Media Policy in the Era of User Generated and Distributed Content:
Transitioning from Access to the Media to Access to Audiences

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Abstract

This paper argues that a fundamental guiding principle for contemporary media policymaking

and policy advocacy should be the First Amendment right of *access to audiences.* That is, as the

barriers impeding access to the media drop, it is important for policymakers to consider those

remaining barriers that can contribute to disproportionate levels of access to audiences. In

addressing this issue, this paper contextualizes the emerging importance of policymaking that

emphasizes the right of access to audiences within the ongoing phenomenon of *audience*

evolution, a key part of which involves the de-institutionalization of our media system and the

blurring distinction between content providers and audiences. This paper then applies the access

to audiences analytical framework to contemporary media policy issues such as network

neutrality, media ownership, and search engine operation.

Introduction

Perhaps the greatest challenge confronting communications policymakers and policy researchers is effectively adjusting their analytical frameworks to account for the dramatic changes taking place in the contemporary media environment. We saw this quite vividly, for instance, in the FCC's media ownership proceedings, in which decision-makers and researchers grappled with questions related to if and how the Internet should be incorporated into assessments of the competitive conditions and diversity of local media markets (see, e.g., Napoli & Gillis, 2006). Today, with the emergence of what is commonly referred to as Web 2.0 (Mabillot, 2007), many of us in the communications field – and not just those of us dealing with policy issues – are confronting further changes in the media environment that have the potential to dramatically affect established theories, research methods, and policy frameworks (Benkler, 2006).

Of particular importance is the rise of user-generated content and the associated uncertainty about what it means (in terms of both challenges and opportunities) from both policy and research standpoints (e.g., Croteau, 2006; Fonio, et al., 2007). For those of us focused on the intersection of communications research and communications policy, this evolution of audiences from primarily being receivers of content to also being producers and distributors of content (see Napoli, forthcoming) points us in particular directions in terms of research and policy concerns.

A natural byproduct of this process of audience evolution is the evolving role of our media institutions. To some extent, our traditional media institutions are being displaced, in terms of some of their functions, by "users" and the content that they create. At the same time, however, they are serving new functions, such as hosting, and providing search functionality for, massive aggregations of content produced by others. In this regard, some of our new media

institutions are gatekeepers in the truest and more appropriately narrow sense, in that they produce little or no content on their own, but rather serve only as the gateways through which audiences pass to access content (for discussions of the nature of these new gatekeepers, see, e.g., Chandler, 2007; Sithigh, 2008; Zittrain, 2006). From this standpoint, the long-standing application of the term gatekeepers to our traditional media institutions (particularly news outlets) seems to have been somewhat imprecise, given the extent to which these institutions did not just allow content to pass through them, but also were instrumental in the creation of much of this content.

This paper considers the policy implications of these fundamental elements of the de-institutionalization taking place in the production and distribution of media content. The migration of production and (more recently and more importantly) distribution capacity to individual media users, combined with the demonstrated willingness of audiences to consume such user generated and user distributed content (see Napoli, forthcoming), call into question fundamental assumptions underlying many aspects of media policy about the relationship between media institutions and their audiences. Specifically, traditional media policymaking has been premised largely on the assumption that access to the media was highly limited and exclusive. Reflecting this notion, media policy advocacy has historically been heavily focused on increasing *access to the media* for those individuals and institutions outside the bounds of traditional media organizations.

Of course, in the digital age, structural and technologically-based disparities in *access to the media* are more easily addressed, as the diffusion of Internet access results in a much more egalitarian communications platform than preceding media such as newspapers, motion pictures, radio, or broadcasting and cable television. Online, the rigid sender-receiver dynamic of the

traditional media is replaced with a more interactive dynamic, in which the notion of mass communication is in some ways reconfigured as the masses now join the previously exclusive fraternity of mass communicators (Napoli, 2009).

