

MAPPING DIGITAL MEDIA: **GERMANY**



Mapping Digital Media: Germany

A REPORT BY THE OPEN SOCIETY FOUNDATIONS

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Contents

Mapping Digital Media.....	4
Executive Summary.....	6
Context.....	9
Social Indicators.....	11
Economic Indicators	13
1. Media Consumption: The Digital Factor	14
1.1 Digital Take-up.....	14
1.2 Media Preferences.....	17
1.3 News Providers	19
1.4 Assessments	24
2. Digital Media and Public or State-Administered Broadcasters.....	25
2.1 Public Service and State Institutions	25
2.2 Public Service Provision.....	28
2.3 Assessments	30
3. Digital Media and Society.....	31
3.1 User-Generated Content (UGC)	31
3.2 Digital Activism.....	35
3.3 Assessments	37

4.	Digital Media and Journalism	38
4.1	Impact on Journalists and Newsrooms.....	38
4.2	Investigative Journalism.....	43
4.3	Social and Cultural Diversity	46
4.4	Political Diversity	49
4.5	Assessments	53
5.	Digital Media and Technology	55
5.1	Broadcasting Spectrum.....	55
5.2	Digital Gatekeeping.....	57
5.3	Telecommunications.....	58
5.4	Assessments	59
6.	Digital Business	61
6.1	Ownership.....	61
6.2	Media Funding.....	66
6.3	Media Business Models.....	71
6.4	Assessments	71
7.	Policies, Laws, and Regulators.....	73
7.1	Policies and Laws.....	73
7.2	Regulators	79
7.3	Government Interference.....	83
7.4	Assessments	84
8.	Conclusions.....	86
8.1	Media Today.....	86
8.2	Media Tomorrow.....	86
	Bibliography.....	88
	List of Abbreviations, Figures, Tables, Companies	99

Mapping Digital Media

The values that underpin good journalism, the need of citizens for reliable and abundant information, and the importance of such information for a healthy society and a robust democracy: these are perennial, and provide compass-bearings for anyone trying to make sense of current changes across the media landscape.

The standards in the profession are in the process of being set. Most of the effects on journalism imposed by new technology are shaped in the most developed societies, but these changes are equally influencing the media in less developed societies.

The **Mapping Digital Media** project, which examines the changes in-depth, aims to build bridges between researchers and policy-makers, activists, academics and standard-setters across the world. It also builds policy capacity in countries where this is less developed, encouraging stakeholders to participate and influence change. At the same time, this research creates a knowledge base, laying foundations for advocacy work, building capacity and enhancing debate.

The Media Program of the Open Society Foundations has seen how changes and continuity affect the media in different places, redefining the way they can operate sustainably while staying true to values of pluralism and diversity, transparency and accountability, editorial independence, freedom of expression and information, public service, and high professional standards.

The Mapping Digital Media project assesses, in the light of these values, the global opportunities and risks that are created for media by the following developments:

- the switchover from analog broadcasting to digital broadcasting,
- growth of new media platforms as sources of news,
- convergence of traditional broadcasting with telecommunications.

Covering 60 countries, the project examines how these changes affect the core democratic service that any media system should provide—news about political, economic and social affairs.

The aim of the Mapping Digital Media project is to assess the impact of these changes on the core democratic service that any media system should provide, namely news about political, economic and social affairs.

The **Mapping Digital Media** reports are produced by local researchers and partner organizations in each country. Cumulatively, these reports will provide a much-needed resource on the democratic role of digital media.

In addition to the country reports, the Open Society Media Program has commissioned research papers on a range of topics related to digital media. These papers are published as the **MDM Reference Series**.

Mapping Digital Media: Germany

Executive Summary

On 25 November 2008, Germany completed the transition from analog to digital terrestrial television transmission. About 90 percent of the population can receive DTT, on the DVB-T standard (Digital Video Broadcasting–Terrestrial). The reception of digital satellite television is widespread; in 2012, all analog satellite reception will cease.

The digitization of broadcasting has increased the choice of both public and private television channels. Broadcasters are pushing new channels at niche interests, but the German audience is slow to break with its traditional preferences. (The digitization of radio broadcasting has so far attracted negligible consumer interest.)

Due to satellite and cable, the media landscape in Germany had a wide choice of television programs even before digitization. (Less than 5 percent of television households have access only to terrestrial television.) The most popular TV channels have hardly lost market shares over the last five years, shrugging off the threat from their new digital rivals.

Digitization has led to an increasing acceptance of terrestrial transmission overall, which had been declining. In particular, the possibility of mobile use via USB DVB-T sticks seems to make using DVB-T more attractive compared to analog terrestrial signals.

Regarding broadcast news, the traditional TV news programs have lost ratings and market shares – though these have not slumped, and the loss is offset by gains by the commercial news channels.

German society is famously supportive of public service broadcasting. In popular understanding, PSB is not seen as a service of or for the state, but as a public service. In total, the revenues of public broadcasters are €8,617 million, which is more than the total revenues of commercial television and radio broadcasters combined. The latest research suggests that public broadcasters are seen as more informal, modern and entertaining than before, without having lost their traditional reputation for quality. Younger people agree that public broadcasters have more credibility, but they think that private broadcasters are more likeable.

Research shows that German internet-users find that the internet provides better and faster access than TV does, to a broader supply of information, entertainment and advertising. News on social networks is not a priority, but research in this field is still not well developed, and it may be that these networks serve news-related purposes that have eluded notice. There is no missing the fact that social media (YouTube, Twitter, social bookmarking, etc.) have become standard tools on the websites of political parties and politicians.

Declining press circulation is an old story in Germany, as elsewhere. The decline in the advertising revenues of the daily newspapers between 2005 and 2010 amounts to €839 million—more than the gains of advertising papers and online advertising combined. Nevertheless, the leading newspapers and magazines are now among the strongest competitors in online news provision. In fact, much of the competitive pressure on newspapers stems from their own online versions, hitherto provided mostly free of charge.

In terms of policy and regulation, Germany has a decentralized system for public as well as commercial broadcasting. As in the UK, the public service broadcasters are regulated by internal bodies, while private media are regulated by the regional states (Länder).

The digitization of terrestrial broadcasting was implemented regionally, starting in Berlin. Nevertheless, digital policy-making was not delayed or unduly compromised by the demands of aligning the numerous players in the system. The statutory conditions under which analog terrestrial transmission could be switched off included implicit reference to the public interest. This was articulated in the context of specific requirements to ensure that the supply of digital services delivered public value at least comparable to that provided by analog.

Regarding digital broadcasting, three legal provisions have had a positive impact on diversity and pluralism:

- A less demanding licensing process
- Must-carry rules for digital cable providers, and diversity-related selection procedures regarding DVB-T program lists
- Strong safeguards against monopolies and concentrated media power have ensured a degree of healthy competition in new media markets.

There have been no digitization-based amendments to media concentration laws.

The effects of digitization on the practice of journalism are ambivalent. On the one hand, journalists have many more sources, can investigate issues faster and in much more detail, and interact with their audience. On the other hand, journalism faces new, non-professional or semi-professional competitors, has lost its gatekeeper monopoly, and can no longer rely on its traditional business model. The impact is clear to see in the amount of time dedicated to investigating and gathering information: German journalists spent, on average, 23 minutes less a day for this purpose in 2005 as compared with 1993.

Most journalists understand that they can no longer assume their audience to be passive. Yet the potential of the internet to establish a genuine two-way conversation between producers and users still seems to be at an experimental stage. Computer-assisted reporting (CAR) has not taken off due to Germany's rigorous privacy policies and the reluctance of the authorities to release information

The digital television market is developing very slowly as a result of a wide choice of analog channels from public and private broadcasters that are available to all cable and satellite households—meaning the vast majority of all households in Germany. In the telecoms market, Deutsche Telekom retains a dominant position, with 67 percent of 38.9 million landline connections (as of 2009).

Looking ahead, digitization will continue to deliver greater plurality and diversity as traditional media lose their dominant market positions in news selection and interpretation. Meanwhile, the strong consensus in support of public service media—and support for quality journalism—should offset the negative effects of the digital revolution on journalism standards. This puts Germany in a fortunate position, not just by global standards but by European standards.

Context

At the end of 2010, Germany had around 81.8 million inhabitants, among whom 74.6 million were German, while 7.2 million were of other nationalities. Of the latter, 1.6 million were Turkish, 900,000 from former Yugoslavia, 500,000 were Italian, 400,000 Polish, and about 300,000 Greek. Since 2000, a child born in Germany with neither mother nor father having German citizenship can still become a German citizen if one of the parents has lived in Germany for at least eight years and has unlimited residence rights. When grown up, he or she has to decide between German and his or her other nationalities.¹

The German language is the standard language for the whole country, with the exception of two small minority groups (Danish in the north and Sorbs in the east). As a consequence of migration, German is not the mother tongue of all citizens. For the recent census, the questionnaire was provided in 13 languages. However, the mother tongue of inhabitants was not a question asked in the census.²

The number of households in 2009 was 40.2 million: an increase of 4.9 million since 1991. The average size of households has declined during the same period, from 2.27 to 2.04 persons. Of private households, 40 percent are single-person.

