Section A: MANAGING NON-MARKET COMPETITION

I. INTRODUCTION: NON MARKET COMPETITION
II. THE LEGAL AND PUBLIC AFFAIRS FUNCTIONS IN MEDIA FIRMS
   1. Scope of Legal Function
   2. General Counsel
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      A. Organizing the Lobbying Function
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         (3) How Much to Spend
      B. Lobbying Strategies
         (1) “Inside” Strategies
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E. Case Discussion: Comcast Local Lobbying

2. Public Relations Management

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B. Measuring PR Effectiveness

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IV. THE REGULATORY PROCESS

1. Self-Regulation

   A. By Companies

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       (1) Film

       (2) TV

       (3) Advertising

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       (5) Newspapers

(6) Case Discussion: Self-Regulation at Comcast

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   (1) Using the Standards Process Strategically

2. Direct Government Regulation

A. Role of Government Regulation

B. Compliant Management

C. Strategic Use of the Regulatory Process

   (1) Case Discussion: How Much Should Comcast Invest in the Regulatory Process

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1. Content Restrictions

   A. Defamation: Libel and Slander

       (1) Internet Libel Cases

       (2) Case Discussion: How Much Should Comcast Invest to Avoid Potential Liability for Defamation

   B. Obscenity and Indecency

       (1) Obscenity on the Internet

       (2) Children’s TV

   C. Government Restrictions of Publication

       (1) Freedom of Information Act and the Press

   D. Advertising Regulation

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2. Antitrust and Market Structure Law

3. Anti-Competitive Behavior under Antitrust Law

   A. Price Discrimination

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VI. GOVERNMENT
INDUSTRIAL AND CULTURAL POLICY
1. Industrial Policy for IT
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VII. CONCLUSION
1. Issues Covered
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Section B: MAJOR MEDIA REGULATORY ISSUES
VIII. TEN MAJOR U.S. REGULATORY ISSUES
1. Media Ownership
2. A la Carte Pricing of Cable Channels
3. Interconnection, Unbundling, and Separation of Networks
4. Transition to Digital TV
5. Reform of Spectrum Allocation
6. Regulating the Internet
7. Internet Jurisdiction
8. Internet Infrastructure Upgrade
9. Net-Neutrality
10. Regulation of Internet TV

OUTLINE: MEDIA LAW AND REGULATION
Section B: MAJOR MEDIA REGULATORY ISSUES
I. Ten Major U.S. Regulatory Issues
1. Media Ownership
2. A la Carte Pricing of Cable Channels
3. Interconnection, Unbundling, and Separation of Networks
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7. Internet Jurisdiction
8. Internet Infrastructure Upgrade
9. Net-Neutrality
10. Regulation of Internet TV
Start of Lecture

Section A: Managing Non-Market Competition in Media
In this Chapter We Will Discuss
1. The legal rules under which media companies operate
2. The way media companies manage and use their legal-organization activities
3. How media firms can use law and regulation as a part of their strategy

Law & Regulation in Media and Communications
• Significant in the Past
• Important in the Present
  – Will show details
• Major Role in the Future

Not Covered In This Chapter:
• The legal and regulatory issues of media in:
  – Intellectual property
  – Securities Accounting
  – Employment
  – Price Setting
• Those are discussed in separate chapter
I. Introduction: Non-Market Competition

What is Non-Market Competition?
• Rivalry not for customers but for favorable treatment by governments, courts, industry associations, etc., that is supportive of the firm’s business activities.

Non-Market Strategies
• Actions to influence regulation, litigation, legislations, and standards, as part of competing with rivals.

Non-market Strategy
• A nonmarket strategy does not directly generate revenue, unlike market strategy.
• The greater the control of opportunity by government, the more likely nonmarket strategies are needed.
Non-Market Strategies Increasingly Important

Example 1: News Corp

- News Corp regulatory involvements in recent years

- Persuade in US, the FCC and Justice Dept. to approve acquisition of DirectTV, the largest DBS company in America, and then later to sell it to Liberty Media
- Lobby the FCC to loosen restrictions on ownership of television stations
- Sue Al Franken for use of term “fair and balanced”

- Engage in FCC battles over
  - digital TV licenses
  - “must-carry” rules for cable TV Ownership ceilings and cross-ownership with views

- Lobby Russian government to sell the satellite service of NTV, one of Russia’s largest television networks;

• Get the German government to waive restrictions blocking News Corp from buying part of bankrupt KirchMedia.

• Engage around world to strengthen IP protection for its Fox film studio
• Seek laws mandating encryption and access control devices (DRM) on television sets.

• Engage in battles over technical standards for HDTV and digital TV
• Deal with numerous countries rules on permissible depiction of sexual and violent, and radical content
• Deal with numerous countries rules on libel and defamation

• Bought Dow Jones & Co. and required antitrust approval

• Tried to buy New York’s suburban Newsday newspaper in the face of public protest over media concentration.

Litigated in U.S Supreme Court against the FCC’s fine on on-air live colorful language, such as musician’s Bono’s greeting expletive on live TV
• Lobbied the Chinese government to expand the reach of Star TV’s satellite service.

• Persuaded the Italian government to facilitate acquisition of Telepiu, (pay-TV) and expand Sky Italia.

• In addition, News Corp. had tens of thousands of other legal transactions.

• Spent millions of dollars on official lobbying in Washington alone.
  • Does not include lawyers, PR firms, and other expenses.

• Licensed out hundreds of programs to other providers, thousands of programs, from their rights holders.
  • Obtained licenses to broadcast thousands of programs.
• Negotiated with unions and individuals over employment – negotiate strikes like with Writers Guild
• Entered into tens of thousands of contracts world-wide with suppliers, buyer, employees, stars
• Entered into dozens of contracts with sport teams, leagues and events.

Conclusion
• News Corp.’s business is heavily dependent on the effectiveness of its regulatory and legal activities

Example 2: The Internet

Internet and Government
• In 1994, major Internet pioneers issued a “Charter for Internet Liberties,” which proclaimed:
  • “Government, leave us alone, we did not call you, we don’t need you.”
  • A general libertarian attitude

After an early libertarian phase, the Internet industry soon became as active in lobbying as anyone
Wish list of Internet industry from government

- Ban state sales TAXES ON INTERNET TRANSACTIONS
- Extend the R&D TAX CREDIT
- Provide software EXPORT TAX CREDITS
- Loosen IMMIGRATION restrictions for IT professionals

- Prevent online COPYRIGHT liability
- Shorten DEPRECIATION periods for capital equipment
- Standardize DIGITAL SIGNATURE technology and law
- Reform patent law

- Subsidized INTERNET CONNECTIVITY to schools, libraries, hospitals
- Protect ISPs from telecom and cable TV power

- Use ANTITRUST (against Microsoft; Intel)
- Provide government FUNDING FOR R&D

- Reform GOVERNMENT PROCUREMENT
- Set and enforce PRIVACY standards
- Prevent SOFTWARE PIRACY

- Protect American ISPs from foreign restrictions
- Reform SECURITIES LITIGATION laws
- Increase SPECTRUM ALLOCATION
- Invest in TECHNOLOGY FOR SCHOOLS
• Unbundle LEC service
• INTERCONNECTION AND COLLOCATION requirements on LECs
• Subsidize INTERNET-2 and supercomputers at universities


• Extend COPYRIGHT protections
• Restricted CLASS-ACTION shareholder lawsuits against venture capitalists

• And now, advocates laws for NET NEUTRALITY (non-discriminatory access) for internet content providers and users, restricting the pricing and quality power of telecom and cable networks

Conclusion:
• The Internet’s functioning is heavily dependent on its regulatory and legal environment
Case Discussion:

Comcast vs. AT&T

• Comcast is the largest US cable operator (~40% of cable subscribers)

Comcast vs. AT&T

• AT&T is America’s largest wireline and wireless telecommunications carrier, (~40% of telecom revenues)
• Comcast requires FCC and state utility commissions’ approvals and rule changes in order to enter VoIP.
• Comcast also wants to prevent AT&T from entering video.

AT&T must get FCC and local approvals and changes of rules, in order to offer video.

• AT&T is engaged in a huge upgrade of its network to fiber and DSL
• Wants to move into high-speed video service where over DSL and fiber networks, in competition to cable and satellite companies like Comcast.
• AT&T is also trying to prevent or slow down Comcast from entering VoIP.

• Comcast wants to move into voice telecom (VoIP) over its cable network, in competition to traditional phone companies like AT&T

• Comcast vs. AT&T
• AT&T and Comcast compete with each other in both the market and non-market spheres

One way to analyze this is to ask:
• 1. What is the harm to Comcast of 1 year of regulatory delay of its own entry into telecom service?
• 2. What is the value to Comcast to delay AT&T for 1 year from entering video services as a competitor?

Today, government enters most aspects of communications

• How much should Comcast and AT&T invest in the regulatory process?

• But this is not new
• Government has always played a major role in media
• Law and litigation have always played a major role
Invention of Print:
Gutenberg 1455

Gutenberg and Litigation
• Throughout his career, Gutenberg sued and was sued
• Almost all that we know of Gutenberg come from cases court records of trials

After Gutenberg’s Invention: Regulation
• 1501 bull issued by Pope Alexander VI required the licensing of printing of books.
• Vatican: 1559 - Index Expurgatorius banned a list of books

Print Controlls in England
• 1637: In England, Star Chamber limits number of printers to 2.
• Publications required approval by official English censor

Print Controlls in France
• Strict controls in 16th century, and the burning at the stake of printer Etienne Dolet in 1546, caused many printers to flee to Holland.

• Before the French revolution destroyed the Bastille in 1789, over 800 authors, printers, and book dealers had been incarcerated there.
Electronic Media:
The Telegraph and Government
• 1840s: Samuel Morse starts telegraph
  – government postal monopolies take over telegraph in most countries, private lines banned
  – patent litigation follows

Source: http://www.millikin.edu/history/civilconflict/images/bastille.jpg

Next Innovation:
The Telephone and Government
• 1876: Alexander Graham Bell starts telephone
  – Rivals start war of patent litigation
  – Government telegraph monopolies take over telephone

Source: http://lcweb2.loc.gov/ammem/atthtml/mrshome.html

Next: Wireless and Government
• 1900s Guglielmo Marconi starts wireless transmission
  – Governments establish control over spectrum allocation & broadcasting
  – Private broadcasting banned in many countries

Source: http://www.etedeschi.ndirect.co.uk/marconi/marconi.tour.htm

Next: Radio
• Licensing Requirements
• Public radio, after supported by mandatory tax
  – Private broadcasting banned in many countries

Source: http://www.etedeschi.ndirect.co.uk/marconi/marconi.tour.htm

Next: Television
• Similar controls to radio, plus rules on content and networks

Source: http://www.etedeschi.ndirect.co.uk/marconi/marconi.tour.htm
Next: Cable TV & Satellite TV
- Local cable franchises with many conditions
- Satellite frequencies and orbital seat allocations

Next: The Internet
- Government role in establishing the system technology and the protocols.

Today, government involved in most aspects of communications

Technical Innovations with a direct Central Role of Government
- Communications Satellites
- Internet
- Packet switching
- Spread spectrum
- Mobile technology
- Microwave transmission

Government Media Role
- Frequency allocations for broadcasting and mobile
- Price regulation for phone and some cable
- Granting of patents and copyrights
- Anti-monopoly and ownership controls

Government Media Role (cont.)
- Libel, obscenity and privacy laws
- Interconnection and connectivity rules
- Direct state ownership of telecom infrastructure and of transmission stations
- Censorship of certain content
Government Media Role (cont.)
• Truth-in-advertising rules
• High-tech development support
• Trade protection
• Public TV financing, and operation of many public stations
• R & D support
• Standards setting

Government Media Role (cont.)
• Orbital slots for satellites
• Procurement of equipment and services
• Securities regulations
• Taxation and tax incentives
• Licensing of performers
• Immigration certificates
• Customs fees and trade rules
• Protection of investors overseas
• etc., etc., etc.

• Market structure regulation
• Company structure regulation
• Profit and price regulation redistribution
• Interconnection regulation

• Content regulation
• Advertising regulation
• Investment regulation
• Technology regulation (standards)

What are the reasons for government’s activities in the communications sector?
1. Protection of public interest
2. Protection of powerful private interests
3. Bureaucratic and political self-interest
• Usually a mix of the 3

• Media companies seem always seem to be in the lime light, in the midst of controversy.

Media self image

Fundamental Economic Characteristics of Media
1. High fixed costs, low marginal costs
2. Convergence of production
3. Divergence in cost trends in value chain
4. Accelerating returns
5. Excess supply
6. Network effects
7. Non-normal distribution of demand
8. Price deflation
9. Intangibles
10. Public goods
11. Non-maximizers of profit
12. Role of Government
<table>
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<th>Main Reasons for Governmental Role in Media</th>
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<tr>
<td>• “Public good” aspects of media and communications</td>
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<tr>
<td>- Create social benefits beyond the private benefits</td>
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<tr>
<th>“Network Effects”</th>
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<th>“High fixed cost”, “Low marginal cost”</th>
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<tr>
<td>Lead to Market power</td>
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<td>Incentives to piracy</td>
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<td>High consumer surplus</td>
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<td>Incentives to price discrimination</td>
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<th>“Price Deflation”</th>
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<td>Instability, volatility in essential services</td>
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<th>“Excess supply”</th>
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<td>Instability</td>
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<td>Sensationalism</td>
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<th>“Intangible Assets”</th>
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<td>Need for definition, creation, and protection</td>
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“Presence of Non-Maximizers of Profits”

- Media issues go far beyond business and economics
  » Politics
  » Culture
  » National identity
  » Societal roles
  » Etc.

Contrasting with the Realm of the Market: The Public Sphere

- Public Sphere – “the space within ideas, opinions, and views freely circulate.”

The Public Sphere

- Media is a central element of the public sphere
- Mass Media makes possible continuous, comprehensive public discourse
- People are citizens, not consumers

Conflicts over the Role of Government

- Under the “public sphere” concept, government needs to assure a diverse and responsible media

On the Other Hand: Free Speech Guarantees limits the Government’s Role in the Public Sphere

- Media has unique status outside of governmental control
- 1st Amendment: “Congress shall make no law… abridging the freedom of speech, or of the press.”

- But this applies to media content, not to media businesses activities, technical infrastructure, or purely commercial activities as media or employer, etc.
I. The Legal and Public Affairs Functions in Media Firms

The Legal and Public Affairs Function in Media Firms
- Increasingly important
- Increasingly expensive
- Increasingly a strategic function
- Increasingly a management responsibility

OUTLINE: MEDIA LAW & REGULATION
Section A: MANAGING NON-MARKET COMPETITION

I. LEGAL & PUBLIC AFFAIRS FUNCTIONS IN MEDIA FIRMS
- Entertainment and IPR Law
- Inside & Outside Case: Comcast vs. AT&T
- Litigation Management
  - Budgeting
II. INFLUENCING GOVERNMENT AND THE PUBLIC
- Lobbying
  - Organization
- Public Relations
  - Strategies
  - Reaction
  - Reputation
III. THE REGULATORY PROCESS
- Self Regulation
  - Standard process
- Direct Government Regulation
  - Role & Strategic Use
IV. SUBSTANTIVE MEDIA LAW
- Content Restrictions
- Anti-Competitive Behavior
- Profit Regulation
V. GOVERNMENT INDUSTRIAL AND CULTURAL POLICY
VI. CONCLUSION
“Public Law” Issues of Legal Departments
• Discrimination
• Securities & governance
• Tax
• Media regulations
• Compliance with regulations

Distinction of private and public law are not clean or clear, especially in American reality.
Public regulatory struggles can be fought through private litigation.
Public inter-company struggles can be fought through private litigation.

Public Affairs Function: “Public Law” Department
1. Regulatory Affairs
2. Legislative Affairs
3. Press Relations
4. Public Relations

Public vs. Private Law
• “Public law”: governmental policy, rules, and enforcement: media regulation.
• “Private law”: contracts, transactions, intellectual property, employment: entertainment law.

“Private Law” Functions of Legal Department:
• Contracts (customers, suppliers, financiers)
• Intellectual Property
• Compliance (with regulators)
• Tort liability
• Advertising
• Competitive behavior
• Real Estate

“Public” and “private” law in media are not clearly separated, and often overlap.

Legal Department Functions

- Creating corporate entities
- Distribution agreements
- Licensing & rights acquisitions
- Labor agreements with unions
- Options contracts
- Screening of content for libel and rights infringements

Legal Department Functions

- Production Deals
- Trademark Protection
- Infringement Actions

Legal Specializations Relevant to Media

- Entertainment Law
- Publishing Law
- Intellectual Property law
- Copyright Law
- Patent Law
- Regulatory Law
- Labor Law
- Contract Law
**“Entertainment Law”**

- A collection of private law legal areas that apply to media activities
  - Contracts
  - Trademark Copyrights
  - Financing transactions
  - Speech rights
  - Libel
  - Employment and labor
  - Tax planning
  - Advertising and marketing
  - Media Regulation

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**Entertainment Lawyering**

- Up to 12-16 courses in entertainment law are offered at some law schools, *however*:
- Many firms do not hire entry-level associates into their entertainment law departments.
  - Prefer to see experience, connections

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**Special Elements in Entertainment Law: Theater**

- Securing rights to perform play
- Venue rental and insurance

---

**Special Elements in Entertainment Law: TV**

- Negotiating the rights to music
- Syndication rights
- Negotiating advertising contracts

---

**Special Elements in Entertainment Law: Film**

- Story and music copyrights
- Talent negotiations
- Complex finance transaction
**Special Elements in Entertainment Law: Internet**

- Online Trademark Infringements
- Liability issues for online publishers and distributors
- Database protection
- Information security
- Privacy protection


---

**Publishing Law**

- Like entertainment law, not a discrete area of law.
- Combination of traditional areas of intellectual property, contracts, torts, and First Amendment law.

---

**Publishing Law**

- But authors and publishers can also be on the same side.
- **Ex:** Author James Frey and Random House were co-defendants in a 2006 class-action lawsuit over Frey’s falsifications about his drug use in his memoir “A Million Little Pieces.”


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**Publishing Law**

- **Ex:** In 2006, Harvard freshman Kaavya Viswanathan signed a two-book, $500,000 deal with publisher Little, Brown & Co.


---

**Publishing Law**

- Often here are two sides to publishing:
  1. **Major publishing companies**
  2. **Authors**

---

**Publishing Law**

Soon, news surfaced that Viswanathan had plagiarized copyrighted works in her book, which had already sold about 50,000 copies of a 100,000 copy first printing.


Little Brown hired top IP law firm Fish & Richardson.

After a short-lived plan to re-print a corrected version, Little Brown cancelled the deal and recalled unsold copies of the book.


Specialized in patents, copyrights, trademarks, trade secrets, etc.

Some top IP firms are boutiques that do only IP-related work

Finnegan Henderson et al.
Kenyon & Kenyon
Fitzpatrick Cella et al.

Intellectual Property Law

http://www.uspto.gov/go/dcom/gcounsel/seo.html

IP Law


Intellectual Property

Law

IPR & Licensing

http://www.deepelm.com/images/licensing.jpg

http://www.uspto.gov/go/dcom/gcounsel/seo.html

http://www.finnegan.com/
http://www.kenyon.com/
http://www.fitzpatrickcella.com/
IP Law

- Other top IP firms do work in other practice areas as well as IP:
  - Fish & Richardson
  - Kirkland & Ellis
  - Howrey
  - Morrison & Foerster
  - Weil, Gotshal & Manges
  - Foley & Lardner

Patent Law

- The US Patent and Trademark Office (USPTO) tests and registers *patent attorneys* and *patent agents*.
- Patent lawyers often have technical backgrounds or degrees.
- Some are registered *patent attorneys*, which requires certification by the USPTO.
- Patent attorneys must also be lawyers admitted to the bar.
- Patent agents are non-lawyers with experience in the field.

Patent Law

- To register for the test to become a patent attorney or agent, one must:
  - Possess a Bachelor's degree in a recognized technical field; OR
  - Meet requirements based on credit-hours in technical fields in undergraduate or graduate study.

Patent Law

- Anyone can try to draft a patent application, but patent attorneys and agents have expertise.

IPR & Licensing

- Intellectual Property Law is discussed in detail in the chapter “Managing Intellectual Assets”.
These legal specializations can be practiced *inside* a media company by staff lawyers as using *outside* specialist law firms.

**Law Department Functions**
- The “inside law firm” for the company
- The monitoring of “outside” lawyers

**General Counsel**
- In the past, high legal ability was not key.
- Not necessarily managerial skills.
"In-House Counsel"

• Inside Law Departments range from one attorney to several hundred.

General Counsel as Manager

• Must control cost and arrive quality of legal services
• Must create interaction of lawyers serving in various business units
• Must supervise training lawyers and employees about compliance with laws

• But by becoming part of management, this may create problem of intermingling roles of lawyers and general management
• It Blurs the traditional attorney-client privilege

General Counsel: Compensation

• The 100 highest paid GCs in the US made at least $844,000 in total cash compensation 2005.
  - (Plus stock options, etc.)

General Counsel: Compensation

• Highest paid GCs in 2005 were at General Electric ($5.03m) and Lehman Bros. (5.0m). (includes salary and bonus, does not include stocks and options)

Media General Counsel: Compensation

GC salary & bonus, 2005
- Viacom: $3.8m
- Time Warner: $3.7m
- AT&T: $2.9m
- CBS: $2.4m
- News Corp: $1.9m
- Verizon: $1.8m
- Qwest: $1.5m
- Alltel: $1.2m
- DirecTV: $1.1m

Viacom General Counsel Michael Fricklas took home $3.8m in salary and bonus in 2005, making him media’s highest paid GC, in 2005.

Viacom: Legal Management

- Over 250 lawyers, all over the divisions and corporate center
- Tried to achieve a uniform corporate legal culture through creation of an in-house “Law School”
- 6-8 programs per year for lawyers
- Helps establish “corporate culture” and inform lawyers of company positions

Disney General Counsel Alan Braverman ($3.9m in salary and bonus in 2006) media’s highest paid GC.