As the dividing line between media institutions and audiences thus becomes increasingly permeable, it is increasingly important for policymakers, advocates, and scholars to move beyond an *access to the media* analytical frame. This paper argues that a fundamental guiding principle for contemporary media policymaking and policy advocacy should be *access to audiences.* That is, as the barriers impeding access to the media drop, or, more precisely, as access to traditional media institutions becomes less central to the process of mass communication, it is important for policymakers to consider those structural, technological, or institutional barriers that can contribute to disproportionate levels of access to audiences amongst speakers.

This paper develops this argument first by grounding it in the concept of *audience evolution* (see Napoli, 2008b, forthcoming) – a key element of which is the growth and consumption of user-generated and user-distributed content. As the first section of this paper will illustrate, we are in the midst of a fundamental transition in the nature of media audiences – one that bears directly on the production, distribution, consumption, and character of media content. This paper then traces the place of the *access to audiences* principle within the framework of the First Amendment, the associated right of access to the media, and the normative goals of media policymaking. As this section will illustrate, there is a strong First Amendment tradition of preserving and promoting access to audiences, but this tradition has been inappropriately marginalized within the context of media policy. This paper then briefly applies the access to audiences principle to contemporary media policy issues, including network

neutrality, media ownership, and search engine operation, in an effort to illustrate how such an analytical emphasis can support specific advocacy positions. The concluding section summarizes the paper's main arguments and considers their implications for communications policy research.

Audience Evolution and the Emerging Importance of Access to Audiences

It is well known, at this point, that media audiences are changing. The dynamics of how audiences consume (and now, even produce) media are changing, giving audiences increased control and increased choice over when, where, and how they consume media, thereby transforming the relationship between audiences and the media (Livingstone, 1999). At the same time, new technologies for measuring and monitoring audience behavior are revealing aspects of how and why audiences consume media that previously were unknown. These technological changes are compelling media industries to think differently about their audiences, undermining traditional conceptual and analytical approaches, while at the same time opening up new approaches to conceptualizing audiences (Napoli, forthcoming). Thus, we are in the midst of an evolution in the nature of media audiences. Just as a growing body of scholarship has shown how media evolve in response to changing environmental conditions (see, e.g., Lehman-Wilzig & Cohen-Avigdor, 2004; Dimmick, 2002, Noll, 2006), so too do *audiences* evolve in response to such changes (Napoli, forthcoming). And, just as media industries need to acknowledge, and respond to, these changing dynamics of the relationship between media and audiences, so too do media policymakers.

The process of audience evolution involves three primary components. The first of these is the transformation in the dynamics of media consumption. The key aspects of this transformation that are integral to the process of audience evolution are the increasing

fragmentation of the media environment and the increasing autonomy that media audiences have over their interaction with media (Napoli, 2008b, forthcoming). These transformations interact not only with each other, but also with the second major component of the model – the changing nature of audience information systems. The term audience information systems is used here in reference to the wide-ranging and consistently evolving mechanisms via which information is gathered about a growing array of dimensions of audience behavior. The changing nature of audience information systems provides important new inputs into how media organizations can conceptualize (and monetize) their audience (see, e.g., Anand & Peterson, 2000). Finally, the third key component of this model involves what is termed here stakeholder resistance and negotiation. It is through this often contentious process, involving stakeholders ranging from content providers and advertisers to citizens groups and policymakers that new conceptualizations of the audience emerge and are embraced by a sufficient majority of industry stakeholders to allow the audience marketplace to continue functioning effectively. These basic elements of the model, and their interactions, are illustrated in Figure 1.

