

**Competition in the Mass Media:
Ascertaining the Product Markets**

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Competition in the Communications Mass Media;
Ascertaining the Product Markets

by Mark S. Nadel^{1/2/}

What limitations, if any, should be placed on mergers or acquisitions involving owners of media of mass communications? The Federal Communications Commission (FCC) recently relaxed its limitations on the ownership of multiple broadcast stations,^{1/} yet many have criticized this decision.^{2/} The critics fear that concentration is reaching dangerous levels in broadcasting and throughout all of the mass media--that too few companies are gaining too much control over what information the American public receives.^{3/} This article will examine their concerns with respect to the retail mass media--those media that deliver information directly to consumers^{4/}--to see whether their concerns may be justified.

To begin that examination, it is necessary to understand why concentration can be dangerous. Concentration is disfavored generally because the fewer firms that compete in a market the easier it is for those firms to reach implicit understandings, if not explicit agreements, to eschew vigorous price competition.^{5/} Absent such competition, product prices will likely be set higher than necessary and it will unlikely that the products will be allocated efficiently.^{6/} Moreover, in the information industry, concentration is also harmful in a more significant way. The fewer mass media information providers there are in a market, the more likely it is for all of those media to effectively suppress controversial messages by refusing to disseminate them, thereby limiting the diversity of ideas available to the public.

Understanding concentration in the context of the mass media is made more difficult, however, because of the nature of the marketplace in which the mass media compete. Each media entity does not simply offer a single information product and compete against all other media in a single information market. Rather, almost all media firms deliver multiple information products and compete in a variety of separate markets/7/ against different groups of other media. Meanwhile, consumers generally depend on different media to satisfy different information needs./8/ Media concentration, then, should only be regarded as a problem when it appears that too few firms control too large a share of the media serving a significant user need of some community. Concentration should not even be discussed outside the context of some geographic and product market./9/

Confusion over media concentration arises because most discussions of it adopt an inappropriate definition of the media product market under examination, if they adopt any specific definition of it at all. Some confuse the retail media market with the wholesale markets--either the software acquisition market (in which wholesalers like the television networks contract with producers) or the market in which wholesalers deal with retailers./10/ Others define the retail markets much too narrowly--giving too little recognition to intermedia competition and thus failing to include an integrated set of all relevant media--or much too broadly--failing to segregate out those media which do not serve the particular product market to be examined.

Those who have defined media markets in terms of media technologies have defined them too narrowly. For example, Who

Owns the Media?,/11/ probably the best single collection of empirical data about the ownership patterns among the media, includes separate chapters, on 1) newspapers, 2) magazines, 3) books, 4) theatrical film, 5) TV & radio broadcasting, and 6) cable & pay TV, written by four different authors. While such technical/business categories are useful for providing historical or even future perspectives, statistics about ownership within each of these groupings, as included in the book,/12/ are often not particularly meaningful for assessing the degree of current media competition and diversity. Substantial intermedia competition has drastically diminished the relevance of these categories.

Today, television stations, cable systems, and video cassette rental stores are all direct competitors as retailers of video entertainment. Magazines, radio networks, and direct mail are all competing outlets for national advertisers. Local news may be provided by cable system operators, weekly newspapers, or radio stations. Those watching television may even forget whether the entertainment programming that they are watching has been delivered over a cable system, by a broadcaster, or from a video cassette borrowed from a friend, until there is a commercial break or they desire to review a scene./13/

Hence, media competition or diversity can not be adequately evaluated by measures of markets which are defined to include only single media technologies without regard to their competitors. While it is true that no media are perfect substitutes for any other, and thus at any given time a consumer may have desires that can be satisfied by only one of the mass

media technologies, for most consumer information needs, a few different media are reasonable substitutes for each other. To determine whether media concentration is becoming dangerous, one must apply one's measure of concentration to an integrated set of all relevant media.

This article will be concerned with the mass media product markets, but it is important to recognize that every market must also have a geographic component./14/ Since the availability of mass media varies from one local community to another, and may even vary within a community, the most appropriate geographic markets to consider are local markets, even for products available throughout the nation./15/ That is for each mass media product the question should be asked, how much competition is there between the media delivering that product to each local market or to the average local market.

The way to do this is to take the integrated set of all communications media and, for each particular consumer need, carefully segregate out all of those media which cannot adequately satisfy it. One should then consider all of the remaining media that serve the particular geographic market at issue. As this procedure makes clear, the degree of media competition varies, depending on which media product and geographic markets are examined. Thus, separate measures of competition and concentration should be made for each specific information product of interest within each geographic market./16/

Admittedly, it is much more difficult to segregate all media for each kind of information product examined--e.g., national news or live video sports entertainment in the home--rather than

segregating them once according to their technology. In addition, while it is usually easy to tell which media supply such "national" products, as the two just mentioned, to a market, it is often very difficult to tell which actually deliver local news about a particular local market or which are economical as local advertising vehicles for a market./17/ Nevertheless, to continue to define media markets according to historical categories rather than the behavior of information users, due to the difficulty of the latter methodology, is to risk generating increasingly inaccurate results./18/

To propose a definitive typology of the mass media information product markets would require massive empirical research, much beyond the scope of this article. However, this article can identify what appear to be the most relevant variables for establishing such a list and then make a first attempt at composing a single typology for categorizing all mass media messages. The actual empirical testing of which of these variables are truly relevant to consumers should be left to the detailed empirical studies that will accompany antitrust litigation,/19/ FCC inquiries,/20/ and economic, sociological, and psychological studies of media audience behavior and preferences./21/

Unfortunately, even after media product markets are identified and the particular media that ordinarily serve such markets are listed, the task of measuring media concentration is not finished. The statistical tools which are used to measure concentration generally/22/ seem inappropriate for measuring at

least some of the more important media markets, like the market for news, which information is a "public good"/23/ and which diffuses quickly and easily through a market./24/ In addition, the relevant data from the different media are in unit that are often difficult to compare./25/ Fortunately, even without such modified tools, a casual review of some of the data reviewed here can give an indication of where problems of concentration are most likely to arise and where there is little danger of concentration.

This article begins, in section I, with a review of recent prior studies of competition among the mass media and how they have failed to articulate adequate definitions of the mass media product markets. Section II presents the major market categories and the significant criteria to be considered in further dividing and defining markets. Sections III, IV, and V, then give more detailed analyses of the retail media serving the news, advertising, and entertainment product markets. Section VI explains why the fourth category of information products: non-fiction other than news is not discussed in depth; and section VII concludes with an analyses of how competition may be affected by mergers and acquisitions involving such retail mass media.

I. Prior Studies

Over the last ten years, a number of studies have been made about media concentration, but none seems to have examined a fully integrated set of all mass media, segregated according to which ones actually served a particular geographic-product market.

The main failure of the early studies was that they evaluated each medium separately. Presentations and comments made at the

1978 FTC symposium on media concentration all focused on individual media industries./26/ No effort was made to integrate the media. The same was true of the testimony given at the 1980 hearings of the subcommittee on General Oversight and Minority Enterprise of the House of Representatives Committee on Small Business./27/ The structure of the first edition of Who Owns the Media? has already been noted./28/

After 1980, studies began to integrate data about all of the media, but these failed to segregate media according to the different markets served. In a revision of Who Owns the Media?, Ben Compaine added a chapter on the companies with significant presence in the media/29/ and The Media Monopoly by Ben Bagdikian/30/ examined the 50 largest of those companies. Yet, neither of these analyses focused on competition in specific geographic or product markets. All media were simply lumped together. Raw data of the kind they examined is updated annually in Broadcasting's "Top 100 Companies in Electronic Communications"/31/ and Advertising Age's "100 Leading Media Companies,"/32/ but that data is not analyzed in the context of specific information media markets.

In 1981, the House Subcommittee on Telecommunications updated and expanded upon an earlier CBS study to provide an integrated set of statistics for the different retail media serving specific geographic markets. In its report "Telecommunications in Transition: The Status of Competition in the Telecommunications Industry,"/33/ the House staff presented a market by market tabulation of the approximate number of television and radio

stations, daily newspapers, and MDS (multipoint distribution service) channels serving each of 212 geographic markets./34/ It also provided estimates of the cable penetration in each market and, for the top 50 markets, it gave the average number of cable channels available.

Nevertheless, the text of the report did not seriously consider full intermedia competition. After a separate discussion of common carriers it examined print, audio and video media separately and then focused on home video media./35/ While a strong case can be made that home video entertainment represents a separate and distinct market,/36/ it is hard to consider home video local news or advertising as distinct markets since the 6500 non-daily newspapers throughout the nation seem to represent reasonable substitutes to them. The latter, however, which were not included in the chart. The report never discussed or identified the distinct substantive categories of information products that consumers desire from the media.

A 1983 National Telecommunications and Information Administration (NTIA) report called "Print and Electronic Media: The Case for First Amendment Parity"/37/ included information similar to the 1981 House study for a sample of 25 city markets. It also introduced a time dimension by including data for each of those markets at various points during the period 1928-1980./38/ Unfortunately, it suffered from the same critical defects that hurt the House study: the failure to examine a completely integrated set of media and the failure to segregate them according to particular consumer desires. It omitted some critical news media--non-daily newspapers and news magazines and

did not point out that different media should be counted for different product markets.

In 1982, Jonathan Levy and Florence Setzer, of the FCC Office of Plans and Policy, prepared a market concentration report entitled "Measurement of Concentration in Home Video Markets,"/39/ It examined the goals of competition and diversity and discussed the product and geographic dimensions of the program delivery market. Further, it included calculations of sample concentration ratios and data about the number of local markets that would be classified as competitive depending on the number of broadcast TV stations in the market and what one assumed about the existence of other media.

In that study, however, the authors treat the media as if they compete in a single broad "information" product market./40/ They note that information products may serve different functions to different users,/41/ but they do not treat the information packages which serve these different functions as different products.

This omission created tension when the authors considered whether and how to include in their list of competitors those media--like books and radio stations--which compete with television broadcasting in some areas, but not others. They handled this by offering statistics which permitted readers to count additional media according to their "various alternative assumptions."/42/

If they had recognized the existence of different information product markets they would have been able to make their calculations for different product markets. Evaluations of concentration in the national news market would count daily

newspapers and radio stations, as well as national news magazines, which they omitted, but probably not books or VCRs./43/ Evaluations of the adult (sexually suggestive) entertainment markets, however, would include books, VCRs, and magazines, but probably not newspapers./44/ Different sets of media, and thus different concentration statistics will apply to different product markets.

In 1985, Ralph Jennings prepared a quick study called "Diversity of Communications Facilities in American Communities," for the Office of Communication of the United Church of Christ/45/ which came very close to providing a fully integrated picture of media competition in the local news market. Jennings included an inventory of the daily and weekly newspapers as well as broadcast, cable, and MDS entities originating from a sample of ten percent of the 3,926 communities in the U.S. with at least one commercial or public radio station. Still, he failed to give proper treatment to the geographic markets served by the media or to distinguish clearly between the local and national news markets.

He presumed that each media entity serves only the community from which it emanates. That is a reasonable assumption for cable systems and weekly newspapers, but it is generally not an accurate description of large daily newspapers and broadcast stations which usually serve many surrounding communities. Therefore the study underestimated the number of media serving the communities it discussed. With minor adjustments, however, it could be used as model of how to measure competition in local news markets. Supplemented by additional data about advertising

media from state media directories like those prepared for promotion and marketing firms by Burrelle's, /46/ it could also be used to evaluate competition among local advertising media.