Compliance Management


Compliance Management

• Company is liable when company employee commits a violation when acting within the scope of employment and for the corporation’s benefit.

• Over-compliance may slow down decisions, investments, and raise cost
• Under-compliance:
  - Fines and delay
  - Negative Publicity

Setting Up A Corporate Compliance Program
• Appointment of a high-ranking senior manager
• Compliance code
• Familiarization of managers
• Oversight system
• Employee training programs
• Enforcement and disciplinary actions;
• Mechanisms for corrective action.

Compliance with Sarbanes-Oxley Act in U.S.
• Section 302 of this law requires CEO and CFO of publicly traded companies to certify that the company has established and maintained effective system of internal control.

Another issue with compliance occurs with companies who operate globally. Because there are different regulations depending on the country, the company has to make policies to ensure that they are complying with a variety of regulations.

General Counsel is also responsible for hiring outside lawyers

I.3. Outside Counsel
Why Hire “Outside Counsel”?
• Same economic dynamics as for any input acquisition vs. self-production
  – Specialization
  – Cost
  – Economies of scale
  – Strategic focus of company
  – Other country’s law

Outside Counsel
• “Outsourcing” to law firms of
  – 1. Highly complex matters (e.g., antitrust battle)
  – 2. Highly routine matters (e.g., bill collection)
  – 3. Highly specialized matters (e.g., proxy fights)
  – 4. Contacts (Government Lobbying)
  – 5. Local Intensive Matters (Texas, Sweden, etc.)

Need to have Experts in the International Environment
• Cultural policy of another country
• Content laws (decency, violence, libel)
• Trade rules
• Tax laws
• Labor and safety laws
• Liability rules
• Access and telecom laws

• Some law firms provide a full-service
• IP firm Fish & Richardson maintains a literary agency called Kneerim & Williams at Fish & Richardson

Negative Factors To Consider
• Costs & time manage to outside professionals
• Less incentive to keep costs low, more incentives to costly perfectionism
• Magnitude and importance of a case
• Outsiders less knowledgeable about the business than the company attorneys

Cost Factors
• Chief legal officers of top companies about $700K in mid-2000s
  – Translates to an Hourly: ~$550/hr

• Regular staff lawyers cost about $180K plus benefits plus overhead
  – Rate ~$150/hr

Survey: Billing Rates For Outside Entertainment Lawyers
• Highest hourly rate: $850/hr (Bertram Fields, an entertainment law partner at Los Angeles' Greenberg Glusker)
• Law partner’s high rates: $600-$700
• Partners usual rates: $300-$600
• Associates: $100-$350

Percentage Of Legal Matters Assigned To Outside Counsel by Major U.S. Companies
• Litigation (69%)
• Labor & employment (55%)
• Intellectual Property (52%)
• General Corporate (48%)
• Acquisitions (43%)

Percentage Of Legal Matters Assigned To Outside Counsel
• Regulatory (27%)
• Worker’s Compensation (21%)
• Tax (17%)
• Contract (31%)

Entertainment Law Firms
• US-based law firms
  –usually located in New York, DC, and LA
  –Some with international branches (London, Hong Kong, Tokyo, etc.)

Entertainment Law Firms
• Two kinds of firms:
  - Those that represent the entertainment companies (generally national firms) (often “defendant law firms”)
  - Those that specialize in representing talent (generally boutique firms, often “plaintiff law firms”)


Second Annual Outside Fee Survey, ACC Alliance, October 2003
Percentage Of Legal Matters Assigned To Outside Counsel
Second Annual Outside Fee Survey, ACC Alliance, October 2003
Entertainment Lawyer Firms

- The Beverly Hills Bar Association alone includes about 12,500 entertainment lawyers as members.


Entertainment Lawyer Firms

- In LA, most influence with a few independent boutique firms and entertainment law departments of several major law firms.


Law Firms

- Examples of national firms representing major entertainment companies:
  - O’Melveny & Myers
  - Katten Muchin Rosenman
  - Sheppard Mullin Richter & Hampton
  - Mitchell Silberg & Knupp


Law Firms

- Examples:
  - Sheppard Mullin, a national firm, successfully represented Disney, in arguing that promotional deals [like Disney’s deal with McDonald’s] are not part of a film’s “gross receipts”, therefore actors cannot claim a percentage.
  - Case took four years of discovery and 15 weeks of trial.


Entertainment Lawyering

- It is typical for a company, media or otherwise, to use many different firms for its legal needs.
  - Combination of specialties, cost structures.
  - Examples:


Law Firms

- Ex: Disney uses Sheppard Mullin’s entertainment law department (424 lawyers firmwide, HQ in LA).
  - Disney’s principal corporate law firm is Dewey Ballantine (544 lawyers, HQ in NYC).
  - Disney’s other firms include DLA Piper (3700+ lawyers, HQ in Chicago) and Wachtell Lipton (201 lawyers, all NYC).

Major US Law Firms with Entertainment Law or Media Regulatory Practices: Washington, DC

- Arent, Fox, Kintner, Plotkin & Kahn
- Arnold & Porter
- Baker Botts
- Cleary, Gottlieb, Steen & Hamilton
- Covington & Burling
- Debevoise & Plimpton
- Dewey Ballantine
- Fullbright & Jaworski

Last Accessed on 24 June 2008

Law Firms that have represented Verizon
- O’Melveny & Myers (antitrust)
- WilmerHale (litigation, regulatory, bankruptcy, corporate)
- Wiley Rein Washington (appellate)
- Hunton & Williams (arbitration)
- Debevoise & Plimpton (corporate)

Fee Arrangements
- Hourly Charge
- Contingency Fee
- Flat Fee (getting more popular)
- Alternative fee arrangement

Entertainment Law

• Large law firms (the ones typically representing the media co’s) are less flexible with fees than small firms representing the artists.
  – Different hourly rates for partners, junior/senior associates, paralegals, plus expenses for photocopying, travel, etc.

• Ex: LA entertainment lawyer Scott Schwimer charges an initial retainer of $3000 from which is subtracted $400 per hour.


Entertainment Law

• Some lawyers take their fee as a percentage of client’s income, typically 5%, especially when they manage many aspects of client’s career

Representing Talent

• Top Hollywood contract lawyers:
  • Bert Fields (also does litigation) of Greenberg Glusker Fields Clayman Machtiger & Kinsella
  • Jim Jackoway of Jackoway Tyerman Wertheimer Austen Mandelbaum & Morris
  • Jake Bloom of Bloom Hergott et al.
  • Skip Brittenham of Ziffren Brittenham et al.
  • Tom Hansen of Hansen Jacobson et al.
  • Barry Hirsch of Hirsch Wallerstein
  • Bruce Ramer of Gang Tyre et al.

Representing Talent

• "When a client gets an offer to be in a potential series, the offer might come in on a Tuesday, and they want to test Wednesday, so we have 24 hours -- sometimes less -- to get a contract done. Because the studios won't even test you without a deal in place."

  - Entertainment lawyer Deborah Klein of Barnes Morris Klein Mark & Yorn


Case Discussion: Comcast vs. AT&T

Law firms representing AT&T

* AT&T’s main corporate law firms are Wachtel Lipton Rosen & Katz (200 lawyers, HQ in NYC) \(^1\) and Sidley Austin (Merger with BellSouth, 1800 lawyers, HQ in Chicago) \(^2\)
Case Discussion: Comcast vs. AT&T

Law firms representing AT&T

- **Baker Botts** (Patent infringement, 750 lawyers, HQ in Houston TX)  
- **Sullivan & Cromwell** (AT&T’s acquisition of BellSouth, 650 lawyers, HQ in NYC)  
- **O’Melveny & Myers** (iPhone unlock, 1000 lawyers, HQ in L.A.)

Law firms representing Comcast

- Comcast’s main law firm for FCC related lawsuits is **Davis Polk & Wardwell** (740 lawyers, HQ in NYC)  
- Other law firms include **Ballard Spahr Andrews & Ingersoll** (500 lawyers, HQ in Philadelphia) and **Dechert** (1000 lawyers, HQ in Philadelphia)

I.5. Litigation Management

How to Control Costs of Outside Counsel

- Require advance a budget
- Alternative fee arrangements
- Tight control of time spent

• increase in size and quality of inside law departments
• Create competition for outside legal work
• Offshoring Legal Work
  – Hourly fee of a NY lawyer: often $300+
  – Hourly fee of equiv. lawyer in India: $30

Offshoring legal work offers significant savings


Offshoring Legal Work
The legal offshoring business was estimated to be $60 million and $80 million a year in 2007.


Offshoring of Patent Law Work
Patent cases have increased offshoring, in order to reduce the cost of lengthy, expensive research searches.


Offshoring of Legal Work

5. Are you offshoring (India, Philippines, etc.) any of your legal services or back-office operations?

Chief Legal Officer Survey, Association of Corporate Counsel and Altman Weil, Inc., 2004
Strategic Question: How much to invest in a non-market competitive activity such as litigation?

The managerial question is:
– How much to invest in non-market competition
  » Private litigation
  » Lobbying
  » Regulatory litigation
  » PR

In each case, professionals will set the tone
– Lawyers
– Lobbyists
– PR agencies
Their professional goals need not be perfectly aligned with the company
– the “principal-agent” problem
– excessive perfectionism

Can lead to over-spending on a case
Also, need to coordinate the several strategies for optimal “bang for the buck”

Legal Spending
• Average large U.S. company ($1 billion plus in annual revenues) faces 556 lawsuits/year
• Plus, indirect cost of negative publicity
• Plus settlement payments, fines and negative judgments.
• Average billion dollar U.S. company spends $19.8 million a year on litigation
A. How to set budget for individual case?

- Settle?
- Fight?
- Initiate?

Litigation Management

- Require inside or outside law firm to submit plan and budget

• Outside tend to resist the concept of a set litigation budget because of the unpredictability of cases, and because it constrains them.

Litigation Management

- But manager must consider probability outcome and expenses associated with process
- Goal is to win at “reasonable cost”

Litigation strategy

- Questions to ask:
  – what is the risk level of the case?
  – What is potential benefit
  – Is the company willing to proceed given the risk level

Settlement

- 90% of cases do not make it to trial
- Need to for settlement range and success likelihood at all stages of litigation

When to settle?
• Litigation goals can often be achieved through mediation with a reasonable budget
• Deloitte & Touche survey shows mediation resolves 85% of cases in less time


Settlement strategies
• Important part of “risk management”
• Best times to settle are at the outset of a case and close of discovery
• Is not yet committed, no major investment in case yet
• Know all the facts, but before trial preparation


Valuing a case
• For example, conduct an electronic search of jury verdicts to estimate potential damages


Assess Success Probabilities
• Check on probabilities of similar cases coming up in court
• For example, patent owners (plaintiffs) win 58% of cases, infringers 42%
• Juries more likely to favor patent holders than judges do
    —(Study by Kimberly Moore)


Litigation Risk Analysis
• Identify uncertainties in any given case of litigation
• Arrange uncertainties schematically in order to form a “Decision Tree”
    —Tool for analysis


Creating a Decision Tree
• Identify aspects that can be manipulated by firm and aspects out of the firm’s control
• Create a flowchart as shown below to represent these uncertainties

Creating a Decision Tree

- Each node represents a certain event in the case with 2 outcomes e.g. “witness does not testify” or “witness does testify”
- Each outcome has a probability associated with it. Probabilities add up to 1.

Creating a Decision Tree

- After identifying uncertainties, lawyers should provide risk assessments (numerical) to each possible outcome

Creating a Decision Tree

- All final outcomes on right side (end outcomes) have financial consequences
  - penalties if case is lost
  - legal expenses

Interpreting a Decision Tree

- Sum of probabilities of outcomes should come to 1.
- Multiplying probabilities with monetary value of each outcome gives expected value
- Sum of all expected values gives the value of the case

Usefulness of Decision Trees

- Can become cumbersome if too many variables are involved.
Case Discussion: Should Comcast Sue AT&T?

• Suppose Comcast considers suing AT&T, accusing it of anti-trust behavior in the VoIP market.
• How can Comcast estimate the expected value of the case?

Decision Tree (Schematic)

Case Discussion
• Comcast should create a decision tree outlining the costs and expected benefits from the suit, and probabilities of outcome

Case Discussion
• Expected value for Comcast:

\[
(-500,000) + (0.2)(0) \\
(0.8)[(0.7)(7,000,000) + (0.3)(-2,000,000 + 0.4(0) + \\
(0.6)[(0.2)(12,000,000) + (0.5)(8,000,000) + (0.3)(5,000,000)]] = $4,240,200
\]

Conclusion:
• Comcast should bring the case; its expected value, after subtracting expenses, is $4.24 mil
• But if probability of winning drops from 60% to 30%, and if the expense rises from 2 mil to 4 mil, then expected value is negative $-0.13.
• Case then should not be brought by Comcast

• So far, this was a “static” analysis, with static probabilities and set costs and rewards.
• But the real question is often “how much to invest” in a case, and how to respond to one’s rival, in a dynamic situation.

B. How to Analyze Dynamic Spending?

The optimization solution of non-market spending by firm A is to invest until marginal cost = marginal benefits
This requires:
1. estimation of $ value of goal
2. estimation of probability of success, with zero investment, given an estimated spending by the “other side” firm B
3. Estimation of impact on probability of success of spending above those of the other side, e.g., of $100,000, $200,000, $1 mil, etc.

• These estimates need to be made by the professionals and experts on the issue, based on their experience.
• With these estimates, one can calculate marginal benefits from spending, and their optimal level, relative to the other side.
Case Discussion: Comcast vs AT&T

• Assume value to AT&T of success of a non-market strategy = $1,000,000
• Assume for now that AT&T’s rival, Comcast, spends $100,000 on the case
• How much should AT&T invest?

Schedule of Outcomes

<table>
<thead>
<tr>
<th>Investment by AT&amp;T in $</th>
<th>Δ Investment</th>
<th>Probability of success for AT&amp;T (est.)</th>
<th>E(V) of Outcome</th>
<th>ΔE(V)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0</td>
<td>0.2</td>
<td>200,000</td>
<td></td>
</tr>
<tr>
<td>100,000</td>
<td>100,000</td>
<td>0.5</td>
<td>500,000</td>
<td>300,000</td>
</tr>
<tr>
<td>200,000</td>
<td>100,000</td>
<td>0.65</td>
<td>650,000</td>
<td>150,000</td>
</tr>
<tr>
<td>300,000</td>
<td>100,000</td>
<td>0.75</td>
<td>750,000</td>
<td>100,000</td>
</tr>
<tr>
<td>400,000</td>
<td>100,000</td>
<td>0.83</td>
<td>830,000</td>
<td>80,000</td>
</tr>
<tr>
<td>500,000</td>
<td>100,000</td>
<td>0.86</td>
<td>860,000</td>
<td>30,000</td>
</tr>
<tr>
<td>1,000,000</td>
<td>100,000</td>
<td>0.88</td>
<td>880,000</td>
<td>20,000</td>
</tr>
</tbody>
</table>

• AT&T’s optimal investment is $300,000, because at that level, a dollar in investment will yield an expected dollar in revenue.

• How to create such a table?
• Consult with experts (in-house lawyers, litigation consultants)

• But now suppose Comcast spends $200,000 in opposition
• Need to re-estimate the success probabilities for AT&T, because the will be lower
<table>
<thead>
<tr>
<th>Investment by AT&amp;T in $</th>
<th>ΔI</th>
<th>Probability of success for AT&amp;T, with comcast=$20(...)</th>
<th>E(V)</th>
<th>ΔE(V)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>0</td>
<td>0.1</td>
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<td></td>
</tr>
<tr>
<td>100,000</td>
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<td>550,000</td>
<td>150,000</td>
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<tr>
<td>300,000</td>
<td>100,000</td>
<td>0.66</td>
<td>600,000</td>
<td>110,000</td>
</tr>
<tr>
<td>400,000</td>
<td>100,000</td>
<td>0.74</td>
<td>700,000</td>
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</tr>
<tr>
<td>500,000</td>
<td>100,000</td>
<td>0.77</td>
<td>810,000</td>
<td>30,000</td>
</tr>
<tr>
<td>1,000,000</td>
<td>100,000</td>
<td>0.78</td>
<td>820,000</td>
<td>10,000</td>
</tr>
</tbody>
</table>

**Outcomes**

- The ‘optimal’ investment for AT&T would now be between $400,000 and $500,000.

- Thus for every investment level by Comcast, there is an optimal spending level—a “reaction function” by AT&T.

- But Comcast will also do the same calculation for AT&T’s spending level, and thereby set its own “reaction function” of optimal spending. See next graph.
• Comcast and AT&T will raise each other’s spending until equilibrium Point E.
• In other response configurations, there is no equilibrium Point E, and Comcast and AT&T may try to outspend each other in an “arms race” to the top, continuously increasing their spending.
• That is possible when the expectations of probabilities and rewards differ widely.

But more likely, both sides will then conduct a cost-benefit analysis for the spending and consider settlement parameters based on the decision calculus discussed above.

II. Influencing Government and the Public

• We now move from private litigation and law to the public law area of government regulation.
3 Business Responses to public policy
• (1) Passive reaction – take policy as given.
• (2) Positive anticipation – factoring government policy into planning of firm.

Choosing a Political Strategy
• When choosing a political strategy, companies can divide the process into three stages of decision making:
  1. Transactional v. Relational
  2. Collective v. Individual
  3. Informational v. Financial v. Constituent-Based

Choosing a Political Strategy
  1. Transactional v. Relational

Transactional:
- “Issue-by-Issue” approach
- Responding to proposed policies
- Short-term relationships with policymakers

Choosing a Political Strategy
  2. Collective v. Individual

Choosing a Political Strategy
  3. Informational v. Financial v. Constituent-Based

Choosing a Political Strategy
• (3) Shaping – proactive effort to achieve specific political objective.
  – Ad hoc
  – Relational: build relationships over time
Choosing a Political Strategy

Transactional v. Relational

• Relational: Better for firms with homogenous policy interests across business units
• Transactional: Better for firms with diverse policy interests across business units


Choosing a Political Strategy

2nd Stage: Individual v. Collective

• Individual: Working alone
• Collective:
  - Form alliances in the industry
  - Work through trade associations or ad hoc coalitions


Choosing a Political Strategy

Individual v. Collective

• Individual:
  - Often better for large companies able to commit resources
  - Less of a need to share company information with competitors


Choosing a Political Strategy

Collective:

- Better for high-profile issues, limits company’s public exposure
- Also good for smaller firms with limited resources


Choosing a Political Strategy

3rd Stage: Informational v. Financial v. Constituent-Based

• Informational:
  - Briefings by executives for policymakers
  - Commissioning research
  - Shaping media coverage


Choosing a Political Strategy

Financial v. Constituent-Based

• Financial: Campaign contributions
• Constituent-Based: Pressure policymakers by generating support for company’s position amongst voters

Choosing a Political Strategy
Informational v. Financial v. Constituent-Based

- Financial & Informational approaches better for late-stages of the policy process
- Constituent-Based approaches better for shaping the environment before specific policies are discussed


- This applies also to trade associations, NGOs, and advocacy groups

Collective vs. Individual Action:
- Trade associations often coordinate collective action
- Larger and more dominant firms tend to prefer individual action.
- Small firms often prefer collective action bec. they have neither resources nor connections


Organizations which repeatedly lobby in Washington on Media and ICT Issues

- MPA: Magazine Publishers of America
- MPAA: Motion Picture Association of America
- NAB: National Association of Broadcasters
- NCTA: National Cable & Telecommunications Association

Eli M. Noam, Entertainment Law and Media Regulation
Major Media Oriented Trade Associations
- RIAA - Recording Industry Association of America
- International Newspaper Marketing Association
- National Newspaper Association
- Association of Local Television Stations
- Newspaper Association of America (NAA)

US Telecom Association (USTA)
- Telecommunications Industry Association (TIA)
- Cellular Telecommunications and Internet Association (CTIA)
- National Public Safety Telecommunications Council

Open Internet Coalition
- National Association of Telecommunications Officers and Advisors (NATOA)
- The National Cable & Telecommunications Association (NCTA)
- American Cable Association (Smaller cable Co.’s)

American Electronics Association (AEA)
- Business Technology Association

Compete America
- DVD Copy Control Association
- Electronic Industries Alliance

Other Technology Associations:
- Road to 100G
- Search Engine Marketing Professional Organization
- Semiconductor Industry Association
Media Watchdog
- Accuracy in Media (AIM)
  - Conservative-oriented monitors the news media
- Fairness and Accuracy in Reporting (FAIR)
  - “advocating for greater diversity in the press and by scrutinizing media practices that marginalize public interest, minority and dissenting viewpoints.”

Fairness and Accuracy in Reporting

National Coalition Against Censorship

Major Media-Oriented Trade Associations in Europe
- The European Federation of Magazine Publishers
- European Publishers Council
- Association of European Radios
- European Advertising Standards Alliance
- European Association of Communications Agencies

Major Media-Oriented Trade Associations in Japan
- Foreign Correspondents Club of Japan News
- Japan Newspaper Publishers and Editors Association
II.1. Lobbying

Lobbying

• “Lobbying” is a part of the exercise of free speech, assembly, and petition to government
• As such it is an integral part of democracy

Basic Lobbying Techniques
• Direct lobbying of policy makers
• Coalition-building
• Grassroots mobilization
• Political finance
• Public Communications
  – Advocacy advertising, promotion of press editorials, placement in news stories

Lobbying Targets
• Legislators and staff
• Executive branch officials and staff
• Independent agencies
• Judiciary (subtly)
• State & local officials
• Other countries

Direct Lobbying Can Influence Public Decision-Making by:
• Influencing legislation
• Affecting pending regulatory matters
• Shaping executive policies, programs & budgets

• Impacting decisions on key personnel appointments
• Offering opinions on pending judicial cases
• Influencing outcomes on gov’t grants & contracts
A. Organizing the Lobbying Function

Organizational Issues
1. How to choose the right person?
2. Should lobbyists be in-house or retained?
3. How much to spend on lobbying?

