbers right, and the figure we came up with is the same percentage of GDP today, if the government spent it, \$30 billion. An extraordinary expense our federal government made to subsidize journalism in the first 75 years of American history, and it led at the time to the northern states, the most democratic nation in the world by a wide margin. When we start talking about issues like government support, as Professor Cowan talked about, the first issue that comes to mind is what about censorship? Doesn't this lead

invariably to government having control over who gets the money and who doesn't. Rightly that contradicts the first part of our tradition of Freedom of the Press. So we all have alarm bells rightly to go off. That's something we're deeply concerned with. And policies that don't deal with that first part like the founders did, our policies, we're going to be skeptical toward. And one of the things we notice that the people were talking about this. Invariably the nations that were brought up, this is the place you're going to end up if you do this were places like Stalin and Pravda and Izvestia and parts of Cambodia, and we thought maybe those weren't countries to look at to try to, to really understand what the relevant options are for the United States. Why don't we look at nations that are also democracies, that have similar economies, that have legal political opposition parties. Countries like Canada, Britain, Germany, Japan, Holland, Sweden, Denmark, Norway, South Korea. And what we found looking at say 25 of those countries today, and over the last decade, is that they all have extraordinarily large public media and journalism subsidies compared to the United States. Extraordinarily large. Again, if we had their subsidies in the United States that all those countries have, we'd have to spend at the low end, \$7 billion a year, federal government. At the high end, 35 billion. So that's the range they are all in. What's striking when we look at those subsidies was as you said, well, what does this mean for the democracy there? How free are those countries? According to The Economist magazine and its annual rankings of democracies in the world. Its countries that lead the pack every year for the last five years of most democratic nations in the world are the ones with the heaviest, largest public subsidies for public media and journalism. Norway, Sweden, Denmark, Germany, well ahead of the United States. Then we said, well maybe they do that by crushing private media and putting private media in a difficult position to survive. So we went to Freedom House, a group that studies the private censorship of a, the government censorship of private media, and they monitor all the governments in the world by how free their private media are. And we were struck to see that Freedom House ranked as having the freest and most lucrative private news media in the world were the same countries that had the largest press and journalism, public media subsidies. Norway. Denmark, Germany, Japan, Sweden, so clearly these subsidies cannot only not damage democracy, not only not damage private media, they can be a boon for both of them. They can actually assist them. And I think if you look at other democratic nations, we can see that it's a solvable problem. It doesn't mean they give us the exact solution, but it's something they've figured out, and we can learn from them and do the same. In that spirit I will now give you some of the examples, which I think compared to what you

just heard are going to seem a bit extreme. But I think, in view of the crisis we're facing, a bit necessary. First of all, I think there are four of what I call shovel ready funding propositions, and the idea that we're losing journalism at too rapid a rate to do nothing and wait around for a long-term study. One of the four things I'd recommend we look at in the near future to really try to do something about. First of all, and this is something Professor Cowan mentioned, ramp up spending on public media. I'd say tenfold. I say increase it tenfold, federal spending for public media with the money to go almost exclusively towards local journalism where we're losing journalists in local news rooms all over the country. Get them to bring these journalists back to work in covering their communities again. Put it on the air. Give them websites, but get journalists working covering their communities again. Do it through the mechanisms of public media. I think we need to have competing heterogeneous, public media systems with NPR, PBS, community stations, university and school stations, LPFM stations. We don't stand for monopoly in the private sector. We shouldn't have monopoly in the public sector either. Ten times sounds like a lot of money. Well, the United Kingdom spends seventy times more than we do on public broadcasting. Ten times doesn't even get us in the European first division. Ten times doesn't get us Canada. Ten times, we're still in the bush leagues. We got a long way to go. So ten times, it seems like a lot, but it's not much. Now, the argument for a long time was we don't need to spend that money in public media in the United States because the commercial guys are doing such a bang-up job. Well, the commercial guys are leaving. It's up to us now. So we'd better get to it. Secondly, one of the great crises we face in the United States is we're about to lose an entire generation of young people who want to become journalists. They're about to go out, and as I put it, they're about to dive head first into a swimming pool that doesn't have any water. There just simply aren't any jobs there. We can't afford to lose this generation. I've given talks all over the country, and I teach at a college. Anyone who teaches at a college in journalism knows this. We have thousands of very talented young people that really want to be great journalists. Don't believe anything anyone else tells you otherwise. We need to get them work. We simply can't afford to lose this generation. It's just not an option. We need to come up with something Write for America, a News AmeriCorps, I don't care what the term is, but we've got to start thinking long and hard about something to put these young people to work, coming out of school for a year or two. Working, covering communities around the country. Getting them employment and getting them in the game and keeping them there. Third, we have to come up with a plan to transition failing daily newspapers into viably

locally owned concerns, whether they're local private owners, whether they're non-profit owners, foundation, I'm open minded. We have to be experimental here, but find something that works. I don't think we can afford to lose news rooms much more than we already have, and I think we want to reverse the process where we have lost our news rooms. I'm a big believer that, as in John Nichols, my co-author, is a big believer that while it's great to have niche news media that appeal to cover one issue or appeal to one segment of the population, it's imperative in a free society to have some news rooms where the buck stops for whole communities. Some news rooms where you learn about people who aren't just like you. Where you learn about other people in your community. Newspapers, and they're going to be digital, largely if not exclusively, play that role. So we need something like that to stay alive. So, I think we need to have the small business administration, or some government agency, have the funds, to go in and quarterback a deal, so when a paper's declining, before it goes under entirely, it can get into the hands of local owners or someone at the local level and give them enough money to get the thing going so we have the hope of getting news room there. Ideally, and this is one of the great advantages of the decline of advertising, we might be able in this situation, eventually, to have multiple news rooms in communities again, like we used to have in the pre advertising era in the 19th century. Where it was routine in mid-sized American cities, to have seven, eight, nine, ten daily newspapers. And in large American cities, 15 daily newspapers. And that died when advertising emerged. Now, without advertising, maybe get back to work in a competitive environment like that. Third, I think we need to lower postal rates for publications. And I also take an act of Congress for reasons that Chair Goldway mentioned. I think often times when we talk about postal subsidies for publications, we think in terms of we're bailing out these old dying media that don't really have a way to fit in. It's sort of like bailing out horse and buggy people. That's really not an accurate way to look at it. The Columbia Journalism Review has a new research report coming out very soon. I don't think it's been released yet, but I had a chance to see it. Where they did research on 665 publications to get postal subsidies. And what they discovered is, that these 665 publications threw an enormous amount of free material on the web. Not, just that they produced a new print publications, but additional materials their staff produces. And almost all this material, not all of it, but almost all of it, is issued for free. It's in the public domain virtually. Anyone can have access to it. Much of the blogosphere lives and feasts off this material. This material would not exist without the postal subsidy. If those rates go up, we're going to see many of these publications either go under, or

we're going to see them drastically cut back operations to survive. It's going to affect all of us. It's very much in our interest to keep postal subsidies alive so that, not only these publications, but our democracy has a peaceful and successful transition from the analog to digital era. How ever long that might take. So, I think that those four areas are the areas of the shove already stuff where I think we have to go and where we need to put our attention. If you buy the public an argument though, even that's not going to be enough. Even if you have a local owner of a newspaper, if the money's not there, the advertising revenues. They're not going to be able to support themselves and still have a big news room like we're accustomed to in a major daily newspaper 10 or 20 years ago. And then we still have a public issue, how do we solve that problem? One solution came from a gentleman named Ed Baker, so of you may know Ed. Late Ed Baker, we lost him in December, regrettably. The first amendment scholar of the United States of Pennsylvania. One of the real visionary figures on this issue and on the first amendment. And Ed proposed that one thing we could do is give in effect a tax credit for every journalist position up to the first 45 thousand dollars. The government pay half the salary in the fact of every working journalist. Now, Ed, regrettably is not with us. He can't defend or articulate his position. He said it would be easy enough in his view, to defines what a journalist was to prevent fraud. It's still not a fully developed position but, I think the importance in that position, in the real world in which we are just simply having fewer and fewer journalist, and it's not commercially viable. This is one way to think of subsidizing the position that does not cherry pick one paper over the other. You have, as professor Cowen put it, you have certain criteria that are uniform across the board and transparent, in all news media qualified, get the advantage of it. Whatever their political view point. And then finally, I think all of the things we talked about, and in some extent even the Baker idea, are really all about transitioning old media and existing media to a new digital world. In a way that's good. And I think all the stuff we've done, if we implemented that, would go a long way towards giving us a healthy, vibrant journalism. But, I think in a way, we need to also understand in this moment of severe crisis, that we really might want to think in even broader and bolder terms. Must like the famers of this country had to think about when they were trying to do how you we're gonna have a valuable press system. And Dean Baker, the economist based here in Washington, came up with a plan 10 years ago, which I've like a lot. We embellish it in our book, others have embellished it. Bruce Ackerman, from the law school, has a proposal that's going to take off as it is coming out in a few months. Which goes in a different direction that mine, but I think it's definitely worthy of