The FCC, meanwhile, has repeatedly noted the significance of intermedia competition. In its decisions to review and repeal the multiple broadcast station ownership rules, it discussed the media as an integrated industry and also noted that national and local markets should be distinguished within the advertising market. /47/ Unfortunately no similar distinction was made between local and national news, and the entertainment market was never explicitly discussed. Recent law review notes that have addressed the issue of video program markets have also failed to discuss media providing reasonable substitutes for video news. /48/

From another perspective, many of those doing research on communications from a more sociological perspective, have tried to construct their own typology of product markets. Many have tried to categorize the different types of information provided in the broadcast media for the purpose of evaluating diversity in those media. /49/ A review of most lists of program types, however, reveals that they have been designed with respect to a single broadcast medium: TV or radio of a particular era. /50/ There does not seem to have been any attempt to design a single uniform typology for categorizing all of the messages offered in broadcast media, not to mention all mass communications media. This article considers just such a task.

II. An Overview of the Media Product Markets

A product market includes all products which are "reasonably interchangeable] for the purposes for which they are produced....."/51/ Two firms compete in the same market then if and only if buyers consider their products to be reasonable substitutes for each other. The question of whether two products are "reasonable substitutes for each other" is by nature subjective, and should be based on carefully collected empirical data. Even in the absence of clear supporting data, however, section II.A, below, discusses some of the more obvious distinctions between clearly different media product markets. Section II.B, then discusses other significant distinctions which may lead consumers to find that a product of one media firm is not actually substitutable for that of another, and thereby suggest that additional media product subdivisions should be acknowledged. Sections III, IV, and V explore such distinctions in more detail and then identify the media that deliver these products.

A. The Primary Markets

The most significant distinction that media users make between media products is based on their primary use for the products. The four principal categories of information seem to be news, advertising, entertainment, and non-fiction other than news./52/ One could say that since all information products are designed to be entertaining--in the broadest sense of that term--news, other non-fiction, and advertising should be considered as subsets of the entertainment product market. Furthermore, one could also argue that advertisements seek to provide consumers

with an important form of new factual information/53/ and therefore advertising should be recognized as a subset of news and other non-fiction.

Yet, whether or not one accepts this analysis, it seems quite clear that enough of those who desire news would not consider any product that is not news to be a reasonable substitute, and the same could be said for each of the other four categories. Thus each must be recognized as a separate product market and competition among the media within it evaluated. Still, these are only the broadest of product markets. On a slightly less broad level one can recognize that both the news and advertising markets each comprise two major and obvious smaller markets.

Although there may be some overlap between the submarkets, news and advertising messages can usually be sorted into one of two categories. Some messages are strictly of local interest or are designed to reach only a local audience. News of school board elections or ads by a local pizza parlor are good examples. Other messages concern the entire nation, whether they be news involving the federal government, local news with a national impact, or advertisements of products available throughout the nation. All media are cable of delivering national news or advertising, but many fewer are practical media for local news or advertising./54/

The vast majority of entertainment products are suitable for national, if not international, audiences so this article will focus on them and ignore local mass media entertainment/55/ except to note that it can generally be delivered via the same media as

the national product. There is a much greater significance to the distinctions between different formats of media entertainment: video, audio, or print. For example, consumers generally regard the novel and film versions of "Gone With the Wind" as very different forms of entertainment--different products which are not very good substitutes for each other. A similar distinction exists between the music broadcast by radio stations and the music printed in music books. They are sufficiently different forms of entertainment to represent different product markets.

Many consumers of entertainment have preferences for entertainment products with particular attributes, thereby requiring that many separate and distinct entertainment product markets be recognized, but there are so many of these markets of comparable status that a discussion of them is postponed to section V. Meanwhile, since a large portion of the media providing non-fiction other than news are not commercial entities, the issue of competition and concentration in that market is of lesser concern and that market will merely be touched on in section VI.

B. Other Distinctions Suggesting Further Market Divisions

In addition to the major and obvious media product markets based on subject matter discussed above, there are also less significant distinctions among information products and the media which deliver them which might also indicate that such media do not really compete in the same product market. These include 1) whether the medium delivers video, audio, or only printed materials, 2) whether a medium delivers material "live" or whether it permits users to consider products of their choice at

times of their choice; 3) whether the medium delivers the product into the privacy of a home or whether it is made available in a technically superior form outside the home; 4) whether the products are delivered without charge or without commercial interruptions, or neither; 5) whether the medium can be used by mobile users; 6) whether the medium is legally permitted to deliver sexually suggestive "adult" programming, and 7) whether the medium can operate at a competitive price.

In many contexts at least one of these characteristics will be considered to be important enough to enough media users that they would not consider products without it to be reasonable substitutes. In such cases, a new separate and distinct product market, defined according to the indicated characteristics, should be recognized and only those media which can satisfy those characteristics should be included as competitors.

1. Media Formats: Video, Audio, or Print

One can begin by noting the significance of whether a medium delivers video (actually audiovisual), audio, or printed messages. Consumers who desire a visual experience will often demand a video product,^{756/} while those involved in some other task which requires concentration may prefer an audio product which permits more passive consumption. Printed products require the most mental effort to consume, but they can often deliver information in greater detail than video or audio. If enough people desire each of these format while not considering the other two to be reasonable substitutes, as might be the case, then each of the three formats would constitute a separate

entertainment product market.

2. Live v. Delayed, But With More Flexibility

Media may also be distinguished according to the time they require to disseminate messages, for example, whether they are capable of delivering information in real time (live). Those that can deliver live are able to keep consumers informed about the latest news and are at least capable of delivering advertising at very late notice (though this technical possibility may rarely, if ever, be taken advantage of). Of most significance, however, is the ability of such media to permit sports fans to see or hear live sporting events and other real events, like academy awards night, which have uncertain outcomes that consumers may desire to discover as soon as they have occurred.

Yet the media which can deliver material live because they deliver material "in real time" have the disadvantage that they bind consumers to their real time schedules. Particular messages are delivered at particular times and consumers must get them then and so consumers do not have wide discretion over when they will receive the less timely information they desire (unless they employ a non-live medium also, such as using a VCR in conjunction with broadcast television). Thus, although the media which do not deliver in real time may only deliver messages once each day, week, or even month, they permit consumers to consider and repeatedly reconsider the messages they deliver. It is unclear how their variance in frequency affects their desirability.

Therefore, if the products that must be delivered live are significant enough to enough people, as sporting events certainly

appear to be, then such products should be considered as a separate and distinct product market and those media which can deliver live should be evaluated as a relevant submarket of competitors. If the ability to consider mass media material according to one's own schedule is considered to be valuable enough then products which permit this should be recognized as a separate product market and those media which deliver them should be evaluated separately. It is unclear what degree of competition there is between media with different deliver frequencies.

3. The Privacy of the Home v. Technical Superiority

Another factor that users often find significant is whether a medium delivers a product into the home or whether a consumer must leave his or her home to receive it. Those media which deliver to the home permit a consumer to receive them at a moment's notice and under greatly varying conditions. Consumers may enjoy them while eating, while doing housework, or while in bed for medical (or other) reasons. They may also turn them on or off whenever they desire. Other media, not delivered directly into the home may still be carried into the home and used almost as easily.

On the other hand the experience of enjoying media products at home may be limited by the technical quality of home receivers. Attending a live concert, show, or sporting event, or even a movie at a theater with a much larger picture and superior sound system may be sufficiently more desirable that no other media are reasonable substitutes. There is also the difference between

being entertained in a private environment or within a group of strangers with similar tastes.

In those circumstances where home delivery or the live or cinema experience is considered important enough to enough consumers then those media with this capability should be considered separately from others serving the relevant product market. The same hold for live, in-person media.

4. Without Charge v. Without Advertising

A further factor which is most likely to be significant to consumers of mass media entertainment is whether it is economical for the media to distribute commercial-free entertainment. Media which are not designed to permit a media retailer to charge a usage fee must depend solely on subsidies, audience donations, or advertiser sponsorship. In the latter cases, or cases, they must deliver material interrupted by advertisements. Nevertheless, because they are provided without charge, they may be preferred by many consumers. Consumers able to pay for commercial-free entertainment, however, may often prefer to do so. If enough consumers do not consider free and commercial-free entertainment to be reasonable substitutes for each other than they should be regarded as separate and distinct products and the media which deliver each should be evaluated in separately.

5. Capable of Reaching Mobile Receivers

Still another significant characteristic of a medium concerns whether or not it can be used by consumers as they travel. If enough consumers consider the ability to receive a particular

product while in transit to be important enough then media capable of delivering such a product to mobile consumers should be considered to be serving a separate and distinct product market.

6. Capable of Avoiding Minors

Consumers who desire sexually explicit adult entertainment must depend on media which do not violate laws restricting the access that children have to such entertainment./57/ Since enough people seem to consider this product to be without reasonable substitute, it should be considered to be a separate and distinct product market and those media able to serve it should be evaluated as serving a relevant market.

7. Competitively Priced

Another very important factor which can differentiate the different media are their operating costs, that is, how costly they are to use and thus how costly they make the receipt of the information products they deliver. If one or some group of media are sufficiently more efficient delivery media than all others then such others may not represent significant competitors in the market, at least for the purpose of evaluating the effectiveness of price competition. Clearly no media users consider significantly higher priced media to be reasonable substitutes for lower priced media that deliver the identical mass media products.

In sections III, IV, and V below, the markets for news, advertising, and entertainment products are examined in some detail. Each of the seven characteristics just discussed are considered to see whether they are likely to be sufficiently to

enough media users so that product markets should be further divided and redefined to take them into account. While none of the seven appear to be sufficiently significant to do so for the news media product markets and only one may be so for the advertising media, all of them seem to be significant to some degree in the entertainment product market. This makes it more difficult to ascertain and evaluate entertainment product markets, as noted in section V.

III. News & Controversial Advertisements: Insuring the Public Access to Diverse Positions

For a democracy to function effectively, its citizens require access to facts and interpretations about recent events that have direct or indirect influence on them./58/ They need such information to help them to make decisions during federal, state, and local elections, to discuss public policy issues, and to make business decisions. Most desire access to relevant facts, incisive analyses, and well reasoned opinions about issues and events in the news. This includes information about controversial products or services that may be available.

To insure that the public has access to the widest range of significant ideas and facts, as well as controversial advertisements, the government of the United States, as bound by the First Amendment of the U.S. Constitution, depends on competition in an "unregulated" market, where that is possible./59/ Journalists are usually taught to strive to present objective news stories which give their audience all the important facts,/60/ but the law permits reporters or news analysts to publish, broadcast, or "cablecast" severely biased stories or programs./61/ In fact, newspapers and magazines need never present balanced reports on any issues and historically few did./62/ Historically, those who wanted two sides to a story would review two different newspapers or talk to others with opposing views.