Lobbyist Traits and Capabilities
• Strong persuasive skills
• Intimate grasp of legislative procedures

Lobbying Capabilities
• Lobbyist needs to be good as
  - Advocates
  - Courtiers
  - Intelligence agents
  - Unpaid
  - Political campaigners
  - Assistant
  - Alliance builders
  - Facilitators
  - Enforcers
  - Fundraiser
  - Collection agents
  - Publicists
Lobbying Capabilities

• **Diagostic:** Ability to diagnose potential impact by gov’t., and identify achievable goals?


• **Organizational:**
  - Ability to build org. capable of linking gov’t. relations to bus.-strategy development
  - Design and implement strategies to influence policy makers.


• **Relational:** Ability to build relationships with key players in gov’t. and those who influence them, and to create a “relationship capital” to draw upon on when needed.


  Eli M. Noam, Entertainment Law and Media Regulation 345

  Eli M. Noam, Entertainment Law and Media Regulation 346

  Eli M. Noam, Entertainment Law and Media Regulation 347

2. Used a Retained Lobbyist or an In-House Lobbyist?

• For long-term, repetitive and continuing issue => In-house

• For short-term or unique issues => Retaining a lobbying firm is more cost-effective


  Eli M. Noam, Entertainment Law and Media Regulation 348

Retained Lobbyists

• Tend to be expensive
  – Most ask for up-front retainer covering a legislative session or calendar year
  – Some charge by clock
  – Others by issue or projects

3. How Much to Spend on Lobbying?

Annual Lobbying: Telecom Companies 2007

<table>
<thead>
<tr>
<th>Client</th>
<th>Affiliate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT&amp;T Inc</td>
<td>-</td>
<td>$6,002,240</td>
</tr>
<tr>
<td>Verizon Communications</td>
<td>-</td>
<td>$5,400,000</td>
</tr>
<tr>
<td>US Telecom Assn</td>
<td>-</td>
<td>$9,000,000</td>
</tr>
<tr>
<td>ICT Corp</td>
<td>-</td>
<td>$200,000</td>
</tr>
<tr>
<td>Orange Holdings</td>
<td>-</td>
<td>$750,000</td>
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<tr>
<td>National Telecommunications Corp Assn</td>
<td>-</td>
<td>$700,000</td>
</tr>
<tr>
<td>Competitive Telecommunications Assn</td>
<td>-</td>
<td>$527,000</td>
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<tr>
<td>AT&amp;T Southwest</td>
<td>AT&amp;T Inc</td>
<td>$381,859</td>
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<tr>
<td>T-Mobile</td>
<td>Telephone &amp; Data Systems Inc</td>
<td>$3,000,000</td>
</tr>
<tr>
<td>Time Warner Telecomm</td>
<td>Time Warner</td>
<td>$334,205</td>
</tr>
</tbody>
</table>

Annual Lobbying: Wireless Companies 2007

<table>
<thead>
<tr>
<th>Client</th>
<th>Affiliate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualcomm Inc</td>
<td>-</td>
<td>$6,840,000</td>
</tr>
<tr>
<td>Sprint Nextel</td>
<td>-</td>
<td>$5,506,500</td>
</tr>
<tr>
<td>Motorola Inc</td>
<td>-</td>
<td>$2,406,000</td>
</tr>
<tr>
<td>Cellular Telecom &amp; Internet Assn</td>
<td>-</td>
<td>$2,800,000</td>
</tr>
<tr>
<td>Terrestrial Networks</td>
<td>-</td>
<td>$2,110,000</td>
</tr>
<tr>
<td>Verizon Wireless</td>
<td>Verizon Communications</td>
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<tr>
<td>Qualcomm</td>
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<tr>
<td>Alcatel USA</td>
<td>-</td>
<td>$1,265,125</td>
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<tr>
<td>Intel Ltd</td>
<td>-</td>
<td>$894,257</td>
</tr>
<tr>
<td>T-Mobile USA</td>
<td>-</td>
<td>$912,250</td>
</tr>
</tbody>
</table>

Annual Lobbying: Computers /Internet

- Climbed to more than $100m in the 2000s

Annual Lobbying Expenses: Computers /Internet


- Total For Printing & Publishing: $8,226,117

Annual Lobbying: TV/Movies/Music 2007

- Total For TV/Movies/Music: $39,824,234

TV/Music/Movie Industry

Top Lobbying Firms in the TV/Music/Movie Industry (2009)

<table>
<thead>
<tr>
<th>Client</th>
<th>Total Spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Cable &amp; Telecommunications Assn</td>
<td>$15,980,000</td>
</tr>
<tr>
<td>Comcast Corp</td>
<td>$12,590,000</td>
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<tr>
<td>National Assn of Broadcasters</td>
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<tr>
<td>National Amusements Inc</td>
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<tr>
<td>Recording Industry Assn of America</td>
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<td>News Corp</td>
<td>$5,230,000</td>
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<td>Time Warner Cable</td>
<td>$4,625,424</td>
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<tr>
<td>Time Warner</td>
<td>$4,588,000</td>
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<tr>
<td>Liberty Media</td>
<td>$3,590,000</td>
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<tr>
<td>Sony Corp</td>
<td>$3,570,000</td>
</tr>
<tr>
<td>Clear Channel Communications</td>
<td>$3,078,501</td>
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<tr>
<td>Viacom</td>
<td>$2,880,000</td>
</tr>
<tr>
<td>Cbs Enterprises</td>
<td>$2,880,000</td>
</tr>
<tr>
<td>SoundExchange</td>
<td>$2,105,000</td>
</tr>
<tr>
<td>Charter Communications</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Motion Picture Assn of America</td>
<td>$1,840,000</td>
</tr>
<tr>
<td>Cbs Holdings</td>
<td>$1,890,000</td>
</tr>
<tr>
<td>ASCAP</td>
<td>$1,553,000</td>
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<tr>
<td>DSH Network</td>
<td>$1,330,000</td>
</tr>
<tr>
<td>Broadcast/Music Inc</td>
<td>$1,220,000</td>
</tr>
</tbody>
</table>

Annual Lobbying: TV/Movies/Music 2007

- Total For TV/Movies/Music: $39,824,234

TV/Music/Movie Industry

Election Cycle | Donations to Democrats | Donations to Republicans | % to Democrats | % to Republicans
---             |------------------------|--------------------------|----------------|-----------------|
2010*          | $8.342 mil             | $2.706 mil               | 75             | 24              |
2008           | $37.89 mil             | $10.64 mil               | 78             | 22              |

In 2009, the TV/Music/Movie industry spent $107,276,953 on lobbying.

TV/Music/Movie Industry

Top Lobbying Firms in the TV/Music/Movie Industry (2009)
Murdoch's Washington Lobbyists


1) Anthony Podesta, former counsel to Senator Ted Kennedy brother of Clinton Chief-of-Staff, and co-founder of the lobbying firm.
2) Ed Gillespie, former Republican Party chairman;


Murdoch's Washington Lobby Representation

3) Former New York Senator Alfonse M. D'Amato
4) The firm headed by former NYC Mayor Rudolph W. Giuliani.
5) Jack Quinn, former White House counsel under Clinton.

News Corp. (2007) Lobbying Representatives

Lobbying Expenses Reported by Subsidaries

Murdoch's Lobbying in Europe

- In 2008 EU launched a voluntary lobby register
- By mid 2009 there are 1,600 entries and 30 registrants signing per week
- Transparency and False reporting issues

News Corp. (2007) Lobbying Representatives


News Corp. (2007) Lobbying Representatives


News Corp. (2007) Lobbying Representatives


News Corp. (2007) Lobbying Representatives

Lobbying spending in Europe for 2008

<table>
<thead>
<tr>
<th>Company</th>
<th>Reported Spending</th>
</tr>
</thead>
<tbody>
<tr>
<td>BP</td>
<td>EUR250,000</td>
</tr>
<tr>
<td>Business Europe</td>
<td>EUR550,000-600,000</td>
</tr>
<tr>
<td>Cefic</td>
<td>EUR50,000</td>
</tr>
</tbody>
</table>

Figures show that European companies have significantly lower lobbying budgets compared to what U.S. companies spend on lobbying.

http://www.lexisnexis.com/.../docview/docview.do?docl.inkn...true&...RELEVANCE&startDocNo=1

Note: No info was found on media companies lobbying spending.

Weak Regulatory Lobbying System for Europe

Europe has different system based on “recommending that they apply a system of self-regulation.”

(In other words, no required registration)


Annual Lobbying

http://www.opensecrets.org/lobby/clientsum.php?name=Japan+Electronics+%26

Case Discussion:
AT&T VS. Comcast

Comcast Lobbying

- Lobbying 1998-2006: $19,151,000

### Comcast Lobby Firms 1998-2006

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>1998-2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>WPP Group</td>
<td>$2,880,000</td>
</tr>
<tr>
<td>Ryan Phillips Utrecht &amp; MacKinnon</td>
<td>$1,900,000</td>
</tr>
<tr>
<td>Interpublic Group of Companies</td>
<td>$1,140,000</td>
</tr>
<tr>
<td>Palmetto Group</td>
<td>$1,070,000</td>
</tr>
<tr>
<td>Brownstein Hyatt &amp; Farber</td>
<td>$760,000</td>
</tr>
<tr>
<td>Blank &amp; Rome</td>
<td>$480,000</td>
</tr>
<tr>
<td>Card and Associates</td>
<td>$420,000</td>
</tr>
<tr>
<td>WISE &amp; ASSOC</td>
<td>$400,000</td>
</tr>
<tr>
<td>The Duberstein Group</td>
<td>$400,000</td>
</tr>
</tbody>
</table>

### Comcast Lobby Firms 1998-2006

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>1998-2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mintz Levin</td>
<td>$320,000</td>
</tr>
<tr>
<td>DLA Piper Rudnick Gray Cary</td>
<td>$300,000</td>
</tr>
<tr>
<td>The c2group</td>
<td>$240,000</td>
</tr>
<tr>
<td>Ernst &amp; Young</td>
<td>$200,000</td>
</tr>
<tr>
<td>Shipp &amp; Associates</td>
<td>$150,000</td>
</tr>
<tr>
<td>Arent Fox</td>
<td>$140,000</td>
</tr>
<tr>
<td>HOBBS GROUP</td>
<td>$120,000</td>
</tr>
<tr>
<td>NICKLES GROUP</td>
<td>$100,000</td>
</tr>
<tr>
<td>Steven K. Berry</td>
<td>$60,000</td>
</tr>
</tbody>
</table>

### AT&T Lobbying Data

- Lobbying 1998-2006: $145,326,000
### AT&T Lobby Firms 2005
#### (top 9 of 42 listed)

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Akin Gump</td>
<td>$500,000</td>
</tr>
<tr>
<td>WPP Group plc</td>
<td>$925,000</td>
</tr>
<tr>
<td>The Dutko Group Inc.</td>
<td>$230,000</td>
</tr>
<tr>
<td>Clark &amp; Weinstock Inc.</td>
<td>$240,000</td>
</tr>
<tr>
<td>Brownstein Hyatt &amp; Farber</td>
<td>$320,000</td>
</tr>
<tr>
<td>Mintz Levin</td>
<td>$200,000</td>
</tr>
<tr>
<td>Cormac Group LLP</td>
<td>$260,000</td>
</tr>
<tr>
<td>Ricchetti Inc</td>
<td>$300,000</td>
</tr>
<tr>
<td>PodestaMattoon</td>
<td>$240,000</td>
</tr>
</tbody>
</table>

#### Outside Lobby Firms 2005

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>DCI Group, LLC</td>
<td>$205,000</td>
</tr>
<tr>
<td>Ernst &amp; Young LLP</td>
<td>$190,000</td>
</tr>
<tr>
<td>Jack Ferguson and Associates</td>
<td>$120,000</td>
</tr>
<tr>
<td>Paul, Hastings, Janofsky &amp; Walker</td>
<td>$180,000</td>
</tr>
<tr>
<td>Capitol Solutions</td>
<td>$260,000</td>
</tr>
<tr>
<td>Shipp &amp; Associates</td>
<td>$167,000</td>
</tr>
<tr>
<td>The Alpine Group</td>
<td>$200,000</td>
</tr>
</tbody>
</table>

#### Outside Lobby Firms 2005

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Palmetto Group</td>
<td>$125,000</td>
</tr>
<tr>
<td>The Loeffler Group</td>
<td>$200,000</td>
</tr>
<tr>
<td>Anderson &amp; Baker</td>
<td>$130,000</td>
</tr>
<tr>
<td>Martin Fisher Thompson &amp; Associates</td>
<td>$220,000</td>
</tr>
<tr>
<td>Davis Manafort, Inc.</td>
<td>$120,000</td>
</tr>
</tbody>
</table>

#### Outside Lobby Firms 2005

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mayer Brown &amp; Platt</td>
<td>$80,000</td>
</tr>
<tr>
<td>John Breaux Jr.</td>
<td>$70,000</td>
</tr>
<tr>
<td>Sibley, David</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

#### Outside Lobby Firms 2005

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interpublic Group of Companies, Inc.</td>
<td>$120,000</td>
</tr>
<tr>
<td>Sonnenschein Nath &amp; Rosenthal</td>
<td>$160,000</td>
</tr>
<tr>
<td>WISE &amp; ASSOC</td>
<td>------</td>
</tr>
<tr>
<td>Alexander Strategy Group</td>
<td>------</td>
</tr>
<tr>
<td>Dewey Square Group</td>
<td>------</td>
</tr>
<tr>
<td>Winstead Sechrest &amp; Minick</td>
<td>------</td>
</tr>
<tr>
<td>Arter &amp; Hadden LLP</td>
<td>------</td>
</tr>
<tr>
<td>Valis Associates</td>
<td>$200,000</td>
</tr>
<tr>
<td>Stanton Park Group</td>
<td>$120,000</td>
</tr>
<tr>
<td>New Frontiers Communications Consulting</td>
<td>------</td>
</tr>
</tbody>
</table>

---

### AT&T Firms 2005

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brown Rudnick Berlack Israels</td>
<td>$120,000</td>
</tr>
<tr>
<td>Giacometto Group</td>
<td>$10,000</td>
</tr>
</tbody>
</table>


### AT&T Lobby Firms 2005

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leach, David LLC</td>
<td>$60,000</td>
</tr>
<tr>
<td>Tongour Simpson Holsclaw LLC</td>
<td>------</td>
</tr>
<tr>
<td>Parry and Romani Associates Inc.</td>
<td>------</td>
</tr>
<tr>
<td>Sher &amp; Blackwell</td>
<td>------</td>
</tr>
<tr>
<td>Patala strategies</td>
<td>$60,000</td>
</tr>
<tr>
<td>Morgan, Lewis &amp; Bockius LLP</td>
<td>------</td>
</tr>
<tr>
<td>LeBoeuf, Lamb, Greene &amp; MacRae</td>
<td>$160,000</td>
</tr>
<tr>
<td>Capitol Resources</td>
<td>------</td>
</tr>
<tr>
<td>Oldaker Biden &amp; Belair</td>
<td>------</td>
</tr>
<tr>
<td>Rife Consulting</td>
<td>$100,000</td>
</tr>
</tbody>
</table>


### AT&T Lobby Firms 2005

<table>
<thead>
<tr>
<th>Outside Lobby Firms</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lytle Consulting LLC</td>
<td>------</td>
</tr>
<tr>
<td>Clark &amp; Associates</td>
<td>$40,000</td>
</tr>
<tr>
<td>Fleishman-Hillard Inc. (am Omnicom Group company)</td>
<td>------</td>
</tr>
<tr>
<td>Hertel &amp; Assoc., Dennis M.</td>
<td>------</td>
</tr>
<tr>
<td>Public Strategies, Inc.</td>
<td>------</td>
</tr>
<tr>
<td>Venable &amp; Venable</td>
<td>------</td>
</tr>
<tr>
<td>TIMMONS, PAULA</td>
<td>$100,000</td>
</tr>
<tr>
<td>Wunder, Knight, Thelen, Forscey &amp; Deviero</td>
<td>------</td>
</tr>
<tr>
<td>Henderson, Wallace J.</td>
<td>------</td>
</tr>
</tbody>
</table>


### Cable industry, incl
- Comcast spent more than $2 million in 2006 fighting AT&T in Tennessee alone.
- The expenses were on lobbying inside and outside the state Capitol.

### Cable group, Comcast spend more than $2 million fighting AT&T
- Tennessee Cable Telecommunications Company and Comcast spent at least $2 million since 2006, fighting AT&T.


- Aimed primarily against AT&T’s bid to get into the television business.
- For the period of Oct. 1, 2006, to March 31, 2007, 11 lobbyists cost between $200,000 and $250,000
- Costs on lobbying expenditures was $1.65 million.

Expenditures include public relations and television advertising on cable television.

Prominent Ties Among Comcast Hires

- Ehrlich was first hired as a lawyer by Comcast when her husband, Robert L. Ehrlich Jr. (R), sat on the House of Representatives’ telecommunications subcommittee.

Prominent Ties Among Comcast Hires

- Comcast hired:
  - two members of the University System of Maryland Board of Regents;
  - two sons of a key General Assembly committee chairman;
  - former county executives from Prince George’s and Harford counties.

Prominent Ties Among Comcast Hires

- Comcast hired then-Sen. Thomas L. Bromwell’s two sons shortly after the Baltimore County Democrat championed legislation that hats enabled cable companies to collect millions in late fees.

Prominent Ties Among Comcast Hires

- Maryland first lady Kendel S. Ehrlich was executive producer and star of a half-hour television talk show about drug and alcohol abuse.

• an undisclosed sum to host 16 episodes of “Live Right: Straight Talk on Substance Abuse”.
• “Live Right” can only be seen in the cable provider’s on-demand library.

• Comcast hired ex-US Senator Alphonse D’Amato

• Lobbyists advise firms where campaign contributions should be targeted

• Campaign Contributions

• Campaign Contributions by their Political Actions Committees and Media Companies and their Employees

METHODOLOGY: The numbers are based on contributions from PACs, and individuals giving $200 or more. (Only those groups giving $5,000 or more are listed here. In many cases, the organizations themselves did not donate; rather the money came from the organization's PAC, its individual members or employees or owners, and those individuals' immediate families. Organization totals include subsidiaries and affiliates. All donations took place during the 2007-2008 election cycle and were released by the Federal Election Commission on Sunday, October 19, 2008.

• PACs limited to maximum gift of $10,000 for a candidate during an election cycle (limiting influence)

Industry Contributions for 2008 Cycle (PACs and employees)

<table>
<thead>
<tr>
<th>Industry</th>
<th>Total Contributions ('000)</th>
<th>Percent to Democrats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cable TV</td>
<td>$7,446</td>
<td>62%</td>
</tr>
<tr>
<td>TV/Radio Stations</td>
<td>$4,622</td>
<td>49%</td>
</tr>
<tr>
<td>Music Production</td>
<td>$3,630</td>
<td>78%</td>
</tr>
<tr>
<td>TV Production</td>
<td>$2,746</td>
<td>87%</td>
</tr>
</tbody>
</table>

Media Companies’ (PACs and Employee) Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Organization</th>
<th>Amount ('000)</th>
<th>Democrats</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Electric</td>
<td>$492</td>
<td>90%</td>
</tr>
<tr>
<td>Sony Corp</td>
<td>$471</td>
<td>69%</td>
</tr>
<tr>
<td>Vivendi</td>
<td>$298</td>
<td>71%</td>
</tr>
<tr>
<td>Cox</td>
<td>$157</td>
<td>45%</td>
</tr>
<tr>
<td>Reed Elsevier</td>
<td>$152</td>
<td>66%</td>
</tr>
</tbody>
</table>

Media Companies’ (PACs and Employee) Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Organization</th>
<th>Amount ('000)</th>
<th>Democrats</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time Warner</td>
<td>$3,518</td>
<td>44%</td>
</tr>
<tr>
<td>Comcast</td>
<td>$2,238</td>
<td>65%</td>
</tr>
<tr>
<td>News Corp</td>
<td>$1,255</td>
<td>64%</td>
</tr>
<tr>
<td>Walt Disney</td>
<td>$815</td>
<td>68%</td>
</tr>
<tr>
<td>Clear Channel</td>
<td>$680</td>
<td>42%</td>
</tr>
</tbody>
</table>

Data from http://www.opensecrets.org

### Media Companies’ (PACs and employees) Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Amount Donated</th>
<th>% Given to Democrats</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT &amp; T</td>
<td>$1,655,152</td>
<td>44%</td>
<td>4</td>
</tr>
<tr>
<td>Comcast</td>
<td>$1,035,945</td>
<td>65%</td>
<td>20</td>
</tr>
<tr>
<td>Time Warner</td>
<td>$814,328</td>
<td>81%</td>
<td>37</td>
</tr>
<tr>
<td>Verizon Communications</td>
<td>$575,706</td>
<td>55%</td>
<td>71</td>
</tr>
</tbody>
</table>

*Data from http://www.opensecrets.org*

### Telephone Utilities Companies’ Campaign Contributions (PACs and Employees (2010))

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contributions</th>
<th>to Dem.</th>
<th>to Rep.</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT&amp;T</td>
<td>$1,896,638</td>
<td>50%</td>
<td>50%</td>
</tr>
<tr>
<td>Verizon Communications</td>
<td>$916,442</td>
<td>99%</td>
<td>40%</td>
</tr>
</tbody>
</table>

*www.opensecrets.com*

### Printing & Publishing Companies’ (PACs and employees) Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>News Corp</td>
<td>$400</td>
<td>42%</td>
<td>1</td>
</tr>
<tr>
<td>Hallmark Cards</td>
<td>$240</td>
<td>29%</td>
<td>2</td>
</tr>
<tr>
<td>SPS Studios</td>
<td>$233</td>
<td>100%</td>
<td>3</td>
</tr>
<tr>
<td>Reed Elsevier</td>
<td>$152</td>
<td>66%</td>
<td>4</td>
</tr>
<tr>
<td>Printing Indust. of America</td>
<td>$141</td>
<td>8%</td>
<td>5</td>
</tr>
</tbody>
</table>

