

ENPA



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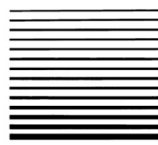
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Submission from **the European Newspaper Publishers' Association - ENPA** of the Commission Staff Working Paper on **"Strengthening the Competitiveness of the EU Publishing Sector – the role of media policy"**

15 November, 2005



Introduction

ENPA is a non-profit organisation of 5100 titles from 24 European countries (plus one observer member), representing the interests of newspaper publishers to the European institutions. More than 120 million copies of newspapers are sold each day and read by over 235 million people in Europe.

ENPA welcomes the Commission Staff Working Paper (CSWP) and congratulates the Commission for the comprehensive work done illustrating some of the fundamental strengths and opportunities of the industry.

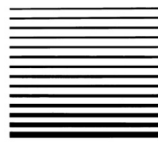
ENPA however would like to comment that the **period of time granted** for **this consultation was particularly short** and therefore, this makes it difficult to have a proper consultation amongst our members.

ENPA has based its submission on the basis of the pre-release document published on the Media Task Force website, considering that the final version of the document has been published only a few days before the consultation deadline.

Summary

ENPA is in full agreement with the Commission of the main objective of the media policy of the Commission: to **ensure the competitiveness** of the EU newspaper publishing industry. Newspaper publishers see this CSWP as a fundamental instrument in helping to identify some of the core business, legislative and practical challenges facing the industry.

Newspaper publishers are fully supporting the aim of pushing **vigorously ex-ante impact assessments** of all new legislative initiatives as well as assessing impacts to the industry when existing pieces of legislation are being reconsidered. Publishers would like to remind that the duty to present facts, arguments, data and figures for impact assessments should not lie only at the industry itself. The Commission should be able to present valid costs and benefit justifications for new legislative acts which it would like to propose. The same principle should apply to proposals that are being revisited, reconsidered or consolidated.



As suggested by the Commission, ENPA is also in favour of more accurate **statistical analysis of the industry**. As can be read from the Working Paper, the data describing the industry is not as accurate as it should be. Some of the figures date back to 2001 which was a year after one of the best advertising expenditure years. If one draws conclusions from year 2001, one reaches a false conclusion that would not take into account the most recent positive developments neither in advertising spending nor in circulation performance. In order to be successful in its analysis, the Commission should carry out systematic and continuous analysis of the different sectors of the EU publishing industry. There should be industry specific surveys on the developments of the industry. ENPA with the help of its member associations is willing to assist the Commission to find and analyse relevant data and facts of the industry.

Media Task Force is an important new creation in the Commission for monitoring new initiatives for EU-wide legislation. Newspaper publishers fully endorse the existence of the Task Force as an early warning system. The only problem with the Task Force seems to be despite of the competent officials working at the Task Force is that it obviously lacks some resources. Given the important role of what the EU publishing industry plays in the EU, the Task Force should also be equipped with necessary resources to carry out its function as the early warning system.

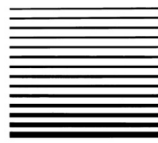
Questions of the Commission staff working paper are repeated below.

Regarding this staff working paper (questions 1 – 4):

(1) Does this paper accurately describe the main indicators for competitiveness across different publishing segments?

The statistical picture

ENPA agrees with the Commission that the statistical picture is not as accurate as it should be. Statistics by Eurostat are constantly lagging behind. The Commission could have used figures e.g. from World Association of Newspapers (WAN) (www.wan-press.org) as reference and supportive material. WAN is publishing annually a book called World Press Trends which could have given a more detailed and up-to-date picture of the developments within the industry.



In the eyes of the Commission, facts and figures published by the newspaper industry may not be as reliable as official statistics. However, ENPA calls on the Commission to take into serious consideration whether it could benefit from the **statistics produced by the industry**. These could give a more sophisticated description of advertising figures, circulation performance and similar facts of the industry. For example, there are quite different newspaper markets in the EU as far as readers' buying habits are concerned: in Greece, single copy sales amount to 97 percent of total sales of newspapers while in the Netherlands home deliveries amount to 89,7 percent of the sales. Another example deals with advertising markets: in Italy, newspapers share of advertising expenditure is approximately 15 percent while in Finland this share is over 50 percent.