consideration and I look forward to seeing it when it's in print. But, Deans basic ideas as an economist was, the old idea of new media industry, where you produce a product, you go to market and you sell it and you make your money, like another product, it dying. It's not going to work on the internet, especially with advertising gone. And what we really need to do it come up with an entirely new vision for this public good. How you can have the resources to have a stable new media but in a situation where the market won't generate it for you. And his idea was, and what we've adapted, is what we like to call the citizen news voucher. And this is the idea that every American adult over the age of 18 should have the right to allocate \$200 of government money to any non-profit new media of their choice. All Americans over 18 have the right to allocate \$200 of government money to any non-profit news media of their choice. Do it on their tax form, or if they don't pay taxes some other form easily enough for them to get. Purely voluntary, they don't have to do it if they don't want to. They can split \$200 among many qualifying non-profit news media as they want or give it all to one. It could go to public broadcasting. Or any other form of nonprofit media that didn't except advertising. And it could certainly go to, certainly go to all those internet website right now that desperately need money. They're trying to do journalism, they're starved for money, they're begging for micro-donations, micro-ads, micro-grants. Get them off the micro track and get them actually into the fact they can do journalism again and not worry about their fund raising. I think that policy is a sort of big picture policy that we need to really think about long and hard, as maybe the solution, ultimately to our problems. Why not advertising, why not allow commercial interests? There's some debate. Bruce Ackerman thinks advertising is fine and that commercial interests should be eligible for this \$22 grant. And I think that's a good debate to have. In my view, I want to have a healthy, vibrant commercial private news media, but I want to let them be the only ones who can have advertising then. I don't want this sector to take money away from people who don't want to accept donations or any money whatsoever. We can keep them independent. I think that's a smart way to go. But I think that the crucial thing we want to do is to prevent fraud, we want to make sure there are stipulations that don't allow someone to register and take the money so he and his friends can go get drunk on it. And there are ways to do that. We talk about them in the book and, actually, in the handout. But, the most important thing, I think, to understand is that right now, from my experience. John Nichols and I advised dozens of internet news operations. The people who are applying to the night foundations for the grants, probably the most people are familiar with because they desperately need them to survive if they're doing

journalism. And, what we've seen is literally hundreds or thousands of people that are trying to do journalism without any success online commercially. Simply, the money is not there. And it's not coming. It's simply not going to come. We're dreaming. There might be some Jed Clampett's who hit a gusher, but the state of Arkansas is untouched. And that's the situation we're looking at and the Dean Baker proposal gets at that. It basically says to any website, if you can go out and get a thousand people in your community to give you the voucher, then that's \$200,000 in your neighborhood. You can hire three or four people to work full time. And if you do you a lousy job, someone will come along next year, and they'll put together a proposal and take it away. It'll be a check and it'll be very competitive. You can't guarantee it. It won't lock you in. And it promotes innovation. So, this is something that all these internet websites, and this is exactly what we need. This is a chance to have to do the resources to do great journalism in a competitive environment. And, as our libertarian friends like to say, it's doesn't have the government play any role in who gets the money. And I trust the judgment of individuals to make their own choices. People make their own picks. It doesn't tell you who you have to give your money to. You create the media system you get. But it understands for the public good, if there aren't the resources, you aren't going to get a media system at all, and that's not acceptable. Now, another advantage of this in our view is it gives foundations a role to play. Foundations, basically now, and the poor Knight Foundation gets, you know, how many hundreds of thousands of people trying to get money from them. They can only give to 7 or 10 people and the other people don't get it are just out of luck. That's a ridiculous situation for the Knight Foundation or for any other foundation is basically as the future of all these journalism programs on their hands. In this proposal, Citizen News Voucher Foundation can start something for two or three years, fund it and if it takes off then look at citizen news vouchers for people who want to support it. So it allows for innovation, allows for competition. It's not ideologically weighted, but it gives the resources to do journalism. In our view, by making it non-commercial and keeping the money out of it, you get the great advantage to, not really probably get a lot of people to give their money to support something like "The National Enquirer." So much of that is commercially driven. We think that some people might still read "The National Enquirer," but that will be done by "The National Enquirer." They'll give this money to go to non-profit, non-commercial groups. More likely to be people doing journalism, since everything produced by it should go immediately into the public domain, so you lose any copyright advantages for it. That'd be the condition of the deal too. Now, I think it's a plan. This

idea needs to be thought about or similar tenets like that, because it solves the problem in many ways if it works, and it leaves innovation untouched and encouraged. There are two provisos about this, I must say, and two things that would make it difficult beyond the obvious political fights. One, it means that we'd have to get used to possibly having funding go to journalism that we would detest. Or media we would detest. Americans are very proud of the fact how much open-minded we are to diverse ideas, but when I read Jefferson and Madison and saw how genuinely open they were to diverse ideas and dissent, I realized how little we are today in America for all our talk about how much we love dissent. We love it as long as we don't have to hear it or see it. But I'm reminded, Jefferson, at the exact same moment Jefferson was putting dissident newspaper attacking him on the top of the pile outside his office when he was President of the United States, so visitors from other countries would see that he encouraged newspapers that would have gotten people in prison in any other country. At the exact same moment he was encouraging getting rid of all postal costs whatsoever for newspapers while President of the United States. He also said, "The person who reads nothing at all is more educated than the person who only reads the newspapers." He had a very critical view of the newspaper industry, but impressively understood that that's just the price of freedom, the price of democracy, and we have to rebuild and rekindle that sense of open mindedness for this to be successful. I'll stop there. I'll only add that I do think we have a greater sense of urgency than sometimes is well understood. I don't think we have the luxury of 5, or 10, or 15 years to sort of work this. I think this crisis, we're beginning to see some of the signs of it with uncovered elections, with uncovered city and county governments. We need to really move much more quickly. I think we should regard this much more like we would regard the country attacked us militarily. We wouldn't appoint a commission and say come back in ten years and tell us if we can afford to defend ourselves. While I think in many respects, what's going on with journalism today is an attack the foundations of self-government and our constitutional system, and we have to respond in kind. If we do, we have the resources and we have the knowledge to build, by far, the greatest, most democratic, most open and most exciting journalism the world has ever seen. The choice is ours. Thank you very much. [ Applause ]

>> Susan DeSanti: I want to thank all of our panelists who have been waiting very patiently for us to begin a half hour late. We apologize but, you're worth it to wait for. We're going to discuss competitive collaborations to aid journalism and we're fortunate to have five experienced antitrust

lawyers to inform our discussion and answer questions and each will begin with some brief opening remarks, and we're going to start with two speaker, Allen P. Grunes, a Shareholder at Brownstein Hyatt Farber Schreck, L.L.P. and Maurice E. Stucke, an Associate Professor of Law at the University of Tennessee College of Law and Senior Fellow at the American Antitrust Institute. Allen and Maurice worked together at the Antitrust Division at the Department of Justice and have co-authored a number of articles on the role of competition in the news media, so I will let you guys start.

>> Allen P. Grunes: Thanks, Susan. A few points about what DOJ has been up to and how antitrust applies in media markets and then a few comments about proposals that have been floating around which involve either relaxing the antitrust laws or creating new exceptions. Although we're at the FTC today, I'd be remiss if I didn't point out that the Department of Justice has primary responsibility for antitrust enforcement, in traditional advertising supported media, including newspapers, television and radio. And as both Maurice and I can attest from our own experience at the Antitrust Division, the division has devoted substantial resources to efforts in these media. These tend to be the matters that touch most directly on news and journalism. In recent years, the division has investigated a number of newspaper mergers, including large transactions, such as McClatchy's acquisition of Knight Ridder and smaller transactions such as Hearst's acquisition of a partial stake in Media News. The division has also investigated a number of terminations of joint operating agreements. There aren't many of those left anymore. In addition a few years ago, the division brought a case against the two largest chains of alternative news weeklies for market allocation. Very recently it settled a case against the owners of the two newspapers in Charleston, West Virginia for conduct not immunized by the Newspaper Preservation Act. How does DOJ analyze media markets in general? It is focused primarily on advertising competitions, since that is where most of the dollars are spent, and where the most direct competitive effects are felt. It applies the merger guidelines and looks primarily at price competition. Joel Waldfogel, I noticed this morning said that quality may be the main factor when it comes to competition in this area, but quality is notoriously difficult to measure and hard to get your hands around from an antitrust standpoint. Plus the fact that in newspapers and other media, there's quite a bit of data out there, if you want to do price studies, so it's fertile ground for the economists. In the case of newspaper, the division tends to look at both advertising and readership since both markets may be affected. And

in a few instances, it has also looked at and talked about editorial competition. I think, as antitrust lawyers, one thing, certainly, when you're with the government, people in this area raise the internet as a cure-all sometimes or an attempt to broaden the product market. So it's a fair question to ask whether the proliferation of sources on the internet should allay concerns about concentration in traditional media. On the one hand as we've heard in these workshops, the internet has done some good things. It's reduced costs such as news print and ink and delivery trucks. It's lowered entry barriers for bloggers and citizen journalists, and it's a place for experiments with online journalism. On the other hand, the internet remains mostly a distribution medium and not a source of original content. We've heard that also in these workshops. The available survey data suggests most Americans still get their news from traditional media and in most communities, the local newspaper's website is by far the most visited internet source of local news. In other words the internet is not a cure-all to competitive problems. So that brings us to the interesting question posed by the title of this workshop. How will journalism survive the internet age, and for this panel, what does antitrust have say about that subject? In view of the adverse changes to the newspaper industry, some have proposed the antitrust laws should be relaxed. Specifically, that the antitrust product market definition should be broadened to include other media. In antitrust, of course, a market includes only that set of competing products that act as some kind of constraint on price, quality or service. In past newspaper mergers, the division has performed a factual analysis that determined whether other media outlets, such as radio, television and new media are in the same relevant market as local daily newspapers. In those past investigations, the DOJ found sufficiently strong competition among local daily newspapers to define these products as a relevant market. These conclusions are perfectly consistent with the observation that newspapers having been losing subscription and advertising revenues to other media. In other words, product market is always a fact-intensive inquiry, and there is no reason to relax the antitrust laws for newspapers. Second proposal has been to create an antitrust exemption that would allow newspapers to jointly charge for content. There are various proposals along these lines, but I'll take one of the more extreme ones, create a broad antitrust exemption for newspapers. So, if you look at the range of proposals, you might say, "On the one hand, a blanket, nonexclusive license without an exemption could be pro-competitive. On the other hand, there are significant antitrust risks that need to be considered with blanket nonexclusive licenses. And then, once you get into the realm of exemptions, you're in a very dangerous territory, indeed." There's broad consensus within the