Those concerned about insuring that individuals will have access to all important ideas, facts, and controversial advertisements note that individuals rarely have access to competing local newspapers today, but studies indicate that

almost all individuals actually have access to a significantly more diverse set of ideas today than ever before./63/ One need only reflect on two media which seem to guarantee some degree of universal access to news by almost all Americans: the mail and telephone./64/ Anyone with a small amount of money and a mailing address can purchase any of a myriad of newspapers and news magazines covering national issues and nationally available products or services. With a little more money and a telephone, one could conceivably call a media firm's news department or some other organization to find out the latest developments on some issue although it would not be practical to do this regularly.

Yet there are two reasons why this does not end the matter. First, the First Amendment and public policy favor actions which foster the dissemination of the widest possible diversity of ideas and opinions./65/ Second, and more importantly, the mail is often not economically practical to use to disseminate local news at a competitive price and the telephone is probably not economical or practical to use to distribute any more than a short message about local or national news. The problem of concentration in the news market then is a problem of too few sources of competitively priced news media./66/

The danger of undue concentration is that all competitively priced media serving a market may refuse to carry a news story criticizing a popular or powerful public figure or supporting an unpopular position about racial or sexual equality. If few enough media are available, it is not too difficult to imagine all of them also refusing to carry political advertisements concerning such matters or refusing access to candidates they

oppose such as candidates who strongly criticize the media./67/ Such refusals by all relevant media in the market would serve to suppress information that the public might desire.

Such conduct might also serve to suppress information about products or services of interest to consumers. Media firms might well be inclined to refuse to carry advertisements for products like contraceptives,/68/ which they considered immoral, or ads by competing media firms seeking to steal their audience./69/ The matter at issue in this section then, is to identify those competitively priced media in the local market that are potential distributors of news stories or advertisements, of great interest to many consumers, but which many many media owners might consider to be offensive, in bad taste, unworthy of attention, or detrimental to their own self-interest.

Concentration must be evaluated in three generally distinct submarkets of news: national & international news--of interest to the nation because of its national impact or emotional content; local news--of interest to those in a local community, state or region, but rarely of any interest to those outside the community; and business and trade news--of interest to those in some particular industry or trade.

A. National News & Controversial Ads

According to recent polls, most residents of a local market receive their national news from electronic media: television and radio station broadcasts or cable television transmissions,/70/ yet most of those local media companies simply deliver national news reports packaged by others. The problem is that comprehensive

coverage of world news is prohibitively expensive for any single local medium/71/ and therefore the cost of such coverage is effectively shared by many media through the use of networks/72/ and newswire services,/73/

In fact, two local broadcasters may even rely on the same radio network for national news, but from the perspective of diversity and competition, the important thing is that local media often offer their own analyses of controversial national news issues in editorials and special news segments, as well as presenting audience viewpoints. They can depend on many sources for their own views (as noted below) and have a medium permitting them to spread the word about anything they find important to those in their market.

Consumers may also get their news from their daily newspaper/74/ where, again, most of the national news stories are simply reprinted from national newswires and internal news services/75/ and many of the analyses are simply syndicated national columnists and cartoonists./76/ Yet, again, these media provide diverse perspectives on national news issues in their editorials, news analyses, guest editorials, and letters-to-the-editor and simply in the selections of national news sources they rely on.

The most thorough coverage of national news, however, may be provided to individuals in all markets by the national print media. Distributed to readers, without additional editing, by the postal service or newsstands (sometimes by way of magazine wholesalers), national newspapers and news magazines present perspectives on national and international issues ranging from the far right to the far left and many in between.

Two other new media which also merely deliver other network news reports to homes are home satellite dishes aimed at Direct Broadcast Satellites (for a form of DBS)/77/ and Multichannel Multipoint Distribution Service (MMDS), otherwise known as wireless cable, which may yet rise again./78/ Both are most likely to serve markets which are not economical for cable to serve./79/

Finally, as mentioned above, individuals may get national news in direct mail/80/ or by using their telephones to access computer databases/81/ or from calls by automatic dialer-recorded message players (ADRMPS)./82/ They may also attend speeches given in large auditoriums or stadiums--if they exist in the local market--or even by reading billboards./83/ This latter group of media, however, are probably not very efficient mass media for national news.

Therefore, to evaluate the diversity of sources of national news and controversial advertisements in a market, it is necessary to recognize which and how many of the following media offer facts or analysis about national issues in that market and then how many different owners are represented:

1. Television stations (including Low Power (LPTV/84/))
(may be simply network news).
 2. Cable television systems (may be simply cable network news).
 3. Radio stations (may simply be network or news service news).
 4. National newspapers & magazines.
 5. Daily local newspapers (may be simply news service news or syndicated political columns, comments & cartoons).
 6. Non-daily newspapers and non-national magazines.
 7. Direct broadcast satellites (DBS) to home dishes.
(may be simply network news).
 8. Multichannel multipoint distribution service (MMDS)
(may be simply network news).
- ***
9. Large auditoriums or stadiums available to speakers.
 10. Billboards and poster space.
- as well as
11. Direct mail. (including its use for newsletters).
 12. Videotex news databases (including bulletin boards)

accessible by telephone.

13. Automatic dialer-recorded message players (ADRMPS).

B. Local News & Controversial Ads

The term local news can represent news of interest to any community smaller than the nation as a whole. Thus it can include stories about regional water projects, state tax reform, countywide political scandals, and local school board elections. Political advertisements may be of comparable value to consumers. Yet it does not seem worthwhile to measure the media concentration for very small local markets such as single towns or villages because in such markets the mail, telephone, billboards, and public and private fora represent significant media for disseminating local news. Since the first two are common carriers--and thus offer access to any communicator--there would seem to be little danger of media concentration in those markets.

For larger local markets it is not practical to use these latter to reach the mass audience and thus media concentration may be an issue. Residents of these markets are likely to receive local news from daily or weekly newspapers/⁸⁵ and local television and radio stations. Some may also be served by city or county magazines.⁸⁶ As cable television systems establish news departments these are likely to become good sources of local news and local cable access groups may even provide alternative local news shows on public access channels, if and when they exist.⁸⁷ Again, large auditoriums or stadiums in a market may be used to deliver speeches on local issues and, at times, billboards may also be practical. Also local computer bulletin boards or even

ADRMPs accessible by telephone.

In summary, local news may be provided in local markets by any of the following media serving the particular market:

1. Television stations (including LPTV)
 2. Cable television systems.
 3. Radio stations.
 4. Daily newspapers.
 5. Non-daily newspapers and non-national magazines with local news staffs.
 6. Large auditoriums and other forums available to speakers.
 7. Billboards and poster space.
 8. Multichannel multipoint distribution service (MMDS).
- as well as
9. Direct mail (including leaflets placed in mailboxes).
 10. Local videotex news databases (including bulletin boards) accessible by telephone.
 11. Automatic dialer-recorded message players (ADRMPs).

C. Business & Trade News

The business & trade news category is a large one which the Standard Periodical Directory divides into more than 200 different subject matter headings./88/ The audiences for this type of service--generally provided by magazine or newsletter--may vary from dozens to millions. Because these markets are generally difficult to define precisely and also appear to be competitive and/or subject to potential competition from a new entrant supported by the industry trade association, these markets are not examined here.

D. Further Market Subdivisions

The predominant interest of most consumers desiring to receive news appears to be the content of the news and analyses delivered. Therefore, while many consumers have preferences for different media, it would appear to this commentator that most would consider the different media's news reports to be at least reasonable substitutes for each other.

This is not to say that differences in the format of news messages are insignificant. After all, it is claimed that television's coverage of the Vietnam War, not the media's coverage, was responsible for turning the public against the war./89/ It is only to say that all media formats permit sufficiently detailed presentations of news topics to represent reasonable substitutes for each other. While print media analyses are generally more detailed and more minor issues can be examined in a large newspaper or magazine, broadcast stations almost always have weekly public affairs programs which examine the most controversial news issues at depth, and radio stations often have call in talk shows focusing on controversial issues in the news./90/

While many consumers prefer to get their news while it is still "new," the value of incisive controversial analysis is rarely lost if it is delivered the a day, a week, or even a month later. The news that most consumers desire most quickly seem to stories about relatively objective facts, such as important announcements by public officials or public figures, economic statistics, or results of events like elections. But diversity is really only important when there are potentially conflicting views of an event or a policy. Thus for all issues that are not time sensitive, even the news products delivered monthly would appear to be reasonable substitutes for live reports on controversial issues. Meanwhile, news reports are generally repeated frequently enough on the broadcast media to permit one to get the news from those media directly, by using a VCR, or indirectly from friends or neighbors.

It would not seem important to consumers whether or not a medium delivered the news product to their home since those media products that were not could be purchased daily outside the home or easily received in the mail. Similarly, consumers do not seem to have a strong preference for news products which are free of advertising. Certainly, consumers enjoy being able to carry a newspaper or magazine with them wherever they go or to listen to a radio while they are driving, but news media which are not so portable still seem to represent adequate substitutes for the former. There would be no point to treating news media capable of excluding minors as a separate market.

It appears that there is no need to distinguish among the news media based on their cost of delivering the news because the low cost provider would not be able to drive out all the rest. This is because two of the primary news media--television and radio--already deliver news without charge. In addition, news is easily diffused, without charge, in personal conversations. Thus even the relatively expensive media may be able to serve as reasonable substitutes for the poor because of such indirect diffusion. Hence, none of the legitimate mass media seem to be excluded from the market due to their costs, although those media which use telephones or small scale mailings may be economically impractical, as may billboards and live fora. In the markets where it appears that they may be significantly less practical they are segregated from the other media listed by ***.

E. Summary

Since, it does not seem very important to evaluate any of the

submarkets of the national and local news product markets one can focus solely on the national and local news markets. It appears that there are a wide diversity of views on issues of national available to any individual in any market. National political magazines alone constitute a set of very diverse viewpoints on news and public policy and all are available in any market since they can be received through the mail. That many individuals do not avail themselves of such media and may remain ignorant about many aspects of an issue may be more a consequence of our educational system than of media concentration.

Clearly there are many fewer local news media and, therefore, that concentration is greater and diversity less than in the national news market. Yet this is most likely a consequence of the smaller number of consumers in each local market than anything else. Without the support of advertisers--who show a marked preference for the local medium which reaches the largest local audience/91/--second and third local news bureaus are difficult to support financially. With the recent demise of so many local newspaper news organizations it is unclear whether they could be supported even if media like public or leased access cable channels or Low Power TV (LPTV) stations were available.

IV. ~~Advertising~~: Prices of Time and Space

Most of the revenues earned by local media firms come from selling time or space to advertisers eager to disseminate messages promoting their products, issues, or political candidates./92/ Therefore, most media firms seek to attract large audiences with characteristics that advertisers find desirable. Most select their editorial content with an eye towards providing the most attractive environment for potential advertisers./93/

Meanwhile, advertisers selling products of nationwide appeal seek the most efficient channels for reaching the largest nationwide audience of potential customers. On the other hand, owners of local pizza parlors or used car dealers generally find it wasteful to pay for reaching people outside their local market. Accordingly, these firms generally prefer to use media which focus on the smaller market that they serve. To insure that both of these types of advertisers are able to secure access to audiences in the markets they desire at a reasonable price it is important that there be sufficient competition among advertising media in the local market, both the media suitable for national advertising and the media economical for local advertising.