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Insert Figure 1 Here

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All of the elements of this model of audience evolution, and the interactions between them, are discussed in greater detail elsewhere (Napoli, 2008b, forthcoming). The key element of this model that is central to this discussion is the extent to which enhanced audience autonomy is a central element of the ongoing transformation of media consumption (see Figure 1). The term audience autonomy in this case refers to how contemporary characteristics of the media environment, ranging from interactivity to mobility to on-demand functionality to the increased

capacity for user-generated content, all serve to enhance the extent to which audiences have more control in their interactions with media. Figure 2 outlines the various aspects of audience autonomy, illustrating the mechanisms that can today be employed to influence what, when, where, and how media are consumed and produced

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Insert Figure 2 Here

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One industry analyst has described the contemporary media environment as one in which the consumer is "devastatingly in control" (Jaffe, 2005, p. 43). The use of the term devastating in this statement is particularly telling, as it suggests that audience autonomy may be having damaging effects on the traditional dynamics between content provider and audience. And, indeed, this is the case. Perhaps the most dramatic manifestation of the enhanced audience autonomy of the new media environment involves the increased interactive capabilities and the way they can blur traditional boundaries between content provider and audience (see, e.g., Cover, 2006; Jenkins, 2006; Stewart & Pavlou, 2002; Svoen, 2007). According to Cover (2006), "Such interactivity . . . has resulted in new tensions in the author-text-audience relationship, predominantly by blurring the distinction between author and audience" (p. 140). As audience researcher Sonia Livingstone (2003) thus notes, the end result is a transformation of the audience from "passive observer to active participant in a virtual world" (p. 338; see also Svoen, 2007). She goes on to suggest that the implications of this evolutionary process extend so far as to mean the end of the concept of the audience (Livingstone, 2003), with the concept of "users" as

potentially better able to capture the current range of means by which consumers engage with media in the new media environment.

What seems particularly striking about this current direction in the evolution of audiences is how, somewhat paradoxically, it essentially resuscitates the concept of "mass communication" that has been largely dismissed (or at least marginalized) in the communications field (see, e.g., Chaffee & Metzger, 2001). The logic behind the decline of mass communication as an orienting term, which began in the late 1980s and picked up increased momentum in the1990s, was that the new media environment, with its ability to facilitate the targeting of small, homogenous audience segments due to increased media fragmentation, and its ability to facilitate increased opportunities for one-to-one communication via the emergence of email and mobile telephony, was one in which traditional notions of mass communication, involving the one-to-many dissemination of content to a large, heterogeneous audience who simultaneously received the content, represented an increasingly rare form of communication (see Neuman, 1991; Webster & Phalen, 1997).

The concept, however, seems poised for a comeback, though in a somewhat reconfigured form (see Napoli, 2009). Specifically, when the term "mass" is conceptualized a bit more inclusively, to account not just for the receivers of content but for the senders as well, then the concept of "mass communication" in fact perfectly captures much of what is taking place in the new media environment. Via representative Web 2.0 applications such as YouTube, Facebook, MySpace, and Twitter, the masses are communicating to the masses (see Fonio, et al., 2007).

The process of mass communication, as newly constituted, now prominently features a much more – though far from completely – egalitarian communication structure, in which the "masses" operate alongside the traditional institutional communicators in the process of reaching

audiences. Reflecting this perspective, one recent analysis has claimed that we have entered the "mass age" of Internet law, given the extent to which online activities such as content creation and distribution have moved beyond the early adopters and are now of the "'average' Internet user" (Sithigh, 2008). The notion of the "mass audience" (see Neuman, 1991; Webster & Phalen, 1997) thus seems to have some sort of continued, if reconstituted, relevance. We are, however, still in the relatively early stages of understanding the communications policy priorities that should be highlighted by these reconfigured dynamics (see, e.g., Benkler, 2006; Zittrain, 2008).