Since reunification in 1990, deaths have outnumbered births in Germany. However, due to immigration the population was still growing until 2002. Since then, the population has declined slightly. Because the last census was in 1981 for East Germany and 1987 for West Germany, the Federal Statistical Office expects that the real number of inhabitants may be 1.3 million less than supposed.³ The first national census post reunification is being conducted in 2011. Results are expected in 2013.

1. See Staatsangehörigkeitsgesetz (StAG), BGBl. III, Number 102–1, last amended by Art. 1 of Act dated 8th December 2010, BGBl. I S. 1864.

2. See https://www.zensus2011.de/uploads/tx_templavoila/Fragebogen_Haushaltebefragung_20101007a.pdf.

3. See www.zensus2011.de/der-zensus-2011/artikel/wofuer-der-zensus-gut-ist.html (accessed 4 April 2011).

Germany has made a strong recovery from the economic crisis of 2008. Although a balanced budget has not yet been achieved, politicians are already discussing tax reductions. During the financial crisis, short-time work with reduced working hours and state subsidies were used to avoid layoffs. The unemployment rate is now 6.9 percent, the lowest rate since 1992. Inflation-adjusted, average wages in Germany in 2009 were 4.5 percent less than in 2000, in part due to shorter working hours.⁴

4. See http://www.ilo.org/public/german/region/eurpro/bonn/download/wagereport_german_brief.pdf.

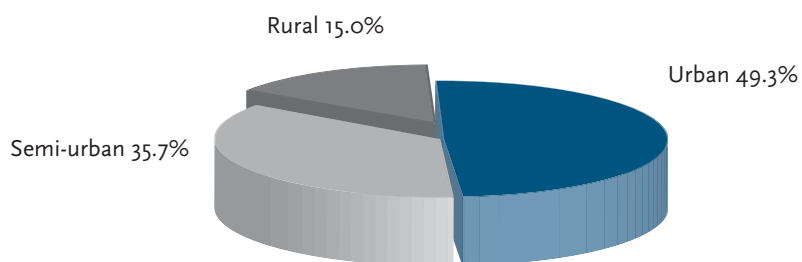
Social Indicators

Population (number of inhabitants): 81.8 million (end-2010)

Number of households: 40.2 million (2009)

Figure 1.

Rural urban breakdown 2008 (% of total population)



Source: Federal Statistical Office.

Figure 2.

Ethnic composition (% of total population)

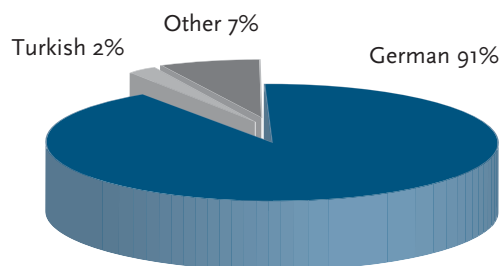
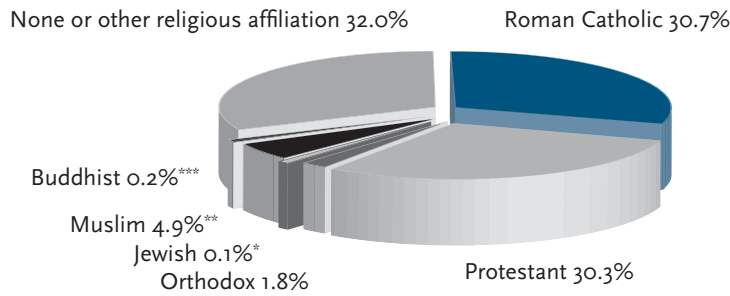


Figure 3.

Religious composition (% of total population)



Sources: Evangelical Church in Germany (ed.), *Zahlen und Fakten zum kirchlichen Leben* (Facts and Figures on Church Life), Hannover, 2010, p. 6. See http://www.ekd.de/broschuere_2010_mit_Links.pdf (accessed 4 April 2011);

* Central Board of Jewish Welfare in Germany (ed.), *Mitgliederstatistik der jüdischen Gemeinden und Landesverbände in Deutschland für das Jahr 2010* (Membership Statistics of Jewish Congregations and Regional Associations in Germany 2010), Frankfurt am Main, 2010, p. 1. See http://www.zwst.org/cms/documents/178/de_DE/ZWST-Mitgliederstatistik%202010_Langversion.pdf (accessed on 4 April 2011);

** S. Haug, S. Müssig, and A. Sticks, *Muslimisches Leben in Deutschland* (Muslim Life in Germany), Federal Office for Migration and Refugees, Nürnberg, 2009. See http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/Politik_Gesellschaft/DIK/vollversion_studie_muslim_leben_deutschland_.pdf?__blob=publicationFile (accessed 4 April 2011);

*** German Buddhist Union, *Zahlen zum Buddhismus in Deutschland* (Figures on Buddhism in Germany), 2009. See http://www.buddhismus-deutschland.de/dbu/pdfdocs/info_zahlen.pdf (accessed 4 April 2011).

Economic Indicators

Table 1.
Economic indicators 2005–2012 (estimates start after 2009)

	2005	2006	2007	2008	2009	2010f	2011f	2012f
GDP (current prices), in US\$ bn*	2,793.2	2,921.3	3,333.9	3,651.6	3,338.7	3,305.9	3,358.2	3,453.9
GDP (current prices), per capita in US\$*	27,230	28,282	29,599	30,254	29,316	30,983	32,120	33,269
GNI per capita, PPP current international \$**	31,740	34,420	36,190	37,510	36,780	n/a	n/a	n/a
Unemployment (% of total labor force)*	10.6	9.8	8.4	7.3	7.5	7.1	7.1	7.0
Inflation (average annual rate in % against previous year)*	1.9	1.8	2.3	2.8	0.2	1.3	1.4	1.4

Sources: * International Monetary Fund, Economic Outlook Database, October 2010;

** World Bank.

1. Media Consumption: The Digital Factor

1.1 Digital Take-up

1.1.1 Equipment

In Germany, almost everyone has access to a television set and a radio set at home. The available statistics show only small variation, in part caused by changes to the sample population included in the studies (see Table 2). About 60 percent of people live in households equipped with a personal computer (PC).

Table 2.
Households owning equipment in Germany, 2005–2010

	2005*		2006*		2007*		2008**		2009**		2010***	
	Pop. ('000)	% of Pop.	Pop. ('000)	% of Pop.	Pop. ('000)	% of Pop.	Pop. ('000)	% of Pop.	Pop. ('000)	% of Pop.	Pop. ('000)	% of Pop.
TV set	63,530	97.9	63,510	97.7	63,330	97.7	67,740	97.0	67,900	97.2	68,310	96.9
Radio set	63,980	98.6	63,900	98.3	63,910	98.6	68,570	98.2	68,740	98.4	69,090	98.0
PC	38,740	59.7	39,010	60.0	39,480	60.9	42,670	61.1	42,610	61.0	41,950	59.5
Sample population	64,890	100.0	65,010	100.0	64,820	100.0	69,830	100.0	69,860	100.0	70,500	100.0

Notes: Pop.: population;

* Sample population: Germans of age 14+.

** Sample population: Germans and residents from EU countries of age 10+.

*** Sample population: German speaking residents of age 14+.

Sources: ARD-Werbung Sales & Services, *Media Perspektiven Basisdaten. Daten zur Mediensituation in Deutschland 2009* (Facts on the Media Situation in Germany 2009), Frankfurt am Main, 2009 (hereafter, AS&S, *Media Perspektiven Basisdaten 2009*); ARD-Werbung Sales & Services (ed.): *Media Perspektiven Basisdaten. Daten zur Mediensituation in Deutschland 2010* (Facts on the Media Situation in Germany 2010), Frankfurt am Main, 2010 (hereafter, AS&S, *Media Perspektiven Basisdaten 2010*).

1.1.2 Platforms

Starting in December 2003, Digital Video Broadcasting–Terrestrial (DVB-T) was introduced region by region, cutting off analog terrestrial television after a short period of simulcast. By the end of 2008, DVB-T was established all over the country and analog terrestrial television ceased.

In satellite television the most widely used ASTRA satellite system will cease analog television transmission in the spring of 2012. Currently, 34 percent of television households in Germany use digital satellite television (see Table 3), with around nine percent of these households yet to switch.

Cable is the most popular mode of television reception. However, the uptake of digital cable television has been relatively slow. This is perhaps not surprising given the costs of new receiver hardware, as well as higher subscription fees levied for digital cable packages. So far, 20 percent of all television households receive digital television via cable.

Pay-television in Germany is 100 percent digital, either by cable or satellite. It is likely that pay-television was initially a key driver of digitization. But it has been eclipsed by growth in digital free-to-air provision. In the fourth quarter of 2010, the main pay-television broadcaster in Germany, Sky Deutschland, had 2.65 million subscribers.⁵ This is just a fraction of the 7.3 million digital cable and 11.7 million digital satellite households.

Table 3.