A. National Advertising

Advertisers of national consumer goods or services usually seek to reach the largest possible audience most efficiently. They may do so by seeking out the local media which reach households in their local market at the lowest cost per thousand (CPM) in the "national spot" market, but national advertisers are

less inclined to use media that reach relatively small local audiences despite their relatively low CPMs. They are more intent on reaching large total numbers of households and prefer vehicles for achieving that end./94/ Therefore, local media desiring to attract significant amounts of national advertising must usually affiliate with many other local media.

Owners of multiple television and radio stations that reach a substantial combined audience may themselves be large enough to attract some degree of national advertising, particularly in light of the relaxation of the multiple ownership rules to permit a single entity to own up to 36 broadcast stations (12 TV, 12 AM, 12 FM radio)./95/ Yet more often, even group owners must affiliate with the largest group owners so that access to a single very large network of stations can be sold to advertisers as a package. Cable television multiple system operators (MSOs) are generally too small to attract national advertising,/96/ but they depend on others to represent them. Advertiser supported ("basic") cable satellite networks, "superstations" (broadcast stations that are retransmitted nationally by satellite), and more recently home shopping networks all provide networks for reaching many MSOs, thereby becoming attractive to national advertisers./97/ Because even significant national cable networks or broadcast radio networks may be too small, some of them may offer themselves in combination with other networks./98/

While most television broadcasters affiliate with one of the three major broadcast television networks for 5-year terms,/99/ many affiliates and non-affiliates are taking advantage of another opportunity to attract national advertising. These broadcasters

are effectively affiliating by broadcasting "bartered" programming sold by syndicators./100/ Until Viacom's recent venture, syndicators had not distributed their programming by satellite to permit the simultaneous broadcast of commercials,/101/ but even so, they otherwise act effectively as television networks for single programs even though they may not own many or any television stations or have long term sophisticated affiliation agreements with the stations they serve.

The national print media are generally less desirable for reaching that large mass national audience, although both TV Guide and Reader's Digest have circulations of about 18 million./102/ Nevertheless, they are excellent for advertisers seeking a specific smaller well defined audience. The national newspapers and news magazines mentioned earlier provide an efficient channel for reaching some of the better educated readers in the nation while sports magazines such as Sports Illustrated are certainly fine pathways for reaching sport fans and women's magazines like Glamour are efficient vehicles for reaching fashion and beauty conscious women. It is also possible to buy the equivalent of local spot advertising in local daily or non-daily newspapers, aided by the ANPA's adoption of standardized advertising space units. Advertisers may deal directly with individual papers, use advertising agencies, or publishers' representatives like CASS (formerly the Collegiate Advertising Student Service), which places advertisements in most college newspapers.

Finally, catalogues or direct mailings may be an efficient way to reach particular lists of individuals who may not be served by

a single publication and proposals have even been made for including advertisements on postage stamps./103/ Even telemarketing becomes an option with the use of inexpensive automatic dialer recorded message players (ADRMPs)./104/ Billboards are another supplementary medium. And advertising on video cassettes is even being tested./105/

Finally, the AT&T divestiture decree prohibits AT&T from entering the electronic publishing field,/106/ but those who operate the telephone and cable wires are certainly relevant potential, if not present competitors in the national classified advertising market. Thus, the list of media available to national advertisers includes the following:

1. Television stations (through networks or directly).
2. National newspapers and magazines.
3. Radio stations (through networks or directly).
4. Metropolitan daily newspapers.
5. Cable television systems (through networks, super stations, or directly for systems with the technical facilities).
6. Direct mail.
7. Non-daily newspapers and non-national magazines (including shoppers).
8. DBS
9. MMDS
- ****
10. Billboards and walls (for posters).
11. Video cassettes.
12. Telemarketing (including the use of ADRMPS).

B. Local Advertising

Local firms seeking the most efficient way to reach their target audiences prefer media that reach that entire market, but not those outside that market. If that market is very small then they might consider reaching it by using a small mailing, ADRMP over the telephone (particularly in communities with flat rate local telephone service), billboards, or leaflets distributed outside the post office or local shopping center. Thus, as for

local news (discussed in section III.B, above), the availability of common carriers makes it unlikely that media concentration could have much effect in a small local market.

In larger markets--too large to make it economical to use the telephone or mail as mass media--the dominant media used for local advertising are local newspapers and television and radio stations. Yet a number of other media are having or will have a significant impact. For general advertisements that are not very time sensitive, the yellow pages telephone directory is very popular and for more time-sensitive material there are "shopper" magazines./107/

Another growing medium for local advertising is cable television. As systems are interconnecting with their neighbors and sharing facilities and staff local advertising is becoming a more practical for local advertisers./108/ Cable operators can offer commercial minutes on basic cable networks or purchase their own syndicated material and sell their own advertising time. More interestingly, cable operators are increasingly offering small electronic versions of the classified ads, either in conjunction with or in competition with local newspapers./109/

In summary, the local advertising media that must be considered in each local market would be

1. Television stations.
2. Cable television systems.
3. Radio stations.
4. Regional and metropolitan magazines.
5. National magazines with local editions.
6. Daily newspapers.
7. Non-daily newspapers including shoppers.
8. The yellow pages telephone directory.
9. Leafletting.
10. Direct mail.

11. Telemarketing (including the use of ADRMPs)
12. Billboards and posters.

C. Trade & Business Advertising

For the reasons mentioned in III.C above, this area will not be addressed here.

D. Further Market Subdivisions

The media format used to deliver an advertisement--video, audio, or print--is more significant in the advertising market than it is in the news market discussed above. Some advertising messages must contain so much detail about prices and selections that they almost necessitate the use of the print media and others require a television presentation to produce the requisite emotional impact. Nevertheless, as with news, the predominant goal of the advertiser is to communicate a message: buy these products or services. The value of advertising is measured by this alone.

Thus, while many advertisers will have a preference for one medium format or another, enough seem to be able to use more than one effectively so that the different media are pressured to compete against each other to attract these substantial discretionary expenditures. Still, there is a good argument that can be made that since only video, with its tremendous popularity, can attract the mass audiences that some advertisers need, prices may be set by those media as if they did not face significant competition from audio or print media. Therefore, it may be appropriate to consider retail distributors of video advertising media as a separate product market. Their ability to achieve this, however, may be disappearing quickly as cable television and other new media serve to fragment the video

audience./110/

Advertisers rarely, if ever, would require the use of a live media for advertisements so media with that capability are not particularly special to advertisers. In fact, most advertisements are planned and ready sufficiently well in advance of the time they are designed to be disseminated that they permit advertisers to use monthly and weekly, as well as more timely media. Speed is important to some media, but as long as the most timely media feel pressure to price themselves competitively with the less frequent media, there is no need to segregate advertising media according to their timeliness.

Most advertisers would be expected to be indifferent as to whether their ads are received by consumers in their homes or outside their homes so it is unnecessary to distinguish between home media or media capable of delivering to a mobile audience except for advertisers employing an 800 phone number for orders. Also irrelevant is the distinction between media capable of delivering without advertising, since only advertising media are included in the advertising markets listed above. Advertisers of "adult" products (including adult films or video cassettes) are usually required to avoid using media which are easily accessible to minors. If the media which they can use do not seek out other non-adult ads, but rather set their ad rates with the knowledge that they face no competitors, then they should be evaluated as a separate and distinct market.

Finally, although it does not appear that any advertising media technology has such lower costs that they do not face competition from the others for general purposes, it may often be

that only a small set of media are specifically targeted to reach a particular very specialized or small local audience. In such cases the rates of other media, which deliver many undesired audience members, might be prohibitively high and the specifically targeted media might take advantage of their status to set excessive rates. In such cases it would be appropriate to examine a market consisting of only those media offering competitively priced access to the local market.

E. Summary

It appears that national advertisers seeking to reach local markets can secure competitive access to local markets throughout the nation by dealing with the many broadcasters, newspapers, and national magazines, among others, serving the market, or by dealing with them through networks. However, if those advertisers desire to reach exceptionally large mass audiences there is a danger that the market might be too concentrated, for there are only a few broadcast television networks that can deliver the largest audiences which some national advertisers demand.

On the local level there is a comparable situation. Local advertisers serving large enough markets are likely to have access to competitively priced broadcasters, newspapers, and cable systems, among others. But, those desiring to reach a particularly small or specialized market may well find that very few media can deliver to that audience effectively and economically. The concentration in such markets is likely to be exceptionally high.

V. Mass Media Entertainment

A third distinct major market that media firms compete in is the market for messages that serve primarily as entertainment. Some consumers desire such entertainment as a temporary escape from their everyday existence, it may permit them to derive vicarious exhilaration from adventures they can and do not have themselves./111/ Others desire entertainment as a form of relaxation, enabling them to exert a minimum of energy while unwinding from a difficult day./112/ Still others may desire entertainment because it permits them to participate in social conversations at work or at parties, when others talk about fictional characters or sporting events./113/ There are undoubtedly many other reasons./114/

The messages that media firms disseminate in this market include television sports, mass market paperback novels, musical recordings and performances, feature films, and prime time television series. Some argue that this market necessarily includes all forms of leisure time activities,/115/ but that is not so. Activities such as bowling, gambling, or adult games require significantly more active audience participation than mass media entertainment, and so for the substantial portion of consumers who desire a passive form of relaxation, the former do not represent a substitute for the latter. It is, therefore, reasonable to treat mass media entertainment as a distinct product market.

In fact, the mass media entertainment market includes an indeterminate multitude of distinct subcategories which might or might not be recognized as separate markets submarkets. Unlike the news and advertising areas, which seem easily divided into

three main subject markets--local, national, and trade--consumers seem to distinguish between at least a dozen, if not dozens, of "types" (subject matter categories) of entertainment products. In addition, all of the seven non-subject matter distinctions reviewed in section II.B. above, have some application to entertainment markets and many of those distinctions appear to be more significant to consumers than the subject matter of the material.

The various combinations of all of these eight variables indicate that ascertaining the relevant product markets in the entertainment market is not an easy undertaking, and it is attempted here only with the clear disclaimer that the subjective judgments made are offered only as first draft suggestions, subject to revision based on further more detailed empirical analysis by others. Because so many different distinctions may have relevance, it becomes cumbersome to list the media serving each of these media markets. Instead, only a subjectively selected set of the more narrow product markets are discussed in section V.C.. The markets are selected based on the discussions in sections V.A. and V.B..

A. Types (Subject Matter Categories) of Mass Media Entertainment

A typology of television shows used in a study about programming diversity in the early 1960s listed about 47 types of shows and distinguished between detective shows, police shows, and mysteries within the drama category, but not between baseball, basketball, and football within the sports category./116/ That study also condensed these types into eight larger

categories of entertainment (four were not entertainment)./117/
Subsequent studies have used a variety of different typologies./118/

After many attempts to group entertainment into categories with some meaning, this commentator came up with an uneven list of seven "meta" categories, which group different types of entertainment into groups with those that represent the most reasonable substitutes for them. The first group are the numerous types of fictional stories, including comedies & dramas, mysteries and romances, science fiction and animated children's cartoons. Second, are live sporting events: including football and basketball at both the professional and college levels. Third is sports commentary: reports and stories about past games as well as actual pictures or tapes of them. Fourth, are non-athletic games: television games shows like "The Wheel of Fortune" and "Let's Make a Deal," radio quiz shows, which are currently out of fashion, and books of puzzles and brain teasers.

