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Thank you for the opportunity to participate today in the discussion of this very important topic.

As a journalist of many years -- one who has witnessed the "death" of exemplary newspapers where many like me were nurtured and learned the craft - I share the alarm voiced here that we are navigating perilous times, with much to lose. I also share the conviction that it is vital for the future of this democracy that we emerge from this period of innovative disruption enhancing -- as well as protecting -- our ability to provide relevant and credible information, thus "reinventing" journalism for this interconnected, digital age.

Similarly, as a business executive of almost two decades, who has worked diligently to protect the intellectual property rights of the content created by journalists, I understand and appreciate the financial fears articulated in prior FTC workshops, as we've watched the profits from print advertising that supported "good" journalism in the latter part of the 20th century utterly collapse in recent years.

Having said this, I want to address and analyze both the broad issues we are discussing today – as well as the specific legal ones now on the table-- from the vantage point of, I hope, a dispassionate academician, who is a lifelong student of the media business. Over the last two years, my primary research has been along two fronts:

1) Analyzing the financial situations of more than a hundred newspapers and media companies -- ranging in size from an 8,000 circulation, hundred-year-old family-owned daily newspaper in rural eastern North Carolina to multi-billion-dollar global conglomerates, and
2) Studying other industries that have experienced similar periods of "creative destruction," seeking lessons that can be applied to our current situation.

From that, I want to highlight two relevant observations:

First, during periods of massive disruption, industries almost always initially measure the wrong thing. This can lead to complacency and a false sense of security in the early years – as it did in the late 1990s when newspapers benefitted from the dot.com burst of display advertising and we failed to see the massive and precipitous fall-off in both classified and display that occurred this decade. When it becomes apparent that the world has been turned upside down, this complacency is invariably followed by a period of catastrophic thinking. The upside of such catastrophic thinking is that it finally prompts an industry to act; it creates a needed sense of urgency. The downside is that by continuing to measure progress against "old" world standards – the share of advertising dollars captured by print, for example -- we often fail to identify paths to renewal in the new world. And we choose instead to fight the tide -- usually futilely -- using "old" world maneuvers.

Second, creative destruction moves across an industry in waves, crippling and disabling certain segments early on, before any paths to renewal may be discernable. Invariably, the segments that suffer first and longest are those that are the "youngest" – the last to arrive on the scene. While I applaud the FTC for taking a "kitchen sink" approach in attempting to get all proposals to "reinvent" journalism on the table, I worry that we may fail to prioritize the proposals, and thus fail also to practice triage where it is needed most. Very specifically, I worry that we are facing an imminent and perhaps prolonged "market failure" at the state and regional level of investigative and analytical reporting. This sort of "Pulitzer Prize-winning public service" reporting effort by large city newspapers and by state newspapers such as The Charlotte Observer and the Raleigh News and Observer in my home state of North Carolina, was relatively rare prior to the 1970s. Over the last three decades it has informed public policy debate not just on the regional level – vitally important in this inter-connected digital age – but also at the national and local levels. You may disagree with me as to where the threat is most imminent, but I do hope that as we assess these proposals, we ask this question: Does this proposal help the segment of the industry that is in most immediate peril?

Let me briefly elaborate on both observations and explain why, from a purely business perspective, I fail to be enthusiastic about either the copyright or anti-trust proposals, and their potential to either "hold back the inevitable tide" or "reinvent" journalism. In fact, I think they could divert us from that "reinvention."

On Measuring the Wrong Thing:

Our panic over the recent precipitous decline in print advertising is driven by our unspoken belief in a theory that Charles Scripps is credited with first articulating. In 1965, he observed that, despite the introduction of radio and television, the amount of money devoted to advertising appeared to remain "relatively constant" over time -- roughly two percent of GDP. This became known as the "theory of relative constancy" in academic circles and a number studies in the 1970s confirmed that, indeed, this relationship had held from the 1920s to the then-present-day. In the 1980s, the business world – primarily ad agencies and investment banking firms – took over from the academics and began measuring advertising expenditures across more than a dozen categories (from billboards to magazines, and more recently, search and on-line).

We became accustomed to measuring our success or failure – and calculating future viability and profitability -- based on what share of the traditional advertising dollar we took from other media – or in the case of online, other media took from us. So, when print advertising falls off the cliff as search advertising surges, we assume we are playing a zero sum game – with the online aggregators taking our most important revenue source for good. In panic and indignation, we start asking: Can we make up any portion of the lost revenue through subscription and licensing fees (even though we've traditionally received less than 20% of total revenue from those sources)? Can we make the aggregators pay something – even if it's only a penny or two – for the content we're providing?