antitrust community that exemptions are rarely a good thing. Exemptions may be created with noble intentions, but they can also impose significant costs and often end up being used to the detriment of consumers. For this reason, the antitrust modernization, which puts the statement in most blunt terms, so, that's why I'm quoting it. But the FTC has certainly said this and the DOJ has said it and the ABA has said and the AAI has said it. Anyway, the antitrust modernization commission says, and I'm quoting, "while the beneficiaries of an exemption likely appreciate reduced market pressures, consumers, as well as nonexempt firms and the U.S. economy generally bear the harm from the loss of competitive forces." Newspapers have been living with an antitrust exemption, in the form of the newspaper preservation act, for decades. So, it's natural that they would enjoy having a new exemption. But an exemption likely would not be good for consumers and would probably also slow innovation.

>> Susan DeSanti: Thank you. Maurice?

>> Maurice E. Stucke: Thank you. Thanks to the FCC for inviting Allen and me. To reiterate two points that you've heard throughout this two day conference is that, first, a democracy relies on healthy and competitive marketplace of ideas. And second, newspapers continue to play an important role in a vibrant and competitive marketplace of ideas. Our recent article in the AAI's transition report goes into greater detail, as to our proposals for the Obama administration. No doubt, the U.S. newspaper industry is in transition. So the issue then arises, how should the antitrust laws apply to such an industry, and I agreed fully with Allen, that the wrong solution is to relax the competition laws. Take, for example, the Newspaper Preservation Act. In 1965, the first newspaper, "The Examiner," entered into a newspaper joint operating arrangement with the primary competitor, "The San Francisco Chronicle." In theory and antitrust liability, the Justice Department then began cracking down on these JOAs. CEO Richard Berlin and other large media companies had lobbied Congress in the Nixon administration for the Newspaper Preservation Act. And what the NPA does is it immunizes otherwise illegal price fixing in market allocation from civil and criminal liability. It also immunized then existing JOAs, including the one between the "Chronicle" and "The Examiner." But in exchange for this antitrust immunity, the JOA partners have to maintain their news rooms as independent. In preparing for today, I thought that the most informative critique of the NPA came from the head of the antitrust division at that time. Dick

McLaren. The DOJ was very much opposed to the NPA. And Dick McLaren, in his Senate testimony, I thought very eloquently explained why antitrust immunity was unnecessary. The first thing that he noted was that antitrust immunity was unnecessary because lesser restrictive alternatives existed. He noted how the newspapers could enter into pro competitive joint ventures, whereby they can agree to join printing and distribution and that such ventures would be then evaluated under the rule of reason. Second, he warned that antitrust immunity would raise other risks, other media industries. Such as magazines and television broadcast would then seek antitrust immunity. Third, he mentioned how JOA creates a shared monopoly, and that can increase entry barriers into the market. And then fourth, how the JOA can affect the party's incentives, because if there's a soft landing, if the parties compete fiercely, then at the end of the competition is immunized price fixing, because if one newspaper really thought that the other was going to exit the market, then it would be unlikely that they would enter into the JOA in the first place. A fifth concern he raised is that the NPA confers too much discretion to the Attorney General and the government's involvement with the press. It's hard to characterize, today, the NPA's success. On the one hand, if you look at the competitive impact statement in the West Virginia case of the DOJ recently prosecuted, it does mention the benefits that readers had from two competing news rooms. But on the other hand, the NPA never yielded a better newspaper in San Francisco and in other cities. In 1970, when the NPA was enacted, there were 22 JOAs. In 2003 there were 12 that still published two newspapers. Today there are five JOAs that still publish two newspapers. As the DOJ's recent prosecution in Charleston, West Virginia shows, JOAs are subject to abuse. Some JOAs today exist in name only. The junior paper agrees to close in exchange for a percentage of the surviving newspaper's profits over a period. And that happened, for example, most recently, in Tucson, the junior paper closed in 2009, but the JOA continues until 2005. So antitrust can play a very important role to preserve a vibrant and competitive marketplace of ideas, but the best anecdote is not to allow media firms to consolidate, because they are too big currently to fail, or that they need, necessarily, the relief from the antitrust laws. Antitrust analysis is, I believe, sufficiently supple to consider dynamic market factors. And it is -- antitrust -- Allen and I are thinking, have come to agree, that antitrust is not always easy to apply to media merges. It's easier to look at a media merger's impact on advertising rates. But it's harder to look at the impact on the editorial competition, but you can't ignore that editorial competition. So our primary recommendation for the Obama administration is more empirical work on how media markets

work, and ensure that any competition policy towards media mergers is driven by a national media policy as set by Congress. Thank you.

>> Susan DeSanti: Thank you very much. I apologize for interrupting. But, Chris, there are some lights here that are incredibly bright, that weren't on yesterday. I'm wondering if you could ask somebody to turn them off. Okay. Next we're going to hear from Katherine I. Funk, who is a partner of Sonnenschein Nath & Rosenthal LLP. She counsels clients on a variety of antitrust issues, including matters involving competitor collaborations and supplier distribution issues. She has extensive experience working with clients in health care, life sciences, energy, and new media. And she has a unique qualification for this panel, in that earlier in her career, she was a sports reporter for "The Kansas City Star." Katy.

>> Katherine I. Funk: Thanks, Susan. I feel as though my professional career is converging here today, because I was at the federal trade commission, and then I went to be a sports reporter, and now I'm back being an antitrust lawyer. First, I'd like to thank the Federal Trade Commission and chairman Leibowitz for convening these workshops and in particular I'd like to acknowledge the efforts of Susan, who is my former partner at Sonnenschein, and her policy planning team for taking on the challenge of finding the answer to the question how journalism will survive the internet age. Also, I should state that the views expressed today are my own and are not made on behalf of any client or in particular are not made on behalf of my firm. We are here because publicly, mostly publicly-traded newspapers, and television news profits, what I refer to as traditional media, are under siege. The siege is being laid by technology, people's habits in response to technology, and the changing routines of the American family. Unlike a good newspaper lead, however, I will not give away my opinion at the top. Rather, and roughly the equivalent of a 25-inch story, I will discuss ways which the journalism industry is adapting to these changes and whether the antitrust laws are impeding those adaptations. It is unfortunate for traditional media that they cannot jump into the way-back machine and go all the way back to 1994 when the internet first started creeping into people's lives. Traditional media failed at that time to recognize that the journalism industry was undergoing seismic change. No longer would selling advertising be their core activity. In the information age, revenue would come from the end product of news gathering and distribution. In a word, information. Presumably, if they could go

way back, traditional media, independent of one another, of course, which used to make use of their web content pay for it. But the way-back machine is not available. So traditional media is faced with evolving or extinction, or the third way. In lieu of the former, and in serving to only stave off the ladder, they get an antitrust exemption. An antitrust exemption, however, will not save traditional media. Rather, it would likely temporarily prolong an outdated business model of a monopoly paper that presided over a city and reliably turned out 25% margins towards ownership. The antitrust laws are not what ail traditional media. After all, the antitrust laws only prohibit anticompetitive agreements, exclusionary conduct and mergers that distort market outcomes. Everything else is pretty much fair game. Rather, the antitrust laws stimulate innovation through competition. As Carl Shapiro, the deputy assistant attorney general for economics at the DOJ said last year, this is especially true in industries experiencing technological change, where competition spurs innovation, including innovative business strategies and business models. That is exactly what is happening in the journalism industry, a much larger universe than traditional media. Setting aside the nonprofessional undertaking, such as blogs, wikis and crowd sourcing, trained professional journalists are sourcing, reporting and distributing news in ways that both utilize technology and respond to the changed currents of daily life. For example, within just the past two years, all across the country, news organizations are collaborating on news coverage, allowing for better allocation of scarce resources. As was discussed in December at these hearings, the eight largest papers in Ohio have formed what's unfortunately called OHNO, the Ohio News Organization, to share content, including sports coverage, state government, and local events. Five newspapers in Maine launched the state-wide alliance similar to that in Ohio. "The Miami Herald," "The Palm Beach Post" and "South Florida Sun Sentinel" entered into an alliance to share stories, including longer feature stories. "The Dallas Morning News" and "The Ft. Worth Star Telegram," began sharing photos and features, such as concert reviews. However, they're keeping separate their coverage of the Dallas Cowboys. "The Washington Post" and "The Baltimore Sun" have entered into an agreement to exchange some of their local Maryland reporting. And television, Fox and NBC news announced plans to share video taken at news events, like crime scenes and press conferences in Philadelphia, New York, Chicago, L.A., Dallas and Washington. And here in Washington, WAMU, the public radio station at American University has entered into news gathering exchanges with various local papers in and around Virginia and Maryland to share content. Two weeks ago, the Department of Justice issued a business review letter clearing the way

for MyWire Inc. to form Global News Service, an online subscription news aggregation service. And ProPublica, a nonprofit entity, is sourcing and reporting stories that are being published in outlets such as "The L.A. Times," "The New York Times," NPR, and everywhere in between. And in just a little while, Bill Baer will speak, I'm sure, to what seems to be the incubating idea with the Associated Press to begin a registry product. And in Chicago and San Diego, independent news sites, staffed by professionally trained journalists, are reporting local news stories. Importantly, from an antitrust perspective, the participants of all these collaborations are still competing with one another and with other traditional media outlets, for readers and advertisers and revenue. In short, the antitrust laws are not impeding the journalism industry. Instead, the antitrust laws are allowing these adaptations and innovations room in the marketplace to succeed or fail on their own merits. That said, we are left with a nagging question. With only one organization's reporter at City Hall or the state house, what is the effect on exposing corruption, unlawful, or just plain stupid behavior? Scandals such as Coingate in Ohio were exposed because beat reporters from different organizations competed to break the latest development. Unfortunately, such noneconomic competition, while theoretically within a scope of antitrust, is not readily quantifiable with current analytical tools. In this regard, an antitrust exception for the journalism industry is a glass slipper that simply does not fit the foot. As both a former journalist and avid consumer of news and information, I have a deep interest in these issues, and I very much appreciate participating in these discussions and look forward to your report.