Generalisation of newspapers sub-sector on the basis of official Eurostat statistics does not give detailed answers to question such as why is competitiveness of newspapers in some EU member states better than in other member states. Newspapers are mainly **operating at national markets** and therefore official statistics do not provide enough data describing national situations.

For the reasons mentioned above, ENPA supports the idea implicitly expressed in the CSWP that there should be more in-depth analysis of the different sub-sectors of the publishing industries. There isn't a one size fits all statistical solution. It is of vital importance to identify and analyse in detail market developments at national markets' level if any policy conclusions are drawn from the analysis.

ENPA is in **favour of introducing a new industrial classification** of the publishing industry as proposed in the Working paper. A new and more detailed definition would contribute to better understanding of publishing industries.

Newspaper publishers are wondering why the Commission has not benefited from the so called **Rightscom study** from 2004 in this part of the CSWP. The study which was contracted by the Commission itself would have been a valuable addition to this part of the CSWP. It seems that the Rightscom study is ignored without any particular reason. The publishing industries were involved and contributed to the study. Even though there could have been more accurate analysis of the industries in



that study, it still helped both the Commission and the industries to understand better some of the challenges the industry is facing.

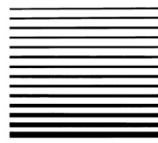
Competitiveness of EU publishing: costs, revenues and change

Newspaper publishers are confident about **revival of the industry**: current industry statistics show that circulation performance is now better than during some earlier years, advertising expenditure in newspapers is growing and online newspapers are one of the most visited sites hence offering advertisers good opportunities for reaching their desired target audiences. Publishers are positive about their performance and competitiveness in the future as long as policy makers are not intervening into their business with unnecessary and unjustified regulations.

ENPA agrees with the analysis of the Commission that newsprint, printing, content as well as distribution **costs will play an important** role also in the future. Even though publishers are very well represented on the internet, significant investments in printing plants show that the industry has confidence in printed newspapers. Price of raw material will remain a significant cost factor for newspaper publishers.

One factor in the **chain of costs is the costs linked to content**. In some Member States, newspaper publishers have been advocating for a legislative solution whereby the publishers would not have to pay again for the content their own employees have created in the course of their employment. This question is linked to copyright legislation, and more specifically to the question of transfer of economical rights to the employer. In many cases a publisher has been required to pay extra sums of money to his own employees if he has used the content – created for this publisher – yet again in some other contexts such as in online newspapers. This problem could be solved with legislation by introducing a rule of presumption: copyrights attached to works that are created in employment relationship should be automatically transferred to the employer if not otherwise agreed by the parties. Employees have already been paid for their work and therefore new rules should not include any statutory compensation schemes.

As far as **revenues** are concerned, ENPA agrees with the Commission that advertising revenues are of major importance for the industry. Any new advertising restrictions will therefore influence the competitiveness of newspapers. For this reason, both ENPA at EU-level and national



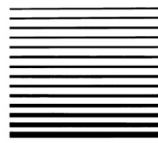
newspaper publishers' associations at national level have been strongly advocating for industry self-regulation instead of statutory measures.

However, in many countries, revenues from subscriptions and single copy sales constitute vital sources of revenues for newspaper publishers. Value added tax (**VAT**), especially reduced/super reduced/zero VAT levels, is a concern for the industry. Any attempts to raise the level of VAT by harmonising the level of VAT will be opposed by the industry. ENPA feels that the question of VAT should also be addressed in the Communication from the Commission.

Online newspapers are considered to be services as far as **VAT** treatment is concerned. An open question which should be addressed at some point either at national or at EU-level is whether online newspapers would be able to develop new businesses in digital environment if publishers would be allowed to offer subscriptions to online newspapers with lower VAT – the same VAT rate as for their printed products – and thus with lower prices.

A quite recent trend in the newspaper publishing industry is that subscribers and single copy buyers receive other printed products such as books and magazines with the main product i.e. newspaper with a combined price. This phenomenon "**third leg revenues**" is of importance for publishers e.g. in Italy, Spain, Portugal and France. Future policy options should take into account that VAT on books as well as magazines might have an effect also on newspapers' revenues.