The answer to both questions is probably, "yes." But it does not address the changed economic reality – our main source of revenue for the last 200 years is disappearing. Nor does it position news organizations to take advantage of the new world order. Here's the opportunity: While we were busy tracking and measuring dollars spent on "traditional" advertising, the interactive world has been nurturing new robust categories of advertising that, until recently, have been so small as to be "below the radar" because they mostly depended on face-to-face contact at the mall, the local store or on the sidewalk. Ad agencies typically refer to this by the confusing label "below the line advertising." I prefer the label "nontraditional advertising" – and it covers a broad range of marketing endeavors, including everything from loyalty programs and event sponsorships to discount coupons with purchases.

This nontraditional advertising was not even tracked in any reliable or credible fashion until 2000. Over the last year, at UNC, we've attempted to update the "theory of relative constancy" for the 21st century and account for this new category of nontraditional advertising revenue. Reconciling the two measurement systems – of the traditional and nontraditional – cannot be precise since the tracking data is owned by private firms, who are not transparent about methodology. However, even discounting significantly for double counting of certain categories, such as direct marketing and search, we have still concluded that the size of this nontraditional advertising market is almost double that of traditional advertising – and it is growing at twice the annual rate.

Our insights into this new revenue source have also been informed by several dozen interviews we conducted with mom-and-pop stores and small regional retail chains serving rural North Carolina. (The interviews were funded by the McCormick Foundation through a grant aimed at helping rural newspapers successfully navigate the digital divide.) These small advertisers were unanimous in reporting that they no longer distinguished between traditional or nontraditional methods of advertising – it all comes out of the same marketing "pot." And almost all expressed a willingness – even eagerness – to spend a significant portion of those nontraditional advertising dollars with the local newspaper, provided they were given the opportunity.

So, if you heed two age-old business adages – "aim for where your customers are heading" and "follow the money" – you can begin to envision a far-sighted, entrepreneurial publisher crafting a viable 21st century business model for a news organization that is not too dissimilar to previous business models, with a significant portion of the revenue and profits still coming from "advertising." Only in this iteration, it comes from the growing segment of "nontraditional" interactive advertising spawned by the digital age.

I worry that in a rush to "protect" and exact payment from the aggregators by strengthening copyright law and advocating anti-trust exemptions, we – traditional news media -- get diverted from the task at hand, reinventing the business model. Meanwhile, the evolution of the digital world keeps on rolling along – progressing, as it has over the last 20 years, from portal to e-commerce to search to social networking and whatever the next iteration – all the while nurturing new categories of revenue that we could potentially tap.

On Practicing Triage

Which brings me to the second point: We need to prioritize among these various proposals, looking first at those that benefit news organizations facing the most peril. The two segments of our industry best positioned both to tap into this new pool of "nontraditional" advertising revenue, as well charge a licensing or subscription fee for some proprietary information, are our largest news organizations – the national newspaper – and the smallest – the small to mid-sized dailies and weeklies.

This leaves the state and regional newspapers, which have served a very vital role in the latter part of the 20th century in both identifying and investigating region-wide public policy issues, betwixt and between – too large to attract a substantial share of a mom-and-pop's nontraditional ad budget and too small for the national brands.

In North Carolina, between 1981 and 1996, The Charlotte Observer, the state's largest newspaper, won two Pulitzer Public Service Awards and The News & Observer, the second largest, won one. The N&O was cited for its investigation of waste disposal at the state's growing hog farm industry. One of Charlotte's two awards was for an investigation of brown lung in the state's textile industry. Both series led to reform at both the state, local and regional level – and both pieces were funded by newsrooms that had the "luxury" of detaching experienced reporters from day-to-day reporting duties for several months.

Over the last two years, the news department staffs of these two papers -- both owned by McClatchy, which is attempting to pay down the debt it incurred purchasing Knight Ridder -- have been cut 25% each in three rounds of lay-offs. We, at UNC, are hoping to do a statewide audit of traditional news organizations (newspapers and television) to determine exactly what effect the layoffs have had on specific categories of reporting – such as environment, health care and education – where trend and investigative reporting directly influence public policy. But it is safe to assume – with a 25% reduction in staffing – neither newsroom has the luxury of pursuing as many investigations as in the past – nor do the reporters have the luxury of pausing from deadline to ponder the context and subtleties of certain conflicting data that might lead to a months-long investigation with unknown results.

I do not see that either of the legal remedies we're discussing on this panel would change the long-term prognosis and marketplace dynamics for state and regional news organizations. And since we may be looking at an extended period of market failure in this segment, I hope that in our discussions today, we can agree, first, that this is the most imperiled segment and, then, look at the other proposals with an eye for what they might do to "fill the gap."

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In closing, because I bring a business – not a legal – mind to the questions at hand, I did consult with colleagues at three different universities with expertise in internet law and intellectual property rights. While these colleagues can offer much more salient legal arguments – pro and con for these two broad proposals – all three cautioned that in pursuing these, we may be flying in the face of economic reality.

One asked pointedly, "What did we learn from watching the music industry go down the same path?"

Thank you.