*www.opensecrets.org*

### Printing & Publishing Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Houghton Mifflin</td>
<td>$133</td>
<td>97%</td>
<td>6</td>
</tr>
<tr>
<td>Recycled Paper Greetings</td>
<td>$107</td>
<td>6%</td>
<td>7</td>
</tr>
<tr>
<td>RR Donnelley &amp; Sons</td>
<td>$101</td>
<td>76%</td>
<td>8</td>
</tr>
</tbody>
</table>

*www.opensecrets.org*

### Printing & Publishing Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>McCormack Communications</td>
<td>$92</td>
<td>100%</td>
<td>9</td>
</tr>
<tr>
<td>Magazine Publishers of America</td>
<td>$83</td>
<td>56%</td>
<td>10</td>
</tr>
</tbody>
</table>

*www.opensecrets.org*

### TV / Movies / Music Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comcast Corp</td>
<td>$2,238</td>
<td>65%</td>
<td>1</td>
</tr>
<tr>
<td>Time Warner</td>
<td>$1,732</td>
<td>78%</td>
<td>2</td>
</tr>
<tr>
<td>National Amusements Inc</td>
<td>$1,664</td>
<td>87%</td>
<td>3</td>
</tr>
<tr>
<td>National Cable &amp; Telecom. Assn</td>
<td>$1,196</td>
<td>53%</td>
<td>4</td>
</tr>
</tbody>
</table>

*www.opensecrets.org*
## TV / Movies / Music Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>News Corp</td>
<td>$829</td>
<td>75%</td>
<td>5</td>
</tr>
<tr>
<td>Walt Disney Co</td>
<td>$815</td>
<td>68%</td>
<td>6</td>
</tr>
<tr>
<td>National Assn of Broadcasters</td>
<td>$770</td>
<td>56%</td>
<td>7</td>
</tr>
<tr>
<td>Clear Channel Communications</td>
<td>$680</td>
<td>42%</td>
<td>8</td>
</tr>
</tbody>
</table>

Source: open secrets.org

## Contributions of Murdoch Family Presidential Election 2008

- **To John McCain**
  - Murdoch, Rupert K. $4,600
  - Murdoch, Wendi $4,600
  - Murdoch-Mann, Anna $2,100

- **To Hillary Clinton**
  - Murdoch, Rupert K. $2,300
  - Murdoch, James R. $2,300

Source: open secrets.org

## Telephone Utilities Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT&amp;T</td>
<td>$3,494</td>
<td>44%</td>
<td>1</td>
</tr>
<tr>
<td>Verizon Communications</td>
<td>$1,744</td>
<td>48%</td>
<td>2</td>
</tr>
<tr>
<td>Embarq</td>
<td>$393</td>
<td>44%</td>
<td>3</td>
</tr>
<tr>
<td>National Telephone Coop. Assn</td>
<td>$257</td>
<td>64%</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: open secrets.org
### Telecom Serv.&Equ. Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qwest Communications</td>
<td>$919</td>
<td>46%</td>
<td>1</td>
</tr>
<tr>
<td>Qualcomm</td>
<td>$596</td>
<td>71%</td>
<td>2</td>
</tr>
<tr>
<td>T-Mobile USA</td>
<td>$539</td>
<td>56%</td>
<td>3</td>
</tr>
<tr>
<td>Motorola Inc</td>
<td>$476</td>
<td>70%</td>
<td>4</td>
</tr>
</tbody>
</table>

### Telecom Serv.&Equ. Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 3 Communications</td>
<td>$468</td>
<td>92%</td>
<td>5</td>
</tr>
<tr>
<td>Corning Inc</td>
<td>$450</td>
<td>48%</td>
<td>6</td>
</tr>
<tr>
<td>Sprint Nextel</td>
<td>$346</td>
<td>62%</td>
<td>7</td>
</tr>
<tr>
<td>Alltel Corp</td>
<td>$233</td>
<td>45%</td>
<td>8</td>
</tr>
</tbody>
</table>

### Computer/Internet Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Microsoft Corp</td>
<td>$2,320</td>
<td>70%</td>
<td>1</td>
</tr>
<tr>
<td>Cisco Systems</td>
<td>$1,099</td>
<td>65%</td>
<td>2</td>
</tr>
<tr>
<td>Google Inc</td>
<td>$1,051</td>
<td>84%</td>
<td>3</td>
</tr>
<tr>
<td>IBM Corp</td>
<td>$718</td>
<td>72%</td>
<td>4</td>
</tr>
<tr>
<td>Intel Corp</td>
<td>$618</td>
<td>52%</td>
<td>5</td>
</tr>
</tbody>
</table>

### Computer/Internet Companies’ Campaign Contributions (2008)

<table>
<thead>
<tr>
<th>Company</th>
<th>Total Contrib. ('000)</th>
<th>to Dem.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oracle Corp</td>
<td>$601</td>
<td>66%</td>
<td>6</td>
</tr>
<tr>
<td>Hewlett-Packard</td>
<td>$566</td>
<td>65%</td>
<td>7</td>
</tr>
<tr>
<td>EBAY Inc</td>
<td>$422</td>
<td>57%</td>
<td>8</td>
</tr>
<tr>
<td>EMC Corp</td>
<td>$372</td>
<td>43%</td>
<td>9</td>
</tr>
<tr>
<td>EDS Corp</td>
<td>$361</td>
<td>53%</td>
<td>10</td>
</tr>
</tbody>
</table>
Case Discussion: AT&T VS. Comcast

Eli M. Noam, Entertainment Law and Media Regulation 430

Top 20 Contributing Organizations (2007-2008)

<table>
<thead>
<tr>
<th>Rank</th>
<th>Organization</th>
<th>Total Contributions</th>
<th>To Dems</th>
<th>To Repubs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ActBlue</td>
<td>$5,489,881</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>2</td>
<td>Goldman Sachs</td>
<td>$3,305,171</td>
<td>72%</td>
<td>28%</td>
</tr>
<tr>
<td>3</td>
<td>Chipotle Inc</td>
<td>$2,555,000</td>
<td>61%</td>
<td>39%</td>
</tr>
<tr>
<td>4</td>
<td>AT&amp;T Inc</td>
<td>$1,452,182</td>
<td>44%</td>
<td>56%</td>
</tr>
<tr>
<td>5</td>
<td>J.P. Morgan Chase &amp; Co.</td>
<td>$1,563,644</td>
<td>67%</td>
<td>33%</td>
</tr>
<tr>
<td>6</td>
<td>Morgan Stanley</td>
<td>$1,533,413</td>
<td>66%</td>
<td>34%</td>
</tr>
<tr>
<td>7</td>
<td>Operating Engineers Union</td>
<td>$1,487,955</td>
<td>86%</td>
<td>14%</td>
</tr>
<tr>
<td>8</td>
<td>UBS AG</td>
<td>$1,377,466</td>
<td>61%</td>
<td>39%</td>
</tr>
<tr>
<td>9</td>
<td>Intl Brotherhood of Electrical Workers</td>
<td>$1,345,405</td>
<td>98%</td>
<td>2%</td>
</tr>
<tr>
<td>10</td>
<td>American Bankers Assoc.</td>
<td>$1,304,520</td>
<td>40%</td>
<td>60%</td>
</tr>
</tbody>
</table>

Data from http://www.opensecrets.org

Top 20 Contributing Organizations (2007-2008)

11. Antiwar/Aerospace Workers Union $1,167,590 98% 3%
12. National Beer Wholesalers Assn $1,147,390 51% 49%
13. National Assn of Realtors $1,142,590 57% 43%
14. Common Cents $1,127,001 0% 100%
15. General Electric $1,102,143 59% 41%
16. American Assn for Justice $1,019,790 98% 2%
17. Laborers Union $1,018,450 92% 8%
18. International Assn of Fire Fighters $1,014,590 76% 24%
19. Merrill Lynch $1,005,896 52% 48%
20. Comcast Corp $1,035,345 65% 35%

Data from http://www.opensecrets.org

AT&T and Comcast are, with GE, the only non-financial companies among the top 20 givers.

Comcast Campaign Contributions

- Total $5,781,695
- To Democrats 44.1% = $2.5 Mil.
- Contributions to Republicans 55.7% = $3.2 Mil

Comcast Campaign Contributions
• In 2006, Republican National Committee $56,950;
• Democratic Senatorial Campaign Committee $88,750;
• National Republican Senatorial Committee $45,000;
• National Republican Congressional Campaign Committee $52,000.

Comcast Corporate Contributions to Politics
Democratic National Committee $5,250; Democratic Congressional Campaign Committee $36,250
• In 2004, George W. Bush, $85,460; Arlen Specter (R-PA) $81,750.

AT&T campaign Contributions (2006)
• Total contributions $28,360,426
• Contributions to Democrats 39.7% = $11.2 Mil
• Contributions to Republicans 60.2% = $17.1 Mil

AT&T Campaign Contributions
• Republican National Committee $36,580;
• Democratic National Committee $35,556;
• National Republican Congressional Committee $37,150;
• Democratic Senatorial Campaign Committee $42,000.

AT&T Campaign Contributions
• National Republican Senatorial Committee $38,350;
• Democratic Congressional Campaign Committee $36,000;
• George W Bush $210,920.
B. Lobbying Strategies

“Inside” Strategies
• Contribute to candidate member’s campaign
• Through PAC or coordinated member giving

“Outside” Strategies
“Outside” Strategies
• Generating public pressure on policymakers to support group’s agenda
  – No ready access to members needed
• Good tactic to use with members on “fence” of an issue


“Outside” Strategies
• Groups w/ large and ideologically cohesive memberships best able to use grassroots tactics


“Astroturf” Campaigns
• Campaign designed to create appearance of strong opinion in district or state for an issue often when little interest among constituents


Example For Generating Local Support
• MediaOne cable company wanted to transfer operating licenses to AT&T, after merger.
• But communities in Massachusetts could challenge the plan.


• MediaOne organized employees living in each community to help persuade key local gov’t. officials to vote in favor of proposal.

• Employees living in each community were asked to send letters and attend hearings.

• Result: 98% unconditional approval in 115 MA communities that voted on the transfer of the licenses.

Example: Anti-Napster Campaign

• Napster, the first major file-sharing company was sued in 1999 by The Recording Industry Association of America (RIAA), rapper Dr. Dre, and band Metallica for copyright infringement.

• Artists Against Piracy purchased ads in newspapers to give effort a more appealing face.

Napster's opponents, the recording industry, organized a coalition of over 60 Artists to persuade key senators to hold hearings to publicize the artists’ prospective which had more sympathy than that of record companies.

Comcast Secretly Pays People to Fill Seats at FCC Hearing

• On February 25, 2008, public FCC hearing on net neutrality was so packed that many activists and reporters were turned away.

• Comcast quietly paid people to attend and cheer for its side during the hearing.

• Paid participants were identifiable by the yellow highlighters tucked into their lapels.
Comcast’s “citizens” organized beforehand with instructions and yellow pens.

Comcast sponsored participants.

Identifiable by their yellow highlighters.
D. Regulations on Lobbying

Lobbying Restrictions
- Individuals who devote at least 20% of their working time to lobbying activities must register as lobbyists with the Secretary of the Senate and the Clerk of the House of Representatives.


Lobbying Restrictions
- Lobbying firms must file quarterly reports of their activities if their annual revenue from lobbying exceed $2,500.


Lobbying Restrictions
- Companies with in-house lobbyists must file quarterly reports if their annual lobbying expenses exceed $10,000.


Lobbying Restrictions
- Companies that pay at least $5,000 for a trade association’s lobbying activities and “actively participate” in that association’s lobbying activities must be listed on that association's public lobbying reports.


Lobbying Restrictions
- Lobbyists and companies that file lobbying reports must report financial contributions to or on behalf of a public official, including contributions to third-parties that will make a public official an honoree.

• Byrd Amendment (31 USC, Section 1352):
  – prohibits recipients of federal funds (grants, contracts, cooperative agreements) from using them to obtain, extend, or modify a federal award
  
  [http://www.rochester.edu/ORPA/Regulations/fedlobrg.htm](http://www.rochester.edu/ORPA/Regulations/fedlobrg.htm)

1. Can’t use government money for lobbying government
   – A recipient of federal funds that uses non-federal funds for lobbying purposes must report those activities to the awarding agency.
   – example: public TV stations
   
   [http://www.rochester.edu/ORPA/Regulations/fedlobrg.htm](http://www.rochester.edu/ORPA/Regulations/fedlobrg.htm)

2. Can’t intervene during Agency decision process
   • Rules ban contact between lobbyists and the agency during pre-described blackout periods, when a case is being decided
   • Loopholes: lobbyists can to make presentations to the agency at the request of a sympathetic Commissioner

3. Limits on “Revolving Door”
   • Federal Office of Government Ethics, “A former employee is forever banned from representing another person or organization before a Federal Department, agency, or court on certain matters in which the former employee participated personally and substantially while working for the Government.”


Limits on “Revolving Door”
• For 2 years after, a former employee may not lobby on matters which were pending under the employee’s supervision in Government service.


Anti-“Revolving Door”
• There are numerous examples of former regulations joining industry or law firms representing the industry
• Revolving door laws deal with problems of government officials able to peddle insider knowledge and personal contacts gained on the job for a new employer who is a stakeholder.
Anti-“Revolving Door”

- There is also concern that the government employee may already rule favorably for a future employer in an attempt to get a job.

- However the restrictions can be overcome by merely “advising” the company as law firms without directly “representing” them.


Pro-Revolving Door

- But it is unfair to limit the job prospects people of qualified people?.
  - Will deter good people to work for the government
  - Should someone who worked for the IRS never be permitted to do tax work.

Lobbying Restrictions

A 2007 Senate bill extended the “cooling off” period against lobbying from one year to two years for Senators, members of the House and Congressional “senior staff.”


Lobbying Restrictions

- A provision in the bill also prohibits these officials from offering lobbying advice or participating in lobbying meetings, regardless of whether they themselves lobby.

- Under this bill, Senators and staff members could not have “official contact” with spouses of Senators who are registered lobbyists, unless the spouse had been registered for at least one year prior to the marriage.

Case Discussion: Comcast vs. AT&T

• How much should Comcast spend on lobbying?

Case Discussion: Comcast Local Lobbying (A hypothetical case)

• A municipality considers providing free WiFi service to connect to the internet
• Comcast wants to influence the city councilors to forgo their plan. How can it influence the local council vote on the issue? How much should it invest in these efforts?

Loss of Business market size:
- There are 100,000 home broadband customers
- Value of Customers: $40/month revenues for home customers

• Assuming net income = ½ of revenue, the loss to Comcast would be total revenue/profit share/lost customers = $48 mil/2/3 = $8 mil

• The NPV of this loss at a 12% discount rate, is about $64 mil

• How to counter this potential loss?
Experts estimate that each $10 mil dollars of lobbying reduces the probability of the municipal WiFi proposal to be adopted by another 20%.

### Comcast Optimal Lobbying Investment

**Example:**

<table>
<thead>
<tr>
<th>Value of customers (Assumption: Net profit is 1/3 of revenues)</th>
<th>Percentage of market share at risk</th>
<th>Value of Net Present Loss (discount rate 12%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broadband customers $20 per month x 12 x 100,000 = $24m per year</td>
<td>1/3</td>
<td></td>
</tr>
</tbody>
</table>

**Conclusion:**

Comcast should spend about $20 mil on lobbying. Beyond that, cost exceeds NPV of improvement.

for more details see Appendix F: Microsoft Lobbying
Public Relations

• “PR is a set of communications techniques to help an organization to create a good reputation for itself and its goals”


Advertising vs. PR

• PR: No money is spent for the outright purchase of time and space to relay the company’s message
• Instead involves third parties in telling and supporting a campaign


Example: European Union spending on PR

• EU spends every year pounds 2 billion on PR campaigns
• The number is bigger than the Coca-Cola's entire global advertising budget

http://www.lexisnexis.com/us/lnacademic/results/docsview/docsview.do?lostLinkInd=true&rs=21_T867130734&format=CBBF&com=RELEVANCE&startDocNo=1&resultsUrlKey=79_T867150544&rs=22_T867130734&maxResultsWidth=0&cas=8109&dc=2857


http://www.levymgi.com/images/Public-Relations.jpg
Publicity

• **Publicity** refers to the generation of the news about a person, product, or service that appears in broadcast or print media.
• Publicity is a subset of the public relations effort.


Publicity

• Publicity is typically a *short-term* strategy, while public relations is a concerted program extended over a period of time.


• In the latter half of the nineteenth century, the publicity business was generally limited to the relatively modest objective of getting newspapers to mention products that already existed.

• Press agents, paid by the number of “mentions,” provided local newspapers with newsy items
• P.T. Barnum staged a pseudo-event to attract reporters to products.

But, in the early twentieth century, “public relations” had a more ambitious aim: shape public opinion.

Elements of PR
• Press relations
• Product Publicity
• Corporate communications
• Lobbying
• Counseling

Target Audiences of PR
• The media
• Employees Stockholders and Investors
• Educators
• Civic and business organizations
• Governments
• Financial groups
PR Responses and the Internet

Crafting a PR response
• The Internet provides great PR and marketing opportunities, but also presents the risk of untrue and defamatory charges.

• Casarez, Nicole B. “Dealing with cybersmear: how to protect your organization from online defamation” Public Relations Quarterly: 2002

PR Strategies: Response to Third-Party Web Sites
• The Internet has led to the emergence of Web sites about the company run by third-parties, often portraying the company negatively.
• Poses a challenge for controlling the corporate image.


Gripe Sites: Opinion and Rhetorical Hyperbole
• frustrated customers, activist groups have also launched sites to talk about social issues and responsibilities

• Casarez, Nicole B. “Dealing with cybersmear: how to protect your organization from online defamation” Public Relations Quarterly: 2002

PR Strategies: Response to Third-Party Web Sites
• Examples:
  – www.walmartwatch.com
  – www.exxposeexxon.com

• Silver lining: Gripe sites help gauge customer and public reaction
• In some cases, PR efforts were to provide or recruit positive counter-positions without identifying these as company-sponsored

• Casarez, Nicole B. “Dealing with cybersmear: how to protect your organization from online defamation” Public Relations Quarterly: 2002
B. Measuring the Effectiveness of PR

How Does One Measure PR Effectiveness During?

- Volume of news clips
- Overnight polling: surveys, usually phone intvs.


- Reach
  - # of placements and/or media impressions and/or circulation or potential circ.
  - Impressions = audited circ.


- Metrics for measure effectiveness of PR
  - Total number of impressions over time
  - Total number of impressions on the target audience
  - Total number of impressions on specific audiences


- Content Analysis: tracks what has been written and broadcast

-% of positive articles over time
-Ratio of positive to negative articles
-% of positive/negative articles by publication or reporter

- % of positive/negative articles by subject
-% of positive/negative articles by target audience

- How much coverage compared to rivals?
- What issues and messages were covered?
- How were individuals and groups portrayed (leaders, followers, etc)?

• By Story
  • Source of story? i.e. via a press release or media?
  • Type of story? i.e. a news story or letter to the editor?
  • Exposure? i.e. # of paragraphs or sec’s?

• By Subject or Topic
  • Who was mentioned and in what context?
  • Prominence (headline, body, both)?
  • Who was quoted and how frequently?

Example: Kodak
• Kodak suffered a series of leaks about potential layoffs in 2002.
• It kept silent until the layoffs
• Got a lot of negative story
• But before a second round of layoffs it briefed reporters gradually.
• The following chart tracks media coverage of the layoffs the weeks after the leak.
• Y axis = News clips per week


- Kodak also learned that to make available senior manager, such as the CEO as the spokesperson
- And to avoid the “no comment” response

• Crisis management- fast and accurate communication are key
• Start early- worst damage is usually earliest/immediate

Managing Unfavorable Publicity

Lamb, Hair, Medallion, Marketing, South-Western College Publishing, 1996

For more details see Appendix G: Crisis Management
C. How Much PR Spending?

1. Same-as-Before Budgeting: base budget on budget of similar recent project
   – Drawbacks: (1) assumes projects are sufficiently similar.
   – (2) presumes earlier project successful and deserves to be imitated

2. Competitive parity: base budget for activities on level of similar activity by major competitors.
   • Drawbacks: (1) not exact, often involves some guessing.
   • (2) companies may have different situations or goals.

3. All-You-Can-Afford Budgeting: Provides for funding when co.’s financial condition is sound, and limits during lean times.
   • Not good approach, but is how many co.’s work.

4. What-if-not-funded budgets: must demonstrate the effect inaction will have on organization’s mission.
   Forces executives to consider expected outcomes.
5. Stage of Lifecycle Budgeting: Takes into account the issue’s phase of development; i.e. start-up programs require more financial resources than maintenance programs.


6. Cost-Benefit Analysis: cost of implementing a tactic compared to estimated value of expected results.


7. Marginal Cost-Benefit Analysis: Incremental PR benefit must equal incremental PR cost
–Correct procedure, but hard to calculate

One would have to put some value on per-thousand, per message reach on the audience reached.
• This could be a value similar to that of a paid advertising message to the same audience

Corporate PR Spending Of Fortune Magazine’s List of “Most Admired” Firms (In 000’s)

• Top 200 reputation co.’s avg. spending = $6,000,000.
• Bottom 200 reputation co.’s avg. spending = $2,800,000.