>> Susan DeSanti: Thank you very much, Katy. And now we will hear from Bill Baer, who is a partner and the head of the global antitrust practice at Arnold & Porter LLP. He is very familiar at the FTC, because from 1995 through 1999 he served as the director of the federal trade commission's bureau of competition, and we won't go into the earlier positions he also held at the FTC. He currently represents clients on a wide range of issue, and his clients include the Newspaper Association of America and the Associated Press.

>> William J. Baer: Thanks, Susan. It's always good to be back. I am, as Katy indicated for herself, here and in my individual capacity, as someone who spent some years in and out of government dealing with interesting antitrust issues. Susan already noted that I do -- and I want to make sure the record reflected -- represent a couple of entities with very serious interests in these

hearings, the NAA and AP, I should say that both have appreciated the opportunity to participate in these hearing, and both -- I can speak on their behalf, have appreciated the opportunity to work with Assistant Director and DOJ in addressing some of the issues of competitive collaboration and consolidation that are very much the forefront of these hearings as well. I'm going to make a slightly -- a slight variation on typical FTC staff disclaimer, I need to say the views are my own and not necessarily anyone else's, but I think it's unlikely that the NAA or the AP will disagree with anything I have to say here today. I want to make three quick points in opening, and then we can get to Q&A. A little bit about the nature of the problems we're facing, you covered that yesterday in some of the earlier hearings as well. I want to talk about two ways in which, I think, antitrust enforcement can and should account for the changing nature of competition in the newspaper business. First point, and the professor covered this pretty thoroughly -- You know, there are real challenges facing newspapers and others who are originating news content. Ad revenues are down significantly and don't look poised to recover any time soon. Some of this can be seen as cyclical, our reaction to a depressed economy, but some of it is fully a one-way directional decline in advertisers hurting the newspaper, their traditional source of communication with consumers. I don't think there's any doubt too that subscription costs aren't going to make up for the lost revenue, and whether that distribution is by print or electronic means. You know, a large part of the problem is Katy and others have said stems from the fact that their new sources of obtaining information for a consumer, largely the internet. That's where some of the advertising dollars have gone. But there's a related problem, in that those who are aggregating content for the internet, may not always be paying fair value, or any value, for the content that they are aggregating. Some of that content, maybe much of it, is copyright protected. Obviously, not all. But there are today no really efficient ways for the people who generate the content and those who aggregate to reach a meeting of the minds about what appropriate compensation is. In the face of this economic reality, newspapers have been forced to cut costs and adopt many efficiency measures. You know, recent -- and Allen and I have talked about the nature of competition and the benefits of that. One challenge, though, is in fact, your revenues have gone down and you're cutting your news room staff to the bone, do you really have that kind of editorial and journalistic competition that we all see as hallmark of the American democracy? So I think in order for newspapers to survive in light of the economic reality base, there's going to be further cutbacks, and they're going to be some need for some creative efforts, whether they are merger, joint ventures or other forms of competitor collaboration.

So what's the relevance of antitrust in this environment? Nobody is seriously arguing the proposition, that antitrust is the root cause of challenges that newspapers are basing, and I don't think most people see a broad-based antitrust exemption as necessarily a magic bullet solution. A lot of the problems will remain with or without an antitrust exemption. But that all said, I think we ought to look at a couple of issues, both of which have been alluded to by the earlier speakers. The first is, does the changing nature of competition for advertising dollars suggest that the traditional market definition that Allen talked about, that we employ a merger analysis, is that still right? Is that the right model? Antitrust has this problem in that it is predicting a future, but it's doing it based on past behavior, and one of the challenges in a rapidly changing environment is does past behavior, competitive interaction, adequately predict -- appropriately predict -- what is going to be happening going forward. You know, market definition, why does it matter? Obviously, because if, in two newspaper towns, if the economics no longer support two newspapers, and they actually can demonstrate that the future is one where ad revenues are going to be generated in competition with these alternative sources of advertising. Then maybe a market definition is too narrow, and it needs to be broadened. Second area where I think antitrust is relevant, is in helping those who originate the content understand ways in which they can collaborate without taking on undue legal risk. There's a lot of interesting ideas floating around, ventures to better track, how newspaper content is being used, is something the Associated Press and others have talked about. Their collaborations being discussed to address free writer issues, perhaps by offering those who aggregate or use content, some sort of option, not an exclusive option, but option of a blanket license, which would be negotiated in advance. There are ventures being discussed about ways in which print media can collaborate on classified ads, whether it's on the internet or otherwise. There are ideas out there. Now, we've got a framework for analyzing these sorts of collaborative ideas, and Susan was one of the principle authors of the competitor collaboration of joint venture guidelines some ten, maybe a few more years ago than that, and I know that both the FTC and the Department of Justice has pledged to work cooperatively. I'm one who's been in there interacting with DOJ on some of these issues and can tell you, they really are trying to understand a make sure they are adequately predicting the future. In some ways, if you look at it, we obviously have some very, very serious problems, and what can antitrust do? Maybe it's look to the notion, in the general dynamics case out of the Supreme Court years ago, where you don't necessarily assume that current competitive conditions adequately predict the future. And it may well be the right answer is

that we need general dynamics on steroids in order to adequately address what is a ridiculously rapidly changing environment.

>> Susan DeSanti: Thanks very much, Bill. Finally, we're going to hear from Steve Nevas, who is a fellow of the information society project at Yale law school. Since 2003, he has also served as an attorney at the law firm of Nevas, where he advises media and business clients about media law, privacy, right of publicity, trademarks, copyright, for profit and nonprofit business strategies. Now, Steve has a proposal, and so we've given him a little extra time. Since we haven't put a time limit on anybody this afternoon, I hardly think I can start here, but I'm going to hope that the panelists who have gathered here will actually stay a little past 4:00, and we can actual have some discussion. So begging your indulgence. Go ahead, Steve.

>> Stephen Nevas: Thank you, Susan. I'll talk quickly. I should say at the outset that most of my experience as a First Amendment lawyer and as a journalist, I was an investigative reporter for many years as well. It's hard to get that out of my blood stream. I think it's important to start by thinking about the fact that very few of us here have to strain our memories to remember when we actually paid for news. The paper boy, the paper girl, collected on the weekend. In fact, I can even remember being a paper boy in my youth. We subscribed, we stopped at news stands, we bought news one way or the other, but when the internet emerged, our favorite news media all migrated to the web, because without a presence there, without a robust and up-to-date presence, you just don't exist in this society anymore. And we have to face that. The belief in the news business was that the advertising which made journalism's economic viability possible, was going to follow that presence on the web, but what actually happened is that advertisers straggled, they paid less because the proliferation of digital media led to a huge, largely unused, and still largely unused inventory of advertising on the internet. No one is willing to predict that the income that news organizations once enjoyed is going to come back any time soon. In fact, the Neilson Company recently reported that overall media ad revenues were down 9% last year. According to Neilson, newspapers took a 26% hit, but I'm informed by the newspaper association that that number is likely to be closer to 25%, and that tells us a great deal about the economic impact that has had on the news business and damage that has been done. Advertising on the web, according to Neilson, remains stagnant at 1%, one tenth of 1%, and that doesn't appear to be growing very much either.

