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Dear Reader

Welcome to the new issue of JMM – The International Journal on Media Management.

The papers in this issue cluster around legal, regulatory and governmental themes. We are again happy to be able to present the work of a number of distinguished authors. Each of the contributions allows the reader to gain interesting insights and detailed information on different fields of concern in the above topics and within the general context of media management.

Broadband Internet infrastructure promises to revolutionize the range and variety of services available to consumers in accessing interactive media content. Ruth de Backer and Bharat Rao lead off this issue with an overview of legal and business issues related to broadband. In their contribution they discuss how it will impact future innovation in the industry.

Shahid Akhtar, Mahesh Kumar Malla and Jon Gregson analyze in their paper the role new information and communication technologies (ICTs) can play in achieving goals such as transparency, accountability and good governance. After a short outline of these concepts, the paper probes into both the advantages and disadvantages of the growing utilization of ICTs in the general framework of globalization and democratization, with a focus on the developing world and the Asian continent. It is argued that by increasingly using ICTs and taking on a role as spokespersons for civil society, the Asian media has the potential to promote good governance practices and values.

It is a known fact that there is a high correlation between the level of telecommunications infrastructure represented by teledensity and the level of economic power represented by GDP per capita. The problems and actions for the growth of teledensity in 48 least developed countries (LDCs) are being discussed, as well as the opportunities for utilizing communication technologies to solve prior problems in those countries. However, the study submitted by Victor W. Mbarika suggests that increased investment in telecommunications technologies is not a major factor for growth of teledensity; higher GDP and higher contribution of the service sector share to GDP in the least developed countries play a more important role for growth of teledensity.

In his article, Tadeusz Kowalski delivers an in-depth examination of what happened to the media market in Poland in the process of the so called “media internationalization”. It is an example of the shift from a highly ideologically motivated concentration into an also high, but mainly capital driven concentration. The general development enabled diversity of expression but also created a concentration. It is an example of the shift from a highly ideologically motivated concentration into an also high, but mainly capital driven concentration. The general development enabled diversity of expression but also created a concentration.

Drawing on results from a historical study of the Swedish Broadcasting Corporation, the article written by Sune Tjernström argues the need to develop present theories of the media firm for media management research. Doing this, agency theory is identified as a powerful tool for the analysis of the behavior in public service organizations.

The research paper written by Sanghee Kweon explores how news magazines deal with mergers and acquisitions in the 1990s unstable social phenomenon. One of many findings of examining the coverage of mergers based on types of mergers, government policy, and news focus of three U.S. magazines was that news organs tend to cover media mergers differently than non media mergers.

In his essay “Building Dynamic Capabilities”, Dan Steinbock describes the development of the Wall Street Journal Interactive Edition. The paper aims to explain why the WSJE was able to launch and stabilize a successful subscription model, a feat that most of its direct and indirect rivals have failed to accomplish.

In the new media environment, communication has become an even more important factor for a company’s success. This issue of JMM is rounded out with a paper submitted by Markus Will and Victor Porak. Using a survey of 150 corporate communication web sites, they examine the question whether known offline communication models are also used for online communication. In addition, it is shown that in corporate communication web sites, content is distributed using a classical target group rather than a community driven approach.

We hope you will enjoy this collection of contributions. The JMM Editorial Team gives heartfelt thanks to all those who helped to make this journal a successful and internationally known publication since its foundation one year ago. We are proud of the JMM’s success and will give our best to provide our readers with interesting new findings in this research area in the future as we did in the past.

Beat F. Schmid
Peter Glotz
Peter Gomez
Dörte Wittig
The Broadband Debate
Legal And Business Implications

by Bharat Rao, Polytechnic University, N.Y., U.S.A.
and Ruth De Backer, McKinsey & Company, Brussels, Belgium

Introduction

What is Broadband?

The term “broadband” describes the bandwidth of a transmitted communications signal. The bandwidth describes a range of frequencies that the signal occupies. Digital and analog signals have a certain bandwidth, which is directly proportional to the amount of data that can be transmitted or received per unit time. Higher bandwidths lead to faster transmission speeds, making technologies like cable and DSL (digital subscriber line) and cable capable of transmitting large amounts of data at extraordinarily rapid rates (Brennan, 1999). Technically, such speeds can also be provided through other means. Some of the recent advances in third-generation mobile infrastructure rollout in Japan and the US suggest that this might also be a potential channel of broadband delivery. At the consumer end, access to the broadband Internet can take place through interfaces like personal computers, televisions, cell phones, PDAs, and other appliances.