Platform for the main television reception and digital take-up in Germany, 2005–2010*

	2005		2006		2007		2008		2009		2010	
	HH** (million)	% of TVHH***	HH (million)	% of TVHH	HH (million)	% of TVHH	HH (million)	% of TVHH	HH (million)	% of TVHH	HH (million)	% of TVHH
Terrestrial reception:	3.29	9.7	3.12	9.2	4.25	11.5	4.14	11.1	4.23	11.3	4.17	11.1
of which digital****	1.49	4.4	1.80	5.3	3.66	9.9	3.91	10.5	4.23	11.3	4.17	11.1
Cable reception:	17.53	51.7	17.56	51.8	19.86	53.7	19.57	52.5	19.75	52.8	19.25	51.4
of which digital	1.70	5.0	2.44	7.2	3.22	8.7	4.10	11.0	6.06	16.2	7.29	19.5
Satellite reception:	14.61	43.1	14.24	42.0	15.75	42.5	15.66	42.0	15.75	42.1	16.03	42.8
of which digital	5.66	16.7	6.61	19.5	9.02	24.4	10.29	27.6	11.67	31.2	12.70	33.9
IPTV (DSL-TV)	0.00	0.0	0.00	0.0	0.11	0.3	0.11	0.3	0.37	1.0	0.86	2.3
Total:	33.90	100.0	33.90	100.0	36.98	100.0	37.28	100.0	37.41	100.0	37.46	100.0
of which digital	8.71	25.7	10.71	31.6	14.76	39.9	17.41	46.7	20.58	55.0	23.13	61.7

Notes: * The figures refer to the main television set in the households for multi-television households.

** Total number of households owning the equipment.

*** Percentage of total number of television households (TVHH) in the country.

**** Since 2009 terrestrial television in Germany is broadcast only via the DVB-T standard.

Sources: Commission on Licensing and Supervision (ZAK) (ed.), *Digitalisierungsbericht 2010* (Digitalization Report 2010), Berlin, 2010. See http://www.lfk.de/fileadmin/media/pdf/Digitalisierungsbericht_2010.pdf (accessed 4 April 2011); Commission on Licensing and Supervision (ZAK) (ed.), *Digitalisierungsbericht 2009* (Digitalization Report 2009), Berlin, 2009. See http://www.lfk.de/fileadmin/media/pdf/2009-09_Digitalisierungsbericht.pdf (accessed 4 April 2011).

5. See Sky Deutschland's press release, 12 January 2011, <http://info.sky.de/inhalt/de/sky-deutschland-veroeffentlicht-ergebnisse-fuer-3-quartal-2010-uk-12012011.jsp> (accessed 4 April 2011).

Somewhat smaller numbers of digitized households are reported by the Television Research Partnership (*Arbeitsgemeinschaft Fernsehforschung*, AGF), which measures audience shares between the major providers. According to their recent projection in March 2011, Germany had 17.22 million households with at least one digital television receiver connected. That represents 48 percent of all households with German or EU citizens,⁶ and 41 percent of the total viewing time spent with digital television.⁷

Internet and mobile penetration has been growing steadily in the past five years. In 2009 the internet penetration was 79 percent of households, with 65 percent having broadband access (Table 4). Mobile phone penetration has developed even further. In 2009 the number of subscriptions was 1.3 times the number of inhabitants. Significantly, the number of 3G subscriptions, which facilitate mobile broadband, is now 26.5 percent of the population or 20 percent of the total number of mobile subscriptions.

Table 4.

Total internet subscriptions as % of total population and total active SIM cards as % of total population, 2005–2010

	% of households					
	2005	2006	2007	2008	2009	2010
Internet*:	62	67	71	75	79	82
of which broadband**	37	51	70	73	82	91
Mobile telephony***:	96	104	118	131	132	—
of which 3G****						
• as % of total population	2.8	7.9	12.6	19.4	26.5	—
• as % of total number of mobile phone subscriptions	2.9	7.6	10.7	14.8	20.1	—

Sources: * Eurostat, *Internet-Zugangsdichte—Haushalte* (Internet Access—Households), 2010, <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=1&language=de&pcode=tsiir040> (accessed 4 April 2011);

** Eurostat, *Households having Access to the Internet, by Type of Connection*, 2010, <http://epp.eurostat.ec.europa.eu/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tin00073&language=en>, (accessed 4 April 2011);

*** Eurostat, *Mobile Phone Subscriptions*, 2010, <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tin00060&plugin=1> (accessed 4 April 2011);

**** Federal Ministry of Economics and Technology (ed.), *Innovationspolitik, Informationsgesellschaft, Telekommunikation. 12. Faktenbericht 2009* (Innovation Politics, Information Society, Telecommunication. 12th Fact Report 2009), München, 2009, p. 143. See <http://www.bmwi.de/BMWi/Redaktion/PDF/M-O/monitoring-iuk-12-faktenbericht-2009,property=pdf,bereich=bmwi,sprache=de,rwb=true.pdf> (accessed 11 June 2011); with calculations by the present authors.

6. AGF, *Entwicklung des Digitalisierungsgrades* (Development of Digitalization), 1 March 2011, www.agf.de/daten/zuschauermarkt/digitaltvgrad (accessed 4 April 2011).

7. AGF, *Marktanteil der Digitalen Nutzung an TV-gesamt* (Market Share of Digital TELEVISION Viewing Time), 28 February 2011, www.agf.de/daten/zuschauermarkt/markanteiledigital accessed 4 April 2011).

1.2 Media Preferences

1.2.1 Main Shifts in News Consumption

In 2010, people in Germany spent on average almost nine hours per day using media—305 minutes during leisure time, 231 minutes at other times (Table 5).⁸ The main shifts during the last five years have been the reduction in radio listening by half an hour per day and the increase in internet use by 39 minutes per day. However, there may be some blurring in these data because the use of the internet does not mean a specific mode of communication like reading, listening or writing but a mix of these as well as several modes of personal communication including email and social networking. In general, internet use can be seen as an activity requiring a more active user in both selecting and creating content.

Table 5.
Expenditure of time for selected media use 2005 and 2010

Media usage during (minutes per day)	Leisure time		Other time	
	2005	2010	2005	2010
Newspaper reading	14	12	15	11
Radio listening	43	38	179	151
Television viewing	189	187	32	34
Internet use	24	50	20	33
Total*	304	305	255	231

Note: * Not including other media use like reading books or magazines or using CD/MP3 that in 2010 account for 69 minutes daily, down from 87 minutes in 2005.

The data were compiled using CATI methodology, asking for the media use during the course of the day every quarter of an hour, cf. B. Engel, S. Best: "Fragebogenentwicklung als Spiegel der Medienentwicklung" ("Questionnaire Development as a Mirror of Media Development"), *Media Perspektiven* 1/2010, p. 6.

Sources: AS&S, *Media Perspektiven* 2010, p. 69; B. van Eimeren, C.-M. Ridder, "Trends in der Nutzung und Bewertung der Medien 1970–2010" ("Trends in Media Use and Evaluation 1970–2010"), *Media Perspektiven* 1/2011, p. 14.

The most important demographic variable in new media use and literacy is age. Of those younger than 30, more than 95 percent use the internet. Of those over 50, the proportion is just about half (see Table 6). Even within the latter group, many more people are learning to use the internet. Indeed, it has seen the biggest rise in uptake over the last five years.

8. AS&S, *Media Perspektiven Basisdaten* 2010, p. 69.

Table 6.

Percentage of internet users in different age groups 2001, 2005 and 2010

Age group	2001	2005	2010
14–29	63.4	82.8	95.8
30–49	48.0	71.2	87.1
50+	15.6	30.5	49.6

Source: Initiative D21 (ed.), (N)Onliner Atlas 2010. *Eine Topographie des digitalen Grabens durch Deutschland. Nutzung und Nichtnutzung des Internets. Strukturen und regionale Verteilung* ([N]Onliner Atlas 2010. A Topography of the Digital Divide in Germany. Use and Disuse of the Internet. Structures and Regional Distribution), 2010, p. 14. See <http://www.initiaved21.de/wp-content/uploads/2010/06/NONLINER2010.pdf> (accessed 5 April 2011).

Based on 1,000 telephone interviews, a recent study finds six different types of internet users and thus illustrates that the digital divide has not yet been overcome.⁹

- *Digital outsiders* (28 percent), average age 65, have little access to the internet and low skills for computer usage.
- *Occasional internet users* (28 percent), average age 45, usually have a computer, a printer and in most cases internet access at home. They have the basic skills necessary for internet search, email and text processing and sometimes use the internet for these activities. However, they prefer the conventional media.
- *Job-related internet users* (7 percent), average age 45, spend two or more hours per day using the internet, mainly email, word processing and information search.
- *Trend driven users* (20 percent), average age 37, have a private computer and equipment. Many of them also have internet access with a smartphone. They are participating in the social web and play computer games.
- *Digital professionals* (12 percent), average age 39, have extensive knowledge of computing and use the internet on the job as well as at home for communication and information seeking.
- *The digital vanguard* (5 percent), average age 34, is characterized by higher formal education and income. The members of this group spend 10 hours per day with computers, for work as well as entertainment.