While journalists and financial foundations have continued to crumble, the measurable value to readers and internet users of what journalism produces has not. The Pew center founded in Baltimore a few months ago, that during a single week, while the news landscape had rapidly expanded, most of what the public had continued to learn was so overwhelmingly driven by traditional media, particularly newspapers. Nearly 50% of all original local reporting was produced by print organizations and then reused or reversioned with or without permission by other media. 38% of web users made 78 million unique visits to newspaper websites in the third quarter of 2009, an upward trend according to a study by Neilson online for the NAA. Pew also found that in Baltimore, "The Baltimore Sun" produced 30% fewer stories on any subject than it did in 1999, 73% fewer than in 1991, and that traces the trajectory of what has happened to journalism. News organizations, large and small, printed, broadcast too, are increasingly unable, and this is no secret from our discussions here, unable to monetize what they gather in support. David Carr wrote in "The New York Times," the clock is ticking. Many of the news legacy businesses that produce that concept will not be able to continue to do so. So what are we going to do? The question presented by chairman Leibowitz in his opening remarks at the first of these workshops in December was whether or not journalism is experiencing creative destruction or simply destruction, to which one might add, should we, can we afford to sit back and wait to find out. What journalists produced can ready be categorized as socially valuable public goods. And there's been some discussion of that here today. Professor William Fisher at Harvard describes them rather well. He said first, they are non-rivalrous. In other words, enjoyment of them by one person does not prevent enjoyment of them by other people. Second, they are what he calls nonexcludable. In other words, once they have been made available to one person, it is impossible or at least difficult, to prevent other people from gaining access to them. And Fisher goes on to point out that potential suppliers recognize that they would not be able to recover from consumers the costs of producing these goods. And into this category, he places the lighthouses, roads, national defense was mentioned, inventions and recorded entertainment, to which I would add, journalism. News and information are the lifeblood of our democracy. Citizens, communities and their institutions depend on a steady supply of it to fuel and inform participation in day-to-day decision making and in elections. So what are our options when is now the signific -- the signs point to what I think is a market failure in journalism or a series of them, or partial market failures. If we look at our history, technology-induced market failure has more than once led Congress to adopt content-neutral measures to protect the economic

base for the production of public goods whose markets have, or would otherwise, fail. 101 years ago, the player piano, the must-have entertainment system of the day, threatened to deprive songwriters and music publishers of the benefits of their creativity. Why? Because piano roll manufacturers were reproducing their compositions without paying for the music. So, Congress stepped in to assure that those whose work was taken without permission would be paid. Lawmakers, when they considered the problem with a cold eye, realized it was not possible to prevent the reproduction of such public goods, like news, but those who did could be made to pay under the copyright law, which had been enacted at that time. And so, they passed a compulsory copyright license to allow anyone to use legally protected music, but obligated those who reproduced it to pay royalties to those who wrote it. In the years since Congress has adopted compulsory licenses to provide basic income streams, and I emphasize "basic" income streams, not the entire source of the income, for the owners of content used by public broadcasting, retransmission by cable television systems, subscription audio transmissions and nonsubscription internet radio. The primary beneficiary of these compulsory licenses, the music industry, has over the years, organized itself through voluntary performance rights organizations or PROs. They are BMI, ASCAP, SESAC, and the Harry Fox Agency. Due to the rule of reason, they are viewed as not violating antitrust laws. They negotiate, they grant licenses to those who use music. They collect and distribute the income. Could this model or a variant or hybrid of it possibly provide digital journalism with a financial floor and if so, how would we go about it? One of the most difficult challenges facing both news organizations and individual writers is to track down and bring to account those website operators who regularly scrape, aggregate, and monetize the headlines and stories of others without permission, without paying anything, and sometimes without the scruples to attribute what they re-publish to the copyright owners and original authors of that work. Key elements of a solution have been under our noses now for some time, and they are falling into place. Thanks in part to imaginative use and application of the same digital technologies that have created the problem in the first place. Two organizations in particular are responsible for this. The fair syndication consortium and alliance of 1,500 newspaper publishers, organized by the software firm Attributor and using its special software to track the extent of the problem found that during the single 30-day period late last year, 112,000 full copies of their work appeared on unlicensed sites, some of which used the work of its members and others as many as 15 times, without permission and without compensation. The consortium has publicly announced

that it hopes to use the information to press the advertising agencies who place ads on these sites to divert income from the sale of the ads that appear in conjunction with their work back to the creators of that content. The Associated Press is beta testing a different approach -- a software approach known as news registry. The AP has adapted a largely open source program which had already gained acceptance in Europe, and has made it available to its own members. The software allows the users of it to attach a digital wrapper to each original work. When someone downloads the content to which it is attached, a message is sent back to the publisher or to the AP via the web that a site maybe using its material, and a paid license may then be offered. No one at consortium or the AP has publicly announced that they will use their content tracking software as the digital cornerstone for voluntary broadly based copyright rights organizations who would act like VMI and ASCAP, like those performing rights societies to identify and negotiate with unauthorized users of their work. But that is, in fact, what they appear poised to do. Essential as these contributions by the consortium and the AP are to the future of digital journalism, the news and information universe of the web is much larger. And partial solutions that result in payments to some but not all who cover and report the news, will continue to beg what I believe is a larger question. How can we fairly compensate all who create original content consumed by significant publics? In other words, who is going to pay and how. Internet service providers sell access to free content, but pay nothing for the privilege. Only in rare cases do web users pay for what they download. Just 3% pay for what they use according to recent Forrester research data. A plethora of findings at the same time discloses that web users have grown so accustomed to free news and information that a few short years, many consider its continued availability without charge as a birthright. Yet if no one provides adequate compensation and combination of internet and display advertising or commercials continues to meet only a small portion of the cost of content creation and distribution, the quality of news and information that has been identified as public goods will continue to erode as it has been, or it will be accessible only to elites who can afford to pay for it or, has already occurred to too many local and regional communities, it's just going to disappear. This suggests that whatever payment model is adopted, and choices are becoming increasingly unavoidable, it ought to be simple. It ought to be relatively painless, intuitive and universal. One that meets those criteria could be a content license fee to be paid by every internet service provider on each account it provides and passed on in whole or in part to the users of the internet. The funds will be forwarded to a new division of the copyright office which would operate under streamlined

procedures, stripped of some of the onerous, I must say, and costly procedures which have, in the case of compulsory licensing of distant television signals and internet radio made the collection of what copyright owners are entitled to, as if not more expensive than what they get in the final analysis. Copyright owners who elect to participate would agree to periodically submit records of their downloads to the copyright office. Those records to be cleansed of any personally identifiable information. And to prevent the gaming of the system, the copyright office would commission market by market sampling by organizations like Neilson and ARB to cross check the download records, and based on a formula, then decide on appropriate compensation to those who provide content. Those funds should not, and I don't think we can hope to pay all of the news organizations expenses or assure a profit, but they could provide a financial floor that allows them to leverage additional income. This model, applied to digital journalism in all its forms would help to create a level playing field between legacy and new media. It would encourage, not discourage, the operation of market forces, and stimulate the kind of experimentation and innovation which we must have if journalism is going to continue to survive and grow. It could, at the same time, discourage the segregation of information elites who can afford news information, segregation of informational leads from those have nots who would be unable to pay for metered or paywall information, information for which they would otherwise be denied. Finally I think it's important to consider that there is both legislative and judicial precedent for amendment of our copyright laws to authorize either a compulsory statutory blanket or hybrid licensing model for news and information which is distributed digitally particularly when the purpose is to assure the continued production of public goods. The application of these concepts to journalism when distributed digitally is part of the discussion we ought to have, and I think it's one we ought to have before it's too late. Thank you very much.

>> Susan DeSanti: Thank you very much, Steve. We have plenty on the table to discuss. I first want to introduce my co-moderator, Jessica Hoke, who has helped pull all of this together. I also want to make it clear that we as the FTC recognize that DOJ gets to decide the cases. This is not a surprise to us. What we are doing is taking the policy look at this. And I should also mention that we are traditionally very simpatico with DOJ on the whole idea of antitrust exceptions. I'm not aware of any antitrust exemption that the FTC has ever vigorously supported. We've traditionally opposed antitrust exemptions for the reasons that Maurice and Allen so eloquently described. I

thought we should probably -- what I would like to do with this discussion is start with the existing exemption and see what purposes it has served, and get people's reaction on the extent to which it's really worked. And then go into some specific types of competitor collaboration, some of which have been raised here, including Steve's idea. So Allen and Maurice, could you just -- Allen or Maurice, could you just explain the basic rationale and the rules of the current exemption?

>> Maurice E. Stucke: The MPA is at a --

>> Susan DeSanti: I'm having trouble hearing you.

>> Maurice E. Stucke: Sure. The Newspaper Preservation Act is codified at 15USC 1801, and it basically has two tracks. One was for pre-existing newspaper joint operating arrangements. This was at the time that citizen publishing happened, and so it provides them immunity. And then second, for any new JOAs then, that would be then sought, they would then have to go to the attorney general for approval. The statutory framework is not very well laid out in terms of what the DOJ's oversight is, given that there is this sort of immunity. Basically the attorney general has a role at the beginning in order to judge whether or not the new JOA qualifies. And it's a very broad standard. Whether one is not failing under the failing firm defense, or something approaching that. And then secondly whether or not it served the purposes of the act. And then secondly is when there are amendments to pre-existing JOAs, that they would then be filed with the DOJ. But it doesn't really spell to what extent then that the DOJ has an obligation to ensure that the parties are conforming to their side of the agreement in having two competing and independent news rooms. One of the things then that you say that is that JOA, since the act has enacted in 1970, have then modified the terms of JOA which can then also affect the party's incentives, particularly when they go from let's say a jointly run JOA to a host-tenant situation, where the dominant partner then takes over many of the obligations. And this was clearly seen in the Charleston West Virginia case where media news essentially cashed out of the JOA and received a small sum to continue with it. And that's, in essence, the statute, that there's these JOAs that are in existence, now, they're down to five, and there isn't -- the DOJ will open investigations to look into whether or not they satisfied, but it's not statutorily well defined.

>> Male Speaker: The only thing I'd add to that, just in general, for people who aren't familiar with JOAs. They were sort of a Faustian bargain where the circulation and advertising functions could be combined, but the editorial and reportorial functions would be kept separate and would continue to repeat.