This ability to carry data at high speeds has extraordinary implications for the way in which information is accessed and distributed, and perhaps, for a wider and deep-rooted range of product and service innovation. As Dempsey, et al (1999) point out, there are two major domains of intensive competition that can be anticipated. First, firms in the industry will compete to acquire and retain a large network of customer relationships. Second, they will compete to provide a low-cost, high reliability, and geographically widespread network access and backbone infrastructure. In addition to delivering a multitude of media content like music, video and games, rapid rollout of the broadband infrastructure will change the way in which people communicate and are entertained. This will impact the nature of businesses and industries that are currently involved in media, communications, entertainment, and any form of content and interactive service delivery via conventional channels, and via the Internet (Wolf and Zee, 2000). While our analysis in this paper mainly addresses the cable infrastructure, we believe that the legal issues and managerial challenges involved in understanding and exploiting the broadband opportunity will be similar across other channels as well.

Background

The Federal Communications Commission (FCC) is the major governmental body that monitors and assesses changes in this sector, and is responsible for ensuring the fair and effective rollout of infrastructure and applications that depend on broadband. Pursuant to a Congressional mandate in response to the Telecommunications Act of 1996, the FCC fine-tuned its definition of broadband in early 1999 in a report to Congress. In the so called “Section 706 Report”, the FCC defined “broadband” as: the capability of supporting, in both the provider-to-consumer (downstream) and the consumer-to-provider (upstream) directions, a speed in excess of 200 kilobits per second (kbps) in the last mile (FCC, 1999). The characterization included facilities that “could be upgraded or otherwise altered in ways that make them capable of broadband speeds.” Consequently, even a non-broadband line, such as a normal telephone line, that had been conditioned so that it is capable of speeds up to or exceeding 200 kbps would thus fall under the report’s definition of broadband. The Section 706 Report also provided that “broadband service does not include content [itself], but consists only of making available a communications path on which content may be transmitted and received.” The FCC, in attempting to define “broadband access,” thus recognized that the concept of broadband access likely would change as technologies evolve.

Recent Trends in Broadband

In recent months, a number of firms have been rolling out broadband infrastructure or announcing their intent to do so at a rapid pace. Several industry giants are involved and the stakes are high. Among the major providers of cable broadband access in the US include a. AT&T, which also controls former cable systems operated by Media One, TCI, as well as a partial interest in Time Warner’s cable systems, b. Comcast, which is backed by a $1 billion investment by Microsoft, c. Charter Communications, owned by Paul Allen, and d. AOL-Time Warner, a merger proposal that has been approved in Europe and is awaiting approval in the US (Guidera, 2000). In Europe, although only 2% of those online had broadband access in 1999, a number of firms are already staking their claims on a huge potential market. Among the major players are chello broadband and

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1 This rate is approximately four times faster than the Internet access received through a standard phone line at 56 kbps. The Commission rationalized this choice by noting that “it is enough to provide the most popular forms of broadband.”
Europe Online each of whom serve 12 countries, T-Online in Germany, Wanadoo and AOL Numericable in France, B2 in Sweden, and Btopenworld and Tele 2 in the UK (Godell, et al, 2000). Interestingly, these providers provide broadband access through multiple technologies including ADSL, cable, fiber, satellite, and fixed wireless.

Of the major operators in the US, perhaps none has aroused as much interest as the recently announced merger between AOL and Time-Warner, mainly because it brings out the legal, business and consumer impacts of technology convergence. We believe that a resolution of the legal and business issues raised by this potential merger will be the key to broadband infrastructure deployment and service provision in the years ahead, both in the US and in international markets. A number of questions have been raised about the size of the merger. Firstly, analysts question what impact it will have on the ability of consumers to choose their broadband provider from a wide field of competitors. And secondly, there is a concern about one large entity controlling both the distribution and content flowing through the same network (Caruso, 2000). The proposed merger would create a media giant that has access to a vast network of consumers, a broad portfolio of media assets, and the capabilities to deliver interactive and high-speed media infrastructure and content. AOL’s, by merging with Time Warner’s cable system (which has 13 million subscribers nationwide), would substantially add to AOL’s base of more than 20 million users across its multiple brands (Kipp, 2000). This merger would allow the high-speed delivery of data services and interactive communications to an audience seeking variety and choice of traditional media offerings, and new digital multimedia applications. At the time of writing, this merger was approved by the European Commission after AOL agreed to sever all links with the German media group Bertelsmann AG, thus eliminating the risk of dominance in the emerging market of online music delivery (Wall Street Journal, 2000).