1.2.2 Availability of a Diverse Range of News Sources

In line with the average time spent reading newspapers (see Table 5), the circulation of daily or Sunday newspapers has fallen by 10 percent from 25.1 million in 2005 to 22.5 million in 2010.¹⁰ Meanwhile, the number of national newspapers declined somewhat from 377 in 2005 to 369 in 2010. In weekly newspapers there has been a 10 percent reduction in circulation (down to 1.9 million in 2010) and a corresponding decline in the number of titles (from 27 in 2005 to 25 in 2010). The decline in the number and circulation of newspapers is an ongoing process that has been seen for a long time. Among the reasons are market access barriers for new newspapers, resulting in press concentration. Also, the younger generations do not have the same willingness to spend their time and money on reading newspapers. Magazines and trade journals or professional journals experienced declining circulation but a growth in the number of titles. Here the publishers try to keep the attention of the readership and the utility for advertisers by differentiating the magazines.

9. Initiative D21 (ed.), *Digitale Gesellschaft. Die digitale Gesellschaft in Deutschland—sechs Nutzertypen im Vergleich* (Digital Society. The Digital Society in Germany—six Types of Users compared), 2010, pp. 10–11. See http://www.initiaved21.de/wp-content/uploads/2010/12/Digitale_Gesellschaft_2010.pdf (accessed 4 April 2011).

10. AS&S, *Media Perspektiven Basisdaten 2010*, p. 48.

On the other hand, by creating web portals with related content available free of charge, the publishers themselves foster competition for their own print media.

From the point of view of consumers, the internet obviously has increased access to a diverse range of news sources. Moreover, a lot of news sources are accessible free of charge, and search engines and news services deliver information according to the topics specified by the users.

1.3 News Providers

1.3.1 Leading Sources of News

1.3.1.1 Television

As shown above (Table 5), television is the most used mass medium in Germany. The most watched television channels all provide comprehensive programming, including news. Their market shares have not changed much over the last five years, as they were able to maintain their leading market positions during the nascent stages of digital television. A general trend seems to be differentiation of audiences: channels with the highest ratings are losing market share (Table 7) to specialized news channels such as N-TV and N24. In 2010 their respective market shares were 0.9 and 1.0 percent, compared with 0.6 percent each in 2005.¹¹

Table 7.
Television news providers 2005–2010 (market share of viewing time in %)

	2005	2006	2007	2008	2009	2010
Public broadcasters						
Das Erste (formerly ARD)	13.5	14.2	13.4	13.4	12.7	13.3
ZDF	13.5	13.6	12.9	13.1	12.5	12.8
Regional third channels (consolidated)	13.6	13.5	13.5	13.2	13.5	12.9
Private broadcasters						
RTL	13.2	12.8	12.4	11.7	12.5	13.4
Sat.1	10.9	9.8	9.6	10.3	10.4	10.1
ProSieben	6.7	6.6	6.5	6.6	6.6	6.4
VOX	4.2	4.8	5.7	5.4	5.4	5.7
RTL II	4.2	3.8	3.9	3.8	3.9	3.8

Sources: ARD-Werbung Sales & Services (ed.): *Media Perspektiven Basisdaten. Daten zur Mediensituation in Deutschland 2007* (Facts on the Media Situation in Germany 2007), Frankfurt am Main, 2007 (hereafter, AS&S, *Media Perspektiven Basisdaten 2007*); AS&S, *Media Perspektiven Basisdaten 2009*; AS&S, *Media Perspektiven Basisdaten 2010*.

11: Commission on Concentration in the Media, *Jahreszahlen: Zuschaueranteile (in Prozent) von 1990 bis 2010* (Annual Figures: Audience Share 1990–2010), 2010, <http://www.kek-online.de/Inhalte/jahr.pdf> (accessed 4 April 2011).

1.3.1.2 Radio

With regard to radio, most channels provide local or regional programming. Over the last five years the leading channels of the public broadcasters in the largest states have gained in audience reach, partly at the expense of some of the leading private radio channels (Table 8). Digitization of radio broadcasting so far has attracted negligible consumer take-up, so its potential impact is as yet unknown. Some of the reasons for the failure of DAB may be the costs of DAB receivers, the wide choice of existing fm radio programs,¹² and the reluctance of broadcasters to invest in additional channels and thus the missing added value of DAB for the audience.

In August 2011, DAB radio will be replaced by the new technical standard DAB plus. This time not only regional but also national radio channels have been licensed for digital radio. The Telecommunications Act (*Telekommunikationsgesetz*, TKG) determines that the licenses for fm radio shall be revoked by 2015. However, a bill that has not yet passed the Bundestag includes a provision that, depending on the distribution of digital radio receivers, analog fm radio licenses may be extended until 2025.¹³

Table 8.
Radio news providers 2005–2010 (daily reach in millions)

	2005	2006	2007	2008	2009	2010
Public radio channels with widest media penetration						
SWR3	4.7	4.5	5.0	4.8	5.1	5.1
Bayern 1	3.5	3.3	3.5	3.6	4.3	4.5
1LIVE	4.0	3.6	4.0	4.2	4.2	4.6
WDR 2	4.0	4.1	3.7	3.7	4.2	4.6
NDR 1 Niedersachsen	3.9	4.0	3.7	3.4	3.4	3.3
Private radio channels with widest media penetration						
Radio NRW	6.7	6.8	6.8	6.4	6.7	6.7
Antenne Bayern	4.2	5.1	4.9	4.7	4.9	4.8
Bayern Funkpaket (local stations in Bavaria, consolidated)	4.2	3.5	4.0	3.6	3.5	3.5
HIT RADIO FFH	2.9	2.8	2.8	2.6	2.5	2.4
Radio ffn	2.4	2.2	2.5	2.4	2.3	2.3

Sources: AS&S, *Media Perspektiven Basisdaten 2007*; AS&S, *Media Perspektiven Basisdaten 2009*; AS&S, *Media Perspektiven Basisdaten 2010*.

12. At least four or five radio channels offered by the respective regional public broadcaster plus some competing private radio channels.

13. <http://www.bmwi.de/BMWi/Redaktion/PDF/Gesetz/referentenentwurf-tkg-2011>, p. 44.

1.3.1.3 Print Media

Looking at the leading newspapers we find declining circulation in most cases (one of the largest weekly titles was actually discontinued in 2010). Only the renowned weekly newspaper *Die Zeit* has significantly gained paid circulation over the last five years (see Table 9).

Table 9.
Newspapers 2005–2010 (paid circulation in thousands)

	2005	2006	2007	2008	2009	2010
Daily newspapers						
Süddeutsche Zeitung	436.9	432.8	413.4	439.5	429.9	423.1
Frankfurter Allgemeine	377.5	362.6	360.9	366.8	367.5	362.4
Rheinische Post	400.5	390.7	383.4	382.2	379.0	351.2
Freie Presse	327.9	318.7	308.7	300.8	291.4	282.0
Hamburger Abendblatt	265.2	255.1	249.1	248.8	235.2	220.1
Tabloids						
Bild	3,829.2	3,716.3	3,547.6	3,335.6	3,299.7	3,098.3
B.Z.	191.3	187.9	186.9	182.9	175.9	166.0
Express	181.2	174.1	169.1	160.3	155.3	148.9
Tz	155.3	151.5	151.4	145.9	144.6	144.1
Abendzeitung	162.5	159.7	148.7	148.6	143.0	130.7
Weekly newspapers						
Die Zeit	466.7	479.5	480.2	471.7	491.3	494.0
Rheinischer Merkur*	95.3	84.5	78.8	70.5	69.1	—
Bayernkurier	79.0	66.9	65.8	74.3	68.3	60.8
Katholische SonntagsZeitung	79.9	75.4	70.8	66.3	62.7	58.9
Freitag	13.7	12.6	12.4	11.9	18.0	n/a

Note: * This weekly paper was discontinued in 2010.

Sources: W. J. Schütz, “Deutsche Tagespresse 2006” (“German Daily Newspapers 2006”), *Media Perspektiven* 11/2007, p. 579; W. J. Schütz, “Deutsche Tagespresse 2008” (“German Daily Newspapers 2008”), *Media Perspektiven* 9/2009, p. 474; IVW, <http://daten.ivw.eu/index.php> (accessed 4 April 2011).

Some of the leading news magazines are also losing circulation of their print edition (Table 10). A remarkable exception is *Cicero*, a monthly magazine on political culture founded in 2004, the circulation of which is still growing.

Table 10.
Magazines 2005–2010 (paid circulation in thousands)*

<i>Nationwide magazines with political reporting</i>	2005	2006	2007	2008	2009	2010
Der Spiegel (weekly)	1,113.1	1,077.2	1,079.0	1,056.2	1,044.7	1,012.9
Stern (weekly)	1,053.5	1,012.5	1,007.7	987.2	949.5	904.7
Focus (weekly)	790.8	734.0	728.1	787.9	614.0	557.0
VIEW (monthly)	—	—	131.1	132.1	145.1	128.5
Cicero (monthly)	62.7	70.0	73.2	77.6	81.0	82.6

Note: * Data referring to the third quarter of each year.