<div align="center">From Access to the Media to Access to Audiences</div>

At the general level, the new media environment is one in which many of the separations and privileges associated with the traditional institutional communicator that long have been embedded in our regulatory structure need to be reconsidered. This is particularly the case in terms of the issue of access – which has been a long-standing tenet of communications policy (see Napoli, 2002). Traditionally, the institutional communicator was separated from the audience largely by the institutional communicator's level of access to the means of communication. Television stations, radio stations, cable networks, cable systems and the like all represented media to which only a limited few had access. Such inequality was seen as an inevitable byproduct of the economic and technical characteristics of these media, not as free speech or public policy issues in need of remedy. Efforts to carve out a more egalitarian right of access to the media (see Barron, 1967) gained some limited, and largely temporary, traction (Napoli & Sybblis, 2007). The rise and fall of the Fairness Doctrine represents a useful case in point (see, e.g., Campbell, 2008)

However, it may very well have been the case then, and it is increasingly the case now, that the focus of communications policymakers and communications researchers should not be on the issue of access *to the media,* but on the issue of access *to audiences* (see Napoli & Sybblis, 2007). What is the difference? The difference is that the notion of access to the media essentially stops with access to the means of producing and distributing a message. Access to audiences picks up where access to the media leaves off by encompassing the *extent* of the speaker's capacity to distribute a message, and how the capacities to do so are distributed across speakers. Thus, access to audiences goes beyond the speaker's right to express herself; it also encompasses, to a greater extent than the right of access to the media, her right to be heard.

Two speakers with access to the media can vary tremendously in their level of access to audiences. A broadcast licensee in New York City traditionally has had much greater access to audiences than a licensee in Omaha. A cable network available in 80 million homes traditionally has had much greater access to audiences than a cable network available in 10 million homes. A musician signed with a major record label traditionally has had much greater access to audiences than a musician signed to an independent label.

Clearly, there always have been different levels of access to audiences, even among those with access to the media. These differences generally seldom have been thought of as violations of anyone's speech rights, or as policy problems requiring attention. However, it has been argued that the First Amendment right of access to audiences is denied "if selection intermediaries block or discriminate against a speaker on grounds that listeners would not have selected" (Chandler, 2007, p. 1095). From this standpoint, the contemporary media environment, and contemporary media policies, need to be assessed in light of the extent to which such behaviors are taking place.

A renewed emphasis in the legal and policymaking sectors on the First Amendment right of access to audiences seems particularly appropriate in light of the much longer and more robust First Amendment tradition protecting speakers' rights of access to audiences than there is protecting speakers' rights of access to the media (Napoli & Sybblis, 2007). The courts have, for instance, upheld speakers' rights to canvas door-to-door, to approach and offer information and ideas to citizens in public places, and to wield signs and banners, all in the name of protecting the basic First Amendment right that a speaker has to access audiences (for a detailed discussion of the legal basis for a right of access to audiences, see Napoli & Sybblis, 2007). In all of these instances, the key question involves whether speakers' access to audiences is being protected and promoted to the extent guaranteed by the First Amendment.

Communications policymakers only occasionally have emphasized access to audiences in their analyses (Napoli & Sybblis, 2007), probably because, in our now concluding era of true mass media, it was much easier to assume a reasonable degree of equivalence between access to the media and access to audiences. However, in an environment of fragmentation, long tail distributions of audience attention (see Anderson, 2006), and the growing prominence of user generated content, the need for policymakers to recognize, and potentially act upon, the disconnects between access to the media and access to audiences is becoming more pronounced. Now, imbalances in speakers' access to audiences may be much less a function of the unavoidable technical or economic characteristics of the media.

Today, thanks largely to the Internet, an exponentially larger proportion of the population has access to perhaps the most significant medium of communication, and in that regard stands on closer to equal footing with the traditional institutional communicators in terms of their access to the media. In this regard, the traditional access to the media disparity has been *dramatically*

improved (Barron, 2007). Now, for this new media environment to reach its full potential in terms of its ability to achieve greater equality in the allocation of speech rights, we need to focus attention on the issues that arise after access to the media has been achieved. That is, what are the impediments to greater equality in access to audiences? Do any of these impediments involve inappropriate institutional restrictions on speakers' rights of access to audiences? Since audiences are now themselves producers and distributors of content, these questions reflect particularly pressing concerns, since they now directly affect so much more of the population.