The rollout of broadband has legal, consumer, business and technological implications. In the technology category, in addition to necessitating changes in the equipment infrastructure and capacity, this type of infrastructure network would employ new switching technologies for high speed, dynamic traffic control of digital and multimedia applications, including photonics, electronics and smart information processing (Dowling, 1994). Recent activity in the optical networking sector is further evidence that these developments have an impact at all levels of the supply chain, from the networking and communication equipment providers to end-user application service providers and media firms. It is also likely that broadband services will be augmented by the provision of mobile voice and data services, both by the likes of AOL-Time Warner moving into the mobile space, and the likes of NTT DoCoMo and Deutsche Telekom-Voicestream moving into the broadband space.

As is obvious from the above discussion, there will be a convergence of infrastructure, content, services and service providers as broadband rolls out to the wider marketplace. At the same time, we propose that there will be fragmentation within types of services and service providers, forcing firms to get more specialized and focus on small but attractive niches in the marketplace. Eventually, there will be a few dominant players at each stage of the broader supply chain that this opportunity represents. At this point however, this market is still in its nascent stages, and there are no clear winners in sight. One of the important issues facing firms and lawmakers is in deciding what types of regulation will ensure the most innovative use of some of the new technological capabilities promised by high bandwidth and interactive content.

### Legal Implications Of Broadband

#### Role of Regulation

There are several views about the potential regulation of the broadband access, and its impact on the evolution of this new market. Federal regulation could mean that open access is mandatory as far as broadband access is concerned. Regulation plays an important role in shaping industry structure and consequent innovation among firms that compete in it. One approach that has been suggested for the broadband market is regulation through market forces (Lemley and Lessig, 1999). As customers demand access to unaffiliated ISPs, they force cable operators to open their systems. Lemley and Lessig however question which market forces might demand the opening of access. For example, a group of customers could decide that a certain bundled service is less attractive than another, and then change to DSL-access. Thus, accurate forecasting of demand for certain services and service bundles could be problematic. Another approach is that the market might regulate open access through competition within two possible market segments:

a. **Competition in the broadband market at large:** There will be competition in the broadband market at large, between cable, DSL, and fixed and satellite wireless broadband. This approach could entail a significant waste of resources, since it demands that consumers remain flexible if they want to change or switch (services like e-mail addresses, modem settings, branded Internet services, etc.), and

b. **Competition in the broadband cable market:** Cable companies appear to have established an early lead in the
delivery of broadband access. Instead of competition at a macro level as outlined above, there could be rivalry between operators in the broadband cable market, which is one of the major ways of providing connectivity. For example, if the network slows down terribly once too many people are connected to it, a second network might move in and provide faster connections, since there are fewer users on this new network. When both networks are saturated, a third network might emerge. Each of these new networks might move in partnered with their own ISP, and then people might choose a cable network based on both the speed of the access as the content of the ISP-service they provide. Hence, competition in the lower layer will cause competition in the upper layers as well. However, it is important to note that the economics of broadband at the present time do not favor multiple providers, as the cost and complexity of setting up a broadband POP or upgrading a cable head-end are substantial (Dempsey, et al, 1999).

Continuous monitoring of the (competitive) market might be an alternative, since a complex regulatory and tariff scheme will probably have to accompany broadband access requirements. Obviously, regulation comes with its share of disadvantages. One major disadvantage about regulation is the fear that this might lead to an over-regulation of the market. There can also be governmental action ex-post once a monopoly has been formed, most likely through antitrust litigation. This is the strategy that the FCC has traditionally applied to interconnection cases in the telecommunications market, for instance with the breakup of AT&T. But dealing with monopoly problems in the networked economy ex post is extremely inefficient, especially because of the costs of uncertainty. Lemley and Lessig also point out that if regulators wait too long to come in and regulate after a monopoly has been formed, then too much regulation will be needed as one will have to also regulate all the layers on top of the infrastructure.