>> Susan DeSanti: Yeah, and I think that's a crucial kind of issue because in a sense, the price competition from sales of advertising was, in a sense, given up, and in order to preserve the editorial content. So when I think of NPA, I think of it in terms of preserving competition in content rather than competition in prices offered to advertisers. I think that's relevant to think about, as we think about, heaven forbid, the potential for antitrust exemptions for the news. But let me ask you both, you've seen this, and I welcome others who have opinions on this, how well do you think it worked?

>> Male Speaker: I think -- it's hard to say that one argument in favor of the NPA is that it helped preserve a newspaper that would have ceased to exist earlier. On the other hand, you may look, like in situations such as Denver, did it then, changed the party's incentive in such a way that, if they compete too fiercely, but both of them are unsure of which one is actually going to exit, that there could be then a soft landing of antitrust community. And then second component is, this is a point that Dick McClaren raised, is to what extent would the marketplace have been better off, had the assets actually exited the marketplace and then that would have left an opening perhaps for someone else to come in. Rather than trying to then block them, for example, the morning and afternoon space? Okay. That's the first part. The second part is, once you have antitrust immunity, how can you make the best of it? Here, DOJ, very dedicated staff, in the past ten years, have taken a hard look at these antitrust immunities. Not for the sake that they thought necessarily that JOAs are a great thing, but that antitrust immunities aren't going to be abused. Because of the susceptibility for abuse here.

>> Susan DeSanti: Anything anyone else wants to add? Steve, go ahead.

>> Stephen Nevas: I have a question, but I don't want to derail the course of the discussion.

>> Susan DeSanti: No, go right ahead, if it's about the newspaper preservation act, go ahead.

>> Stephen Nevas: It is not, but it's about a related topic. Okay, I can wait.

>> Susan DeSanti: Okay, all right. Anything else people want to add on the newspaper preservation act? Okay. What I then wanted to move into were collaborations to "share" content. NPA preserves competition in content. Now we're looking at the potential for collaborations to share content, and I just need to note, at the beginning, I had a conversation with someone very early on in this process. It was probably last May, about a request for an antitrust exception for newspapers, and I said, "A collaboration to do what?" And they said, "We're not really sure." So I'm really hoping that we talk about specifics, collaboration to do what, because each raises different antitrust questions, to some extent, so that's the reason for framing it this way. So Katie, you mentioned some collaborations involving the sharing of content, or as in the case of the Ohio newspapers. Whereas Dayton, there might have been a reporter from Akron who covering Dayton news. There's no longer that person, because Dayton is going to be providing Akron with the news. I'm not sure I got it exactly right. But that's the basic concept. Do these kinds of collaborations raise antitrust issues, and if so, what do you think of the most significant?

>> Katherine I. Funk: First of all it's interesting that the JOA or the newspaper preservation act got rid of competition on the revenue producing side, or tried to maintain the competition on the content side. Now what we're seeing is the reverse. Right? The newspapers on their own, maybe because of the antitrust laws, are maintaining separateness with respect to subscribers and advertising, and are trying to collaborate, or use scarce resources, reporters, more efficiently, by sharing them. As to whether or not that raises an antitrust issue, I think theoretically it does. I think, for instance, in the West Virginia case two months ago, that the Department of Justice got a consent decree in, in addition to the higher rates for advertising and subscription services, et cetera, one of the points they raised was the lack of -- the resulting lack of competition with respect to content. But my question would be, back to that is, if the only concern, take away the rising of the advertising rates and subscription rate, et cetera, if the only concern in that merger would have been the reduced competition in reporting, would the Department of Justice have brought the case? I doubt it. Because how do you measure quantitatively what the harm is? So, to answer your

question, Susan, I think theoretically these collaborations raise antitrust issues, quality is always one of the considerations when looking at a merger or joint venture or whatever, but I don't know how you would bring that case in court. Maurice.

>> Maurice E. Stucke: A couple courts have addressed that. Is the editorial competition within a JOA, competition that's cognizable under the antitrust laws, the answer is yes, the courts have recognized that. Secondly, there is -- the DOJ in its AMICAS brief in Hawaii in 1999, talked also about end game competition that in some JOAs, it's unsure when the JOA would end. So each partner would have an incentive to invest in its paper not sure exactly how then the JOA might end, or if one party might want to terminate it earlier than the other. And in order to ensure that they had a better position against the other they will then invest in terms of quality. But, I mean, you see in terms of editorial competition, all of the time, with respect to alternative newsweeklies, right? They compete on two facets. One, they compete for advertisers, but they also compete for readers. And the way that they compete for readers is through their content. So in markets where you have two alternative news weeklies which are essentially for free, you still have a cognizable form of competition to attract readers which in turn can sell them to advertisers, and courts have historically recognized a leadership market in connection with an advertising market.

>> Male Speaker: Only thing I'd add, as an interesting footnote, the debates that led to the Celler-Kefauver Act in 1950, the question specifically came up about whether that act would prevent the merger of the two daily newspapers in a particular town, and the response was, "No, we want clash of opinions," so the antitrust laws would actually prevent such a merger. Now, I agree with Katie's point, which is, if editorial competition were the only type of competition, leaving aside the JOA situation. If all we were interested in is editorial competition, then my guess is that the division probably would not bring a case based solely on that, without some other form of economic competition attached.

>> William J. Baer: It's time to go back to general dynamics on steroids. I think the judicial precedent here, which is absolutely clear, cognizable competition includes content competition. There's no doubt about it. But the new reality is, I think, you've got these huge fixed costs that newspapers incur, and their revenues are declining. Subscriptions, circulation and advertising

revenue, and if you look forward, the notion that there's going to be -- Steven, this is what you were getting at, that there is really going to be meaningful competition in the local area. To your earlier point, I think you got to look at probably the content competition is mostly local regional, right? You aren't going to get much of a diminution in international or national news stories, you know, Super Bowl coverage, that sort of stuff. But it's local sports, local news, that really is where you have traditionally seen the most risk of diminution in editorial competition. Is that really going to be there anymore, given that the economic model appears not to be sustainable in the absence of news sources of revenue, which we don't see necessarily as happening or happening in sufficient scale, scope to allow people to maintain competing newsrooms. It may well be that accelerating or at least appreciating the need to move to newspaper consolidation facilitates -- it spreads the costs over more units and facilitates that kind of traditional newspaper reporting competition with the local radio, the local cable provider which does do some news, and you look at the WTOP competing against "The Washington Post." That is actually aggressive, head-to-head content competition. So, appreciating that three to five years out from now, we're probably not going to, in most medium size, and even some large towns, have the circulation, the ad revenue to sustain two traditional newspapers. Looking at a merger or some kind of joint collaborative activity in that context, suddenly takes on a very different appearance.

>> Susan DeSanti: I think that's a crucial issue that you're raising, Bill, both in terms of the local regional focus. In terms of really, what you're saying is, if the competing newspaper would not have covered the story in any case. If the competing newspaper or news organization is not going to be there, then what are you looking for? And this is similar to the issue that you described in the newspaper preservation act, that it's not quite a failing firm defense but it's along the same notion of saying, we have to look at the likelihood that the competition would be there in the first place before we can say, "No, that's not a good idea to allow newspapers to share content." But I also wanted to get, from you, Katie, you mentioned a number of new types of news organizations. We've looked, and so far we really haven't found any, that have found a way to sustain themselves into the future. That's not to say that they haven't been able to get advertising. A number of them have been able to get advertising. It's not to say that they don't have foundation grants or donations, they do. But we had a panel on this in December which really highlighted that, every year for

them, it's a different mix, and every year it's a struggle. I'm wondering, you clearly looked around a bid. Have you found any who are sustaining themselves?

>> Katherine I. Funk: Let me sort of take the chicken way out, right? A lot of these collaborations and different types of reporting and distribution have really just come up in the past couple of years. So I think it's first too early in the evolution of this type of enterprise to say whether or not it can be sustained. If you think there's some statistic that says 1 out of every 100 businesses that have started in a year, only 1 out of 100 survives. So why should news organizations be different from the restaurant business or anything else? I think it's going to be trial or error -- trial and error, and I think that at some point somebody is going to find a way to make it work. And then like the newspaper industry that grew up in the 20th century, that model will then be replicated until the next great meteor hits, and they are faced with extinction. But, there's these independent websites in Chicago, in San Diego, that are actually staffed by professional journalists. And while I don't know that they are going to say they're going to be there in five years, they have been somewhat successful in attracting readership and at least sustaining themselves in the short term.

>> Susan DeSanti: Steve, I wanted to -- we were going to move on to collaborations that enable charging subscribers, in some sense, and I think your proposal fits in that category. Basically, you would end up charging the people who are consuming the news with your proposal, but I wanted to give you a chance to raise your question first, if you don't want to discuss your proposal first.

>> Stephen Nevas: I'm glad to discuss either. But I have a question for anyone on the panel who wants to answer it. And that is, when you look at the BMI ASCAP model from an antitrust point of view, is this an anomaly that people believe should not be repeated, or has this proven to be, from an antitrust point of view, a workable one?