• The chart suggests a correlation between PR investment and a co.’s reputation as measured by Fortune’s "Most Admired Company" ranking.
• (The study, however, was sponsored by the PR industry)


Avg. PR Spending for “Most Admired” Co’s By PR Activity (In 000’s)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Media relations</td>
<td>$1,004</td>
<td>22%</td>
</tr>
<tr>
<td>B. Executive outreach</td>
<td>$239</td>
<td>5%</td>
</tr>
<tr>
<td>C. Investor Relations</td>
<td>$544</td>
<td>12%</td>
</tr>
<tr>
<td>D. Annual and Qtr Reports</td>
<td>$635</td>
<td>14%</td>
</tr>
<tr>
<td>H. Industry Relations</td>
<td>$709</td>
<td>15%</td>
</tr>
<tr>
<td>I. Employee Communications</td>
<td>$1,084</td>
<td>23%</td>
</tr>
<tr>
<td>J. Department management</td>
<td>$425</td>
<td>9%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$4,641</td>
<td>100%</td>
</tr>
</tbody>
</table>


PR Spending “Most Admired” Co.’s (In mil’s.)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Media relations</td>
<td>$4,083</td>
</tr>
<tr>
<td>Executive outreach</td>
<td>$546</td>
</tr>
<tr>
<td>Investor Relations</td>
<td>$1,157</td>
</tr>
<tr>
<td>Annual and Qtr Reports</td>
<td>$1,020</td>
</tr>
<tr>
<td>Industry Relations</td>
<td>$1,487</td>
</tr>
<tr>
<td>Employee Communications</td>
<td>$3,131</td>
</tr>
<tr>
<td>Department management</td>
<td>$1,312</td>
</tr>
</tbody>
</table>


Communications Staff
Staff Size by High and Low Fortune Reputation Firms

<table>
<thead>
<tr>
<th>Professional Support Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Top 100 firms</td>
</tr>
<tr>
<td>2. Second 200 firms</td>
</tr>
<tr>
<td>3. Third 100 firms</td>
</tr>
<tr>
<td>4. Fourth 100 firms</td>
</tr>
<tr>
<td>5. Bottom 76 firms</td>
</tr>
<tr>
<td><strong>Average</strong></td>
</tr>
</tbody>
</table>

• We have discussed the tools of non-market competition
  - litigation
  - lobbying
  - PR
• We now move to discuss the process of media regulation

OUTLINE: MEDIA LAW & REGULATION
  Section A: MANAGING NON-MARKET COMPETITION
  I. LEGAL & PUBLIC AFFAIRS FUNCTIONS IN MEDIA FIRMS
     • Entertainment and IPR Law
     • Inside & Outside Case: Comcast vs. AT&T
     • Litigation Management
     • Budgeting
  II. INFLUENCING GOVERNMENT AND THE PUBLIC
      • Lobbying
        – Organization
      • Public Relations
        – Strategies
        – Reaction
        – Reputation
  III. THE REGULATORY PROCESS
      • Self Regulation
        – Standard process
      • Direct Government Regulation
        – Role & Strategic Use
  IV. SUBSTANTIVE MEDIA LAW
      • Content Restrictions
      • Anti-Competitive Behavior
      • Profit Regulation
  V. GOVERNMENT INDUSTRIAL AND CULTURAL POLICY
  VI. CONCLUSION

III. The Regulatory Process

III.1. Self-Regulation
Advantages of Self-regulation
• Keeps government out
• Greater expertise
• Less lawyers, more flexibility

Self-Regulation
A. By companies
B. By industries

A. Self-regulation by companies

• Screens material and advertising to ensure:
  – Compliance with governmental content restrictions
  – That material is inoffensive to viewers, underwriters, and appropriate for time slot

Self-Regulation: Program “Standards & Practices” Departments of TV Networks
• Maintained by each major broadcast network, as well as many cable networks.

Self-Regulation: Standards & Practices Departments of TV Networks
• Increased attention following the Broadcast Decency Enforcement Act of 2005
  – Increased penalties for “decency standards”
Standards & Practices
Departments of TV Networks

• Size of departments:
  – ABC, in 2008: 35 people


Standards & Practices
Departments of TV Networks

• Activities:
  – Delay mechanisms for live programming
  – “Viewer Discretion” warnings
  – Repetitive display of rating icons, TV-MA (mature audiences), TV-14, etc.
  – Enforce content controls


Standards & Practices
Departments of TV Networks

• Self-rating of TV Programs

  • In addition to the S&P departments of the major TV networks, local affiliates of those networks may also screen content

    – Ex: ABC affiliates in Biloxi, MS refuse to air *NYPD Blue* because of content concerns.


Standards & Practices
Departments of TV Networks

• Broadcasters are liable for content of the advertising on their channels as well


Censorship Today?

• Roger Ebert: “Blockbuster in effect exercises censorship over American movies by making it economically prohibitive for studios to consider NC-17 films”

  • Eli M. Noam, Entertainment Law and Media Regulation, p. 572
Censorship Today?
• Most theater chains will not show “X” rated films.
• Major retailers will not stock NC-17 rated films.
• Netflix does not stock most X-rated films, but offers sexually explicit films if they are not pure titillation.

Self-Regulation by the Newspapers

• Most newspapers have internal code of conduct, and some have an internal “Ombuds Officers”

• Washington Post: statement of principle by owner Eugene Meyer in 1935
• Meyer published his seven principles on the front page in 1935.

Code of Conduct

• The New York Times’: has a 52-page manual as a code of conduct
• Newsroom Integrity Statement, promulgated in 1999

• 155 situations are listed
  – protecting the newspaper’s neutrality;
  – the staff’s civic and journalistic activities outside The Time;
  – dealing with advertisers, marketing and production;
  – conflicts of interests in personal and professional activities;
  – dealing with contributions and gift
• Discourages anonymous sourcing, sets rules
• The NYT manual: “Staff members must obey the law in the pursuit of news.”

Newspaper Ombuds Officers
1980s and ‘80
But in the mid ‘00s, only 30 - 40 of 1,400 US dailies had ombudsmen, citing financial reasons for not retaining ombudsmen.


Newspaper Ombudspersons
After years of resistance, the New York Times finally hired an ombudsman (titled a Public Editor, who also writes a column) after the Jayson Blair scandal. cited previously experience from officer in editorial indifference


B. Industry-Wide Self-regulation
• Faster and more expert than [?]
• Helps set compatibility and interoperability
• Cheaper form of complaint resolution than formal litigation.

Majoras, Deborah P. Self Regulatory Organizations and the FTC. 2005
Examples for Cooperative Self-Regulation
- NAB - National Association of Broadcasters
- MPAA - Motion Pictures Assoc. of America
- Advertising Council
- Internet Engineering Task Force (IETF)

Problems with Industry-Wide Self-Regulation

Problems with Self-Regulation
- Industry codes often lead to cartel behavior
- Usually requires government pressure in the first place
  - Substitution for unconstitutional can be government regulation of content
- No due process
- No public participation

Limitations of Self-Regulation
- No enforcement powers
- No due process
- Can be tool for collusion
- Often created as a PR to forestall government regulation

Film Self-Regulation
• As early as 1907, Chicago passed a law allowing censorship of movies.
• In 1915 the U.S. Supreme Court ruled on the issue and upheld the right of local government to censor movies, specifically excluding them, as “entertainment,” from the First Amendment protection.

• Throughout the 1920s and 1930s, local politicians, religious organizations, and self-styled custodians of public morality—such as the Catholic League of Decency, the Daughters of the American Revolution, and the National Congress of Parents and Teachers—all claimed a right to censor movies.

• In 1924 the studios decided to set up a common censor, William Hays, a former postmaster general, in order to undercut the local censorship boards.

• Hays negotiated a formula, or “production code,” for the studios. The “Hays Office” censored films, set principles and proposed script changes.

• For example, law breakers could not escape justice.
• Married couples had to sleep apart in twin beds.
• Divorce must have bad results.

• In the 1930s, the Hays Office even criticized films that focused on social problems such as poverty.
Film Self-Regulation (US)

• Motion Picture Association of America (MPAA) - self-regulation

As an alternative, the film industry created a rating system.

Self Regulation/Ratings

• G, PG, PG-13, R........
• To give advance warnings so parents

“This Film is Not Yet Rated”

Film criticizing the process
• Secretive
• Unclear standards
• Favoritism to big studios

Problems with Self Regulation

• People involved in self-regulation were working for the MPAA, which was funded by the major studios
• Self regulation’s effectiveness relies on threat of government regulation.
Self-regulation of TV Industry

- Similar to that of the film industry

1997: TV and cable networks (except NBC) agree to rate their programming according to a V (violence), S (sex) and L (language) ratings system.

Cable TV Self Regulation

- The FCC has preferred pushing a self-regulated “voluntary code.”
- The industry has the same preference

TV Parental Guidelines

- Established as a voluntary-participation system, with ratings to be determined by the individually-participating broadcast and cable networks.
- Specifically designed to be used with the V-chip, which was mandated to be built into all television sets manufactured since 2000, but the guidelines themselves have no legal force.

TV Parental Guidelines

- All Children -- This program is designed to be appropriate for all children.
- Directed to Older Children -- This program is designed for children age 7 and above
• TV Parental Guidelines
  General Audience -- Most parents would find this program suitable for all ages
  Parental Guidance Suggested -- This program contains material that parents may find unsuitable for younger children.

• TV Parental Guidelines
  Parents Strongly Cautioned -- This program contains some material that many parents would find unsuitable for children under 14 years of age.
  Mature Audience Only -- This program is specifically designed to be viewed by adults and therefore may be unsuitable for children under 17.

• FCC argues against Self-Regulation
  • FCC (25th April 2007): Self ratings system had failed to protect children from being regularly exposed to violence.
  • Citing Poll (June 2007): Only 27% of all parents in the study group could figure out how to program the V-Chip

Parents Television Council
• Works to “stem the flow of harmful and negative messages targeted towards children.”


Self-Regulation by the Advertising Industry

http://www.aiap.org/aiap/advertising.jpg

Eli M. Noam, Entertainment Law and Media Regulation

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The NAD/NARB

- Until 1982, the NAB (National Association of Broadcasters) “Blue Book” industry code limited the numbers of TV spots: public interest or price collusion?
  – Held by court to violate antitrust law, because it raised prices

The NAD/NARB

- 1971: four associations, the American Advertising Federation (AAF), the American Association of Advertising Agencies (AAAA), the Association of National Advertisers (ANA), and the Council of Better Business Bureau-joined forces to establish the National Advertising Review Council (NARC).

The NAD/NARB

- The council has two operating arms, the National Advertising Division of the Council of Better Business Bureaus and the National Advertising Review Board.
- The NAD/NARB has become the advertising industry’s primary self-regulatory mechanism.

The NAD/NARB

- NAD reviews complaints from consumers and consumer groups, local BBBs, and competitors.

The NAD/NARB

- If the NAD and the advertiser fail to resolve the controversy, either can appeal to a five person panel from the National Advertising Review Board.
- The NARB is composed of 85 advertising professionals and prominent public-interest members.
The NAD/NARB

• If the NARB panel agrees with the NAD and rules against the advertiser, the advertiser must discontinue the advertising.
• If the advertiser refuses to comply, the NARB refers the matter to the appropriate government agency and indicates the fact in its public record.

Example: Malt-O-Meal 2007

• Malt-O-Meal claimed to use “Betcha Can’t Taste the Difference” in advertising to compare various Malt-O-Meal cereals.

Example: Perdue Farms 2007

• Perdue put “no preservatives” on labels and advertising.

2007 Malt-O-Meal

• NAD found that Malt-O-Meal’s testing was sufficiently flawed.
• NARB on appeal agreed and recommended that Malt-O-Meal discontinue or modify its claim.
2007 Perdue Farms

- NARB recommended Perdue discontinue using “no preservatives” and “fresh” on meat and poultry products that contain sodium diacetate and/or sodium lactate in concentrations sufficient to have any antimicrobial effects.

(http://www.narbreview.org/quarterly/pdf/narbpanel141.pdf)

2007 Perdue Farms Incorporated

- NARB also recommended that Perdue discontinue use of the term “fresh” on meat and poultry products that have been subject to high pressure processing.

(http://www.narbreview.org/quarterly/pdf/narbpanel141.pdf)

Children’s Advertising Review Unit

- The Children’s Advertising Review Unit (CARU) of the Council of Better Business Bureaus (CBBB) was established in 1974 to promote responsible children’s advertising.
- CARU is financed by the children's advertising industry.

(http://www.us.bbb.org/WWWRoot/SitePage.aspx?site=113&id=24783d03-2c4b-4b0e-b46f-5fb29117876d)

Children’s Advertising Review Unit

- CARU reviews advertising in all media directed to children under 12 years old as well as online privacy practices involving children under 13 years of age, to ensure they comply with its guidelines on information collection and the federal Children’s Online Privacy Protection Act.

(http://www.us.bbb.org/WWWRoot/SitePage.aspx?site=113&id=24783d03-2c4b-4b0e-b46f-5fb29117876d)

Internet Self-Regulation
See also below the section on “internet regulation”

Internet companies generally prefer self-regulation to involvement by government

Internet Self-Regulation:
Better Business Bureau, TrustE, DMA,

- To get a “seal of compliance”, web sites must agree to disclose their data privacy practices and be monitored for adherence
  - what personal information is being gathered,

- how it will be used,
- with whom it will be shared
- Dispute resolution mechanism
- Whether the user can control its dissemination

- Usually consumer needs to opt out

- Opt-out customers choose not to have their information recorded
  - Often unclear, lengthy and placed in an obscure spot on the site
  - If the choice is read or waive, most people waive
- Opt-in: affirmative choice by customers; vehemently opposed by industry
- Opt-out: 80% stay-rate
- Opt-in: 20% take-rate

- “A seal a day keeps the government away.”
• In many countries, Press Boards self-police newspapers

U.S. Press Self-Regulation
• Failed industry-wide self-regulation experiments:
  - Nationwide “Press Councils” persons

http://usinfo.state.gov/usa/infousa/media/files/media/cd.htm

Press Self-Regulation
Examples:
1) Press Complaints Commission (UK)
2) Australian Press Council


Media Self-Regulation
The UK Press Council was renamed the Press Complaints Commission in 1990.
Press Complaints Commission

Functions:
- Investigates complaints about content (accuracy, etc.)
- Regulates and enforces press activity with its Code of Practice.

http://www.pcc.org.uk/

Press Complaints Commission Code of Practice
- Stipulates reasonable privacy violation
- Defines protected groups whose anonymity must be preserved (e.g. victims of sex crimes, hospital patients, individuals who may face discrimination)

http://www.pcc.org.uk/

PCC Sanctions
The PCC cannot impose fines, but it requires that all breaches be publicized by editors, a deterrent

http://www.pcc.org.uk/faqs/index.html#faq1_18

U.S. Press Self-Regulation
Some State Press Councils still exist in the U.S., modeled on the European press council model, such as the Minnesota News Council.

http://www.news-council.org/

http://usinfo.state.gov/usa/infousa/media/files/media3cd.htm

Case Discussion: Self-Regulation at Comcast

Eli M. Noam, Entertainment Law and Media Regulation
• Collaborating with other cable companies in order to create ‘standards’ of behavior
  – On customer privacy
  – On billing practices and disputes, etc.
• Reason: to avoid bad business and public image for cable industry as a whole
• To avoid government regulation due to the actions of a few companies
• To serve customers better
• To reduce competition in service quality

for more details see Appendix I: Self-Regulation

C. Managing the Self-Regulation Process

Setting Technical Standards

Standards
• Standards are a mix of industry self-regulation, and governmental/inter-governmental encouragement.
Example: European GSM standards for cell phones

International standards bodies

- ITU (International Telecommunication Union)
- IEC (International Electro-technical Commission)

Companies also form private consortia
- Sometimes work with standards bodies, but
  - Usually develop their own standards

Private consortia usually require a pooling of intellectual property
- Can be either incentive or disincentive to join
- Costs $10-50K to join

Not clear which works better: standard bodies vs. private consortia
- Slow, broad (standard bodies) vs.
  - Fast, narrow (consortia)

A company’s standards director must often deal with both the international standard bodies as well as private consortia
How do companies organize their standards activities?

Internal Organization of the Standards Function Inside A Media and Tech Company

• Considerable variation
• Depends on size, age, tech-savvy of company

- Interview with Dr. Ken Wacks, July 2, 2007.

Internal Organization

• Some companies have full-time employees devoted to standards
  – Headed by a VP-level manager
  – E.g. “Director of Standards and Industry Groups”

- Interview with Dr. Ken Wacks, July 2, 2007.

Internal Organization

• But, more common for employees across company to devote part-time attention to standards, depending on the technology in question
  – Most often from Engineering Dept.

- Interview with Dr. Ken Wacks, July 2, 2007.

Internal Organization

• Sometimes company brings in late-career engineers to monitor standards
  – Less leading-edge tech-savvy, but better at playing the politics of standards game

- Interview with Dr. Ken Wacks, July 2, 2007.
Internal Organization
• Key characterization of smaller, younger companies, esp. in US:
  – No attention paid to standards until they are forced to

Estimating Costs
• Ex: Two engineering employees needed to devote two months each to attend committee meetings, travel, etc.
• Plus two weeks each worth of part-time attention

Estimating Costs
• Ex: Salaries estimated at $100K, $175K, respectively.
• Based on about 2.5 months each, cost is apx. $60K/year
• Very rough estimate, varies considerably across companies

Estimating Costs
• Larger companies would expend several hundred thousand dollars per year on influencing and monitoring standards
• A big standards battle (e.g., Sony Blue-Ray vs. Matsushita’s HD-DVD) would cost many millions just in the standards body process

Estimating Costs of Standards
• Mid-size tech company (apx. 100 employees)
  – Estimation based on employees’ time devoted,
  – Of about 2.5 monthly each, about 60K/yr

• Suppose a company has an interest in seeing a standard adopted internationally.
• First step is to find out if anyone else is working on developing this standard
• Is a standard body already working to develop a standard?
• Are there consortia for this standard?
• Are there other companies with an interest in this standard? For/against?

• ISO, IEC, etc. have liaisons between committees, etc. to avoid duplication of standards.
• Identify what group would be working on the standard
• What group within one’s country is working on the standard?

• Next step is to influence one’s own country
• Within country, standards are written by delegated experts appointed by country
• These experts often have “marching orders” from their country as well as their company

• Some countries (e.g. China) allocate state money to the standards process
• The US does not

• In US, ANSI (American National Standards Institute) delegates the power to various industry trade groups like TIA (Telecommunications Industry Association) to actually write standards for international proposal

• Groups like TIA then allow companies to join and charge memberships fees. based on revenue, min. $1,200/yr, up to max. $72,000/yr
• Any company with a US presence can participate
  – So it can include many non-US firms


Interview with Dr. Ken Wacks, July 2, 2007.
Once member of the appropriate committee, next step is try to find other companies in agreement, if possible
– Socialize during coffee breaks, etc.

Interview with Dr. Ken Wacks, July 2, 2007.

Once a national standard is set and State Dept. finalizes national positions on it, individual companies have to support the U.S. govt. In all its decisions, at least in public.

Interview with Dr. Ken Wacks, July 2, 2007.

Idea is to create a New Work Item Proposal (NWIP) to send to other countries for their endorsement
• Best to get committee to back the proposal, but may also circulate proposal to other countries without endorsement

Interview with Dr. Ken Wacks, July 2, 2007.

Committee then decides whether or not to endorse the NWIP
• Requires “substantial support”
  – More than 50% must vote Yes
  – Less then 25% can vote No
  – Members may abstain

Interview with Dr. Ken Wacks, July 2, 2007.

NWIP is then circulated (sometimes without the endorsement of home country’s committee)
• For NWIP to survive in the international process a majority of countries must agree discussion is worthwhile, and at least 5 countries must agree to vote for it.

Interview with Dr. Ken Wacks, July 2, 2007.

Countries then choose to either:
• Endorse the NWIP
• Not endorse it, which requires comments/revision
• Old draft + comments then becomes new draft, recirculated to countries

Interview with Dr. Ken Wacks, July 2, 2007.
• At this stage, companies often try to influence countries other than their home country
  • EU, Japan generally more savvy at this than the US
  • Behind-the-scenes lobbying, often by government consultants or employees

• Each country in international standards bodies receives one vote, “one country, one vote”

Using Standards Strategically
• When multiple companies want to see a certain standard implemented, they may pool their efforts
  – Even if they are competitors

• Each subsequent phase takes about 3-6 months
  • Eventually reach a Final Draft International Standard
  • Then is published, put in library, and sold

• A key characteristic is that the process is very political
  • Companies/countries may call in favors from other companies or countries
  • Debate not only on merits, but also procedures, rules, paperwork.

• Companies often will hire consultants, specialists to represent them in negotiations, committee meetings
  – Can argue, propose, monitor, etc. on company’s behalf
Standard Setting Tactics

• Try to know other participants’ objectives before hand
• Have an idea on who is one’s ally and what compromises one might have to make

• Look for Logrolling Opportunities
• Standard-setting process is composed of politics and economics
• Look for side deals
• Look for strong allies

Be Strategic in Cutting Deals
• Be selective when picking sides
• Always consider following
  – Low cost licensing
  – Multiple sourcing
  – Agree on giving back patents for improvements
  – Assure future participation on joint tech development as this and future products
• Also consider deals on future

Cost-Benefit Analysis
• Very difficult to ascertain benefits
• For some companies, failure to have standard adopted can be fatal
• Some use standards more as marketing tool, non-essential

for more details see Appendix J: Technical Standards
for more details see Appendix K: Using the Standards Process

for more details see Appendix L: Supranational Regulation

III.2. Direct Government Regulation

Regulation: Inconsistent?

Regulation: Antiquated?
Regulation: Ineffective?