The Open Access Argument

The concept of open access stems from a precedent in common carriage law, which for decades has compelled telephone companies to a. interconnect their systems and b. serve all customers, including competitors, without discriminating on price or on who can buy access (Caruso, 2000). Most independent Internet service providers, local telephone companies, local governments, and consumer advocacy groups prefer open access. In their view, a closed cable broadband network not only threatens consumer choice, but also threatens the open nature of innovation on the Internet. They further argue that a closed system would lead to fewer competitive offerings, which in turn will force consumers to pay a higher price. Consumers would be forced to access the Internet and broadband services through proprietary gateways. This type of "lock-in" has been seen in other markets, e.g. in the wireless market where several wireless data providers in the US force consumers to access the Internet through their proprietary content and navigational interface. This directly impacts consumers’ ability to access the Internet wirelessly through cell-phones. Consumer groups have already protested against such a phenomenon, citing the case of the European Community, where wireless data providers cannot lock in customers in this fashion.

Open access proponents also argue that cable broadband is the only feasible option for the delivery of broadband services currently available from among all the various options. This makes its availability extremely important from the consumer standpoint. This view is supported by local phone companies who point to the disparity that would exist if phone companies were required to provide open systems on one hand, while cable operators were allowed to maintain closed systems (despite the similarity of services offered) on the other. In effect, in the event that the government failed to mandate open access, the local phone companies argue that they should be allowed to discriminate against competitors, which is presumably what the cable operators would be doing (Lathen, 1999).

Opponents of mandated open access oppose such regulation for a number of reasons (Brennan, 1999). They argue that premature regulation of the Internet will lead to the stifling of an emerging medium like broadband and the marketplace competition that it will foster. Given that the cable industry has already invested substantial amounts of resources to develop an infrastructure capable of providing broadband services, and would like to reap the rewards of that investment. Further, the opponents of mandated open access argue that the government should stay out of corporate policy and let the market take its due course. They point out the cable companies could not recover systems upgrade costs if they were forced to share profits with unaffiliated ISPs. Finally, some question the technical feasibility of shared infrastructure. For example, AT&T argued in the Portland case that cable systems are not technologically capable of handling a large number of competing Internet service providers (ATT Vs. Portland, 2000; Tech Law Journal, 2000b ).

Finally, one might have to take into consideration the claim of the cable companies that governmental regulation might impede the investment in the expansion of the cable broadband system. This would mean that it would be in the public interest to allow market forces to flourish and only to intervene in the case where market forces fail. However, economists question the
theory that regulation will impede investment. They claim that cable broadband will still be profitable enough to give the cable providers the incentive to make the necessary investments.

**Possible Approaches To Regulating Broadband**

**Federal Regulation of Broadband Deployment**

1. **FCC Regulation**

In the past, when faced with any form of monopolistic behavior, the US government has acted by regulating the monopolist’s pricing, output, and other factors, thus making the playing field more competitive to all entrants. However, the FCC has refused to regulate the broadband market beyond the monitoring periodically mandated by Congress. Recent discussions at the FCC have concluded that regulators should exercise restraint with regard to the broadband Internet industry while it is still in its nascent stage (Grice, 1999). While several state governments have passed open access laws, the FCC has declined to issue a formal ruling on the issue. The preliminary findings of the FCC state that the broadband industry is competitive and will thrive without regulation. Further, they recognize that cable deployment spurs alternative technologies as competitive check, and that regulation or the threat of regulation slows broadband deployment. Finally, they opine that market forces will force AT&T to open its network and, sounding a cautionary note, indicate that regulation can be introduced if competition does not open the network (Lathen, 1999).

2. **Senate Actions**

Various Congressional attempts to address the debate have been unsuccessful. As pointed out by Borland (1999), although several bills are currently pending in Congress addressing the open broadband access issue, Congress has not acted on them.

One of the more recently introduced bills, Congressional Bill No.99/96 states that Open Access should be created so that direct or indirect interconnection with the facilities and equipment of any ISP on terms and conditions that are functionally and economically equivalent to the interconnection provided to any other ISP. This means that interconnection means more than just a ‘clicking through’, since the cable ISP would then be favored over the other ISPs — it would be paid in all cases. However, the Bill lets the cable operator choose whether to provide direct or indirect interconnection. Thus, the Bill doesn’t interfere in the choice whether to connect in the head-end or at the server end, as long as the interconnection is non-discriminatory.