Fifth, are soft news features and gossip, which, like "Dear Abby" might appear in style sections of newspapers, as articles in "People" or fashion magazines, as call in radio talk shows, or television programs like "PM Magazine" or "Entertainment Tonight." A sixth category would include variety shows of dance, comedy, or music, including concerts, radio stations manned by disk-jockeys, and television holiday "specials," and the music videos of MTV. Finally, there is adult entertainment, which appeals to users' sexual interests.

Yet, after still further thought it seems that items from at least some of those categories would serve as reasonable

substitutes for others. In fact, very few entertainment products seem sufficiently distinct from others that consumers will not accept others as reasonable substitutes. It seems that consumers simply do not care as much about distinctions between the subject matter of different entertainment products as they do about other characteristics of such products. Therefore, most entertainment products are presumed to compete in a single entertainment market and only those few in special demand are considered in isolation.

The only types of entertainment which appear to create a significant degree of demand which is for them alone are 1) live sporting events, 2) recently released and heavily promoted material, 3) sexually explicit adult material, and 4) material designed to appeal to young children. Retailers of any one of these would seem to be able to raise their prices significantly before their audience switched to some other form of entertainment. These will be reviewed in turn.

1. Live Sports

Many spectators are intent on following live sporting events, whether because they have placed a bet on the game or they are simply fans of a team or a sport. In fact, football, basketball, baseball, ice hockey, and boxing, may each represent distinct entertainment products, as many fans of particular sports may not consider any other form of entertainment to be a reasonable substitute for the sport they desire to follow./119/ In addition, fans may make sufficient distinctions between college and professional levels of football and basketball to justify treating them as separate markets. Moreover, since fans usually have significantly more interest in home teams than others, home

team contests usually represent another separate market in local markets with home teams./120/

Fortunately, it is unnecessary to decide whether each of these should be regarded as a separate market for the same media which disseminate one of those live sports can or do offer the others. Therefore one need only evaluate the concentration of media that can deliver such live sports and that is enough. These media are exactly those that are able to transmit live and they are discussed in section V.C.1. below.

2. Recently Released & Heavily Promoted Material

Recently released and heavily promoted material often attracts significant product specific demand. Many consumers will be led by advertising, reviews, or personal conversations to seek out one of the latest, blockbuster films, bestseller novels, golden hit singles or albums, internally promoted television special award shows, or self-promoting episodes of a television series. Since characters, plots, or rhythms of these products are discussed at work or at social gatherings many consumers may desire them for "defensive" purposes: so as not to appear "out of touch," while others might simply enjoy keeping up with the latest gossip, albeit of fictional characters.

Television awards programs and first run series episodes are available on the live media and discussed in section V.C.1, below. Feature films of this type were recognized as a distinct relevant product market by the courts/121/ and there is little reason to doubt that other media products so promoted would not have the same status. The media serving this market are noted in V.C.2, below.

3. Pornography

Another very distinctive category of mass media entertainment is sexually explicit material or adult entertainment./122/ This is material designed to be erotically arousing. While it usually must be very visual--photographs or film--it also includes racey dialogue or descriptions of sexual acts. Those who desire this type of material are unlikely to find other forms of mass media entertainment to be reasonable substitutes.

While many may consider much of this material to be obscene, the Supreme Court has held that such material cannot be suppressed unless it is legally obscene according to the three-prong Miller test, which applies community standards./123/ Nevertheless, the courts have recognized that communities should have the ability to permit parents to deny such material to their children if those parents consider it to be "corrupting" and such material may be excluded from media easily accessible to children as discussed in section V.B.6. below. The media that distribute material of this sort are mentioned in section V.C.3.

4. Material Designed For Young Children

Many adults admit to watching and enjoying kids' Saturday morning cartoons. Some may also enjoy Sesame Street. Yet, while most adults will consider many other forms of entertainment to be reasonable substitutes for such programs, young children may not find any. Dr. Seuss books, some comic books, and some Disney and George Lucas films will appeal to them, but most other entertainment products may be too difficult for most of them to follow or at least follow well enough to enjoy./124/ Those that they can enjoy constitute a distinct product market. The media

which deliver children's entertainment are discussed in V.C.4.

B. Distinctions Suggesting Further Market Divisions

All of the seven distinctions discussed in section II.B. have relevance to the entertainment market in some context, as discussed below.

1. The Video Format

While at different times, consumers will desire video, audio, or print media entertainment, it seems that video is the only one of the three that is so desired that substantial numbers of consumers consider it to be without reasonable substitute./125/ It may be because of some McLurean ability of the video medium to mesmerize one's eyes and ears, without demanding much concentration, but whatever the cause, many act as if television is one of the best ways to pass the time./126/

Until very recently, the audio media did have the advantage over the video media of being able to deliver stereo sound, but now that television can be delivered in stereo it seems that there is nothing that television cannot deliver that radio can. Therefore, while video is generally a reasonable substitute for audio, the reverse is often not the case. Print entertainment, meanwhile, requires literacy and appears to demand too much concentration for most television viewers to consider it a reasonable substitute to TV, but television does seem to attract many who might otherwise prefer reading. The video media market, then appears to be a significant discrete one and is considered in conjunction with the home media market and competitively priced entertainment market in section V.C.5..

2. Live Programming

As more consumers become accustomed to the flexibility provided by video cassettes, which permit users to start and stop entertainment at their own discretion, entertainment on cassettes might well be favored in many cases due to such flexibility. Media which deliver tapes should therefore be considered a separate product market. Yet, because consumers with VCRs can tape live programming and review it later--ignoring the time lag--all media, whether they could deliver live or not, would serve this market and therefore it is not examined below.

Media that can deliver entertainment live, however, deserve separate examination, because they are the only ones that permit consumers to follow live sporting events and award specials or popular first run television series episodes when they are first broadcast. Since many consumers consider these to be unique information products, the media which offer these products likely constitute a significant market and are discussed in V.C.1.

3. In the Privacy of the Home

Many, maybe even most, consumers would consider attendance at a live concert, sporting event, or Broadway show, to be a superior experience to receiving transmissions of them via the media. A similar statement could be made about watching a feature film on the large screen and with the superior sound equipment of a local theatre. Many may consider the social experience of being with a group to be a large, if not dominant, part of that entertainment experience. In any case, the fact that all of these media seem able to set prices as if they did not face significant competition from other media, especially in-

person media and therefore to constitute a distinct product market. This market is discussed in section V.C.9..

At the same time, what Dorothy said about Kansas in the Wizard of Oz also seems to be true: "there's no place like home." When consumers desire mass media home entertainment, many, if not most do not consider non-home media to be reasonable alternatives. This may follow from the fact that entertainment is often sought for effortless relaxation or because it is not always easy or inexpensive to hire a baby-sitter, not to mention, that many parents desire to share a maximum amount of time with their children. Those who strongly prefer to stay home for these reasons or who are simply too lazy to leave their homes will select their entertainment from that available within their home. Therefore the home entertainment market is truly a market deserving of study and is considered in conjunction with the video media and competitively priced entertainment media in section V.C.5.

4. Unpriced or Without Advertising

Both free and commercial-free media seem to constitute distinct and separate product markets. For those who cannot easily afford to pay the price of admission, subscription, or the purchase of other entertainment products there are no substitutes for free media, like broadcast television, radio, and public libraries. Meanwhile, this group of consumers have the most need for political protection since it probably has the least economic strength of the user groups mentioned. The media that serve this group are discussed in section V.C.6.

Meanwhile, many consumers seem willing to pay a significant price for commercial free entertainment products like movies on Home Box Office (HBO). It is hard to believe that these viewers are so irritated by commercials that they find commercial television an unreasonable substitute, but the much higher price they are willing to pay for a commercial-free product suggests that they value it significantly more. Yet, it is possible that such higher prices are only indicative of the value of the heavily promoted material discussed in section V.A.2., in which case commercial-free entertainment might not represent a distinct product market. In any case, commercial-free media are examined in conjunction with video media in section V.C.7.

5. For Consumers in Transit

Most consumers are employed and face some form of commute to work. This gives them time every working day when they may desire some form of media entertainment product in addition to the news. Many desire soft news, including sports news, and the latest rumors about celebrities, as well as humor, or short or long fiction in print. Those who take mass transit may use their eyes and ears to consume, but those who must drive themselves demand an audio media to permit visual attention to stay on the road. Consumers like these would seem to consider portable media to be without reasonable substitute for these purposes and so this distinct product market is discussed in section V.C.8.

6. Capable of Excluding Minors

The capability of excluding minors is important for delivering the sexually explicit adult material discussed in section V.A.3. above. As noted there, laws may prohibit such material from

being disseminated via media which may be easily accessible to children, such as daytime radio/127/ (and presumably television), as well as the mail,/128/ telephone lines,/129/ or full display newsstands/130/ in many circumstances. Therefore, the only media which can be used to distribute these adult entertainment products would seem to constitute a distinct market and they are reviewed in section section V.C.3., below.

7. Competitively Priced ~~Media~~

Since broadcast television and radio and public libraries all provide entertainment at no charge to consumers they often exert considerable pressure for lower prices on other competing media in any market in which they compete. Yet in some markets reception of television is so bad that broadcasters are not really effective competitors and households that desire good video reception feel compelled to subscribe to some cable television service.

Even more significantly, many analysts have worried that cable television may dominate all other media in the entire 80-percent of the country where it is viable (because communities are rich or dense enough), due to its ability to bundle multiple services together and distribute them at lower costs than other media./131/ Its ability to offer a cluster or supermarket of different services that no other single media can match makes it more convenient for some consumers. While such consumers might still find a combination of broadcast television, a VCR, and a satellite dish or MMDS to be a reasonable substitute for cable as a technical matter, cable systems appear to enjoy significant

economies of scope and scale/¹³²/ they are able to charge lower prices than other combinations of media and still operate profitably.

Therefore, in markets where consumers desire some product that is provided by cable systems and not by broadcasters, cable systems may be able to act as if they do not really face any competition. Cable operators, who were formerly controlled by rate regulation,¹³³ might now seek and receive monopoly prices. Competition in this market is discussed in sections V.C.5. and V.C.7.

C. Nine Specific Product Markets

As noted above, it would be very cumbersome to discuss the media serving the possible markets that are defined according to the combinations of all eight potentially relevant criteria discussed in V.A. and V.B.. Instead, a sample of nine apparent media entertainment markets have been selected because of their potential for a high concentration and thus lack of competition.

1. Video Entertainment Delivered in Real Time

Video entertainment delivered in real time includes two types of entertainment which can only be delivered by media capable of delivering video live. The two products are live sporting events and the first runs of popular television series episodes and the only media capable of delivering them in most markets are television stations and cable television systems. In markets in which good reception is available from a fair number of television stations, those stations insure that adequate price competition will take place because they offer their products free of charge. In markets without adequate television reception

or where the cable system delivers two or more potentially competing products of this type, the cable system operator may enjoy a monopoly position in this market unless and until DBS and MMDS become viable.

2. Heavily Promoted Films, Music, or Books

Heavily promoted films are almost always released initially to movie theaters alone, for film distributors consider theaters to be the retailers able to collect the maximum amount per consumer for any particular film. Distributors intentionally preempt competition from other media because they do not want to encourage competition and lower prices for movie theater admissions./134/ The only possible competition that they might permit is competition from pay-per-view (PPV) services,/135/ if such services can offer the distributor a comparable price per consumer. In fact, if sufficient numbers of local media become able to offer PPV services, distributors might even use a PPV opening to begin their release. PPV appears to be economical for cable systems and may well be offered by DBS and MMDS operators also.