Source: IVW, <http://daten.ivw.eu/index.php> (accessed 4 April 2011).

1.3.1.4 News Websites

On the other hand, the leading newspapers and magazines are among the strongest competitors when it comes to online news provision (Table 11). While the conservative tabloid *Bild* has seen a reduction in its paid circulation from 3.8 million in 2005 to 3.1 million in 2010, visits per month for its internet content have risen from 26 million to 129 million. The website of the critical news magazine *Der Spiegel* has seen visits grow from 47 to 123 million per month, and the website of the quality broadsheet paper *Süddeutsche Zeitung* has 27 million visits per month, up from six million in 2005. Hence, much of the competitive pressure on newspapers stems from their own online versions, hitherto provided mostly free of charge.

Table 11.
Websites with news reporting 2005–2010 (visits per month in millions)*

<i>Internet portals</i>	2005	2006	2007	2008	2009	2010
T-Online	200.70	246.28	266.43	316.98	343.56	478.60
MSN	108.38	171.95	205.91	211.71	280.23	282.26
Yahoo	n/a	121.46	149.51	167.97	196.62	200.35
Bild.de	26.48	32.13	43.42	57.58	80.97	128.61
Spiegel Online	46.87	60.54	69.36	88.14	103.08	123.30
Chip Online	17.47	16.55	22.30	32.47	40.63	57.44
Arcor.de	n/a	n/a	n/a	n/a	61.39	42.64
Kicker Online	6.98	10.77	13.95	18.22	20.45	31.34
Heise Online	20.11	24.45	24.28	24.88	22.78	29.32
Focus Online	12.62	16.13	15.12	17.83	23.91	27.23
Sueddeutsche.de	6.11	7.79	10.71	17.42	19.80	27.14
Sport1	11.01	15.80	20.89	24.83	19.90	26.30
Welt Online	4.89	5.60	8.29	16.01	24.60	24.48
N24 Online	2.03	3.03	3.55	3.27	3.48	22.71

Note: * Data referring to January of each year.

Source: IVW, <http://daten.ivw.eu/index.php> (accessed 4 April 2011).

1.3.2 Television News Programs

The leading television news programs in Germany have experienced a decline in audience ratings and market share (Table 12). Between 2005 and 2008 their aggregated number of viewers fell from 28.1 million to 24.5 million. By 2010, the number of viewers had grown to 25.7 million. Many people seem to have dropped the habit of watching one of the main newscasts, but recently this trend has reversed. The reasons for this development have not been analysed yet. It may be related to migration to the commercial news channels n-tv (started in 1994, audience share in 2010: 0.9 percent) and N24 (started in 2003, audience share in 2010: 1.0 percent). Both are transmitted not only digitally, but also in analog mode in cable and by satellite. In several regions N24 is now transmitted via terrestrial DVB-T.

Table 12.

Viewers and market shares of television news 2005–2010 (viewers aged 3+ years)

News broadcasts	Viewers (millions)						Market share during the respective timeslot (%)					
	2005	2006	2007	2008	2009	2010	2005	2006	2007	2008	2009	2010
ARD Tagesschau*	9.76	9.39	8.96	8.74	8.86	9.05	33.8	33.0	31.9	32.0	32.3	32.5
ZDF heute**	4.74	4.42	4.13	3.96	4.02	3.88	20.5	19.4	18.4	18.0	18.2	17.6
ZDF heute-journal***	3.88	3.73	3.44	3.43	3.50	3.71	13.7	13.1	12.3	12.4	12.8	12.7
ARD Tagesthemen	2.33	2.41	2.22	2.26	2.26	2.42	11.5	10.6	10.0	10.5	10.7	11.2
RTL aktuell	3.77	3.61	3.85	3.74	3.79	3.81	17.4	17.0	18.3	18.2	18.2	18.2
Sat.1 News/ Sat.1 Nachrichten****	2.30	2.14	1.90	1.54	1.73	1.87	11.6	11.0	9.9	6.4	6.5	6.8
ProSieben Newstime	1.36	1.29	1.29	0.86	0.90	0.91	4.7	4.6	5.3	5.4	5.6	5.6

Notes: * Including audiences for simultaneous transmission in third channels, 3sat and Phoenix.

** Including audiences for simultaneous transmission in 3sat.

*** Including audiences for simultaneous transmission in Phoenix.

**** Reduced audience and market share from 2008 due to change of the time slot.

Sources: AS&S, *Media Perspektiven Basisdaten 2009*, p. 68; AS&S, *Media Perspektiven Basisdaten 2010*, p. 77 (Data for 2010 based on January to October).

1.3.3 Impact of Digital Media on Good-Quality News

For the media sector, competition has clearly increased, with corresponding pressure on revenues and business models. The increasing competition can be related to various dimensions of news quality, e.g. promptness, accurateness, relevance, variety of topics, specialization, depth of information, and availability.

For new (digital) television and radio channels, the main strategy applied for new channels is specialization in order to serve special interests.

The internet offers all kinds of information and infotainment with varying characteristics in these dimensions. The main strategy of the existing mass media seems to be to increase promptness, to retain accuracy and the variety of topics and transfer the existing image to their respective online activities. But in most cases there is no charge for the access to the online news, and often the online news are cross-subsidized. Therefore publishers are looking at options to levy subscription charges for provision of online news content. In addition, they ask for ancillary copyrights in order to charge fees from portals that are showing their content (see section 6.2.2). Whether such a model will be sustainable given the wealth of competition from other free online news sources remains to be seen.¹⁴

1.4 Assessments

Due to satellite and cable, the media landscape in Germany even before digitization had a wide choice of television programs. Digitization of terrestrial television transmission has opened up a wider choice for the small number of households that used neither cable nor satellite, and for the second and third television sets that are not connected to cable or to a satellite receiver.

The digitization of satellite television will be completed in the spring of 2012, when analog satellite television will be switched off. With cable television this process is much slower, because digital cable incurs additional charges. Given there are about 30 analog channels in standard cable TV, the incentive digitization offers many households is small, except for those with pay TV, which requires digital television for its more than 50 channels.

Digital media are providing easier and faster access to a broader supply of news. This is particularly true of the internet, due to news portals and news aggregators like Google.

From the viewers' perspective, the 'legacy' news offers, such as the morning newspaper or television evening news, are still quite important, but they have lost their former urgency. For users know that they can obtain the information they need or want even when they miss today's newspaper or evening news bulletin.

14: However, some news providers have managed to monetize their online activities without erecting pay walls around content. By 2007, *Spiegel Online*, *Süddeutsche Zeitung*, *Rheinische Post* and *Berlin online* were all generating a profit through subsidiary online enterprises and revenue streams, cf. T. Knüwer, "Wie Verlage im Internet Geld verdienen? So wie bisher" ("How Publishers earn money on the Internet? As before"), in J. Krone (ed.), *Medienwandel kompakt 2008–2010* (Media Change compact 2008–2010), Baden-Baden, 2011, pp. 209–211.

2. Digital Media and Public or State-Administered Broadcasters

2.1 Public Service and State Institutions

2.1.1 Overview of Public Service Media; News and Current Affairs Output

As broadcasting is treated as a matter of culture, the federal states (*Länder*) are responsible for its regulation. Besides the Interstate Treaty on Broadcasting and Telemedia¹⁵ laying down a harmonized framework for nationwide broadcasting, Germany's broadcasting is regulated by specific media laws¹⁶ and interstate treaties¹⁷ for public broadcasters. In the so-called dual system—a broadcasting order in which public and private broadcasters co-exist¹⁸—public broadcasters fulfil a specific function according to the German Federal Constitutional Court. As the Court supposes that economically driven private broadcasting tends to seek mass appeal and disregards minority interests, a basic provision („Grundversorgung“) has to be offered by public broadcasters, consisting of information, entertainment, education and advice. According to the Court, the abovementioned deficits of private broadcasting are acceptable as long as public broadcasters ensure basic provision.¹⁹ However, neither are private broadcasters prohibited from ensuring this basic provision nor are they obliged to offer such a basic provision. How the tasks of public broadcasters have to be described and specified is one of the main points of debate in German media policy.

The public broadcasters are public corporations, some of them founded by one of the states, some of them jointly founded by several or all of the states. Only the international broadcaster *Deutsche Welle* is a public corporation funded and regulated by the Federal Republic of Germany.

15. Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty) in the version of the 13th Amendment to the Interstate Broadcasting Treaties, entry into force 1 April 2010; translation by the State Media Authorities, “for information purposes only”, available at http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/13_RStV-englisch.pdf.

16. All state media laws can be found in German at <http://www.die-medienanstalten.de/service/rechtsgrundlagen/landesmediengesetze.html>.

17. There are no translated interstate treaties regarding public service broadcasters.

18. See Libertus, *Essential Aspects Concerning the Regulation of the German Broadcasting System*, Köln 2004, p. 11, available at <http://www.rundfunkinstitut.uni-koeln.de/institut/pdfs/19304.pdf>.