Cable companies argue that connection with head-end brings technological issues and a loss of control issue, and therefore prefer to implement the indirect interconnection scheme (See Figures 1 and 2 for a schematic display of cable connections to end-users).

3. **Self Regulation: AOL/Time Warner Memorandum of Understanding**

AOL and Time Warner have signed a Memorandum of Understanding (hereafter the Memorandum) that calls for a self-regulating mechanism by which they will provide open access to other ISPs and service providers on their network (Tech Law Journal, 2000a).

The Memorandum de facto adopts the implementation of the indirect interconnection scheme, which is preferred
by the cable companies. The Memorandum foresees that the ISPs will be allowed to connect with the systems without purchasing broadband backbone transport from AOL Time Warner. It should be recognized that competition at the level of ISPs is not only for access speed, but also competition for content and lifelong customers. The ISPs can provide value-added services other than just Internet access. These include services like caching, online storage and other customer services. Thus, ISPs will control what content the customers of the cable companies will have access to. The resistance of cable companies to open their infrastructure without regard to content is encouraged by the fact that broadband is a potential competitor for traditional cable video service. If the cable operators gain control over the network architecture and hence have control over the content, they will be in a position to affect the development of the architecture so as to minimize the threat of broadband to their own video market. The Memorandum foresees that the ISPs will be able to provide video streaming over the AOL-Time Warner Network.

While the Memorandum proposes a potentially open access scheme, AOL’s actions in the competitive marketplace suggest that it might be extremely difficult to monitor or enforce compliance with this stated policy. For example, lawmakers have had to contend with AOL’s reluctance to make its Instant Messenger (IM) service interoperable with similar packages from other providers (e.g. Yahoo, Odigo, Tribal Voice, iCast, etc.). While AOL promises open access in the cable area on the one hand, and carries out a systematic strategy of actively blocking access to and from other messenger services, it calls into question AOL’s credibility of its position on open access. What is the guarantee that ISPs might not face the same type of filtering in the future? This issue pertaining to instant messaging could well emerge as the critical hurdle to cross before proposed merger to go through, as pointed out by a number of firms that compete in the instant messaging space. They have proposed to the FCC should require AOL to publish complete IM specifications for easy access to third-party developers, prohibit AOL from providing AOLTV in a market where the dominant franchise is held by Time-Warner until IM is interoperable, and finally, appoint an ombudsperson who can receive and address interoperability complaints (Fisher, 2000). These measures will ensure that it would be counter-productive for AOL-Time Warner and its competitors to erect barriers to the free flow of information and access.

4. Laissez Faire (No Regulation) - AT&T v. Portland

The final option in this matter is a laissez faire system where there is little or no regulation pertaining to broadband access. While this is the system currently in place, it is not clear at the present time if it will be the inevitable outcome.

The district court in AT&T v. Portland decided that ‘access to essential facilities’ and not carriage for programmers is the rationale behind the open access rules (AT&T v. Portland, 2000; Tech Law Journal, 2000b). Whether this reasoning holds concerning ‘common carrier’ service is doubtful. But even when these rules are nothing more than industry-specific antitrust regulation, a law that singles out the press is subject to at least some degree of heightened First Amendment scrutiny. The court further held that the ‘open access’-requirement is not a violation of the First Amendment rights of the cable operator since it doesn’t require the cable operator to carry any particular speech. Also, it is not evident that the cable subscriber will associate the cable carrier with the speech of an unaffiliated ISP.

The FCC, and some experts argue that if the court upholds the Portland ordinance, the floodgates will be open to 30,000 local governments to set the standards and policies on a wide array of technical and business issues, including such areas as taxation, privacy, quality of service and customer protection. If Portland “prevails, local governments will be free to act whenever the federal government has not acted” (Pine, 1999).

The Circuit Court reversed the judgment of the district court based on the language of the Telecommunications Act of 1996. The court started by stating that the affiliated cable-ISP’s services are not truly a “cable service” as defined by the Communications Act. The essence of a cable service is one-way transmission of programming to subscribers generally. The court held that to the extent that @Home provides its subscribers Internet transmission over its cable broadband facility, it is providing a telecommunications service as defined in the Communications Act. The Communications Act includes cable broadband transmission as one of the “telecommunications services” a cable operator may provide over its cable system.