In that case, consumers who desired to see one of the new films would be able to choose from those available in the movie theaters and those available on PPV from cable systems and any other PPV media and these two or more media would compete./136/

Heavily promoted music is available free of charge on radio stations and may also be purchased from record stores, the latest music videos may only be easily available on cable systems, but many television stations broadcast them late on Friday nights or at various other hours. In any case, though, the radio seems to

provide consumers with at least a reasonable substitute for the music video. Musical recordings may also be ordered by mail from record clubs.

Heavily promoted books are also usually available through book clubs and often for special one week loans from public libraries, although they are sold primarily by bookstores and paperback book sellers at airports, train stations, and other locations. Consumers may also purchase books directly from the publisher through the mail by making a phone call or two.

3. Sexually ~~Suggestive~~^{Explicit} Adult Entertainment

Sexually explicit adult entertainment is available from magazines like Playboy, erotic books, or at special adult clubs. "X" rated films may be shown at movie theaters or video arcades or sold or rented on video cassettes by home video retailers. Adult pay-TV services may be offered by cable systems as well as by DBS or MMDS operators.

The availability of such material on video cassettes would appear to insure that this market was very competitive, but increasing numbers of the large number of cassette rental stores are ceasing to compete in the market due to the fear of prosecutions for obscenity violations.^{136A} Still, the ability of individuals to purchase adult cassettes through the mail and trade with others suggests that concentration among retailers is not a danger. It should also be noted, that the cost of such tapes can be amortized over many many uses since they may be amenable to many repeat viewings and potential trading partners are likely to be found at nightclubs.

4. Home Video for Children

Young children seem to constitute a particularly large group of home video consumers with a particular, but limited taste for entertainment. The primary medium which serves them is television, with offerings like PBS's Sesame Street and occasional network specials and more frequently, shows like Dennis the Menace, Leave it To Beaver, or Father Knows Best, from broadcast television or imported independent or super stations on cable. Cable may also deliver programming like Nickelodeon as might DBS or MMDS.

Video cassettes for children (kidvid) is often available at most video stores and these are already a very significant medium. This is because, for homes with VCRs, the cost of tapes can be amortized over repeated uses since children are more inclined to repeated viewings. In addition, their classmates at school provide an excellent group of potential trading partners. Hence, despite complaints about the relatively small amount of children's programming available, it seems that the retailers of it constitute a very competitive market. This indicates that the problem of production is not due to concentration.

5. Competitively Priced Home Video

The home video entertainment market is one of the most important to evaluate, because of the possibility that cable television systems may become dominant natural monopolies if they are not already. The key question is whether any other home video media can deliver their products at costs approaching cable's.

When a market includes many television stations and video

stores permit easy purchase or rental of tapes there may be little danger that there will be the kind of concentration that would permit cable systems to exercise monopoly power. Entry by MMDS and DBS systems may help matter, but not if these systems remain more costly to operate than cable or are marketed by the cable system owner. Purchasing video tapes through the mail also seems unavailable at prices comparable to subscribing to cable.

In the absence of competitively priced "new" media, a lack of sufficient television stations, good reception, or video stores, creates the danger that at any given time, the local cable system will be carrying the only two or three shows which a consumer might desire. In such a case concentration becomes dangerous.

6. Material Available at No Charge

Those who depend on free media due to their limited budgets are likely to have access to broadcast television and radio and public libraries. The issue of price competition in this market is irrelevant, however, one might be concerned about the diversity of entertainment offerings here. It should be noted, though, that since these media do act as if they compete with other media in other markets, as discussed in some of the sections above.

7. Competitively Priced Commercial-Free Video

With the development of home pay media, consumers have gained increased access to commercial free entertainment. Yet, as in the home video markets, there is at least the possibility that competition in this market will be undermined by cable television in at least some geographic areas. This is because the only markets in which cable is likely to face rivals with

comparable costs are those markets in which the population is least dense and cable may never even be installed/137/ and those markets in which the population is most dense and multiple movie theaters and video cassette rental stores are present. MMDS will not be an effective competitor unless it can come close to meeting cable's costs and price. Meanwhile, DBS cannot be considered a competitor to cable where cable operators are the ones who sell it in their markets.

Movie theaters present strong competition when there are enough of them to provide a few different selections on any given night. Households with VCRs can always program their VCRs to tape late night movies and then view them later while zipping through the commercials, but the variety of such offerings also depends on the size of the television market. Video rental stores can supplement this fare, but again, accessibility to them depends on the density of a residential neighborhood or the work/shopping/ commuting environment. These only seem likely to provide competition to cable in the denser or richer geographic markets.

B. Portable Media *Products*

As noted in V.B.5., many consumers in transit desire portable forms of media entertainment. Such entertainment may be provided by books (usually paperbacks, because they are lighter), magazines, and newspapers or by radio stations and cassette tape retailers. The latter pair, meanwhile are the only entertainment products that can be enjoyed by drivers who must keep their eyes on the road. With the proliferation of "walkman" cassette

players and the availability of tapes by mail order or by personal taping from radio broadcasts (despite its probable illegality) it seems that there is little danger of harmful concentration in this product market.

9. Live Performances & Movie Theaters

The only thing that will be said about the market for live performances of sporting events or concerts is that the products which they offer may compete against each other or may be sufficiently unique to consumers that they do not compete with anything. In this market the performer is probably the one with more market power than the medium owner.

As for legitimate theaters, it seems that while there is certainly some degree of competition among media, the ability to compete is severely limited by the power of the theatrical unions to negotiate agreements that seem to require theaters to charge very high prices and the uniqueness of each theatrical production. Most consumers of Broadway theater and even Off and Off Off-Broadway theater seem to be relatively price insensitive/138/ although many theatergoers are willing to wait in line for discount tickets each day. The lack of competition among movie theaters in a city like New York is hard to understand, but if price competition does not occur in market with more than 50 competitors it is hard to believe that the number of theaters will have much affect on competition.

D. Summary

In summary, there are at least a few retail markets of mass media entertainment in which there is a danger of harmful concentration. In particular, cable television systems, with

their economies of scale and scope, may enjoy excessive market power in a number of markets. In those markets where households do not get good television reception, cable (including private cable (Satellite Master Antenna Television (SMATV))) is likely to dominate all home video markets, unless DBS makes tremendous progress. Even where television is easily available, cable is likely to dominate in many markets, such as the market real time entertainment (when cable delivers two or more potentially competitive products) and competitively priced commercial-free home video. In addition, the market for heavily promoted new films may be highly concentrated in localities with few theaters though that might change as PPV comes of age.

There do not seem to be very many sources of children's home video either, but that does not seem to represent a problem with the retail market as much as a problem on the production side where there is not much financing available.

VI. Non-news Non-fictional Works

It is probably not appropriate to analyze the product market composed of less timely non-fictional works such as scholarly or scientific articles, biographies, textbooks, and reference works, educational and religious television programs, works of art, and documentary films in the same manner as the other product and service markets mentioned above. This is because of the production and distribution of most of these products is not subject to normal competitive pressures. Most are funded by government bodies or private donations and editorial decisions are supposed to be made in a non-partisan manner. If the products have any significant news or entertainment value, that aspect of them should be analyzed as news or entertainment under the appropriate category above.

A large portion of the media serving this market are controlled by educational institutions and supposedly non-political governmental bodies. For example, most legal scholarship is published in law reviews, access to which is controlled by groups of law review editors at the more than 100 law schools throughout the country. Documentary films may be broadcast on any number of different public television stations or cable television access channels if not PBS, all of which are staffed by supposedly non-political governmental employees. While educational textbooks are published by private firms, the selectors of what books or video materials are actually distributed in the market are state or local school boards or college or university professors. Similarly, unless a biography is particularly newsworthy or entertaining, the principal

purchasers of it will be public or educational libraries.

In conclusion then, there seems to be little value to evaluating private media concentration in this product market where private firms play such a small role in controlling access and public funding represents such a large portion of media finances.

VII. Conclusion

This article has attempted to identify and discuss the separate and distinct product markets served by the mass media and the different media that serve each market. After reviewing the four general categories of media products and the many more product markets and submarkets within them it becomes clear that there is no single mass media market. Therefore the question of whether or not mergers and acquisitions are increasing media concentration to dangerous levels is revealed to be an imprecise question. Those asking that question must rephrase it to focus on concentration in some particular product market. Only then can restrictions on media ownership be evaluated properly.

NOTES

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1. See FCC Multiple Ownership Rules, 100 F.C.C.2d 17 (1984); 100 F.C.C.2d 74 (1984).

2. See, e.g., Id. especially n.29.

3. Id.. See also B. BAGDIKIAN, THE MEDIA MONOPOLY (1983).

4. As mentioned just below, media firms may compete as producers of information (producing entertainment, advertisements, or reporting on news and other non-fiction), or as wholesalers of such products, as retailers of such products, or as underlying common carriers. These first three markets are merely the manufacturing, wholesaling, and retailing markets which exist for most goods. The distinction between these markets was very clearly illustrated in a special report called "The New Dimensions of Television," published by ABC and included as part of its 1981 annual report. See also the chart in Price & Nadel, Antitrust Issues in the New Video Media, 3 CARDOZO ARTS & ENT. L.J. 27, 28 (1984); Levy, Jonathan and Florence Setzer, Measurement of Concentration in Home Video Markets. Washington, D.C.: FCC Office of Plans and Policy, 1982, at 39-40.

Within each of these categories media firms may compete within the variety of markets discussed in this article. This article, however, concentrates on competition in the retail mass media

market.

5. This oligopoly theory has been developed over the past half-century. See sources noted in White, "Antitrust and Video Markets: The Merger of Showtime and The Movie Channel as a Case Study," in VIDEO MEDIA COMPETITION 338, 343 (E. Noam ed 1985) [hereinafter Noam].

6. Inefficient pricing leads to misallocations of resources. See S. BREYER, REGULATION AND ITS REFORM xxx (198?).

7. See supra, note 4.

8. In some markets, such as the one for banking services, consumers may desire multiple products or services, but tend to seek all of them from a single firm. In such cases, all of the products may be more properly analyzed as a single aggregate cluster. While some have argued that mass media products should be analyzed in this way, see Note, Product Market Definition For Video Programming, 86 COLUM. L. REV. 1210, 1217-19, 1231-35 (1986), this commentator believes that even consumers who use a medium like cable television, which provides a complete cluster of services, will also use other media also. For example, it is likely that almost all consumers consume broadcast television and radio programming, and also consult at least one daily or weekly newspaper as well as a magazine. Many also attend the movies occasionally and increasing numbers own video cassette recorders. See also Lee, Cable Franchising and the First Amendment, 36 VAND. L.REV. 867, 885-86 (1983).

9. As recognized in the U.S. Justice Department's revised 1984 Merger Guidelines, a market must be defined according to the

specific product or service provided as well as the geographic market in which it is provided. See, 1984 DOJ Merger Guidelines sec. 2.0 printed in 46 BNA Antitrust & Trad.Reg. Rep. No. 1169 (Jun. 14, 1984) at S-1 of the special supplement.