These concerns reflect the fact that the issue of access to audiences is largely an issue of distribution. It continues to be the case that in user generated content discussions, the focus is often misguidedly on the user's ability to *produce* content. Even the term, user *generated* content, reflects this emphasis. This is not really the aspect of contemporary developments that is new or of the greatest significance. Users' capacity to generate content has been around for quite some time, due to the long-established availability of production technologies such as home video cameras, personal computers, and home recording equipment. What is different today is the ability of users to *distribute* content, to use the Web to circulate their user-generated content to an unprecedented extent.

Making sure, however, that these producers and distributors of user-generated content are able to operate on equal footing and identifying impediments to this, must be a point of focus for communications policymakers and communications researchers. As Herman (2006) has argued, "Now that we have a communication system with the technical capacity to support millions of independent media outlets, we should guarantee that the editorial control over that system stays as widely diversified as possible" (p. 118). While it is certainly the case that the new media environment offers a more egalitarian level of access to audiences than was the case in years

past, it is important to emphasize that our media system should never be assessed primarily in terms of its performance relative to points in the past. Rather, it should be assessed in terms of the extent to which it is reaching its current potential. Today, technology has given us the potential, within certain communications platforms, to place the individual and the institutional speaker on more equal footing. And policymakers and policy researchers should work toward ensuring that this potential is met.

<div align="center">Access to Audiences and Contemporary Media Policy</div>

The issue of access to audiences is central to many of today's most important communications policy debates, though it has unfortunately remained at the margins of many of these debates – to the detriment of truly robust and well-rounded policy analysis and advocacy. Foregrounding the First Amendment right of access to audiences within these varied policy contexts could prove useful to policy advocates in both the legal and policymaking arenas.

The net neutrality issue is essentially an access to audiences issue, as the discriminatory mechanisms that network service providers can employ to selectively block, disrupt, or slow the flow of Web traffic are essentially mechanisms for creating differentiated levels of access to audiences amongst speakers (Chandler, 2007). In this regard, the net neutrality issue is as much about speakers' rights to reach audiences as it is about audiences' rights to receive information, or about the rights of network operators to control the flow of traffic across their networks.

This is an argument that a number of analyses have, to some extent, already brought to bear on the network neutrality issue. However, in their emphasis on privileging the First Amendment rights of online speakers rather than those of network operators, the grounding in the specific right of access to audiences has been more implicit than explicit (see, e.g., Herman, 2006; Travis, 2007). Explicitly injecting the First Amendment right of access to audiences into

this policy debate could potentially help to bring into sharper relief the nature of the policy challenges that remain in the wake of our transition to an era in which access to the media is much more easily obtainable, and alter, to some extent, the balance of First Amendment power in the arguments between those who favor and those who oppose mandated network neutrality.

The media ownership issue is, to some extent, an access to audiences issue, as greater concentration of ownership of media outlets creates further inequalities in access to audiences across speakers (see Napoli & Sybblis, 2007). As Napoli and Sybblis (2007) argue, the historical neglect of the First Amendment right of access to audiences rationale by those who have advocated on behalf of greater diversity in the ownership of media outlets represents a missed opportunity to bolster a rhetorical strategy that has instead relied primarily on the notion of the First Amendment rights of the audience to receive information, a right that has yet to be fully embraced by those with more conservative interpretive approaches to the First Amendment.

Further, an access to audiences perspective foregrounds one aspect of the media ownership issue that has too often remained in the background – the extent to which audience attention is concentrated around a select few sources (see, e.g., Hindman, 2009; Webster, 2008). Media ownership policy analysis has tended to neglect the distribution of audience attention across media owners for a variety of reasons (see Napoli & Gillis, 2006). However, an approach to the issue of ownership concentration that is grounded in the notion of a First Amendment right of access to audiences is one in which the distribution of audience attention across media owners is a natural point of analytical focus, as it represents an important indicator of the extent to which different media owners are accessing audiences. And if indeed there are structural impediments to the wide distribution of audience attention, then the elimination or reduction of such structural impediments can be premised upon the enhanced distribution of the First Amendment right of

access to audiences. Or, for that matter, the extent to which new media technologies provide

more equitable distribution of the right of access to audiences can inform if and how the

structural regulations that exist within the traditional media sector should be altered (see, e.g.,

Hindman, 2009).