The court has concluded that since the FCC has thus far not subjected cable broadband to any regulation, including common carrier telecommunications regulation, the cable broadband provider need not obtain a franchise to offer cable broadband. Further, local authorities may not impose any requirement that has the purpose or effect of prohibiting, limiting, restricting or conditioning distribution (access).

Managerial Implications

Innovation in the Broadband Era

Whatever the final verdict regarding regulation of the broadband market, it is clear that a new stream of innovation is already in the pipeline to exploit the advantages of high bandwidth. Let us examine the immediate impact of such innovation on the broader consumer marketplace.
First, there will be a strong demand for broadband-optimised and multimedia content. Managers will have to develop capabilities in integrating and exploiting the convergence of content, communications and commerce applications. High-quality audio, video, and interactive gaming and commerce applications will be the most in demand, and will change the nature of distribution in the media, entertainment, software industries. Television will operate bi-directionally, both as a receiver of media programming and content, and as a transmitter of information, customer profiles, and commerce (NTT Group, 2000). In a broadband world, content assets like audio and film libraries and various other media will be invaluable to infrastructure providers, who will use it to package and version content in interesting ways to the final audience. There will be a sharing of distribution and content assets to a broader audience through this partnership, and of other possible partnerships that might be forged in the future.

Second, the concept of “media on demand” or instant interactivity will finally take off. ReplayTV, TiVo, and others, have already developed the infrastructure necessary for such offerings. Intertainer, which has backed by US West, Comcast, Intel, Sony and NBC, has already digitised more than 6,000 hours of movies and television shows that eventually will be available on demand over cable systems. Just as the Web enabled anyone with a computer and an Internet connection to become a desktop publisher, broadband infrastructure will increase the ranks of individual audio and video broadcasters. In the wireless arena, it might mean the ability to instantly download a music file or view a short movie clip, or even book a table at a nearby restaurant. This will necessitate the integration of information databases across multiple vendors, and the ability to rapidly deliver custom information in real-time. This instant interactivity will demand that managers adopt dynamic push-pull type advertising and marketing models in order to attract, reach, retain and transact business with customers (Pavlou, 2000).

Third, the impact of the Internet will be felt anywhere and anytime. By seamlessly connecting all types of Net devices and appliances in the home, office, car, and on person to the Internet, through a physical broadband connection, service providers will build new business models to provide functionality, ease-of-use, and instant access. Businesses focused on media, entertainment, communications, publishing, education and business and consumer services will be the first to feel the impact of this revolutionary change. Managers will have to adopt a strategy that is centred on the notion of superior customer experience, and co-create digital products and services in a dynamic fashion. In a seminal paper, Rayport and Sviokla (1994) suggested that the spread of the Internet would lead to the dis-aggregation of content, context, and infrastructure elements across various industries. The widespread deployment of broadband will accelerate this process. Businesses who operate at various parts of this disaggregated value chain will have to examine and understand how best to leverage their expertise. A direct managerial implication of this dis-aggregation will be the rise in the number of alliances between infrastructure and content providers, and the need to build revenue models based on syndication, versioning, and repackaging of content.

**Conclusion**

Broadband access offers the promise of high quality interactive services that will redefine several industries. It might well be that broadband emerges as both the conduit and source of disruption across businesses and industries (Carr, 1999). While it might be tempting to ignore the realities of broadband infrastructure and access issues at the present time, as the market is in an early stage of growth, some of these problems could resurface down the road and present tremendous challenges to lawmakers and businesses (Bar, et al, 1999). By that time, regulation might be too much and too late (Lemley and Lessig, 1999).