>> Male Speaker: From an antitrust point of view, workable, right? It is a classic way of getting a bunch of folks who have some sort of rights that individually they can't really exercise and collectively it becomes an efficient way of allowing people to -- efficient in quotation marks -- to recover intellectual property. I think the reservations about it as a going forward model, that, and royalty rights tribunal kind of thing. How long it takes to get to a resolution and whether there are

models that do not involve -- that may involve arm's length party to party negotiation as a more efficient way of getting from here to there. So I don't know if I'm --

>> Stephen Nevas: We covered this case in our class two weeks ago and one of the things we highlight with ASCAP is there were 22,000 members with 3 million compositions. And BMI had 10,000 publishing companies and 20,000 authors and composers with 1 million compositions. So, just look at the transaction cost there. Imagine having each person trying to then monitor the market to see if their products were being used and also to negotiate with the various entities. I mean, the transaction costs there would be phenomenal. And to what extent do we have those sort of transaction costs with newspaper owners? There are 389 newspaper -- 389 newspaper owners, as of 2005. The study that you mentioned, the articles from the larger national newspapers, were reused many as 15 times, whereas only one to two articles from smaller papers and I believe it was a study of 157 newspapers. So, to what extent on the transaction costs as significant in the newspaper industry as they would be in BMI and ASCAP?

>> Female Speaker: I think because the newspaper industry mostly publishes on a daily basis, I think very quickly you could get to those significant transaction costs. I actually think BMI and ASCAP is a good framework. And apparently so did the publishers and Google. Although, they sort of went a few steps farther. Maybe a bridge too far. But the thing that would have to change, of course, is that Congress would have to change the copyright laws as they relate to newspapers, and to you know, publishing generally. And frankly, good luck getting Congress to do anything. I don't know how this issue gets brought before Congress in such a way that Congress is motivated to take those steps. So, yeah, theoretically, it's a great idea, but --

>> Stephen Nevas: Well, one argument would be the economic viability of the web as a provider of high value news and information going forward. Because what's happening now is arguably unsustainable. A lot people have taken a flyer at it. Legacy news organizations are in it because they think they have no choice but they also know they can't keep it up. And so we're sort of headed for a wreck, I think you could say. And the question is, "How do we avoid it?" And "Is there political will to do something about it?" Particularly if you characterize what journalism does, and it's not just newspapers. It's a lot of websites. A lot of struggling collaboratives,

nonprofits, for profits all trying to produce what are arguably public goods. And I think the real bottleneck, I think and what experience has shown is the current copyright royalty board system. It's a nightmare, you basically only have what, three judges hearing all of these cases? It is very expensive and the way it's structured, it's an invitation for people to basically hold the system up for their, for relatively small claims. So I think that if there's an appreciation of that, arguably we have to fashion a solution that doesn't allow people to gum up with the works that way.

>> Female Speaker: Welcome to Washington.

>> Stephen Nevas: Oh, I've been here for a while, actually. 20 years' worth.

>> Susan DeSanti: Steve I wanted to ask you a couple questions and by asking these question, I don't mean to, at all, seem to criticize your proposal, but you know, the fact is, you know, there are serious issues here and we need as many to be discussed as possible. So, this is just in the spirit of probing, you know, one of the possibilities, and this was discussed on the copyright panel that you were here for yesterday as well, is that various interest groups, as soon as you take copyright type legislation into Congress and say, "Okay, this is a better way to protect the appropriability of news, that we value, because it's a contribution to and necessary for democracy to function, what can happen is, there will be a lot of people who are providing information on the internet who may want to also argue that they are public goods and also get a share of whatever it is that the ISPs, under your proposal would collect and then would be redistributed." And so, have you thought about that, and have you thought about potential ways to distinguish the news from other types of information, because basically information is public good.

>> Stephen Nevas: Yes, but I don't have a perfect solution at this point. I mean, if we look at the second class postal regulation as a way of attempting to define the press, it's generally publications in general circulation. That is not going to work in this case. I think we might begin, and we have to be very conscious of the first amendment problems that can result, if we discriminate between media, and with discord, discriminating on the basis of who the speaker is. Although I think that if we were to exclude 501 c 6's from the benefit of this, and organizations that are of that type that we would begin to solve the problem. It remains what is a journalistic news organization and part of it

maybe in terms of attempting to distinguish, and I've begun to work on this, between those protected under the press clause of the first amendment and those who are merely protected under the speech clause of the first amendment. It is not an easy distinction to make, but I think arguably it might work. And it is a problem. Do we include every blogger? The answer is those who would be -- contribute significantly and the sampling services help us do that, because when we rate circulation, very small audiences are what are known as BMS, below measurably standards. And we would exclude that way a large number of them also. That is not to say that there would not be some who would claim that they are journalists. And part of the problem, as well, is that we now have, as Yochai Benkler has said yesterday, a party press in this country. The reemergence of a party press who would have to be included as part of this.

>> Susan DeSanti: Let me ask you another question. On the other side of the equation, well, let me actually get to the middle. ISPs. This is obviously going to -- if your proposal were enacted, it would impose administrative costs on the ISPs. Are you presuming that those are also passed on to consumers?

>> Yes. The ISPs currently collect other money for the government. They collect money that goes to an FCC fund for educational purposes. So, in terms of their ability to administratively collect it, it shouldn't be a large problem. The distinction would have to be made between simple individual accounts and those that are institutional, the provider for the federal trade commission, for example provides a number of users and therefore that would have to be computed as part of it, or for a large business, versus a home user.

>> Susan DeSanti: And what about -- okay, so then we get to the copyright royalty tribunal problem. And how do you figure out, you know, how the money should be allocated and who should decide and how on earth do you get those issues resolved, in a relatively speedy manner?

>> Stephen Nevas: Well, I think there are a couple criteria. First of all, you begin by compelling -- this is a proposal that Terry Fisher at Harvard made in connection with something he wrote in 2004 pertaining to the Napster problem at the time. What you do is require that downloaders who wanted to participate voluntarily would be obligated to periodically forward records of their

downloads both numerically and the length of downloads, so that if somebody obtained a lot of information it would count for more, to a new division of the Library of Congress which would be operating separately than C.R.B. does now. Second, the Library of Congress would commission sampling, basically rating studies which it now does for broadcasters and which they do in terms of circulation studies for newspapers. So they're experienced at that. To measure the audience and then crosscheck the download records against the sampling. And this would discourage the kind of gaming that might occur if someone set up a bot to download their own site. So, we would prevent that. And then on the basis of a pre determined formula to decide what percentage of each of these sites would be entitled to against the pool of money that would be available.

>> Susan DeSanti: Any other questions or comments?

>> Male Speaker: I'm curious about how the price would be set, and given some of the concerns about coordination, that DOJ has had in the past, or conduct by dominant firms, just to maintain their position, how would you address those issues?

>> Stephen Nevas: Well, I think, and I will confess the economic study has not been done against this proposal, that would have to be done, but I think in terms of the -- what both the market could bear and what would be fair, and I would refer to some work Terry Fisher did in 2004 and 2005, the fee could not exceed \$5 to \$7 per month, certainly. I think based on some back of the envelope calculations that have been done to date, that it would provide a rather substantial sum of money for distribution to content providers. And the idea would be to create a floor, not to, in other words, to give them something they could use to leverage additional income rather than assuring them of the full compensation. I don't think the BMI ASCAP system attempts to do that either.

>> Susan DeSanti: Maurice?

>> Maurice E. Stucke: I'm just curious as to, Bill, you raised a -- would your -- the instrument that you talk about, tracking system, would that be in addition to, or would that necessarily be a lesser restrictive alternative to having a fee imposed on the ISP?

>> William J. Baer: Well, first of all, you can't really decide, you know what to charge for appropriation of content, unless you know who's using it. Right? So, you need -- that's a prerequisite to anything, right? And then the question is, "What's the next step?" You have Congress impose, you know, clarify what the intellectual property rights are, and to set up a mechanism so that those can be enforced, collected distributed, all that sort of stuff. But there are other you know, potentially private party competing solutions and Steve talked about the Associated Press and the other internet providers, option as alternatives. So I think, first step is obviously tracking use. And then the question is, could you, through private parties, basically offer up various kinds of licenses, for example, you know, if someone had set up the tracking mechanism, had the buy-in from the content providers, they could then turn to offer a blanket license, with some sort of formula that would be set for distribution. That has some antitrust issues associated with it. But you know, depending who is going to be deciding on what the license is going to cost, whether it is a nonexclusive option for a content user, that is, I could go directly to use "The New York Times," and negotiate something if I wanted to, there may be ways to do this, that, again, balancing benefits. You know, and appropriate ASCAP BMI kind of way of tracking and aggregating. You know, there may be ways to do this that deal with free rider issues, and while there may be some modest competitive risk, it may be modest and there be ways to address the risk. So, I mean, that's the way I see it. I share Katie's concern that, you know, given what is a serious economic problem for the newspaper industry, is a legislative solution going to move quickly enough to really address issues. It may or may not, and are there other measures that could be taken by more than one entity to try and get from here to there, that basically address some market failures that we're seeing.

>> Stephen Nevas: If I could just quickly just say one thing. The problem is, unless we find a relatively all encompassing solution, all of the metered kinds of uses, the pay walls, invite someone to go over, under or around the wall, and given the habits that have been inculcated on internet users that's what they're going to do. So the question may come down to what is the value of the news information that journalism provides. And how important is it to act to protect it. Because otherwise, I think we're going to continue to see this kind of decimation of the muscle and the infrastructure of journalism in the process of being monetize the content.

>> William J. Baer: Katie, can I just respond to that? I know you were -- it seems to me that one of the issues here that we haven't talked about a lot, although your proposal implicitly recognizes it is clarifying the intellectual property rights that are issue here.

>> Stephen Nevas: Oh, sure.

>> William J. Baer: Once they're clarified over and under the pay wall may not be possible because it'd be subject to injunction, if you're screwing around. And so that really is one of the issues legislatively you could clarify. Also judicially, you can clarify, you know, what's the -- where does fair use stop, you know, is hot news really something that has universal application.