19. Cf. BVerfGE 73, 118 (157).

Before 1984, broadcasting in the former West Germany was provided exclusively by public broadcasters. When private broadcasting was introduced in 1984, in some regions public access radio, public access television or community media were also established to enhance media literacy and to further grassroots media participation. Presently, some 150 localities are served by community media, with an estimated total daily audience of 1.5 million people.²⁰

The 12 public broadcasters in Germany have more than 28,000 employees. In 2008, they provided 64 radio channels and 22 television channels from a total budget of €8.7 billion.²¹ The biggest share of the funding is contributed by the radio and television license fees, with the same monthly amount nationwide for all households owning a broadcasting receiver. The license fees are set by an interstate agreement, based on the proposal of an independent Commission for the Assessment of the Financial Requirements of Public Broadcasters (*Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten*, KEF).

Each of the nine regional public broadcasters provides at least four regional radio channels, some of them further regionalized. The radio programs are differentiated by interest and special audiences. In particular, the music for each program is selected for the age group expected to listen to the program. There are formats for young people, adults, elderly people, and people interested in classical music or in breaking news. In the daytime, hourly or half-hourly newscasts are provided by most of the radio channels. *Deutschlandradio*, a public radio corporation, founded by all of the states, provides three programs for a nationwide audience interested in news, culture and knowledge, the last of which is transmitted only digitally by cable, satellite, Digital Audio Broadcasting (DAB) and internet. In total, the public broadcasters have a daily reach of 36.6 million listeners; the commercial broadcasters count 29.2 million daily listeners.²²

In public service television, the prominent national channels are Das Erste (the first channel, a joint program of the regional broadcasters, also known as the ARD) and ZDF (the second channel, provided by a separate broadcasting corporation jointly founded by the states). The seven regional “third channels” are now distributed almost nationwide by satellite, cable and in part by digital terrestrial television (DVB-T). While in the first and second channel the proportion of information and infotainment is between 40 and 50 percent, in the third channels it is even higher, between 60 and 70 percent, with a slight reduction over the last five years (see Table 13). Most of them transmit the *Tagesschau*, the evening news of the first channel, at the same time, resulting in a combined market share for that time slot of 32.5 percent in 2010.²³ The end of this newscast at 8.15 p.m. is still seen as the starting point for “prime time,” even in commercial television. Further diversification of public service programming has resulted in more specialized digital channels, most of them with relatively niche audiences.

20. Association of State Media Authorities (ed.), *ALM Jahrbuch 2009/2010* (ALM Annual Report), Berlin, 2010, p. 329. See http://www.die-medienanstalten.de/fileadmin/Download/Publikationen/ALM-Jahrbuch/Jahrbuch_2010/ALM_Jahrbuch_2010_Druckversion.pdf (accessed 4 April 2011).

21. Bayerische Landeszentrale für neue Medien (BLM) et al. (eds.), *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009* (Economic Situation of Broadcasting in Germany 2008/2009), Berlin, 2010, pp. 66f (hereafter, BLM et al., *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009*).

22. AS&S, *Media Perspektiven Basisdaten 2010*, pp. 79f.

23. AS&S, *Media Perspektiven Basisdaten 2010*, p. 76.

Table 13.

Percentage of information and infotainment in the total output in the main television channels of Das Erste, ZDF and the regional television channels of the public broadcasters 2005–2009 (in %)

	2005	2006	2007	2008	2009
National channels					
Das Erste	43.2	42.3	43.7	43.8	44.6
ZDF*	49.6	48.8	51.2	50.5	52.5
Regional channels					
BR (Bavaria)	60.3	64.9	66.1	65.4	64.1
HR (Hesse)	63.5	63.6	63.9	62.8	59.2
MDR Saxony, Saxony-Anhalt, Thuringia)	67.6	64.8	66.4	67.5	67.3
NDR/RB (Hamburg, Lower Saxony, Schleswig-Holstein, Mecklenburg–Western Pomerania, Bremen)	70.7	69.7	70.9	70.2	71.4
RBB (Berlin, Brandenburg)	70.7	71.4	68.7	66.5	67.0
SR/SWR (Saarland, Rhineland-Palatinate, Baden-Württemberg)	72.7	70.3	68.0	68.3	67.2
WDR (North Rhine-Westphalia)	74.2	73.7	74.1	70.9	73.5

Note: * ZDF, www.zdf-jahrbuch.de (accessed 4 April 2011).

Sources: Association of German Public Service Broadcasting Corporations, *ARD Jahrbuch 2006, 2007, 2008, 2009, 2010* (ARD Annual Report 2006, 2007, 2008, 2009, 2010), Hamburg, 2006, 2007, 2008, 2009, 2010.

2.1.2 Digitization and Services

During the process of digitization, the public broadcasters started new experimental television channels, for example a theatre channel offering special-interest content mostly from the archives for rather small audiences. With a growing number of viewers receiving digital television, these additional channels can be redesignated to reach larger audiences. Currently, public broadcasters are starting a process of adapting audience-targeting strategies to suit the new digital landscape, for instance by developing some channels to address a younger audience.²⁴

In addition, public broadcasters distribute their content online. First, almost all of their radio channels and some television channels are streamed live via the internet. Second, some of the broadcasts are available on demand for a limited period through an online media library. Third, broadcasters use the internet to offer additional information as a supplement to their conventional broadcasts.

24. C.-M. Ridder and B. Engel, "Massenkommunikation 2010: Funktionen und Images der Medien im Vergleich" ("Mass Communication 2010: Functions and Images of the Media in Comparison"), in *Media Perspektiven 11/2010*, pp. 543-546 (hereafter, C.-M. Ridder, B. Engel, "Massenkommunikation 2010").

But the provision of public service content online, funded by the broadcasting license fee, has been criticized by the European Commission with respect to state aid laws. In a compromise between Germany and the Commission in April 2007, the future legal framework for online services of public service broadcasters was agreed (“Beihilfekompromiss”, state aid compromise, see chapter 7.3.1).²⁵ The implementation of the compromise led to a prohibition on making their programming accessible online for more than one week after their scheduled broadcast on conventional platforms. Exceptions are only granted for programs that meet specific criteria in relation to how far they cater to democratic, cultural and social needs; the extent to which they will enhance or threaten competitive media markets; and the costs of providing the service.

2.1.3 Government Support

For public broadcasters, the funds needed for digitization have been factored into the renewal and setting of license fees. The KEF has accepted some of the additional funding demands of broadcasters. In other cases they have insisted that some extra costs should be funded by savings elsewhere. When the introduction of mobile television with Terrestrial Digital Multimedia Broadcast (T-DMB) failed, the KEF reduced the calculation for the financial needs in the next period accordingly.²⁶ Since the financing of digitization for public broadcasters is determined by the KEF, itself an independent commission, state interference with the independence of broadcasters by using financial instruments is difficult.

2.1.4 Public Service Media and Digital Switch-over

In Germany, less than 2 percent of television households have access to terrestrial television only,²⁷ with the vast majority having access to cable or satellite providers. Therefore the immediate consequences of digital switch-over in terrestrial television are marginal. For the public service broadcasters, however, switch-over affords an opportunity to obtain terrestrial transmission for channels that are not included in the selection of analog cable providers in order to attract audiences.

The digitization of satellite and transmission will also result in more competition for public broadcasters when viewers get used to more specialized channels.

2.2 Public Service Provision

2.2.1 Perception of Public Service Media

In popular understanding, public service broadcasting is not seen as a service of the state. Nevertheless, discussion over whether political parties have acquired too much influence over public service broadcasters is ongoing. The social democratic fraction (SPD) of the parliament in Rhineland Palatinate recently filed

25. K (2007) 1761 endg. in the procedure E 3/2005; Press Release IP/07/543, Brussels, 24 th April 2007.

26. Commission for the Assessment of the Financial Requirements of Public Broadcasters (KEF), *17. KEF Bericht* (17th KEF Report), Mainz, 2009, p. 149. See http://www.kef-online.de/inhalte/bericht17/kef_17bericht.pdf (accessed 4 April 2011).

27. AS&S, *Media Perspektiven Basisdaten 2010*, p. 4.

a complaint of unconstitutionality at the German Constitutional Court regarding the composition of the board of the ZDF, because they deemed too many of its members to be representatives of states and politics. The decision is expected in 2012.

There are other issues for which public broadcasters come under criticism: imitation of the strategies of commercial broadcasters, high production costs and rising license fees, relocation of programming with smaller audiences to special (digital) channels, a lack of transparency, and a loss of connection to younger people.²⁸

A recent study on public perception of mass media shows that the images of public and private television channels are quite different.²⁹ Some results are shown in Table 14. In general, the study found that public broadcasters are seen as factual, credible and competent, whereas commercial broadcasters are labelled as entertaining, modern and informal. Comparing the results of 2010 with those of 2005, the difference in perception has somewhat reduced: public broadcasters are seen as more informal, modern and entertaining than before without losing their quality image.³⁰ For younger people, however, the strengths of private broadcasters are more pronounced. They assess the television programs of public broadcasters as more credible, but the private ones as more likeable.