A. Role of Government Regulation

Who Regulates the Media Industry? (US)
- Federal Government
  - Congress
  - Federal Communications Commission (telecom & TV)

The Regulatory Process in US
- Legislature passes broad law, delegates details to specialized regulatory commission -- FCC

Independent Regulatory Commissions in the U.S.
- FCC
- SEC
- FTC
- State Public Service Commissions (PSCs and PVCs)

FTC

http://assets.bizjournals.com/story_image/112607-600-0-2.jpg
“4th Branch of Government”

- Independent commissions with broad powers
- Set general rules (quasi-legislative)
- Decide specific cases (quasi-judicial)
- Implement the law (e.g., select TV licenses) (executive)
- Enforce compliance (executive)

Alternative: Executive Agencies

- Part of Executive Branch
- Subject to Presidential authority
- Example: USPTO, DoJ

• Appointed by President, confirmed by Senate and then independent from them

William Randolph Hearst
Pro-socialization

Charles Evans Hughes
Pro-regulation

• US: vital infrastructure industries are private but regulated
• 1906: Governor’s election in NY:
  – Hughes wins over Hearst, establishes regulatory commission (PSC)
• In contrast, most other countries: state ownership for a long time
  – telecom
  – TV

• Goals:
  – Public control over vital infrastructure
  – State influence over politics, culture
  – Redistribution, low prices
  – Source of hard currency (telecom of developing countries)

But the government System changed in recent years
• Privatization
• Licensing of rival competitors
• Regulation by semi-independent national regulatory agency (NRA)

• Even with privatization, there are major governmental ownership stakes in telecom in several countries left.
  • Japan (NTT)
  • France (France Telecom)
  • Germany (Deutsche-Telekom)

– Federal Trade Commission (advertising and competition)
– Department of Justice/Antitrust Division (market structure)
- Commerce Department
  - National Telecommunications and Information Administration (frequencies)
  - National Institute of Standards and Technology technical (standards oversight)
- Securities and Exchange Commission (investments)

Department of Commerce

U.S. Patent and Trademark Office

- US Trade Representative (trade)
- US Patent and Trademark Office (USPTO intellectual property)
- Registrar of Copyrights (IP)
- Copyright Royalty Tribunal (IP)

- State Department (foreign representation)
- The Courts: US Supreme Court, Lower courts
  - 51 state PSCs (Public Service Commissions) for telecomm
  - Thousands of local and state cable TV franchise office

Organizational Structure of FCC
Organization of Regulatory Staff

- Economists, lawyers, accountants, financial assistants
- “Task force” and “working group” approach (avoid rigid hierarchies)

Example: FCC Licensing of Nongovernmental Spectrum

- Allocating blocks (bands)
- Alloting channels within bands
- Assigning licenses to applicants
- Monitoring compliance with conditions of licenses

Source: Law and Regulation

FCC Activities

- Licensing of broadcasters
- Price regulation of some telco and cable TV activities
- Entry conditions for competitors, and interconnection prices
- Ownership limits on broadcasters and cable
- Etc, etc, etc.

Television Regulatory Agency - Canada

- Canadian Radio-television and Telecommunications Commission (CRTC)

CRTC in Canada


Source: Law and Regulation
Television Regulatory Agency - Canada

- CRTC enforces the **Canadian Content Rules**
  - Passed by **Canadian Department of Heritage**
  - Requires certain amount of content aired to be created by Canadians, using point system


Television Regulatory Agency – South Korea

- **Korean Broadcasting Commission (KBC)**
  - Established by the Broadcasting Law of 1987
  - Content restrictions much more strict than in the U.S.


Television Regulatory Agency – India

- **Ministry of Information and Broadcasting**
  - Enforces content code,
  - Cable Television Networks Rules, 1994


Television Regulatory Agency – China

- **Controlled by State Administration of Radio, Film, and Television**
  - State ownership of television - **China Central Television (CCTV)**


Television Regulatory Agency – China

- **China Central Television (CCTV)**
  - Content influenced by the **Propaganda Department**
  - Local stations also state-owned, state censored


A. Strategic Use of Regulatory Process
Strategic Use of the Regulatory Process

• Example: AT&T/BellSouth Merger
  –(March 2006) AT&T announced plan for merger with BellSouth


Strategic Use of the Regulatory Process

• AT&T/BellSouth Merger
  –Proposed merger opposed by new entry telecom providers and interest groups


Strategic Use of the Regulatory Process

• Ex: AT&T/BellSouth Merger
  –Combined company would control about 40% the U.S. telephones

Strategic Use of the Regulatory Process

• Ex: AT&T/BellSouth Merger
  –Opposition group claimed potential loss of competition, loss of network neutrality, and other potential abuses


Strategic Use of the Regulatory Process

• Ex: AT&T/BellSouth Merger
  –Realizing that FCC unlikely to block merger, opposition group focused on delaying and attaching favorable provisions to the merger’s approval


Strategic Use of the Regulatory Process

• AT&T/BellSouth Merger
  –(Fall 2006) Disagreement at FCC among FCC commissions over what conditions to attach to merger
  –FCC vote repeatedly delayed

Strategic Use of the Regulatory Process
- AT&T/BellSouth Merger
  - (fall 2006) To hasten the merger’s approval, AT&T made several concessions
    • Rural connectivity, low prices


Strategic Use of the Regulatory Process
- AT&T/BellSouth Merger
  “While we regret that the merger has been delayed by the self-interest of commercial entities and their litany of unreasonable demands, we look forward to the FCC’s approval.”
  - AT&T, November 2006

The Regulatory Game: Game Theory
- John Nash c. 1948

Nash Equilibrium
- A Nash equilibrium is an action profile (list of actions, one for each player) where all players use a strategy that is optimal taking the strategy of all other players as given.
Game Theory

- Models that analyze oligopolistic behavior as strategic moves and counter-moves
- A firm in oligopoly uses analysis in order to take into account the reasoning of other firms, i.e. to analyze strategic behavior of other firms

Drawbacks for Game Theory

- Most circumstances dealing with multiple players calls for more complicated analysis
- Caused slow development of Game Theory as “management technique”

Win-Win Situation

- Best interests aren’t always to bring down competition
- *Win-win strategy advantages:* allows firms to cooperate, firms less resistant to win-win strategy so easier to implement, imitation of win-win strategies favorable

Prisoner’s Dilemma

- Collusion and sharing the market may be more profitable than threatening a regulatory war which would be less profitable for both Comcast and the other company

- Game theory helps sharpen thinking
- Popular in B-schools
- Both the analysis works mostly for 2-3 player scenarios
- For most situations it doesn’t really provide answers


Prisoner’s Dilemma

Firm A’s Payoff Matrix

<table>
<thead>
<tr>
<th>Regulatory Investment</th>
<th>B’s Payoff Matrix</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10</td>
<td>$10</td>
</tr>
<tr>
<td>$15</td>
<td>$15</td>
</tr>
</tbody>
</table>

A’s Regulatory Investment

- $10 $150m. $50m.
- $15 $180m. $80m.

- A’s payoff matrix indicates that $10 regulatory investment is the appropriate
- If A selects $10, than B’s best act is to do the same

Prisoner’s Dilemma

Firm B’s Payoff Matrix

<table>
<thead>
<tr>
<th>Regulatory Investment</th>
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<td>$15</td>
</tr>
</tbody>
</table>

A’s Regulatory Investment

- $10 $150m. $180m.
- $15 $50m. $80m.

- Apparent paradox or Dilemma: This solution will end both firms up to lower profits
- The solution rests with cooperative, coordinated or “tacit” strategy

Case Discussion:

Regulatory Competition

- How much should Comcast invest in the regulatory process?
- How much AT&T?
- Example of AT&T and Comcast trying to block each other’s entry into their turf
The negative net present value for Comcast of AT&T’s completed entry is about $471m.

• To Comcast, having AT&T as a competitor is worth a negative $471m.
• How much is the benefit to delay AT&T’s entry?

The negative NPV on Comcast of AT&T’s entry with 1 year delay is about $371m.
• Hence, the NPV for Comcast of delaying AT&T’s entry is almost exactly $100m by 1 year delay.

Conclusion:
• Impact on Comcast of
  • 1 year delay of AT&T’s project: $100mil
  • 1 year delay of its own project: $39mil

• How much then should Comcast spend on regulatory process?
• Offensively, to gain Voip approval, maximum $39 million, in present value
• Defensively, maximum $100 million present value, to delay IPTV by AT&T
• So far, this was a “static” analysis, with static probabilities and set costs and rewards.
• But the real question is often “how much to invest” in a case, and how to respond to one’s rival, in a dynamic situation.

• This is the same analysis as we discussed earlier for litigation

• The optimization solution of non-market spending by firm A is to invest until marginal cost = marginal benefits

This requires:
1. estimation of $ value of goal
2. estimation of probability of success, with zero investment, given an estimated spending by the “other side” firm B
3. Estimation of impact on probability of success of spending above those of the other side, e.g., of $100,000, $200,000, $1 mil, etc.

• Again, for every investment level by Comcast, there is an optimal spending level—a “reaction function” by AT&T.
• But Comcast will also do the same calculation for AT&T’s spending level, and thereby set its own “reaction function” of optimal spending. See next graph

• Comcast and AT&T will raise each other’s spending until equilibrium Point E.
• In other response configurations, there is no equilibrium Point E, and Comcast and AT&T may try to outspend each other in an “arms race” to the top, continuously increasing their spending.
• That is possible when the expectations of probabilities and rewards differ widely

• But more likely, both sides will then conduct a cost-benefit analysis for the spending and consider settlement parameters based on the decision calculus discussed above.

For more details see Appendix P: Strategic Use of Regulatory Process
OUTLINE: MEDIA LAW & REGULATION

Section A: MANAGING NON-MARKET COMPETITION

I. LEGAL & PUBLIC AFFAIRS FUNCTIONS IN MEDIA FIRMS
   • Entertainment and IPR Law
   • Inside & Outside Case: Comcast vs. AT&T
   • Litigation Management
     – Budgeting

II. INFLUENCING GOVERNMENT AND THE PUBLIC
   • Lobbying
     – Organization
   • Public Relations
     – Strategies
     – Reaction
     – Reputation

III. THE REGULATORY PROCESS
   • Self Regulation
     – Standard process
   • Direct Government Regulation
     – Role & Strategic Use
   IV. SUBSTANTIVE MEDIA LAW
   • Content Restrictions
   • Anti-Competitive Behavior
   • Profit Regulation

V. GOVERNMENT INDUSTRIAL AND CULTURAL POLICY

VI. CONCLUSION

IV. Substantive Media Law

IV.1. Content Restrictions

Free Speech Protections
   • 1st Amendment of US Constitution
   • Similar provisions in other democracies

Eli M. Noam, Entertainment Law and Media Regulation 794
http://www.nidlink.com/~bobhard/constit1.jpg

US Constitution
• But there are some limits to freedom of the media to publish or show anything.

Limitations of Free Speech Protection
• Defamation (libel, slander)
• Obscenity
• Public Safety
• Copyright

A. Defamation – Libel and Slander
• Publication or broadcast of false information exposing individual to social or occupational injury

• In the US, classification of a plaintiff as a public or private figure is critical for determining the applicable standard of proof in a defamation case

• The Court ruled that public figures have a higher burden of proof in a libel case than private citizens. They have to prove a libelous statement is not just false but is published with malicious intent or with reckless disregard.

• In the US, When the plaintiff is a private figure, these can be recovery of actual damages – damages upon a showing of negligence (unless state law requires a higher standard)


http://mediabibel.org/cases-conflicts/
Libel Standard in U.S.

- About public figures - knowingly or recklessly making false statement harming another's reputation
- stronger protection for private persons.
- Truth is a defense
- 1964 NY Times v. Sullivan case set standard

In America, burden of proof on the plaintiff, whereas most other countries, the defense must prove that the statement was not libelous, e.g., that it was true

–English libel law is, for example, much more pro-plaintiff than in US (i.e., restrictive of the press)

In Britain, libel defendants (i.e., the press) have the burden of proof and the loser is liable for court costs and damages of the winner.

In Britain, libel defendants (i.e., the press) have the burden of proof and the loser is liable for court costs and damages of the winner.

http://www.nationalenquirer.com/

Major causes of Libel Suits

- Carelessness
- Lack of internal verification process
- Therefore, media managers must ensure that internal controls and safeguards are in place
- Libel Insurance provides protection

Case: Hustler Magazine & Larry C. Flynt v. Jerry Falwell

http://www.nationalenquirer.com/

In Singapore, restrictive libel laws used against critics of government
- Critics and journalists have been bankrupted by court decisions

http://mediabel.org/cases-conflicts/

http://mediabel.org/cases-conflicts/

http://mediabel.org/cases-conflicts/

http://mediabel.org/cases-conflicts/
Hustler Magazine
• In a 1983 parody of a magazine advertisement for a popular liquor, Hustler described a Jerry Falwell (Fundamentalist leader) having an incestuous encounter with his mother. Falwell sued.

Hustler
• The Court held that the parody did not amount to libel. Moreover, the jury found that the ad "was not reasonably believable."

Case: Texas Cattlemen VS. Oprah Winfrey
• Oprah Winfrey's talk show covered the potential risk of contracting "Mad Cow" disease in America
• Beef prices fell for two weeks after the show's airing

Oprah vs. Texas Cattle
• Several cattlemen claimed a collective loss of more than $12 mil under the Texas "veggie libel" law which holds people liable for falsely disparaging food products
• Food disparagement:
  –13 US states have passed “veggie libel” laws to "protect" farmers and food companies from criticism of perishable agricultural products

• Court ruled that the cattlemen had to show that Winfrey had deliberately or recklessly made false statements that hurt their business.

Internet Libel Cases

• A publisher is liable for defamation without being aware of the defamatory statement but a distributor is liable only if he is aware of it
• And what about the Internet where many users make reckless statements. does anything go?

Libel on the Internet
• Problem arises when a libelous message is placed onto an electronic bulletin board, chat, etc
• Are the the ISP or portal liable?

• Case: Stratton Oakmont v. Prodigy (1995)
  –Investment bank sued Prodigy for statements posted on "MoneyTalk" bulletin board which asserted that Stratton had engaged in fraudulent activity
• Prodigy had right to control content of bulletin boards, and used software to screen out obscene or offensive language
• Thus, Prodigy had functioned more than as a mere passive distributor, and held liable

• Led Congress to pass "good Samaritan" provision in 1996 Telecom Act
  – It limited the liability for defamation of a computer service provider.

Libel Case: Internet
Matt Drudge & AOL
v.
White House Communication

Internet Libel
• Matt Drudge, the creator of the Drudge Report, was sued by White House aide Sydney Blumenthal for libel, defamation, false light, et. al.
• AOL was also sued for displaying the report

White House aide Sidney Blumenthal sued Matt Drudge for libel on August 27, 1997, two weeks after Drudge posted a false story alleging that Blumenthal beat up his wife.

•Sidney Blumenthal
Matt Drudge

Drudge apologized and retracted the story the next day, but Blumenthal filed two weeks later a $30 million libel lawsuit.

Internet Libel

Court judges ruled that AOL was not liable for the allegedly defamatory comments posted on AOL by Drudge, based on the 1996 law.

How media companies deal with libel

They take errors & Omissions (E&O) Insurance
  - cover affairs claims for libel, slander, breach of privacy, or publicity
Case Discussion:
How much should Comcast invest to avoid potential liability for defamation?

Comcast Investment
• An estimate for Comcast is as follows:
  – Cost of complying
  – Cost of settlements
  – Cost of judgments
  – Cost of trials

Comcast Investment
• 10 lawsuits per year for unpreventable error
• 20 suits per year due to preventable error
• An estimated 10% of the suits go to trial (3 to trial)
• Avg. Cost per trial $5m
• Avg. lost trials per year: 50% of trials
• Avg. Judgment per trial $20m

• Internal safeguards would reduce probability of preventable error lawsuits by 1% per $10 million spent.
• trial cost $15m , 1.5 lost trial $30m
• Expected libel cost total $72m for the year
• Plus insurance premiums in excess of payment received

• This does not include negative impact on its reputation as a news source

• To reduce number of lawsuits by only 10% would lower expected cost by $7.2 mil.
• If Comcast can lower the probability for less than $7.2 mil. it would be better off
Comcast Investment
• Reduce expected cost is $3 million per $1 million in cost of safeguards
• Comcast should institute enough internal controls of $10 million to really eliminate preventable errors.

Case Discussion: Comcast
• Is Comcast more vulnerable to libel lawsuits than AT&T?

• Yes. Because AT&T is not a common carrier. Cannot select and screen content
• In contrast, Comcast selects most of its channels. If it has a warning & complaints and takes no corrective action, it assumes some liability.

B. Obscenity and Indecency

Obscenity
• What is it?
• “You know it when you see it”?
US Supreme Court standard for obscenity: multiple elements
1. “To the average person”
2. “Applying contemporary community standards”
3. “The dominant theme of the material taken as a whole appeals to prurient interest”

4. “That it is patently offensive, as defined by state law”
5. “and that it lacks serious literary, scientific, political or artistic value”

Which “Community”?  
- Problem with determining extent of community (local, national)  
- Material that is intentionally sent from one community to another is subject to the standards of the receiving community

• For broadcasting, a lower standard for obscenity: “patently offensive”  
• *FCC v. Pacifica Foundation* (1978) held that a radio station’s broadcast of George Carlin’s “Filthy Words” monologue was unprotected because of the “pervasive presence” of radio broadcasts, and accessibility to children

FCC Broadcast Rules  
- “Indecency” prohibited in addition to “obscenity.”
- Indecency includes: non-sexual nudity and offensive words

Why less free speech rights for broadcasters than for print or internet?  
- Limited number of licenses  
  – content restrictions  
  – public interest obligations  
  – originally, “equal-time-and-access” rules for major political candidates
2004 Super Bowl
• In 2004, Janet Jackson reveals breast partly in Super Bowl half-time show produced by MTV and aired by CBS

• The 20 CBS-owned local TV stations were fined the maximum indecency penalty (at that time) of $27,500 each for incident

• The 2004 Super Bowl incident resulted in increased FCC fines.

• However, the Court left the door open for the FCC to impose fines for similar incidents in the future if it publicly announces a new policy.

• The FCC fined CBS $550,000 for the incident.
• CBS appealed.

• In 2008, the 3rd Circuit Court of Appeals in Philadelphia overturned the fine.
• The court said that by imposing the fine, the FCC had adopted a new policy without informing the public.

• The court said that by imposing the fine, the FCC had adopted a new policy without informing the public.

FCC Indecency Complaints
• Trends:
• Post-2004 Super Bowl incident:
  – More reported complaints per incident
  – Increased FCC fines
  • Broadcast Decency Enforcement Act of 2005 mandates higher penalties

FCC Indecency Complaints

- **Trends:**
  - Avg. complaints/program: (proxy for complaints/incident)
    2000-03: 211
    2004-06: 614
  - Avg. $ fined/ fine
    2000-03: $28,667
    2004-06: $625,820


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* Jan.-June only

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* Jan.-June only

- In 2008, the FCC received 210,190 indecency complaints.
- In Q1 2009, they received 181,080 complaints.


- This unusually high amount in Q1 2009 can be attributed to a single episode of Family Guy on FOX, which generated over 100,000 complaints.

EU Indecency Regulation
• Member states enforce own rules
  –e.g. U.K. Office of
  Communications (Ofcom)
• EC sometimes has final say
  –Policy dating to 1989, amended
  in 1997
  –When content is broadcast across
  borders, EC has final say

EU Indecency Regulation
• EC (Article 22) requires member
  states to protect minors from
  damaging indecent content
  –Requires warnings, either audio
    or visual
  –Damaging content up to member
    states interpretation

EU Indecency Regulation
• No central enforcement agency
• Member states must notify EC of
  penalties
• EC reluctant to micro-manage or
  overrule member states’ policies
  –Usually economically focused

• Under FCC rules and federal
  law, radio stations and over-the-
  air TV channels cannot show
  material that refers to sexual and
  excretory functions

• Congress raises maximum
  fine of indecency from
  $27,500 to $500,000 for
  single indecency violation.
• For a network with 20
  stations, this could add up
  to $10 mil for a single
  impromptu use of the word
  “bullshit”

Back to US
• Howard Stern radio show
  suspended by Clear Channel
  Radio for indecency
• Stern show aired on 6 of Clear
  Channel’s 1200 stations
• Ignored and did not meet Clear
  Channel Radio’s new standards,
  revised in time for the
  Congressional hearing on
  broadcast indecency

To View, Entertainment Law and Media Regulation 864

To View, Entertainment Law and Media Regulation 865

To View, Entertainment Law and Media Regulation 866
• FCC encourages time delay on live broadcasts, display ratings for violence, nudity, and language and inform public about V-Chip.

FCC argues against Self-Regulation
• FCC urges lawmakers to consider regulations that would restrict violent programs to late evening, when most children would not be watching.

Content regulation
• 1996 law requires broadcast and cable television industries to rate violent or indecent programming
• 1996: TV sets sold in the US must be equipped with V (violence)-chip, to block undesirable programs

Educating Parents
• 2006: National Association of Broadcasters with all the networks and major cable groups, spent $300 million for a marketing effort to help educate parents about the V-chip and other technology to block programs.

V-Chip
• Blocks out shows with owner’s opinion of unacceptable ratings
  – TV-Y: Appropriate for all children
  – TV-G: appropriate for a general audience
  – TV-PG: Parental guidance suggested
  – TV-14: Parents strongly cautioned-probably not suitable for children under 14
  – TV-MA: Mature audiences only
-S: Sexual content  
-V: Violence  
-L: Coarse language  
-D: Suggestive dialogue

- American Civil Liberties Union argues against FCC proposal  
  - “F.C.C. recommendations are political pandering.”  
  - “Government should not parent the parents.”

- Studies show that relatively few households use V-chip blocking  
- Parents can also block channels  
- Pro-decency groups now advocate “a la carte” choices of cable users to drop undesirable channels rather than block them

- FCC originally decided that Bono’s expletive was not obscene, as it was not used in a sexual context  
- But, after pressure from “decency groups”, the FCC reverses decision in 2005
• The US Supreme Court government’s appeal in 2008.
• The Supreme Court has not decided on this issue since FCC vs. Pacifica (1978). Since then, language used on cable, satellite, internet has been less prohibited.


• FCC Chairman under Pres. G.W. Bush, Kevin Martin advocate extension of the broadcasting restrictions also to cable and satellite channels, which are not licensed.
• But if this is unlikely to be upheld by U.S. Supreme Court.

• “in light of technological advances reducing the costs of bleeping offending words, it was rational for the agency to step away from its old regime.”