Newspaper publishers are not so convinced about the **described structural changes** identified by the Commission. Publishers see many positive developments in circulation performance and advertising revenues. Precondition for today's optimism is that policy makers do not propose any new pieces of legislation which would have effects on circulation (e.g. postal services) or advertising legislation (e.g. bans on advertising certain products). Media time consumption is certainly a factor which newspapers have to take into account; are young readers willing to subscribe to and pay for newspapers? A positive trend is that online newspapers are in many cases the most visited sites on the internet, mainly because of their reliable content and their trusted brand. Online newspapers readers – and advertisers – rely on the content that is available from a well-known newspaper's website.



The perception of **free newspapers** varies in the different Member States. In some of them, free newspapers are considered as a threat to paid-for newspapers. In other Member States, free newspapers are not necessarily a threat to newspaper publishing as they are nowadays published by “traditional” publishers and these free dailies are another source of revenues for newspaper publishers.

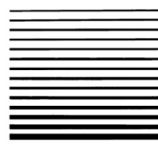
Newspaper publishers have invested heavily in creating different types of **electronic and printed databases**. For this reason sufficient, even enhanced database protection is vital for publishers and the existing level of protection should not be lowered. In this respect, newspapers should be clearly recognised as being databases. **Classified ads as well as recruitment advertising** have moved to some extent to the internet. Unfortunately newspaper publishers have not been the only ones who have been benefiting from this shift from paper to digital. In any case publishers are continuously developing and enhancing their services. It is envisaged that newspapers will be major players also on the internet as far as classified ads and recruitment advertising are concerned. Again, publishers are positive about the future on the condition that policy makers will not interfere in this domain by e.g. removing the existing protection for *sui generis* databases.

Flexible labour market rules are also necessary to achieve a good level of competitiveness within the newspapers’ sector.

(2) Are there any other issues you would add in respect of publishing, notably with regard to the policy approaches set out in the Commission’s recent i2010 communication?

ENPA generally welcomes the i2010 Communication which aims to promote the digital development of media and information society services across the EU. Publishers have developed new digital products and services and continue to constantly innovate in order to meet the readers’ needs and to provide them quality content on various platforms.

First of all, to enable a smooth economic development of these new activities, **the i2010 strategy should not be a source of additional legislation or regulatory burden for the newspaper sector**. Most of the publishing houses are SMEs in the EU. If we want them to be able to respond to the digital challenge and be competitive, it is important for the



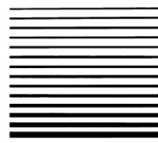
Commission to assess the potential impact on the newspaper sector prior to any legislative proposal and to avoid intervening when it is not necessary. ENPA questions the Commission on its intention to have “a proactive policy approach” in the i2010 strategy.

Secondly, although various media are now present on the internet and are using similar platforms, it does not mean that the content, the products and the services they provide are the same and are used in the same way by users. The **specificities of the various sectors** continue to prevail in the digital environment and users’ expectations vary from one media to another. In consequence, the need to consider newspapers’ specificities remains in the digital environment and should not be confused with other media interests. ENPA therefore questions the Commission’s approach indicating that “digital convergence requires policy convergence” and asks whether the sectoral specificities of the newspapers would be considered in this approach.

Following on from this, ENPA also highlights in particular that the **revision of the Television without frontiers directive**, which falls under the realms of the i2010 initiative should not overburden newspapers. By this, ENPA would not support any extension of the scope of this Directive to newspapers in all their forms of delivery. However, this Directive should ensure that the separation of advertising and editorial content is maintained as a fundamental principle which will guarantee editorial independence and safeguard the needs of users of media.

More generally, examples of the important issues that are specific to the newspapers in the digital debate at EU level are notably the questions of protection and transfer of **copyright, sports’ rights, rights management**, protection of publishers’ investment in content and protection of newspapers’ **advertising** and classified ads, **digital libraries and the role of newspapers in education and literacy**.

In the debate on i2010 strategy, one should consider that an appropriate protection of newspapers’ content (i.e. news articles, photos, advertising and classifieds) and of the high investments made by the newspaper publishers in the digital field are indispensable pre-conditions for any EU initiative on digital technologies.

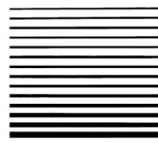


(3) Are current industry structures across all segments likely to survive the transition to electronic value chains? What are the main barriers and threats to publishers during the transition? What are the opportunities for publishers arising from new information and communications technologies?