10. See note 4, supra.

11. WHO OWNS THE MEDIA? CONCENTRATION OF OWNERSHIP IN THE MASS COMMUNICATIONS INDUSTRY (B. Compaine, ed., 2d ed. 1982) [hereinafter Compaine].

12. See, e.g., id. at 39-43 (group ownership of newspapers), 261 (movie theaters), and 329-30 (broadcast stations).

13. Salesmen who have tried to sell cable service to people who already subscribed to subscription television (STV) have often been told by the subscribers that they already had cable service. See, When TV Precedes Cable, Cable Television Business, Feb. 15, 1983, at 77, cited in Note, Defining the Relevant Product Market of the New Video Technologies, 4 CARDOZO ARTS & ENT. L.J. 75, 87 n.98 (1985). See, also, K. Thorpe, Cable Television, Market Power and Regulation 28-34 (Rand Corp. Paper No. P-7095-RGI, 1985)? cited in Note, supra note 8, at 1222 n.80.

14. See note 9, supra.

15. Unfortunately there is no obvious geographic unit to use. If one uses a large unit, for example, an area of dominant influence (ADI), a market measure used by television stations, one might find that five local newspapers and ten cable systems compete in the market, suggesting some degree of competition, when the small territories served by each might not overlap at all. On the other hand, if a small market unit is selected, a census tract or a cable system community, however, it may be

difficult to determine which media serve that market, for many of them are likely to emanate from outside the market.

16. See note 9, supra.

17. The difficulty of identifying which media supply local news to or serve as local advertising media for a community can be illustrated by considering what communities can depend on the highly respected The New York Times to cover their news. Manhattan certainly can, but is it accurate to say that the Times is a local news medium for Queens, Long Island, Westchester, or Northern New Jersey? While it does run stories about these areas it certainly does not give in depth coverage of important local issues such as local school board problems. Meanwhile, do New York City radio or television stations serve as practical local advertising for local businesses in those same areas? The answer is not clear.

18. The proper way to define a product market is to focus on buyer behavior. See, Greenberg & Barnett, TV Program Diversity-- New Evidence and Old Theories, 61 AM. ECON. REV. (papers & proceedings) 89, 90 (1971); H. LEVIN, FACT AND FANCY IN TELEVISION REGULATION 53 (1980); DOJ Guidelines, supra note 9, at sec. 2.12 (1). To use the bright lines of historical distinctions rather than present course of conduct is to act as illogically as the man who searched under a lightpost for a wallet he lost elsewhere, simply because the light was better. See, I. POOL, TECHNOLOGIES OF FREEDOM xxx (1983).

19. See, e.g., cases discussed infra, notes and .

20. See, FCC Report defining markets subject to effective

competition as directed by the 1984 Cable Act. xxx F.C.C.2d xxx (1985). That decision is being challenged in two different courts, see. . . .

21. See, e.g., H. LEVIN, *supra* note 18, at chap. 3; G. STEINER, *THE PEOPLE LOOK AT TELEVISION* 126, 373-74 (1963); Signorielli, *Selective Television Viewing: A Limited Possibility*, J. COMM. 36(3) summer 1986, at 64.

22. The standard measures of concentration are the Herindahl-Hirschman index and the classic four firm concentration ratio. See, F.M. SCHERER, *INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE* 56-59 (2d ed. 1980). The DOJ prefers the HHI measure. See, Justice Department Merger Guidelines, §3.1, *supra* note 9.

23. A public good is the economic term for a good or service that, once produced for use by one consumer, can be enjoyed by additional consumers at no additional cost.

24. Newspapers and magazines measure their output in copies sold, subscribers, and pages. Broadcasters measure their output in households reached for at least a 15-minute period each day or week, or the actual number of households in the audience at a given hour. Cable system operators measure their output in households hooked-up and channels delivered. Video cassette recorder may be measured in households with VCRs or sales or rental units. It is not very clear how to translate these different units into a single uniform standard.

25. In addition to presuming that products generally cannot be shared freely with others via diffusion (only public goods may), the indexes also seem to presume that consumers will purchase

only a single brand of the relevant product. Neither of these assumptions are valid for the news product market.

26. Federal Trade Commission, Bureau of Competition, Proceedings of the Symposium On Media Competition. Washington, D.C.. 2 volumes, GPO 1978.

27. U.S. House of Representatives, Subcommittee on General Oversight and Minority Enterprise of the Committee on Small Business, Media Concentration, 96th Cong. 2d Sess., 2 parts, 1980.

28. See Compaine, *supra* note 11.

29. *Id.*, at chap 8.

30. See, Bagdikian, *supra* note 3.

31. See, e.g. Broadcasting, May 11, 1987, at xx-xx (sic.)

32. See, e.g. Advertising Age, Jun. 30, 1986, at s-1 to s-72.

33. U.S. House of Representatives, Subcommittee on Telecommunications, Consumer Protection, and Finance of the Committee on Energy and Commerce, Telecommunications in Transition: The Status of Competition in the Telecommunications Industry. 97th Cong. 1st Sess., 1981.

34. *Id.* at 310-25.

35. In defense of the House staff, the primary purpose of their report was "to assist the Members in deciding which [telecommunication] markets [were] competitive enough to warrant deregulation today, and which require additional competition before deregulation will advance the public interest." *id.* at iv., and thus they focused on the broadcast media, particularly the impact of cable television on broadcast television.

36. See section V.B.3. & V.C.5., infra.
37. U.S. Department of Commerce, National Telecommunications and Information Administration, Print and Electronic Media: The Case for First Amendment Parity, 1983.
38. Id. at 99-109.
39. Levy & Setzer, supra note 4.
40. Id. at 41.
41. Id.
42. Id. at 97, 99.
43. See section III.A., infra.
44. See section V.C.3., infra.
45. Jennings, Ralph, Diversity of Communications Facilities in American Communities, unpublished report, submitted to the FCC by the Office of Communication, the United Church of Christ, in the Fairness Doctrine Inquiry, Gen. Dkt. No. 84-282, 1985.
46. Burrelle's is a clipping service in New Jersey, which also publishes statewide media directories. It has published directories for Pennsylvania, New York, and New Jersey and acquired New England Media Directories, which had published directories for Connecticut, Greater Boston, Maine, and New Hampshire. See, e.g., Burrelle's New Jersey Media Directory. Livingston, N.J.: Burrelle's Media Directories, 1984.
47. Multiple Ownership Rules, 100 F.C.C.2d 17, 40 (1985); Fairness Doctrine Report, Dkt 84-282, 1985 at .
48. See, e.g., Note, supra note 8, at 1213 n.15; Note, supra note 13.
49. See, e.g., Levin, supra note 18; Steiner, supra note 21; Dominick & Pearce, Trends in Network Prime-Time Programming, J.

COMM. 26(1), winter 1976, at 70, xx; Tiedge & Ksobiech, The "Lead-In" Strategy for Prime-Time TV: Does It Increase the Audience?, J. COMM. 36(3), summer 1986, at 51, 57, and others cited id. at 57.

50. Id.

51. United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 404 (1956).

52. Many commentators have recognized that the advertising market is distinct from the other markets, see, e.g., Bennett, Media Concentration and the FCC: Focusing With A Section Seven Lens, 66 Nw. U. L.R. 159 (1971), and all typologies of broadcast programming, supra note 49, recognize the distinction between news and public affairs programming and categories of entertainment programming.

53. The Supreme Court made this observation in Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 768? (1976) (. . . keener . . .).

54. The distinction between the national and local advertising markets is well recognized. See, e.g., Multiple Ownership Rules, 100 F.C.C.2d at 40; Bennett, supra note 52, at 176. Most, if not almost all media firms set different rates for local and national advertising and statistics compiled by Advertising Age, among others, usually distinguish between local and national advertising revenues.

The distinction between national news and local news is not as bright, but the vast majority of stories can clearly be identified as one or the other.

55. Examples of local entertainment would include local high school sporting events, interviews of local celebrities, variety shows with local talent or disk-jockeys playing music by local groups.

56. See Rubin, Television Uses and Gratifications: The Interactions of Viewing Patterns and Motivations, 27 J. BROADCASTING 37, 48 (1983) concluding that many viewers watch television "out of habit and to pass the time--when there's nothing better to do . . . emphasiz[ing] the communication medium itself."

57. "Indecent" material is not permitted to be broadcast during the time when children are most likely in the audience, see FCC v. Pacifica Foundation, 438 U.S. 726 (1978); and movie theaters exhibiting sexually explicit films may be banned from some neighborhoods, see City of Renton v. Playtime Theatres, Inc., 106 S.Ct. 925 (1986); and newsstands may be required to enclose sexually explicit adult magazines in brown paper bags. N.Y.S. stat ?

58. See, e.g., Whitney v. California, xxx U.S. xxx, xxx (19) (Brandeis, J., dissenting).

59. As Learned Hand observed about the first amendment, "it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." United States v. Associated Press, 52 F.Supp. 362, 372 (S.D.N.Y. 1943), aff'd 326 U.S. 1 (1944).

60. See J. TUROW, MEDIA INDUSTRIES 119-25 (1984); P. SANDMAN,

D. RUBIN & D. SACHSMAN, MEDIA: AN INTRODUCTORY ANALYSIS OF AMERICAN MASS COMMUNICATIONS 137-48 (3d ed. 1982).

61. Content based regulations of the print media are prohibited. See, e.g. Miami Herald v. Tornillo, 418 U.S. 241 (1974).

62. Traditionally, newspapers were very biased. See, OWEN, ECONOMICS AND FREEDOM OF EXPRESSION 44 (1975). Broadcasters, however, are subject to a public interest standard, including a fairness doctrine. See Fairness Doctrine Report, xxx F.C.C.2d xxx (1985).

63. See the statistics in Multiple Ownership Rules, 100 F.C.C.2d 17, 27-28 (1984) and the NTIA Report, supra note 37.

64. Both operate as common carriers, transmitting all messages, except obscenity, without regard to content. See, e.g. United States v. Van Leeuwen, 397 U.S. 249, 251-52 (1970) (prohibiting government censorship of mail); 47 U.S. § 153(h) (1976) as interpreted in United States v. Radio Corp. of America, 358 U.S. 334, 349 (1959), prohibiting censorship by telephone companies). Nevertheless, recent increases in second class postage rates and local telephone FCC access charges have made both of these media less accessible to many.

65. See Associated Press v. United States, 326 U.S. 1, 20 (1945); New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

66. To be considered a reasonable substitute for other products in a market, a product must be offered at a competitive price. See, Sullivan or Areeda & Turner.

67. The fewer media sources the more likely that all will

refuse to carry particular controversial messages. Examples of such messages include Peter Grace's advertisements criticizing the size of the national debt. See Channels 1987 Media Guide, 1986 [hereinafter Channels] at 16.

68. See Shackmi & Squadron, "Why Can't TV Advertise Condoms?," N.Y. Times, Jan. 29, 1987, at A27 col. 1; "NBC and CBS to Air Spots on Pregnancy," N. Y. Times, Oct. 24, 1985, at C13, col. 2.

69. When the MacNeil-Lehrer News Hour was first introduced, attempts were made to place promotional advertisements on the stations of affiliates of the major networks, but such requests were refused, despite comments by network executives recognizing the high quality of the program. N.Y. Times articles in the week or two preceding the first broadcast and the Arts & Leisure sec. on the Sun. before.