>> Stephen Nevas: And I don't think the news business wants to repeat the experience of the recording industry.

>> Katherine I. Funk: Why not? Why doesn't "The New York Times," sue a blog and say you guys using our content and we believe you owe us money for it and we're going to sue you. I mean, there's a difference between doing that and suing a 12-year-old, right? But rather than, which is what the recording industry mistakenly did, but -- at some point in time, and no offense, right, I used to work at a newspaper, at some point in time, newspapers, news gathering organizations are going to are have to stand up and say -- and go to court, essentially and say, "these are my -- this is my property and you're stealing it, and I want my money." And until I think somebody is willing to take that risk, I think you're going to have a hard time getting anybody in Congress to pay attention, getting anybody to feel sorry for you. But I also wanted to point out that two weeks ago a, the DOJ gave a business review letter to Mywire, which essentially going to set up, or is proposing to set up an internet media subscription news aggregation service. So, I think that there are -- that's just two weeks ago. So, I think that AP is thinking of doing something, my understanding is "The New York Times" is working on something similar. McClatchy is working on something similar, given their wide network of newspapers. There are many ideas out there, and I -- I guess I, you know, the point I'm trying to make is the news industry is going to have to start thinking of ways to protect itself and coming up with creative ideas. These guys in Ohio, there's an interview with the "American Journalism Review" with, I think it was "Toledo Beacon" or "Akron Beacon," and the

interviewer said, "Well, this is great. You guys are putting together all of these stories, and you're sharing stories. Have you ever thought about packaging the stories, and selling them to other papers the way AP does?" And the editor said, "Wow, that's a great idea." And to me, having been inside of a newspaper, that sort of sums up the problem, is that, these guys -- they're journalists. They're not business people, they're not entrepreneurs. They grew up in a certain system and they're having a difficult time thinking their way out of that system. So, I think it's going to take entrepreneurs from outside of news or who escaped big paper to come up with the solutions and I don't think that the news industry should wait around for Congress.

>> Male Speaker: I have a question, if I could. Mywire, and I'm interested in the views of this panel on this. Mywire is identified in the business review as primarily a technology company, that fact is highlighted that it was not owned by any content providers. And that it itself is not a source of content. Is the AP a closer call?

>> Male Speaker: Absolutely not.

>> Male Speaker: Did you get that down?

>> Female Speaker: This is why we were so sorry Bill Baer left. Best advocate you can have.

>> Male Speaker: That letter business review letter appropriately noted distinguishing factors. And I mean, candidly, I do think it is a tougher call, when you have people who are competing at the same level. It's not a third party, but it doesn't it's a nonstarter. That was why I referred to Susan in the competitor collaboration guidelines. I mean, in fact that's the whole notion of looking to do a realistic balancing of antitrust risks, whereas this output enhancing, benefits of allowing competitors to talk about doing something. So, I suspect there are, I'm confident there are ways that you can do this and be antitrust compliant. The challenge is basically going to be getting the comfort, you know, that the antitrust division gives or is willing to give, in a timely enough fashion, so that folks can go forward.

>> Susan DeSanti: I wanted to get to what I see as even a tougher question here. And I think it speaks to one of the things you were raising, Katie, you were saying, "why doesn't 'The New York Times' just go sue a blogger," et cetera. You know, there are -- it seems to me, to some extent in the news industry, there are incentives and disincentives for taking individual or collective action. And sometimes, litigation is disincentivized when you've got a lot of people that are in basically in the same position. And if they could, in fact, all get together and do something, you know, about you know, the problem that they have, they would. But they don't necessarily want to. They're waiting for the other guy to step in first, and then they're going to free ride on what the other guy does. There's a similar kind of issue, it seems to me on this notion, and I'm not implying that the AP is going here, but I can see a scenario in which the AP identifies for its members where their content is being used. The members of the AP go individually and say "here, we're proposing this license." And the other people, you know, people on the other end of the bargain saying "no, you really don't want to get that license." Would it then be okay -- would each individual member then have a sufficient incentive simply to say "no, then don't come to our site, when robots.text or whatever the new system would be shows up, you cannot have our content," does that apply equally, if the person -- if the entity that denies the license -- that says they don't want a license is Google?

>> Male Speaker: The answer is -- for my answer is that I don't actually have a clear answer. It seems to me there are steps in what can be done collectively that involve less and potentially more antitrust risk. Tracking, very little risk. Licensing, if done under the right terms, that is nonexclusive, and, you know, and as a consumer of content or appropriated aggregator content, I've got some rights to -- I just don't have to deal with a single entity. I can deal with individual providers of content. You know, I think there are ways to deal with that. Then the question is, but if you -- is it appropriate for content providers to get together and collectively enforce an intellectual property rights or copyright against somebody who is refusing to pay, denying the right exists. You know, and that's a different issue. I think there may be circumstances where that can be done and done in antitrust compliant way, but I do recognize that you know, the different kinds of collective action may involve different kinds of antitrust risk and you're always trying to strike the balance between the benefits and the cost.

>> Male Speaker: Susan?

>> Susan DeSanti: Yes.

>> Male Speaker: I think we should also begin with the idea and the truth that this material is and will be copyright protected. So there is that level of statutory protection right out of the gate. The question then becomes technically, what is the best solution and part of the problem is, that this material is perishable. I mean, if it has a useful life, for most purposes, of 72 hours, that's a long time. So, the question is to what extent are you chasing butterflies, versus trying to discourage repetitive behavior which violates your statutory rights?

>> Susan DeSanti: Okay. Well, I think we should clarify for the record, we had an extensive discussion of copyright issues yesterday. And there were a number of problems raised with, you know, with defining exactly what is fair use and what is not, and for example, it stuck in my mind from December, the report from Ken Doctor of Outsell who did a survey finding that and you know, depending how this is reported in different areas, it's either 40% or 50% of the people who go to Google news never click through. Never click through.

>> Male Speaker: By click through, you mean go to the content provider's site.

>> Susan DeSanti: Never click through to the original news source. And the whole notion of how you get advertising, how you get revenue from aggregators, relies on the principle that the aggregator is going to send, the person who sees that headline or whatever to your site, to your original news site and at that point, the reader will see the advertising on your site and that's how you get compensated. Well, if they never go from the aggregator to your news site, that doesn't work. On the other hand, we had a relatively clear discussion yesterday, from one side saying, "Headlines, in the first sentence? You know, that's not copyright protected. That's where facts and ideas merge and it's just not copyright protected. That's part of the deal." And then we had testimony from others who weren't saying it's copyright protected but were arguing for more of a permission-based system, which sounds a lot more like what, you know, voluntary licensing would look like. So, it's not -- I think it's not at all clear where the lines are on the copyright protection

here and I think that does complicate the analysis. So, in one sense, it is relevant to -- well, you were talking about, Bill, in terms of ways to have nonexclusive, but collective action, and it might not, and if it's in protection of a legitimate copyright protected article, that might seem to an antitrust -- an antitrust lawyer. A more important efficiency on one side than if it's not copyright protected. Nevertheless, I'm confident that there are potential efficiencies, and so I thought I would ask you about the potential efficiencies in that kind of a situation where there might be collective action, in terms of enforcing, you know, "No, we don't -- we really don't want to deal with people who are not paying for our content. We don't really want people who are not paying for the content. We don't want aggregators who are not paying for the content to come to our site and take that content." But, we're not arguing that that's necessarily -- some of it is copyright protected. Some of it is not.

>> Male Speaker: Well, the key efficiency, one of the key efficiencies is that Katie cited appropriately the fact that there are big boys and girls out there who can take care of themselves, who have the resources to sue, to protect. But if you know, you originated some hot news in South Carolina about a governor hiking on the Appalachian trail, and -- and you originated that and you were small town reporter, small town paper, I mean, you lack the resources to go in and enforce that right. And, you know, as Steve says, that may be the scoop of a lifetime, that has real value to it, and you get zippo for it because it's misappropriated. So, there are, I think examples like that, where -- where collective enforcement is a much more efficient way of addressing the problem, and you know, and then you got a balance off, you know, whether it's -- it's too many content providers, ganging up on little content users, you know? I mean, the consumer, so there is a -- you need to look how you would structure a right of collective action to make sure you minimized the antitrust risk but maximize those collective efficiencies.

>> Male Speaker: The only other thing -- and I think it would bear further study, relation to Ken Doctor's report yesterday that 40% don't click through on any story. If people may simply look at a page and say "I don't see what I'm looking for here, good-bye." Or they may be reading those headlines, as they study, or a summary of the new, which is what they came for. And I think it would take some further research to find out exactly what the purpose of the user was, in going to that page in the first place. I mean, I know to Google sometimes and I have the wrong search terms

and I'll go five, six pages before I find myself in the right cue. It takes a while sometimes. Now, that's not really a use. Other people may want to look at the Google headline page, for example, and that's essentially a newscast or summary of the news that has value to it. And the people who write those headlines, I mean, headlines are not titles which would be exempt under copyright law, they are intellectual property. They are more than just words.

>> Female Speaker: They're facts.

>> Male Speaker: Well, they're more than facts.

>> Susan DeSanti: Well, we should not have a copyright law. We did that yesterday. And it's getting to be very late and I very much appreciate all of your patience with further probing, trying to better understand all of these issues. Let me ask, are there any of our panelists who have one last comment you want to make?

>> Male Speaker: Thank you.

>> Susan DeSanti: No, thank you very much. And, please, for those of you who have sturdily stayed with us, please join me in thanking the panelists. [ Applause ]