In this context we refer also to the paragraphs above. Newspaper publishers have **invested heavily in online newspapers** as well as online databases (classified ads, recruitment advertising etc.). Among the publishing industries, newspapers are the most present on the internet offering content for readers and other users of the internet.

Online newspapers are in many cases in cyberspace the most visited websites because of their trusted brands and their reliable content. Of course there are several **challenges**: readers are not that willing to pay for content online and therefore business models are still evolving. On the other hand advertisers are trying to find new methods and ways of reaching their audiences. Online newspapers' revenues have been on the rise for many years. One detail which should be mentioned here is that in Norway, where the newspaper markets are quite similar to other Nordic countries, internet advertising expenditure has already surpassed the expenditure in magazines. Online newspapers have benefited from this because most of the internet advertising expenditure has gone to online newspapers.

Main **barriers** would derive from legislation if policy makers would introduce new obligations for online newspapers such as advertising restrictions or burdensome data retention obligations. Newspaper publishers see many opportunities such as offering their content for users of handheld mobile devices. If legislation would allow publishers to be in direct contact with their customers in the field of these new services – without the middleman who usually is a telecom operator – publishers would be more capable of offering tailor-made content for their b-to-b and b-to-c customers.



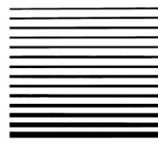
(4) How will business models evolve and how far will Digital Rights Management systems be essential for their successful implementation?

Newspapers **content online**, especially daily news feed, is usually available for free for readers. We refer here also to the paragraphs above on the question of evolving business models. Some parts of online newspapers might be only available for registered users or to subscribers against pay-per-read or monthly or annual payments. Publishers are constantly looking for new business models both in digital and printed publishing sphere.

At this moment digital rights management systems (**DRMs**) have a **minor role to play in electronic publishing**. Some online newspapers have set up conditional access systems to control access to their sites. Usually access would require registration from the user. As far as protecting newspaper articles or other content with copy prevention systems or attaching rightholder information to different types of works included in online newspapers is concerned, the industry has not taken DRMs widely into use.

Main reason is simply because DRM systems are quite **expensive** and newspaper publishers do not wish to invest heavily into expensive digital right management systems to protect their content from normal everyday use. In this respect there is a difference between e.g. a digital book and a piece of music which both have longer life span than today's newspaper article. There are certain works such as photographs which would need to be protected with copy control mechanisms or which would need to contain information about rightholder(s) and conditions of the use of the work. When the business models evolve further and DRM systems become more affordable, it might be possible to use some types of DRMs to control the use of newspapers' content, and also use DRMs to administer payments from the usage.

The developments in the markets and also usage of DRMs will depend on the one hand of readers' and other users' willingness to start on paying for content (there are several good examples in b-to-b electronic publishing e.g. in the field of financial information) and on the other hand on the availability of the companies offering DRMs to meet the



expectations of publishers' needs (reasonable prices and conditions of using DRMs).

Regarding the nature of the link between diversity of ownership and diversity for content (questions 5 – 7):

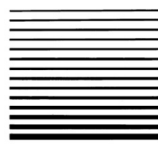
(5) How far is there tension between the need for open outcomes in economic terms at a time of rapid technological change and the political desire to support democratic values including diversity?

The question itself is very unclear; if the Commission is referring to the ongoing debate asking for more transparency in the area of ownership in media, advertising figures as well as circulation figures, the answer is that there is no need to introduce new pieces of legislation or other regulation in this field. Newspaper are publishing their circulation as well as advertising performance figures openly in line with national expectations. There is no link between these market developments and the question of diversity of media.

In any case newspaper publishers are strongly of the view that **market driven approach** is the best approach for this question. It should be left to the markets to decide how to best achieve diversity in media.

(6) How far is diversity of content and ownership likely to be self-sustaining in fully electronic markets, given for instance lower entry barriers to citizens' direct participation (e.g. blogs)?