Table 14.
Images of public and private television programs 2005 and 2010 (in %)

Attributes	2005, total		2010, total		2010, age 14–29	
	Public	Private	Public	Private	Public	Private
Factual	79	14	78	15	81	16
Credible	76	14	75	14	77	17
Competent	71	20	72	20	68	26
Independent	n/a	n/a	54	37	46	47
Likeable	42	50	44	47	21	71
Versatile	31	63	36	57	17	78
Entertaining	25	67	30	62	10	86
Modern	19	74	26	68	9	86
Informal	15	81	24	72	10	87

Source: C.-M. Ridder, B. Engel, “Massenkommunikation 2010”, pp. 543.

28. Cf. M. Weiß, “Eine Zukunft für den öffentlich-rechtlichen Rundfunk: Vom Auslaufmodell zu neuen Überlebensstrategien?” (A Future for Public Service Broadcasters: From Outdated Model to New Survival Strategies?), in *Medienwissenschaft* 3/2010, pp. 282–291; J. Ludwig (ed.), *Sind ARD und ZDF noch zu retten? Tabuzonen im öffentlich-rechtlichen Rundfunk* (Can ARD and ZDF be helped? Taboo Zones in Public Service Broadcasting), Baden-Baden, 2009.

29. C.-M. Ridder, B. Engel, “Massenkommunikation 2010”, pp. 543–546.

30. An example of change in recent years is the more informal communication style among journalists in ZDF newscasts, addressing each other by their first names. Criticism of public broadcasters’ television channels deplores that—with the exception of newscasts—information broadcasts are not programmed in prime time very often, cf. F. Wolf, “Wa(h)re Information—interessant geht vor relevant”, p. 33.

2.2.2 Public Service Provision in Commercial Media

Some public service obligations do apply to private broadcasters. In particular, plurality of opinion is the desire behind Article 25 of the Interstate Treaty on Broadcasting and Telemedia (*Rundfunkstaatsvertrag*, RStV):

The editorial content of commercial broadcasting shall convey plurality of opinion. The major political, ideological and social forces and groups shall be granted adequate opportunity for expression in the general channels; minority views shall be taken into account. The possibility of offering thematic channels remains unaffected.³¹

Moreover, the two general channels transmitted nationally with the largest audience reach are obliged to incorporate regional window services³² providing up-to-date, authentic presentations of political, economic, social and cultural life in the respective state (Article 25 para 4 RStV).

2.3 Assessments

The switch-over to DTT and the emergence of the internet have brought much more choice to the audience and more competition for broadcasters, commercial and public alike. The latter have used digitization to diversify their services and to increase access to their content.³³

The residual problem for public broadcasters in the aftermath of digitization concerns their relative incapacity to attract younger audiences, who find them credible, but not likable. If they fail to gain their attention and loyalty, the justification for the license fee will be weakened in the long run. So the public broadcasters will have to seize the opportunity of digitization to extend their appeal to younger audiences.

31. The English translation is provided with the collaboration of the State Media Authorities (http://www.die-medienanstalten.de/fileadmin/Download/Rechtsgrundlagen/Gesetze_aktuell/13_RStV-englisch.pdf).

32. A regional window service is a broadcasting service of limited duration and extent, offering predominantly regional content transmitted as part of the main service.

33. Association of German Public Service Broadcasting Corporations (ed.), *ARD 2007: Die ARD in der digitalen Welt* (ARD 2007: The ARD in the Digital World), 18 June 2007, http://www.mediadesk.de/Download/ARD_in_der_digitalen_Welt (accessed 4 April 2011).

3. Digital Media and Society

3.1 User-Generated Content (UGC)

3.1.1 UGC Overview

Data about website visits in Germany are published by the Information Association for the Ascertainment of Distribution of Advertising Media (*Informationsgemeinschaft zur Feststellung der Verbreitung von Werbeträgern*, IVW). The ten most popular websites (or groups of websites of the same company) measured by IVW all offer some kind of user participation, albeit in distinct ways. T-Online, MSN, yahoo and AOL are established internet portals providing a value-added entry point or gateway to the internet, as well as incorporating some UGC. The auction platform eBay is a special case, with user-generated offers as the main content.

The other five are subsidiaries of the largest media companies in Germany (see Table 15). Two of them provide access to social networks (schuelerVZ, studiVZ and meinVZ for different age groups, and wer-kennt-wen.de), whereas the remainder provide content related to a newspaper (Bild.de), a news magazine (Spiegel Online) or a television channel (ProSieben Online). Table 15 lists the UGC applications on the 10 most popular UGC websites.

However, the IVW only counts visits to websites paying for their service. Important websites such as google.de, google.com, youtube.com, amazon.de and wikipedia.org are not listed here, although they figure among the top 10 in December 2010, according to Alexa.³⁴

The German version of Wikipedia contains 1.2 million articles, being the second largest after the English version with 3.5 million articles.³⁵ It is a collaborative effort involving thousands of volunteers. German Wikipedia featured content from 106,000 authors as at February 2011, with 12,000 new authors contributing to the site since February 2010.³⁶

34. See <http://www.alexa.com/topsites/countries/DE> (accessed 17 December 2010).

35. See http://de.wikipedia.org/wiki/Wikipedia:%C3%9Cber_Wikipedia (accessed 10 February 2011).

36. See <http://stats.wikimedia.org/EN/TablesWikipediaDE.htm> (accessed 4 April 2011).

There are also plenty of German weblogs covering a wide variety of topics.³⁷ A recent study comparing some newspapers and the most popular blogs finds that the latter are much more likely to make the mass media a subject of discussion.³⁸ As such, their news selection is guided by a different mix of news factors, and their content features proportionately more speculation and editorial opinion than conventional news outlets.

Table 15.

Top 10 most popular websites that among other types of content provide user-generated content, according to IVW in 2010

Website	Visits per month (millions Nov. 2010)	Visits that target UGC elements of the website per month (millions, Nov. 2010)	Types of user-generated content provided on the website	Connection to an established German media company
T-Online Content	449.51	13.02	Comments on news articles, message boards, social network elements (user profile, private messages), photo/music/video/document sharing ("Mediencenter"), personal websites.	—
VZnet: SchuelerVZ StudiVZ MeinVZ	364.14	36.33	Photo sharing, comment functions, groups, discussion boards, social network elements (messages, friendships, personal information); third-party apps with various other UGC elements. Catering especially to school pupils and students.	Holtzbrinck
eBay	361.89	—	E-commerce, social network elements (private messages, user profiles, friendships), video sharing, discussion boards, clubs/neighborhoods (= special interest groups), feedback.	—
MSN	232.21	0.13	Comments, message board, photo sharing (Windows Live), video sharing (MSN ClipClub), blog (Windows Live)	—
Yahoo!	210.74	11.21	Social network elements (user profiles, contacts, private messages), Yahoo! Clever (= Online Community), Yahoo! Foren, Yahoo! Groups, Yahoo! Video (video sharing), Flickr cooperation (photo sharing)	—
Bild.de	157.64	4.28	Photo/video upload ("Leser-Reporter"), Comment function, user profile	Axel Springer
wer-kennt-wen.de	155.18	148.38	Photo sharing, blogs, groups, discussion boards, social network elements (messages, friendships, personal information)	RTL
ProSieben Online	152.02	0.18	ProSieben Community: groups, message boards, video/photo sharing, social network elements (user profiles, friends, private messages etc.), blogs, comments	ProSiebenSat.1
Spiegel Online	134.56	4.14	Discussion board (threads linked to articles), user profile, groups, private messages, votes	Spiegel
AOL	63.38	0.01	Comments on articles (via welt.de)	—

Source: IVW, <http://www.ivw.de/index.php?menuid=30> (accessed 29 November 2010).

37. For unofficial charts of German weblogs, see <http://www.deutscheblogcharts.de>.

38. C. Eilders, S. Geißler, M. Hallermayer, and M. Noghero, "Zivilgesellschaftliche Konstruktionen politischer Realität: Eine vergleichende Analyse zu Themen und Nachrichtenfaktoren in politischen Weblogs und professionellem Journalismus" (Construction of Political Reality by Civil Society: A Comparative Analysis of Topics and News Factors in Political Weblogs and Professional Journalism), in *Medien & Kommunikationswissenschaft* 1/2010, p. 73.

3.1.2 Social Networks

A recent survey shows that social networks are growing rapidly in Germany, with 40 million citizens—that is, about one in two—members of social networks. In 2010, the number was about 30 million.³⁹ Of internet users under 30 years old, almost everyone (96 percent) is a member of a social network. In the age group 30–49 years, the figure is 80 percent and even when it comes to internet users of 50 years and older, 53 percent are members of one of more social networks.

The social network with the most members in Germany is Facebook, and it is also growing the fastest, reflecting the exponential growth tendencies of leading social networking sites. Second is StayFriends.de, a specialized network designed to enable users to both renew and retain connections to former school friends. As shown in Table 16, however, the number of visits per month is less than half the number of members, reflecting a relatively high proportion of inactive users. The same holds true for Lokalisten.de, a platform for UGC about local events.