• “The US Supreme Court heard the government’s appeal in 2008.”
• The Court concluded: “the FCC's new policy and its order finding the broadcasts at issue actionably indecent were neither arbitrary nor capricious.”


• “the FCC did not need empirical evidence proving that fleeting expletives constitute harmful "first blows" to children; it suffices to know that children mimic behavior they observe.”

Obscenity on the Internet

- Communications Decency Act of 1996 allowed FCC to criminalize indecency on the Internet

- The bill was signed into law by the President on Dec 2, 2008.

http://www.opencongress.org/bill/110-s602/show

Persistant Congressional Attempts to “Clean Up” the Internet

- CDA
- COPA
- CIPA
- CFVA
- PROTECT Act
- Dot Kids Act

- US 1997: in Reno v. ACLU, the Supreme Court struck down the CDA as a violation of the freedom of speech protected by the First Amendment
• Congress then passed Child Online Protection Act (COPA) in 1998
• COPA was struck down, Supreme Court twice remanded it
• To re-hear whether COPA requirements are “last restrictive” since law passed District Court in Philadelphia
• Law has not been enforced. Never any Internet censorship ever, and status quo.

Also, Children's Internet Protection Act (CIPA)
• Required libraries and schools to install blocking if accepting school funds
• Upheld by Supreme Court, on issue of children have less protected rights

Child Safe Viewing Act of 2007
• Will require the FCC the use of advanced blocking technologies for various platforms

Dot Kids Domain Name Act of 2001
• Would create a new global top-level Internet domain “dot kids” as a haven for children – material that will promote positive experiences for children...

PROTECT Act of 2003
• To protect children?
• Makes it a crime to employ a domain name with the intent of misleading the public to visit websites offering either obscene material or material harmful to minors
Children’s Online Privacy Protection Act of 1998
• FTC requires that:
  – parental consent for commercial web sites & online services collecting info from children under 13
  – Also requires ISPs to notify customers about blocking technologies.

“Public Interest” As Regulatory Mandate
• The FCC defined several components of the public interest which broadcasters must follow: a) balance of opposing viewpoints b) localism, e) diversity in terms of programming and ownership
• In TV Broadcasting, content rules are stricter.

Broadcast Content Regulation
• Some of these were subsequently dropped
• “Fairness Doctrine” (1949-1987)
  – requires cable operators/broadcasters to discuss important controversial public issues.
  – Red Lion Broadcasting v. FCC (1969) upheld doctrine, for limited airwaves
  – In 2000, also dropped “personal attack” and political editorial rules for reply
  – But FCC 1987

Press need not be balanced or even accurate
• 1974 Miami Herald v. Tornillo: newspaper has exclusive right to determine which messages to carry and which to refuse.
  – There is no outside right of reply to mistakes in the paper
Children’s TV

• 1996: FCC requires all TV stations to air at least 3 hours of children’s educational programming per week.

But, what is “educational?”

• Univision TV broadcasting company fined $24 mil for counting telenovelas as “educational.”

• All TV broadcasters must have 3 hours of “core” educational programs – with an “EI” (education information) logo on screen

Children’s Television Act of 1990

–Restricts amount of advertising during children’s programming to 10.5 mins/hr on weekends and 12 minutes on weekdays

Advertising Aimed at Children

• Premise: Children cannot easily distinguish between programming and advertising and are easily influenced

• 1978-1989 FTC tries, mostly unsuccessfully, to limit advertising aimed at children

Other TV Content Regulations to protect children

–“Safe Harbor:” early evening TV programs reserved to family shows
C. Government Restrictions of Publication

C.1 Restrictions of Publication for Governmental Reasons

- Material endangering Nat’l Security cannot be censored
  – no “prior restraint,” even with court order

“Strict Scrutiny” of government claim for court-mandated suppression
– Requires that the publication would “intentionally incite imminent violence or other great harm, with the likelihood that it will occur, and which cannot be prevented except by suppression”

Exception is very difficult to obtain from court by government
– In “Pentagon Paper Case” against NY Times and Washington Post) restraint was not accepted by the US Supreme Court

This strict scrutiny could also apply to violation of privacy, and to other disclosures

One instance of prior constraint was by a lower court on “The Progressive” against publishing a “how to” on building a bomb

Such prior restraints likely to be held unconstitutional, but the government dropped case.


Last Accessed on 24 June 2008
C. 2 Judicial “Gag” Orders
• On reporting of trials, to protect fair trial
• In U.S., must be instituted by the judge on the case
• Strict standard (on press; more frequent on the lawyers in a case, to prevent lawyers’ grandstanding before the press)
• More prevalent in UK

C.3 “Son of Sam Laws”
• “prohibited criminals from earning money from the sale of their story
–But struck down by Supreme Court

Restrictions on Press Coverage in Britain: Official Secrets Act
• UK act of Parliament 1989, prohibiting the disclosure of confidential material from government sources by employees and also journalists

Official Secrets Act (UK)
• There is no public-interest defense based on the “public interest” in a publication. Even disclosure of information already in the public domain is still a crime. (Such as published in the US already)

C.4 Private “Prior Restraints” by private parties
• Motion Picture Association (MPAA) successful in preventing online hackers’ magazine 2600 from publishing code on how to defeat DVD encryption.
• But upheld on copyright grounds no on free speech. (1999)

• But act also used simply to prevent disclosures embarrassing to government officials
• C.5 Restraints by Government through approval of scripts

• When governments contribute to a film through financing or grants to produce they can impose restrictions on the script.

• Films about China and Vietnam require script approvals. Therefore, some films were shot in Thailand or Philippines (more expensive).

• Government of India had script approval (and exercised it) on the film “Ghandhi”. Producers and distributors tried to hide this fact.

• A major country’s restriction can affect whole film world-wide
  • the distributors must follow the censorship rules of many countries - including France, Germany, China, Japan, Italy, Mexico, Korea, and Brazil.

• Depending on the country, restrictions can apply regarding the portrayal of political, cultural, or religious movements.
  • Even the depiction of particular kinds of violence can be proscribed - Britain, for example, has banned head butts in fight scenes.


Last Accessed on 24 June 2008
D. Advertising Regulation

- On the U.S. federal level, the Federal Trade Commission in charge of complaints of unfair competition and false advertisement.

State Regulations
- These statutes were drawn up in 1911 by *Printers Ink*, for many years the major trade publication of the advertising industry.
- Adopted by 44 states, as a basis for advertising regulation.
FTC Regulation of Other Promotional Areas

- Contests and Sweepstakes
- Premiums
- Trade Allowances
- Direct Marketing

Federal Regulation of Advertising

- 1938, Congress passed the Wheeler-Lea Amendment.
  - Bans unfair methods of competition

Federal Regulation of Advertising

- Gave the FTC the power to issue cease-and-desist orders and levy fines on violators.
- It extended the FTC’s jurisdiction over false advertising of foods, drugs, cosmetics, and therapeutic devices.

Affirmative Disclosure

- Under its affirmative disclosure requirement, the FTC may require advertisers to include certain types of information in their ads so consumers will be aware of all the consequences, conditions, and limitations associated with the use of a product or service.

Affirmative Disclosure

- Fuel mileage claims in car ads
- Cigarette ads must contain a warning about the health risks associated with smoking.
Affirmative Disclosure

• Specificity on country of origin claims.
• The FTC has been working with marketers and trade associations to develop a better definition of what the "Made in the USA" label means.

Advertising Substantiation Requirement

• Advertisers must have a reasonable basis for ad claims.
• Advertiser must possess substantiation of claim before dissemination.

"Puffery" Permitted

• Exaggerated boasting and subjective claims upon which no reasonable buyer would rely

Types of False Advertisement

• Misrepresentation
• Bait and switch
  – advertise product with no intention of selling, then switch to higher priced item
• False price comparison

FTC Requirements for Internet Ads

• Disclosures must be clear and conspicuous
  – Understandable to the intended audience
  – Volume and cadence, and visual disclosures, must be of sufficient duration

Public Broadcast Station Underwriting

• FCC prohibits public broadcast stations from airing promotional announcements, but:
• Requires on-air acknowledgement of sponsorship
• Must air announcements that do not constitute advertising, as defined by FCC

Deception

a material representation or omission that is likely to mislead a reasonable consumer

• Many media outlets, advertisers, and advertising agencies check and review the ads before airing or publication to ensure that they are not deceptive or offensive

The Lanham Act

• Civil suits by competitors are permitted under the Lanham Act (1947).

The Lanham Act

• The Lanham Act was amended in 1998 to encompass false advertising by prohibiting “any false description or representation including words or other symbols tending falsely to describe or represent the same.”

• Need not be literally false if it deceives.
IV.3 Anti-Competitive Behavior

Case Discussion: Comcast Internet Service Advertising
- Comcast wants to launch an advertising campaign to promote its high-speed Internet offerings.
- Needs to distinguish its service from AT&T without violating the laws against false advertising.

Case Discussion: Comcast Internet Service Advertising
- Suppose Comcast releases the following ad: “Comcast’s high-speed Internet service twice as fast as AT&T’s—and at only half the price.”

Case Discussion: Comcast Internet Service Advertising
- Nothing in the ad appears wholly implausible.
- As such, a “reasonable” buyer has a legitimate expectation that the ad’s claims are demonstrably true.

Case Discussion: Comcast Internet Service Advertising
- Possible Concerns:
  - How is Comcast measuring bit rate speed?
  - Is it using the same metric for measuring the bit rate speed of Comcast and AT&T services?
Case Discussion: Comcast Internet Service Advertising

- What AT&T service package is Comcast comparing to its own service?
- Are they truly comparable packages?

Case Discussion: Comcast Internet Service Advertising

- These are all areas where Comcast may be liable to a false advertising suit brought against it by AT&T or the government.

Case Discussion: Comcast Internet Service Advertising

- Suppose instead Comcast released this ad: “Comcast high-speed Internet is so much cheaper than AT&T, that with the money you’ll save, you’ll never have to work again!”

Case Discussion: Comcast Internet Service Advertising

- The second ad is an obvious exaggeration.
- No “reasonable” buyer would rely on the claim.
- As such, much less risk of a false advertising suit.

“Commercial Speech”
“Commercial Speech”

- Speech on behalf of a profit-making activity
  - Since 1942 as a Supreme Court legal category of speech given less protection
  - Can be regulated (advertising)
- Example: Scientist writing studies show “Product X reduces baldness” ok even if wrong
- But if a company makes same claim in an ad and it’s wrong, it can be sued by competitor or fined by FTC.

“Commercial” firms can speak freely, e.g. through advertising, as long as its statements are not false
- In contrast, “political speech” can be false
- Also banned: ads for illegal product

In California, law banned also “misleading” commercial speech (lower threshold than “false”)

Holding under California constitution, but affects all companies doing business in California, which is almost every major company
- Would probably be overturned by US Sup Ct, but has major chilling effect

Nike vs. Kasky

- California Supreme Court (4:3): no First Amendment defense to Nike ads defending its foreign labor practices. Held to be unprotected commercial speech under California law.
- US Supreme Court took case and then dropped it. Nike then settled rather than fight in California.

Would probably be overturned by US Sup Ct, but has major chilling effect
4 Parts test for Commercial Speech Restrictions (“Central Hudson Test”)

1. Speech that is inaccurate can be banned
2. Even if speech is accurate, there can be a public interest in regulating it
3. But restriction must be effective
4. There must be “reasonable fit” of goal and restriction

• Supreme Court increasingly reluctant to uphold restrictions on commercial speech, and the “Commercial Speech Doctrine” may be on its way out favor of full First Amendment Speech Rights to commercial entities for their communications.
• Has upheld even ads for cigarettes despite their being also viewed by children, e.g., on billboards

Standards & Practices Departments
• “Standards of Practice of the American Association of Advertising Agencies”
  – Self-censoring code of advertising industry

• Special concerns, laws regarding advertising of alcohol
• “Beer Institute Advertising and Marketing Code”, example of industry code

• Alcohol and tobacco advertising must target adult audiences
  – Air when adults are watching
  – Not appeal directly to children
IV.2. Antitrust and Market Structure Law

Major US Antitrust Laws

- Sherman Antitrust Act of 1890
  - Section 1: agreements in restraint of trade
  - Section 2: monopoly power
- Antitrust violations can be criminal or civil

- Theory: market structure determines firm behavior and performance
- Problem: Can lead to micro-management of industry by government

- Monopoly is not illegal “per se” anymore
- But monopolies obtained through acquisitions, predatory pricing, exclusive dealing, etc., can be challenged
- Suspect practices will be prohibited or a merger blocked

Private Antitrust Suits

- Winning plaintiff in U.S. can get 3x actual damages, plus attorney’s fees
- Create a strong incentive for plaintiff and its contingent-fee lawyer
Private Antitrust Suits

• Claims for hundreds of millions of dollars
• Losing a private antitrust suit can therefore cost billions of dollars to the loser

Other Remedies

• The FTC can command firms to discontinue specific practices – “cease-and-desist” order

State Antitrust

• There is also state antitrust enforcement, with increasing importance

Minolta Case

• 37 States sued on behalf of their citizens against Minolta and its dealers for conspiracy to fix minimum prices on Minolta cameras.
• Minolta had to refund consumers
Antitrust laws
• A firm could be split up
• This happened to
  – Hollywood studios (divestiture of theaters)
  – AT&T
  – Microsoft (almost)
  – NBC (one of its two radio networks)

1984: AT&T Divestiture.
The Bell System broken into 8 pieces by antitrust case
  – Competitive parts stay with AT&T (Long-distance, equipment). Monopolistic parts go to 7 RBOCs

AT&T in Antitrust
• Major Antitrust cases against AT&T with competitors, and freeze its expansions
  • 1913 (AT&T must cooperate)
  • 1955 (AT&T is excluded from computer manufacturing and overseas
  • 1982 (old AT&T split into 8 firms)

US v. Microsoft
• 2000: District judge orders MS broken up in two parts
• 2001: Judge partly overturned
• 2003: MS settlement with new administration

2nd Major Antitrust Law: Clayton Act of 1914
• Prohibits Horizontal Agreements (Cartels) where Competitors restrict competition
  – Price-fixing
  – Restriction of output
  – Group boycotts
  – Market-division of territories or customers

• Principle: Agreements among competitors that raise, lower, or stabilize prices are per se unlawful…
  – Except when the restraint is truly ancillary to a pro-competitive integration of the parties’ economic activities
“Conscious Parallelism” of Pricing?

• The courts have held that parallel behavior alone is insufficient to prove conspiracy

Matsushita Case

• The court held that the evidence of a conspiracy was insufficient
• Parallel pricing and related tactics are legal if they are based on an independent business justification

Exchanges of Price Information Among Competitors

• not unlawful per se
  – If the data are available to the public
  – If no coercive mechanisms that pressure members to adhere to price schedules
  – If legitimate business reason for the exchange of information

Government Enforcement Tools for Price Fixing

• Amnesty program – to all managers and companies who cooperate with an investigation.
• Amnesty only to “the first in the door.”
• Identity of cooperating firm kept confidential

There are specific exemptions to antitrust laws

• Professional baseball and football leagues
• Labor unions
• Regulated utilities
• Regulated firms
• Newspapers (partly)

• Congress passed “Newspaper Preservation Act” (NPA) of 1970 to give daily newspapers some exemptions from antitrust laws
  – Two newspapers within a market may form a joint operating agreement (JOA) when one is in probable danger of financial failure
• **Newspaper Preservation Act of 1970 (NPA)** protects newspapers from some aspects of antitrust law.

• **NPA**: Designed to encourage the existence of multiple daily newspapers within a locality or region that would otherwise be unable to support more than one paper.

• **NPA** allows newspapers in competition within a market to form a joint operating agreement (JOA).

• **JOA** allows competing daily newspapers to combine some business activities while maintaining separate papers.

• **Ex**: sharing a printing press

• In order to allow a JOA, it must be shown that the lack thereof would result in the failure of one of the two competing papers. “Probability of financial failure” as defined by statute.

• **Major cities with JOAs between newspapers**:
  – Albuquerque, Cincinnati, Denver, Detroit, Las Vegas, Salt Lake City, Seattle

Discussion Case: Federal Judge Certifies Antitrust Class Against Comcast

• A federal judge has certified a class action antitrust suit against cable television giant Comcast Corp.
• The suit alleges Comcast set out to establish monopolies in the Philadelphia and Chicago markets and then increase prices once competition is eliminated.

http://www.law.com/jsp/IHC/PubArticleIHC.jsp?id=117870148540

E. EU Antitrust Policy

• International Antitrust Enforcement Assistance Act of 1994
  – US authorities may help foreign antitrust enforcers

EU Antitrust Policy

• EC laws differ from US in that the critical issue is the abuse of a dominant market position not just the possession
  – The EU standard is softer on dominant firms

• EU competition laws derive from the Treaty of Rome which
  – prohibit conspiracies which restrict, prevent, or distort competition between member states
  – prohibit companies with dominant market position from abusing their position
EU opposes some mergers
The EU has prohibited several media mergers
- MCI-WorldCom
- Worldcom-Sprint
- Bertelsmann-Kirch-Deutsche Telekom digital TV
- Time Warner – EMI
- Bertelsmann - EMI

• EU Merger Regulation
• MCI Worldcom, Sprint
• EC prohibited merger in 2000
• (Technically, merger had already been blocked by the Justice Dept. in the US)

• EU Merger Regulation
• MCI Worldcom & Sprint
• Groundbreaking decision: Both companies are US-based.
• EC had never previously prohibited a merger of two US companies

• EU Merger Regulation
• MCI Worldcom, Sprint
• EC had jurisdiction to prohibit merger because markets in its member states would have been adversely affected.

Microsoft Antitrust Case in Europe

• Microsoft Antitrust Europe
• 2006: EU officials warning Microsoft not to shut out rivals in the security software market by launching its Windows Vista operating system with built-in protection from hackers and malicious programs

• http://antonella.beccaria.org/images/eu_vs_microsoft.jpg
Microsoft Antitrust Europe

- In 2006 the EU fined Microsoft $357 million for not complying with their mandate.
- In 2007, the EU fined Microsoft another $613 million for not complying with mandate.

Microsoft Antitrust Europe

- In 2007, the EU fined Microsoft another $613 million for not complying with mandate.

Microsoft Antitrust Europe

- In 2008 the EU initiated two investigations against Microsoft for bundling of browser and operating system and refusal to disclose information enabling competitor interoperability.

Microsoft Antitrust Europe

- In 2008 the EU fined Microsoft $1.35 billion for continuing to ignore the remedies prescribed in the 2004 ruling.

Microsoft Antitrust Europe

- In 2009 the EU stated that Microsoft’s practice of selling the Internet Explorer together with its Windows operating system violated the unions antitrust rules.

Microsoft Antitrust Europe

- The EU ordered Microsoft to untie its internet browser from its Windows operating system in Europe.

Microsoft Antitrust Europe

- Even these massive interventions Rival web browser have been steadily gaining market share. In January 2009 Microsoft’s share of the Web browser market was 68% compared to about 80% two years earlier.
“Consumer Surplus”
- When a consumer needs to pay less for a good or service than his “willingness to pay”, the difference is called the “consumer surplus”.
- Market prices are lower than the value to the consumer.

- The history of media is the history of the fight over consumer surplus.
  - Fight between consumers, content providers, and distributors
  - Too high a surplus may lower the financial base of media, and its ability to provide content and distribution
  - Too low a surplus means monopoly prices

Graphical Representation of this concept – 3 prices, 3 customers

Consumer surplus is willingness to pay less amount paid
- Demand, Surplus, Willingness

- Price
  - \( P_{Mike} \)
  - \( P_{Joe} \)
  - \( P_{Pam} \)

- # Buyers
  - 1
  - 2
  - 3
Price Discrimination is a key business tool in the information sector to deal with the fundamental economics of “high-fixed cost- low marginal cost”

Law of Price Discrimination in US
• Clayton Act
• Robinson-Patman Act
• No discrimination for Commodities of like grade and quality
• Does not apply to discrimination in services
  – Doctors, cable channels

Legal Defenses Against Price Discrimination
• Cost Justification
  – discounts
• “meeting competition”

One type of price discrimination is B. Predatory Pricing

Predatory Pricing
• Predatory pricing: selling below cost (marginal cost) to eliminate a competitor.
• Once the competition is eliminated the price is raised above the competitive level.

Predatory Pricing
• Very difficult to prove anti-competitive below-cost pricing.
• Pro-competitive price cutting is a benefit to consumers
• U.S. Courts have been reluctant to rule against companies accused of predatory pricing.
Predatory Pricing

• Studies and court decisions show predatory pricing is rare.
• U.S. Supreme Court: “There is a consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful.”


Predatory Pricing

• In 2003, the internet served provider (by France Telecom re-branded as “Orange”). Wanadoo was fined €10m by the European Commission for predatory pricing.
• Europe’s largest ISP


Predatory Pricing

• International example: From 1999-2002, Wanadoo, a French ISP, subsidiary of France Telecom, priced its broadband service at a loss to drive out competition.
• Its market share peaked at 72%.

• Ex: Wanadoo

• Case highlights some difficulties in applying predatory pricing laws to telecom companies
• Difficult to determine “below cost” in telecom service, since marginal costs are naturally so low


•DT, the German telecom incumbent, sold telecom service to both competitors (wholesale) and consumers (retail)

•Example: Deutsche Telekom (DT)

• Ex: Deutsche Telekom (DT)
• Nine competitors file claim with EC that DT was charging them higher wholesale prices than it was charging its retail consumers
• EC fined DT 12.6 million Euros

• Ex: Deutsche Telekom (DT)
• This type of predation also known as “margin/price squeeze”
  – Charging relatively high wholesale price and low retail price

International Predatory Pricing

• **Dumping** – similar to predatory pricing, occurs when a foreign manufacturer undercut prices below its costs or below its price in its home (foreign) market to gain market share in the domestic market

International Predatory Pricing

• U.S. Penalties & Remedies: impose tariff on violating firms equal to the difference in their price and “fair price” as determined by Department of Commerce

International Predatory Pricing

• Unlike predatory pricing laws, U.S. anti-dumping laws are aimed at protecting U.S. businesses directly, rather than consumers.