While open access is desirable and commonsensical, some key principles remain important in any further debate on open access to broadband. Regulators and businesses should consider these matters before plunging headlong into the broadband battleground. We outline these principles in conclusion:

a. **Diversity:** If regulators ensure that consumers have the possibility of choosing or preferring a single ISP from a diversity of ISPs, they also want to keep in mind that open access might delay the deployment of cable broadband. The economics of infrastructure development indicate that it might be extremely hard to ensure open access, especially in small or insubstantial markets. Fair tradeoffs will have to be negotiated between infrastructure and service providers in order to provide customers both “reach” and “richness” in a fair, competitive manner.

b. **Innovation:** Lemley and Lessig stress the importance of the ‘end-to-end’ infrastructure in the innovation process that created the Internet. They recommend that the FCC needs to require access providers with significant market power to provide open access, or face regulation if they did not. In order to sustain such innovation in the broadband era, the FCC might have to move in to ensure that dominance in local, regional or national markets does not create situations where access providers abuse their power.

c. **Information policy:** The Bill seeks to prevent leveraging of positions in the communications access market...
into the information markets. The Bill tries to develop true competition on the cable Internet gateway and to ensure that the infrastructure provider acts as a common carrier without control over the content (to ensure diversity). The court in ACLU v. Reno (American Civil Liberties Union et al. v. Janet Reno, 1999) considered the Internet as an important platform in the protection of free speech as foreseen in the First Amendment.

d. Competition policy reasons: The bill tries to assure competition in the upper layers of the Internet service (ISP services).

e. Creation of technology-neutral law: Since telcos already need to provide interconnection through ‘open access’, we might want to move to regulation that is service based instead of entity based. Cable companies, however, argue that their situation is different from the unbundling that is required from telephone companies, especially due to the small size of the Internet market (compared to the telephone market), and that the telephone industry was under a rate-of-return regulation.

By fostering genuine competition in the broadband access market, by giving consumers the right to choose their service providers, and by keeping the law technology-neutral, future innovations can be accommodated without sacrificing these basic principles of open access. Managers need to understand the legal and business issues involved in the broadband debate, and develop innovative and customer-focused strategies to exploit a unique opportunity.

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Berkeley Roundtable on the International Economy, August.


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Ruth De Backer* is a Fellow at McKinsey & Company’s Brussels Office. She earned an LL.M. from New York University, and is a graduate of the University of Gent in Belgium. Her research interests are in the areas of telecommunications, new media and financial institutions.

* The views of the author are her own and should not be construed as those of McKinsey & Company.
Calendar of Events

January

01/27/2001 - 01/28/2001
7th International Conference on Communications
Indian Institute of Technology, Kampur, India
http://www.iitk.ernet.in

February

02/01/2001
New Media and the interconnection of media in publishing firms
Frankfurt, Germany
http://www.managerakademie.de

02/15/2001 - 02/17/2001
Society for Consumer Psychology Winter Conference
Scottsdale, Arizona, USA
http://fisher.osu.edu

March

03/08/2001 - 03/10/2001
E-Commerce 2001
Hawaii, USA
http://www.e-comprofits.com

03/12/2001 - 02/13/2001
Workshop on Information and Organizational Design (EIASM)
Brussels, Belgium
http://www.eiasm.be

April

04/04/2001 - 04/05/2001
The 8th World Business Dialogue “PLANET NET – Strategies for a New Economy”
University of Cologne, Germany
http://www.ofw.de

04/05/2001 - 04/06/2001
1st International Workshop on MANAGEMENT AND INNOVATION OF SERVICES
Maastricht, Netherlands
http://www.fdewb.unimaas.nl/marketing/workshop

May

05/01/2001 - 05/05/2001
The Tenth International World Wide Web Conference
Hong Kong, China
http://www.10.org

05/17/2001 - 05/18/2001
3rd Symposium of the Hamburg Forum of media economy:
Print vs. online publisher in the Internet age
(language: German)
Email: marketfa@unibw-hamburg.de

05/17/2001 - 05/19/2001
2001 Advertising and Consumer Psychology Conference:
“Online Consumer Psychology”
Seattle, USA
http://fisher.osu.edu

05/20/2001 - 05/23/2001
2001 IRMA International Conference – Managing IT in a Global Economy
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**The journal will observe the following issues closely**

- Strategic, managerial and organizational aspects of the media sector and the media industry
- Economics of traditional and new media
- Evolution of the media industry and media industry segments
- Technology, infrastructure, user behavior related to the changes in the media sector
- Effects of new media on economy, society, politics, law and culture

Our goal is the close analysis of new industry structures, organizational forms, and critical competencies developing as a result of reconfigurations in the media value chain. We want to bring together academics and industry figures to explore the transition from „classic” to „new” media and identify the factors, which will determine organizational success and economic efforts in a fast changing and converging environment.

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