The protocols in the operation of Web search engines raise significant access to audience

issues, as the placement order of Web sites in search engine listings is a key factor in

determining the level of access to audiences enjoyed by different sites (see Chandler, 2007;

Napoli, 2008a). Some analysts have suggested that regulatory oversight of the operation of

search engines is necessary, appropriate, and full defensible on First Amendment grounds, given

the importance of search engines to online communication and the wide range mechanisms via

which search engine operators can distort and block the results of search queries (see, e.g.,

Bracha & Pasquale, 2008). Yet, interestingly, these arguments have tended to focus on the First

Amendment rights of search engine operators (and the limits of these rights), to the neglect of the

First Amendment rights of the web sites seeking access to audiences via search engines. Here,

the incorporation of an access to audiences analytical framework could potentially strengthen

arguments surrounding the need for regulatory oversight of search engines, as a relevant First

Amendment concern is being brought to the table that has, to this point, been largely neglected.

The key here is that policymakers, policy advocates, and policy researchers need to

recognize and better utilize an important, though undeservedly neglected, First Amendment right

that tends to get lost amongst all of the competing normative and legal claims surrounding these

new media policy issues. The internalization of this First Amendment right into the predominant

analytical and advocacy frameworks for these issues may lead to more effective policy advocacy

and decision outcomes in both the legal and policymaking arenas that are more reflective of the full range of First Amendment values that are at issue.

Conclusion

This paper has examined one key policy issue to emerge from the ongoing process of audience evolution and the associated diffusion of communicative power beyond traditional institutional communicators – the extent to which policymaking needs to be more explicitly guided by the recognition of a long-standing First Amendment right of access to audiences. As this paper has argued, given the extent to which the issue of access to the media is now much more effectively addressed in the contemporary media environment, attention can – and should – now be more tightly focused on the extent to which the First Amendment right of access to audiences is equitably distributed.

It is important, as economist Bruce Owen (2004) notes, not to conflate success with access. That is, just because some speakers are reaching larger audiences than other speakers does not mean that access to audience imbalances requiring policy attention exist. Some speakers simply are more popular than others. However, determining whether the patterns we are seeing are a reflection of success or access is not always clear (Napoli & Sybblis, 2007). This is where the research community can make a valuable contribution on behalf of the proper application of First Amendment principles to contemporary communications policy issues. Parsing out these differences, identifying situations where access to audiences is being inappropriately impeded, assessing the mechanisms and justifications, and developing potential solutions, all should be points of focus for communications researchers. Such research feeds into the increasing importance for policymakers to understand the dynamics of the production,

distribution, and consumption of content, something that communications researchers certainly are well-positioned to do (Napoli & Gillis, 2006).

But here again, as has been the case in the past (see Napoli & Gillis, 2006), it is necessary for communications researchers who might not normally consider themselves policy scholars per se to consider the policy relevance of their work. As should be clear from this discussion, researchers looking, for instance, at a wide range of issues related to the production, distribution, and consumption of user-generated content are conducting research that can potentially enhance our understanding of the contemporary dynamics of access to audiences, and can thereby feed into informing the ongoing transition to communications policy frameworks that extend far beyond the traditional institutional communicators and that instead account for the masses as mass communicators as well.

Figure 1: A Model of Audience Evolution

Figure 2: Components of Audience Autonomy.

What	**When**	**Where**	**How**
On-Demand	On-Demand	Mobile	Ad-skipping/Blocking
Search	Mobile	Portable	Community participation//discussion
Informed Recommendations	Time-Shifting		Affect Outcome
Personalization			User-Generated Content

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