Newspaper publishers feel that diversity of content and ownership are very likely to be **self-sustaining**. Online newspapers are offering **diverse and pluralistic content every day** – usually updated regularly several times during a day – about local, regional, national and international news. Which other media can offer such variety of different views and opinions than printed and online newspapers? It should also be noted that many online newspapers have established discussion groups, diaries and blogs in order to serve their readers and other users even better in contemporary media landscape. There is a low barrier to entry



into debates, and in fact participating directly to discussions about the topics and issues newspapers are covering every day.

Outside online newspapers there are hundreds of blogs, online diaries and other forums where everyone can become a “publisher” with his or her own ideas, views and thoughts. This offers a channel of direct participation as well as “ownership” in media for many people.

For the above mentioned reasons ENPA does **not** see any reason to introduce a policy at EU-level which would suggest a **common policy in the area of diversity or ownership.**

(7) In converging markets, from the perspective of publishing, what approaches would you suggest for co-existence between the two different traditions of regulated, licensed broadcast media and unlicensed press?

ENPA strongly opposes any attempt to regulate press content at EU level, whether on-line and off-line, as it would be against the fundamental principle of freedom of the press and would be an obstacle to a free press in the EU Member States.

Newspaper publishing, whether it is online or printed newspaper publishing - **should remain free of any licensing schemes.** Even though convergence is taking place in media, newspapers role in converging markets is different from other media. Newspaper publishers are in the business of offering news, views, information, edutainment and commercial communication irrespective of the method of delivery. Convergence does not mean that newspapers content would be changed to something else. Newspapers content should be left unregulated and unlicensed even though publishers are offering their content through different means of communication. This is also why **newspapers should not be covered by the Television (content) without frontiers directive.**

ENPA’s suggestion is therefore that one has to scrutinize content; newspapers content is different from other content even though it is offered in some other context than traditional printed newspapers or online newspapers. If the content feels like newspaper content, it should be treated like newspaper content. Competitiveness of newspaper publishing will depend of the policy choices: if unregulated press would be burdened with unnecessary legislation, newspapers’ fundamental role as



providers of information and watchdogs of democratic societies would be endangered.

Regarding advertising and integrated media policy (questions 8 – 9):

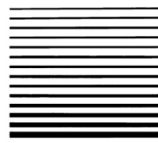
(8) In relation to advertising regulation, what are your reasoned preferences in relation to the different instruments available, voluntary self-regulation, co-regulation and statute law?

As we have explained earlier, advertising revenues play an important role for newspaper publishers now and are foreseen to be of vital importance also in the future. ENPA is calling either for **non-touch or very light-touch approach to advertising regulation**. The industry together with advertisers and advertising agencies know how to act responsibly. **Voluntary self-regulation** is the most appropriate way of taking care of any challenges the industry might be facing in the area of advertising. Self-regulation can take into consideration differences in national markets where newspapers are mainly operating, and with self-regulation the industry is able to quickly make any changes in its direction. That is if something is not working well it is relatively easy and quick to correct e.g. content of advertising. Compared to statutory or co-regulation approaches newspaper publishers are firmly of the view that self-regulation is the only right way with which any problems and challenges can be resolved.

(9) From the perspective of publishing, what are the main issues that an integrated media policy – i.e. the one that covers all media sectors – should address?

In general terms, integrated media policy should aim at enhancing the **competitiveness** of the EU publishing sector. Refrain from unnecessary legislation or other policies, push vigorously for **ex-ante impact assessments** and listen and work closely with the industry before any EU-level actions are planned.

Main issues which should be addressed in integrated media policy are: **(1)** ensure and respect freedom of expression and freedom of the press in all



circumstances; **(2)** refrain from any interference with commercial communications i.e. no new advertising restrictions or bans should be introduced either through statutory means or other similar means; **(3)** protection for copyrighted subject matters should be kept at high level and enforcement rules should be effective so that newspaper publishers are able to defend their legitimate interests of their content; newspaper publishers should also be able to publish their content through all different channels they are operating **(4)** refrain from any policy or legislation which would have the effect of affecting media ownership. In newspaper publishing media pluralism and diversity in media is already secured and **(5)** allow national governments to keep or lower their VAT levels as far as newspaper sales are concerned. Harmonisation of VAT levels having the effect of raising VAT levels will not be accepted.

ENPA is naturally willing to give more details about these main issues listed above in continued cooperation with the Media Taskforce at the Commission.

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