International Predatory Pricing

• Standard for dumping much less rigorous than U.S. laws on predatory pricing.
• Need only show that low pricing is harming domestic businesses.
International Predatory Pricing
• WTO and GATT determine what remedies are available to countries in dumping situation
• WTO handles disputes over the legality of antidumping laws.
• Countries often use antidumping laws in retaliation, often to U.S.


• Line between aggressive competition and predatory conduct is not clear
  – Ex: Microsoft
• Companies with market power are prohibited from using some tactics that others in a competition may use routinely.

In 1963 Japan began to export television sets to the United States much below the price in Japan

In 1968, the United States Electronic Industry Association filed a complaint about illegal “dumping”.
• Japanese manufacturers stalled the investigation for more than three years

The impact of this illegal price dumping is not small
• In 1968 there were 28 U.S. companies manufacturing TV sets in the U.S. By 1976 only six remained.
• Furthermore, more than 20,000 jobs were lost

In 1971, the U.S. Treasury Department ruled that these Japanese companies violated U.S. laws.
• In 1977, an “orderly marketing agreement” was issued by the Japanese manufacturers
But the agreement had a huge loophole, Japanese manufacturers could produce televisions in the U.S. outside of the quotas.

All major Japanese groups established assembly companies in the U.S.

In the end, the Japanese paid one tenth of what they initially owed for illegal dumping, paying $66 million of the estimated $500 million mandated by the U.S. Treasury Department.

International Predatory Pricing

In 2008, after years of losses, Indian producers of the color picture tubes (CPT) used in TVs accused CPT producers from China, Malaysia, and Korea of dumping CPTs in India.

The U.S. Commerce Department determined in 2007 that imports of paper used in magazines and other published works was being sold below a fair price.

C. Resale Price Maintenance (RPM)
Resale Price Management

- In 2008, the Supreme Court eliminated the per-se illegally for minimum prices, and held that reasonable RPM for a reasonable purposes is legal.

Leegin vs. PSKS

- The Court reconsidered whether Leegin’s vertical minimum resale price maintenance agreements should be deemed per se illegal.

Leegin leather goods

Leegin vs. PSKS

- In 1976, however, under pressure from consumer groups that benefited from lower by large chains, Congress again prohibited by RPM.

Producer or distributor requires retailers to charge a particular price

- Unlawful since the Dr. Miles decision in 1911
- In Great Depression, Congress protected “mom and pop” stores by RPM and leaving RPM to states. (Miler-Tydings Act)

- In 1976, however, under pressure from consumer groups that benefited from lower by large chains, Congress again prohibited by RPM.

- In 2008, the Supreme Court eliminated the per-se illegally for minimum prices, and held that reasonable RPM for a reasonable purposes is legal.
D. Private Antitrust Suits

- In the USA, private antitrust lawsuits relatively frequent, with roughly 10 private antitrust suits occurring for every 1 public suit.
- Encouraging private actions helps enforce competition law.


- But encouraging private parties to sue violators of competition laws may also result in excessive, or frivolous actions.


Incentives to complain:
- Weaken a rival through legal harassment
- Induce the rival to compete less vigorously


Private Antitrust Lawsuits

- When private companies believe they have been wronged by anti-competitive acts, one course of action is to file a private lawsuit of another company.


Private Antitrust Lawsuit

Recoveries in Private Cases  Case Recovery ($ mil)
- Airline Ticket Commission Litigation 86
- Auction Houses 452
- Augmentin 91
- Automotive Refinishing Paint 106
- Buspirone 220
- Caldera 275
- Cardizem (direct class) 110
- Citric Acid 175
- Commercial Explosives 77
- Conwood 1,050

Private Antitrust Lawsuit

Recoveries in Private Cases | Case Recovery ($ mil)
--- | ---
DRAM | 326
Drill Bits | 53
El Paso | 1,427
Flat Glass | 122
Fructose | 531
Graphite Electrodes | 47


IV.4 Profit and Investment Regulation

Why Price & Profits Regulation?

- Fundamental Issue: In presence of a “natural” monopoly, how to ensure service at a “competitive” price?
Profit Regulation

• “Rate of return” regulation: assures profit of monopoly on invested capital to be “reasonable” in comparison to similar reasonable risky investments

Approved return on invest net capital (“rate base”), plus legitimate operating expenses, result in an approved “revenue requirement”, which is translated into service prices (the “rate structure”)

• Proposed rates are published as “tariffs” that apply to all similar customers and are approved by the regulatory agency

Rate of Return Formula
\[
P = \frac{RR}{Q} = \frac{E + d + (V - D)R}{Q}
\]

P = price per unit
RR = revenue requirement
Q = quantity sold
E = operating expenses, including taxes
d = depreciation
V = investment

• Theory: Sets prices that are similar to market prices
• Problems:
  – Each of these items is subjective but very big
  – Incentives to over-invest in capital, and be wasteful in operations
Price Regulation instead of profit regulation

- Tendency to “cost-plus” pricing
- Little incentives to reduce cost
- Complicated to administer

Price Regulation

- Prices are allowed to change according to formula,
  \[ P_{t+1} = P_t + I + \beta \]
  \[ P_t = \text{Price in period } t \]
  \[ I = \text{Inflation} \]
  \[ \beta = \text{Productivity factor} \]

- Problems:
  - Works only if \( P_t \) is already an efficient price
  - \( \beta \) can be subjective and political
  - System can lead to huge monopoly profits, or to ruining companies
- Increasingly complicated to administer

Policy Tool: Redistribution

- “Universal Service” is key political goal.
  - Subsidies to expand telecom and TV coverage beyond market equilibrium

• Price Regulation to Subsidize Rural Areas
  - “rate averaging” regardless of higher cost in rural areas
• Goal: to connect
  – the poor
  – rural areas
  – favored political constituencies
  – Often subsidized through transfers inside a monopoly system

Broad political coalition for universal service
• Conservatives from rural states
• Liberals supportive of the poor
• Equipment manufacturers
• Labor unions

US: very complicated system of universal service financing
• 1998: 4% tax on the revenues of all telecom companies (not Internet)
• Into a universal service fund

“New” Universal Service
• Cheap Internet connectivity for schools, paid by a surcharge on customer phone bills
• $2.25 bil/yr
• Even without the subsidy, Internet penetration in schools
  – 1995/6 < 10%
  – 2000: ~80%
  – 2005: ~95%

• 2009: US economic stimulus law includes $8 billion for broadband upgrade into rural and underserved areas.
for more details see Appendix R: Antitrust and Market Structure Law

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     – Role & Strategic Use
IV. SUBSTANTIVE MEDIA LAW
   • Content Restrictions
   • Anti-Competitive Behavior
   • Profit Regulation
V. GOVERNMENT INDUSTRIAL AND CULTURAL POLICY
   • Most countries encourage development of high-tech industries
   • Notable examples:
     - Japan
     - South Korea
     - Singapore
     - France
     - China
   • But US industrial policy was highly active in 19th Century
   • And today, 100, by states, Federal gov’t & local gov’t and the
Example: China’s WAPI Standard
- Any Wi-Fi chip or system imported into or in China manufactured must employ the WAPI encryption scheme incompatible with the current which is international standard.

China’s Technical Standards
- Foreign vendors feel discriminated, they are forced to produce a product for China alone and deal with local manufacturers and pay high licensing fees on WAPI.


Industrial Policy in France
- France invented the word "entrepreneur"
- But the post World War II French economy had its roots in large state-run companies, so-called “national champions”, which received high levels of government financial and research support.


French Industrial collaboration between the firms and the state on media issues
- Ariane rockets
- Communications satellite
- Minitel consumer computer network system
- SECAM color TV standard
- France Telecom network infrastructure
- Alcatel telecom equipment
- Computers development projects

- Beneficiaries
  - Bull SA  - France Telecom
  - Alstom  - Thomson
  - Camal Plus
  - Alcatel

- Ex: State support for Bull SA, the data processing and computer manufacturing company

- Government made up for Bull’s losses with billions of euros in subsidies
  - “Too big to fail,” company kept alive by subsidies

- But revenues fell from €5bn, 44,000 employees in 1990 to €1.5bn, 8,000 emp. in 2002
  - Bull posted losses in 10 out of 15 years through 2002

- EC rules: a company cannot benefit from state aid more than once a decade
• French Industrial Policy: Bull SA
  • In 1997, Bull officially returned to private sector
  • Government stake reduced to less than 50%


• French Industrial Policy: Bull SA
  • In 2001-2002, gov’t granted €490m “emergency loan”
  • In 2003, gov’t forgave 90% of the loan, a €440m bailout


• French Industrial Policy: Bull SA
  • Bailout called a “grave violation of state aid rules” by EC’s competition commissioner Mario Monti


• French Industrial Policy: Bull SA
  • EC took France to European Court over the loan bailout
  • France proposed bonds-for-shares swap, sale of most of its 16.3% stake in Bull


• French Industrial Policy: Bull SA
  • Bondholders ended up with around 28% stake in Bull
  • Bull still posting losses.
  • Net loss of €17.1m ($22.4m) in FY 2006 (on €1.15bn rev.)


• French Industrial Policy: Bull SA
  • Ex: Alcatel

  • Alcatel has repeatedly received direct and indirect state aid

• French Industrial Policy:
  • Alcatel
  • Alcatel privatized in 1988.
  • French officials admitted allowing Alcatel to overbill the gov’t-controlled France Telecom, as a way to subsidize certain Alcatel projects.


• FrenchIndustrial Policy:
  • Alcatel
  • Alcatel forced into massive layoffs 2000-2002. From 115,000 employees in 2000 to 60,000 in 2002. Had been as high as 190,000 in 1995.


• French Industrial Policy:
  • France Telecom
  • In 2002, gov’t proposed a 9bn EUR emergency loan to FT, to help it pay its 15bn EUR in loan repayments due in 2003 (part of 70bn in debts).
  • France to maintain 55% stake in FT.


• French Industrial Policy:
  • Thomson
  • Thomson makes television and other electronic equipment.
  • France gave 366m ECU for HDTV subsidy in 1991, EC approved.

  *http://content.answers.com/main/content/wp/en/f/fc/Thomsonlogo06.jpg

**France: Film Industry Subsidies**

  • CNC (Centre Nationale de la Cinematographie)
    - 2000: $500 Million
  • Tax Shelters
    - Sofica (Societes de Financement du cinema et de l’audiovisual)
    - company investors can write off 50% of the investment against tax
    - individuals can write off 100%
Government Tax Incentives

- French Sofica (Societes de financement du cinema et de l’audiovisuel) provides tax write-offs of 50% for investments in film projects

- In theory, WTO (World Trade Organization) rules prohibit most such practices
- But many are indirect, and the WTO process is slow
- Much of media is excluded from WTO

VI. Outlook on Government’s Role

C. The Reaction Against Media Firms: The New Information Activism Movement
Media companies have been surprised by the rapid emergence of a counter-force of media activists

The Media Activism Movement

- Media Activism in the information sector is emerged on disparate fronts:

Information Activism

- "open source"
- "Copyleft"
- Privacy protection
- Fight against governmental controls over encryption

Information Activism

- non-commercial community radio and TV
- P2P community
- "Unlicensed spectrum"
- municipal and free wi-fi
- Media Reform fight against media concentration

Tenets of Information Activism

1. Many aspects of social and political life have deteriorated into political apathy, violence, consumerism, gender and racial stereotyping, neglect of the world's poor, poor nutritional habits, etc.

2. Information media play a central role in either creating or exacerbating these problems, or in preventing their alleviation.
3. Therefore, reforms of the information sector equal social reform.

- This syllogism is shared by the anti-authoritarian left with the political right and traditionalists who are deeply suspicious of information medias' role in modernism and hedonism, and with most governments wishing to control information media.

- Activism’s members are well-connected electronically and instantaneously into a world-wide activist network of a kind that never existed before.

- In the industrial age, the control over the "means of production" led to revolutionary movements and the overthrow of governments and social systems.

- In Britain, the "commanding heights" of the economy— the coal and steel sector, were nationalized in the 1940s, with dubious results.

- Today, a similar battle is emerging over control over the "means of information".

- Many people are familiar with various flash points.

- But they often have not connected the dots and recognized that they are facing an incipient social movement on the model of environmentalism.

- As media permeate society, society in turn permeate media.
• Public Knowledge—advocacy group focused on digital rights.

Electronic Frontier Foundation
• Supports the digital privacy and free-speech rights of end-users and independent content-creators.

Parents Television Council
• Works to “stem the flow of harmful and negative messages targeted towards children.”

• Every few decades a truly fundamental technological change is upon us. And inevitably, it is supposed to change the world and make it a better place. Conquer poverty, conquer illness, conquer ignorance, deliver social progress, improve public services, and bring us together.

• And yet, wherever we look today around the information society and economy, protests and protesters are emerging.
• One can almost say that a specter is haunting the information society, the specter of its discontents.
• Why such discontent among the plenty? Isn’t everything in this field becoming cheaper, faster, and wider?
• The actions of dissatisfaction started with individual hackers.
• Considered asocial, maladjusted vandals

• But then more recently it moved to groups, disparate groups with various complaints and goals
Peer-to-peer file sharers

“Unlicensed Spectrum” Advocates

“Open source” movement

THE FAIR USE NETWORK

Netroots for democracy

The CryptoRights Foundation
Free Software Foundation Europe

Foundation for a Free Information Infrastructure

P2P Foundation

League for Programming Freedom

CPSR

The Association for Progressive Communications
• And there are many more.

• Many people are familiar with various flash points they have not connected the dots and recognized that they are facing an incipient social movement on the model of environmentalism.

• Of course, it would be surprising if a technological revolution, an economic transformation, would NOT lead to societal unrest.

The Industrial Revolution

• When, in the 19th century, technology proceeded at a rapid pace while social institutions did not, the results were upheavals and revolutions.

Characteristic: Social Strife
Characteristic: Disruptive to Ecology
http://www.pbase.com/image/814510

Now, another Economic Revolution
• The Information Revolution

What is happening?
• And, Why is this happening?

So what are the forces at work here in the information society, that create disruption? And disruptors?
• Let’s start with the most obvious observation, that in any change, there are winners, and there are losers.

Losers
• Losing industries – music
• Losing companies – Kodak
• Losing technologies – Celluloid film
• Losing employment – Production outsourced, moving offshore

Losing Industry: Music
But those forces of dissatisfaction, while serious, are predictable and traditional.

The more interesting forces of disruption are those of the information sector itself.
The Activism of Civil Society

• As the internet permeates society, society in turn permeates the internet, with its internal and international conflicts.

Tenets of Information Activism

1. Many aspects of social and political life have deteriorated, creating political apathy, violence, consumerism, gender and racial stereotyping, neglect of the world's poor, poor nutritional habits, etc.

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3. Therefore, reforms of the information sector equal social reform.

• This syllogism is shared by the anti-authoritarian left with the political right and traditionalists who are deeply suspicious of information medias' role in modernism and hedonism, and with most governments wishing to control information media.

• On top of this, we have experienced

  Fundamental Instability of the Information Society
We experienced the internet crash; the dotcom bubble; the telecom crisis; the music industry free-fall; the PC stagnation; the wireless saturation; the semiconductor slump; the newspaper recession; and the R&D expenditure drop.

All are interconnected, all follow similar economic dynamics.

Characteristic #1 of Information:
• *Usually extremely high fixed costs and low marginal cost.*
  – Expensive to produce, cheap to reproduce

Production and performance increase exponentially, while consumption increases linearly and slowly.

Recall the Fundamental Economics of the Information Sector: Price Deflation

In price competition, the price is dropping towards marginal costs, which are near-zero, which usually do not cover total cost.
It is one of the fundamental economic trends of our time.

The entire competitive part of the information sector – from music to newspapers to telecoms to internet to semiconductors and anything in-between – has become subject to a gigantic price deflation in slow motion.

This price deflation leads to:

1. Volatility of prices
2. Periodic instability in the entire information sector

Therefore:

- As societies become information economies, they also become more volatile economies
- An information economy is a boom-bust economy,
- It is a higher risk society

- And it is an economy where the government does not have the tools.
- Traditional macro tools like demand stimulation or interest rates are not the issue. Demand is no problem. Financing isn't the main problem.
- Even antitrust and market structure regulation isn't likely to do the job, perhaps because reducing competition raises serious societal concerns.

- All this instability and volatility and risk creates social tensions
- And at the same time, the responses of the industry – consolidation to keep prices higher, and protection of property rights--create opposition: movements against media concentration, and movements opposed to copyright and in favor of open software.
Can Traditional Politics Cope?

- If one person drives a car to work, it’s going to be faster than the train.
- But if everyone drives a car, it will be slower.
- To move to ICT, the internet is supposed to help democracy, because it becomes easier to organize.
- True, but it becomes easier for everyone to organize.

Difference of Macro and Micro

- If one doesn’t understand the difference, one commits what is called in logic an “error of composition”.
- One observes positive effects on an individual action, and extrapolates from it to general benefits.

- Of course, the internet makes some political activity cheaper. But it does so for everyone. Thus, any effectiveness of early adopters will soon be matched by their rivals and will simply lead to an expensive and mutually stalemating political arms-race of investment in customization techniques and new-media marketing technologies.

- The early users of the internet experienced a gain in their effectiveness, and messianically extrapolate this to society at large. The gain was trumpeted as the empowerment of the individual over Big Government and Big Business.

- Easy entry exists indeed for the traditional narrowband internet, which is largely text-based. But the new-generation broadband internet will first permit and soon require fancy video and multimedia messages. To provide them is not cheap. Also, the increasing information glut requires increasingly elaborate strategies to draw attention. And in contrast to the broad stroke of broadcast-TV messages, “netcasted” politics will be customized to be most effective. This requires extensive data bases about individuals’ interests and preferences.
• But much of it has simply been an initial strengthening of individuals and groups with computer and online skills (who usually had significantly about-average income and education) and a relative weakening of those without such resources. Government did not become more responsive due to the online users; it just became more responsive to them.

Soon, activist groups and NGOs emerged

• Members are well-connected electronically and instantaneously into a world-wide activist network of a kind that never existed before.

• They create new weapons for their struggles
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   • Profit Regulation

V. GOVERNMENT INDUSTRIAL AND CULTURAL POLICY

VI. CONCLUSION

1. Issues Covered

Issues Discussed
• Optimal investment in
   – PR and public affairs
   – Lobbying
   – Litigation
   – In house outside counsel
• Litigation strategy as an economic decision
• Compliance management
Issues Discussed
• Role of the General Counsel and outside counsel
• Litigation management
• Litigation as market strategy

Issues Discussed
• Organizing the lobbying function
• Political spending
• Lobbying strategies
• Media activism
• PR management

Issues Discussed
• Self-regulation
• Government regulation
• Standards
• Strategic use of standards and regulations
• Antitrust law and the media

Issues Discussed
• Price discrimination and regulation
• Content restrictions: libel, indecency, “prior restraint”
• False advertising
• Industrial policy

Issues Discussed
• Legal and public affairs function and techniques
• Organization of legal function
• Compliance management
• Self-regulation
• Antitrust
• Price regulation

• Libel
• Indecency
• False advertisement
• Licensing
• Standards
• Investment regulation
• Internet regulation?
• Nano-regulation
Issues Discussed

- Media concentration
- A la carte cable pricing
- Interconnection & unbundling
- Digital TV
- Spectrum allocation

Issues Discussed

- Regulating the Internet
- Internet jurisdiction
- Internet infrastructure
- Net-neutrality
- Internet TV

2. Tools Covered

Tools Covered

- Calculation of financial settlements resulting from lawsuits
- Using a decision tree to determine whether to initiate a lawsuit
- Analyzing dynamic spending on a lawsuit

Tools

- Cost-benefit of investment in legal, regulatory, and public affairs
- Decision calculus for litigation and settlement
- NPV of delay
- Standards strategy vs. proprietary technology

Tools

- Determining optimal lobbying spending
- Integrating market and nonmarket strategies
• Media and communications are vital
• Essential tools for political dialogue
• Infrastructure for economy & society
• Formation of culture and personal expression
• High-tech economy

• In consequence, The role of government is large, and likely to continue, in updated ways.
• Emphasis on competition but often managed competition

• Economic rivalry and increased transactions lead to complex system of private entertainment law.

• Protection of intellectual assets has to have a business and a legal dimension
• Requires clear contractual arrangements among the participants
• The economic characteristics of media and information leads to high economies of scale on the infrastructure side, and low entry barriers on the applications side.
• This creates market power and ability to restrict

Implications
• Legal and government-relations function are a key past of successful management.
• Defensively and offensively
  – A tool for non-market competition

• With the rising importance of non-market competition becomes more expensive
• Requires managerial oversight and decision calculus like any other business function

The managerial process made more deficient by constraints:
• No decent management evaluation tools developed
• Resistance by legal profession to be seen as an tactical strategic “input”

Public is concerned with:
• Economic power
• Media power
• And double with combination of Media and economic power

• In consequence this area will be one of great
  – Importance
  – Sensitivity
  – Expense
• For a time, many people thought that the pervasiveness of law and regulation in the media and communications sector was temporary, or induced by temporary bottlenecks, or induced by government itself.

• But increasingly, people recognize that this sector tends to include a strong dose of government intervention.
• Even competition has to be based on governmental intervention and protection.

• And on the private dimension of private transactions, the emerging industry structure of decentralized, networked, ad hoc production and distribution systems means that transactions are increasingly not inside firms, but among firms, leading to a significant increase in contractual deals.
• I.e. more private entertainment law.

• Therefore, it is most likely that the legal and regulatory function of media firms will keep growing.

• Inter-firm rivalry will therefore often take on the role of non-market competition.
• Senior managers must integrate nonmarket and market strategies.

The Legal Function
• The Sword
• The Shield
• The Conscience

End of Lecture