70. find citation showing that most get their news from TV. See F. ROWAN, BROADCAST FAIRNESS xx (1984). But see, 100 F.C.C.2d at 26.

71. Even the CBS network broadcast news department is feeling the pressure and seeking to cut back on the expense of its world news coverage. See, N.Y. Times, Feb. xx, 1987, at xx.

72. The major providers (original sources) of national news to television stations and cable systems are ABC, CBS, NBC, PBS (MacNeil Lehrer News Hour), the Tribune Company (Independent Network News (INN)) and Turner Broadcasting (Cable News Network (CNN)). The first three also provide national news to radio stations, along with National Public Radio (NPR), and Mutual (now Westwood One?). In addition, other cable networks provide other national news services. Public affairs programming is provided

by Cable Satellite Public Affairs Network (C-SPAN) [primarily live coverage of congressional debate and committee hearings]. The Dow Jones Cable News network offers general news with a particular focus on business and financial news, the sole focus of the Financial News Network. There is also the Spanish International Network (SIN).

73. The Associated Press (AP), United Press International (UPI), and Reuters are also primary sources for many radio stations. Meanwhile, about 100 other new services serve more specialized needs of radio and television stations throughout the nation. See Broadcasting/Cablecasting Yearbook (1985).

74. According to Lichty, Video versus Print, 6 WILSON QTRLY 48, (1982 special issue) 68-percent of U.S. adults read at least part of a newspaper every day, while fewer than one-third watch local or national television news on a given day. Authoritative sources listing the approximately 1700 daily newspapers in the U.S. include Editor & Publisher's Annual International Yearbook, the IMS Ayer Directory of Publications, or the American Newspaper Record's Circulation.

75. National newspapers like The New York Times, The Los Angeles Times, and The Washington Post and large chains like Knight Ridder offer news services to many other smaller newspapers.

76. Lists of syndicated columnists and cartoonists can be found in Editor & Publisher and Working Press of the Nation.

77. For a short discussion of the history of DBS see D. BRENNER & M. PRICE, CABLE TELEVISION AND OTHER NONBROADCAST VIDEO

chap. 15 (1986) [hereinafter Brenner]. For a more economic analysis, see Henry, The Economics of Pay TV Media, in VIDEO MEDIA COMPETITION 35-42 (E. Noam ed. 1985) [hereinafter Henry]. For a more recent update see Channels, supra note 67, at 66.

78. For a short discussion of the history of MMDS see Brenner, supra note 77, at §16.04, 16-17 to 16-31. For a more economic analysis see Henry, supra note 77, at 33-35, 40-41, 52-53. For a more recent update, see Channels, supra note 67, at 57.

79. According to a 1985 A.D. Little Study for the National Cable Television Association (NCTA), only 85% of television households will be economically accessible to cable television. The rest of the households are expected to be served by the other pay and broadcast media. See, Arthur D. Little, Prosperity for Cable TV: Outlook 1985-1990 (1985) (prepared for the Nat'l Cable Tel. Ass'n) at App 1-1.

80. Direct mail would include newsletters and the Post Office estimates that of the approximately 35,000 publications with second class postage permits, about 20,000 are single page church newsletters. Conversation with Bob Hallman of the Office of Mail Classification, USPS, Washington, D.C. spring, 1985.

81. For a list of some of the largest videotex databases, see Channels, supra note 67, at 87.

82. For a short discussion of the expanding use of ADRMPs, see Smith, "Dial 'N' For Nuisance," Wall St. J., Feb. 24, 1986 at 42D.

83. See "Advertisers jumping on the bandwagon," Advertising Age, May 12, 1986, at S4. [check]

84. For a short discussion of the history of STV, see Stern,

Krasnow & Senkowski, The New Video Marketplace and the Search for a Coherent Regulatory Philosophy, 32 CATH. U. L.R. 529, 532-34 (1983). For a more economic analysis see Henry, supra note 77, at 49-51. For a more recent update, see Channels, supra note 67, at 54.

85. Reasonably authoritative lists of the approximately 6600 non-daily newspapers in the country are given in Editor & Publisher and the Ayer Directory, supra. In addition, The National Directory of Weekly Newspapers (published by the National Newspaper Association) is said to provide the most comprehensive list of these publications. The Gebbie Press All-In-One Directory also provides an even longer list. If the community under study is covered by a Burrelle's guide then it should also be used.

86. The best sources of local news magazines are likely to be listed in the Ayer Directory under "metropolitan interest" or "local interest" in the general circulation section and in the trade & technical section under "local, state, and sectional." In Magazine Industry Market Place they may be listed under "regional, metropolitan" and under "regional, metropolitan, local" in the Working Press magazine volume.

87. Local news on cable according to BECK, THE VAST WASTELAND (1984) ?? or see a story in Cablevision.

88. STANDARD PERIODICAL DIRECTORY xx (19xx).

89. D. HALBERSTAM, THE POWERS THAT BE 514 (1979).

90. For radio, the National Radio Publicity Directory identifies local talk shows for the 3500 stations it covers in

500 markets. Volume V. of the Working Press gives a list of local programs in categories like news, news commentary, and public affairs, though the list is clearly not comprehensive. The latter also lists television stations that carry particular types of local news by the categories of civic, magazine supplement, news (general and local), news commentary, and public affairs.

91. See OWEN, supra note 62, at xx.

92. According to statistics compiled by Advertising Age, local media earned \$41 billion in advertising revenues in 1985. National media earned \$53 billion. Advertising Age, date, at xx.

93. See, e.g., J. TURROW, supra note 60, at 52-64.

94. See Cable Television Business or Cablevision article discussing why cable nets aren't getting all the ads despite their lower CPMs.

95. See Multiple Ownership Rules, 100 F.C.C.2d 17 (1984).

96. See Nadel, Comment: Multichannel Video Competition in VIDEO MEDIA COMPETITION 178-79? (E. Noam ed. 1985).

97. Id.

98. Many cable systems offer advertisers a "cross buy," wherein their commercials are inserted on a few different channels (networks) at the same time. Id.

99. 47 C.F.R. 76.xxx (198x).

100. Barter is where a syndicator sells programming with some advertising already included (as the major networks do). In return for agreeing to broadcast the program with the commercials included, the station is given a lower price to pay for the programming. Presumably, if the syndicator could sell enough

advertising, it would be willing to offer the programming free to the stations, like the networks do, and stations would accept the programming in return for the ability to sell a few commercials within a very popular program. See Channels, supra note 67, at 48, 50.

101. See Channels, supra note 67, at 48.

102. For a list of the largest circulation magazines see the annual statistics in FOLIO. Note also that the Sunday newspaper supplement, Parade Magazine, reaches 60 million?? check.

103. See N.Y. Times, Feb. 14, 1986, at D15.

104. See note 82, supra.

105. See Channels, supra note 67, at 90-91.

106. See United States v. American Tel. & Tel. Co., 552 F.Supp. 131, 186 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

107. For a list of about 575 shoppers see the annual issue of the Standard Rate & Data Service - Community Publications Rate & Data which is also published as the National Association of Advertising Publishers' Media Guide.

108. See Nadel, supra note 96.

109. See, e.g., Stern, et al, supra note 84, at 551-52 n.122.

110. See Channels, supra note 67, at 40-41?

111. See Rubin, supra note 56. In Rubin's set of motivational categories, this would probably fit under Escape or Arousal.

112. Id. Rubin calls this Relaxation.

113. Id. Rubin includes this under Social Interaction.

114. Id. In addition to the categories mentioned in the notes

just above, Rubin also lists companionship, habit, pass time, and information as the reasons that people watch television.

115. See, e.g., Stern, et al, supra note 84, at xx; White, supra note 5, at 348; Shooshan & Jackson, Cable Television: The Monopoly Myth and Competitive Reality (1982) (prepared for the National Cable Television Ass'n).

116. See Steiner, supra note 21.

117. Id. at 373-74.

118. See note 49, supra.

119. See National Collegiate Athletic Ass'n v. Board of Regents, 104 S.Ct. 2948, 2966-67 & n.49 (1984) (finding televised college football to be a relevant product market); International Boxing Club v. United States, 358 U.S. 242, 249-52 (1959) (finding championship boxing to be a relevant product market); Philadelphia World Hockey Club v. Philadelphia Hockey Club, 351 F.Supp. 462 (E.D.Pa. 1972) (major league professional hockey is a relevant market); USFL v. NFL, citation (professional football is a relevant product market) sheppardize 634 F.Supp 1155 for trial

120. See Nishimura v. Dolan, Civil Action No. 83-0085 (E.D.N.Y. 1983), where a cable operator brought suit against the network that carried the New York Islander professional ice hockey games when it refused to deal, claiming that those games were an distinct and essential product in the Long Island market. cited in 3 Card. AELJ at 40 n.66.

121. See United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948) (recognizing first run feature films as a separate market); United States v. Columbia Pictures Indus., 507 F.Supp. 412, 430 (S.D.N.Y. 1980), aff'd 659 F.2d 1063 (2d Cir. 1981)

(recognizing "blockbuster" films as a separate market); *Aurora Enters. v.* 688 F.2d 689 (9th Cir. 1982) (recognizing popular network television series as a separate market). Meanwhile, older films were not considered to be a separate market. See, *United States v. Columbia Pictures Corp.*, 189 F. Supp. 153, 183-92 (S.D.N.Y. 1960).

122. See, Meese Commission Report on Obscenity (1986).

123. See *Miller v. California*, 413 U.S. 15, 24 (1973), holding that material is obscene if

the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest. . . . [;] the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and . . . the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

124. Reference to child psychology text cited in one of the ACT FCC proceedings.

125. See Rubin, supra note 56.

126. *Id.* See also Kaplan, *The Impact of Cable Television Services on the Use of Competing Media*, 22 J. BROADCASTING 155 (1978)?; M. McLuhan, *Understanding Media* (19xx).

127. See *Federal Communications Commission v. Pacifica Found.*, 438 U.S. 726 (1978).

128. Consumers can request that they not be bombarded by sexually explicit mail. See, Nadel, *Rings of Privacy: Unsolicited Telephone Calls and the Right of Privacy*, 4 YALE J. REG. 99 (1986).

129. The problem of keeping dial-a-porn services out of easy access by children is not susceptible to an easy solution. See,

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Carlin Communications, Inc. v. FCC, 749 F.2d 113 (2d Cir. 1984) and subsequent action [Cur.Ser. 79:217 3-1-85]

130. find NYS brown bag law.

131. See Nadel, Cablespeech for Whom?, 4 CARDOZO ARTS & ENT. L.J. 51, 59-66 (1985).

132. See references noted *id.* at xx n.xx.

133. The 1984 Cable Communications Policy Act preempted rate regulation of cable television systems after 1986 in all markets except those few deemed to be lacking competition (defined by the FCC as those markets which received three or fewer broadcast stations). 47 U.S.C. 543 (1984).

134. See Waterman, "Prerecorded Home Video and the Distribution of Theatrical Feature Films, in VIDEO MEDIA COMPETITION 234 (E.Noam ed 1985).

135. See Channels, supra note 67, at 82.

136. For a discussion of a technology that would make competition more likely, see Note, supra note 8, at 1244 n.207.

136A See New York State case in Buffalo.

137 See note 79, supra.

138 See J. ARTS MGMT.