Table 16.
Number of users and of visits of social networks in Germany in 2011

	Million Members in 2010	Million Visits in March 2010	Change compared to visits in March 2009
1. Facebook.com*	13.9	15.0	+291%
2. StayFriends.de	10.8	4.7	+49%
3. Wer-kennt-wen.de	8.5	7.5	+27%
4. StudiVZ.net	6.0	6.2	-1%
5. SchuelerVZ.net	5.9	9.3	+2%
6. MeinVZ.net	5.1	5.9	+30%
7. de.MySpace.com**	3.8	5.1	-4%
8. Lokalisten.de	3.6	1.8	-1.9%
9. Xing.com	3.1	2.5	+73%
10. Jappy.de	1.9	3.7	+33%

Notes: * Facebook counts “active users” who have logged in at least once in the last 30 days.

** Number of users according to Compass Heading, cf. <http://www.compass-heading.de/cms/nutzerzahlen-sozialer-netzwerke-januar-2010> (accessed 4 April 2011).

Source: Number of users as published by the carriers, number of visitors provided by Comscore, see <http://faz-community.faz.net/blogs/netzkonom/archive/2010/04/26/facebook-zieht-deutscher-konkurrenz-davon.aspx> (accessed 4 April 2011).

SchuelerVZ, StudiVZ and MeinVZ target specific age groups, while Wer-kennt-wen.de is a platform for connecting people with similar interests or in the same region. Xing.com is a network specialized in facilitating the job-related contacts of professionals and freelancers. Although independently founded, these networks are now subsidiary enterprises of large media companies.

39. http://www.bitkom.org/files/documents/PK_Praesentation_Social_media.pdf.

3.1.3 News in Social Media

A recent study suggests that the desire to participate actively in UGC is declining. In 2008, 35 percent of interviewees were very interested or somewhat interested in the opportunity to write contributions and upload them to the internet. Two years later, the figure had dropped to 22 percent,⁴⁰ indicating a saturation—an opportunity that for many people did not become a habit.

But social networks play an increasingly important role in connecting private communities. They provide a forum for daily social interaction and information exchange concerning local events, or those of relevance to a given circle of friends.⁴¹ For many of their members, these communities provide a communication hub for different web 2.0 applications.

In part, social networks are being used for news consumption, but it is a rather specific kind of news that is being looked at: 66 percent of online users with their own profiles in social networks use the network at least weekly to find out what happened within the network or circle of friends, and 54 percent use the network for chat at least weekly (Table 17). Seeking information is not one of the prevalent activities: 47 percent would not use a social network for that purpose at all.

The micro-blogging service Twitter is gaining popularity in Germany. In December 2009 a German user interface was started. Since then, the number of Twitter accounts sending German-language tweets has more than doubled from less than 200,000 in December 2009 to 480,000 in March 2011.⁴²

40. K. Busemann and C. Gscheidle, “Web 2.0: Nutzung steigt—Interesse an aktiver Teilnahme sinkt. Ergebnisse der ARD/ZDF-Onlinestudie 2010” (“Web 2.0: Increasing Consumption—decreasing active Participation. Results of the ARD/ZDF Online Survey 2010”), in *Media Perspektiven* 7–8/2010, p. 360 (hereafter, K. Busemann, C. Gscheidle, “Web 2.0: Nutzung steigt”).

41. Similar results have been found by Kneidinger; see B. Kneidinger, *Facebook und Co. Eine soziologische Analyse von Interaktionsformen in Online Social Networks* (Facebook & Co. A sociological Analysis of Interaction Patterns in Online Social Networks), Wiesbaden, 2010.

42. The underlying analyses do not count the users and their nationality but the accounts and the fact that the German language is used in their tweets, see <http://webevangelisten.de/twitternutzerzahlen-wachsen-in-einem-jahr-um-142-auf-jetzt-460-000/> and <http://webevangelisten.de/480-000-twitternutzende-im-maerz-2011/>.

Table 17.

Frequency of using specific functions in social networks by users with their own profile in 2010

	in %	Daily	Weekly	Monthly	Seldom	Never
Chatting		28	26	8	9	29
Finding out what happened within network or circle of friends		27	39	11	6	17
Sending personal messages to community members		26	39	15	8	11
Writing articles and comments within the community		12	30	12	15	31
Informing others what I am doing right now		11	17	9	10	53
Seeking information		9	18	13	12	47
Seeking contact with acquaintances		9	28	29	16	18
Posting links and information		8	16	13	13	50
Using applications like quiz, games or horoscopes		5	8	5	11	72
Using web pages for fans		2	9	8	12	69
Uploading own pictures		2	11	28	28	31
Uploading own videos		1	2	3	9	85

Sample: Online users aged 14+ in Germany (n=1252), subsample: users with own profile in a social network (n=486).

Source: K. Busemann, C. Gscheidle, "Web 2.0: Nutzung steigt", p. 365.

3.2 Digital Activism

3.2.1 Digital Platforms and Civil Society Activism

The internet is offering new opportunities for networking and political activism. For groups trying to gain public attention and political influence, the internet is an efficient medium. Distribution costs and wastage are low, and for people supporting the issue the threshold to show some support is rather low. Often just a mouse click is needed to participate.

An analysis of 109 internet campaigns criticizing enterprises shows that all of them offer opportunities for offline activities such as distributing petitions, sending postcards or letters of protest, or joining protest marches.⁴³ In many cases, other forms of online participation were also offered, such as access to information, online donations and protest emails. Specific kinds of internet activities, like denial of service attacks ("hacktivism"), are much less common.

43. A. März, "Mobilisieren: Partizipation—vom ‚klassischen Aktivismus‘ zum Cyberprotest" ("Mobilizing: Participation—from, Classic Activism to Cyber-Protest"), in S. Baringhorst et al. (eds.): *Unternehmenskritische Kampagnen. Politischer Protest im Zeichen digitaler Kommunikation* (Anti-corporate Campaigning. Political Protests and Digital Communication), Wiesbaden, 2010, p. 232.

Telecom data retention protests

A recent example of digital activism is the protest against telecommunications data retention. The protest was in response to a European Union directive requiring member states to ensure that their communications providers retain certain personal and user data.⁴⁴ Concerned citizens that were engaged in this issue used the internet to mobilize protests. They did not operate with formal structures like membership. In 2006 about 3,000 people were engaged in demonstrations; in 2007 more than 80,000 supporters were registered, of which more than 30,000 authorized the same lawyer to appear for them at the constitutional court.⁴⁵ In 2010, in response to several petitions, complaints and protests, the Constitutional Court decided that new regulations regarding data retention do not meet the constitutional requirements and thus were void.⁴⁶ Public debate over proposed changes to data retention regulations is still very much alive, however, and the homepage of activists is used to discuss the issue and to organize actions against data retention.⁴⁷

When the Federal President of Germany suddenly resigned in 2010, a successor had to be elected within 30 days by the *Bundesversammlung* (Federal Assembly, consisting of the members of the *Bundestag* and the same number of representatives of the states). Although there was no opportunity for direct participation by the general public, internet campaigns were waged for Joachim Gauck, the candidate nominated by two of the opposition parties. A Facebook group received considerable attention from the mainstream media and attracted 32,000 members within weeks.⁴⁸ As a consequence, several newspapers and magazines conveyed the impression that “the internet” was supporting Gauck.

Another example is the conflict about a new central station in Stuttgart called “Stuttgart 21,” sought by the national rail provider Deutsche Bahn. Although the company secured permission to build the new station, the project has faced considerable popular opposition and protest, much of which has been mobilized online. For instance, 100,000 Facebook users ‘like’ the Facebook group “No Stuttgart 21” (“*KEIN Stuttgart 21*”). The protesters also use Twitter to inform each other about new events. The final decision about this issue is expected later in 2011, when the newly elected regional parliament will reconsider the issue.

44. Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

45. See http://de.wikipedia.org/wiki/Arbeitskreis_Vorratsdatenspeicherung (accessed 14 July 2011).

46. See Federal Constitutional Court, 1 BvR 256/08, 2 March 2010, http://www.bverfg.de/entscheidungen/rs20100302_1bvr025608.html (accessed 4 April 2011).

47. See <http://www.wiki.vorratsdatenspeicherung.de/Hauptseite> (accessed 4 April 2011).

48. J. Berger, *Gauck-Hype? Welcher Gauck-Hype?*, 17 June 2010, www.spiegelfechter.com/wordpress/2930/ (accessed 4 April 2011).

3.2.2 The Importance of Digital Mobilizations

The examples show that quite a number of internet users can be mobilized to endorse a candidate or position.⁴⁹ Digital activism may help to gain the attention of the media and to achieve the support of citizens by offering different types of participation, reflecting the amount of effort one is willing to spend.

Political participation and mobilization is also a matter of social status. The positive effects of internet use for political communication have been shown primarily to affect young, male and better educated users.⁵⁰ For example, Marschall's survey among users of the *Wahl-O-Mat* (an online tool that helps in deciding which party to vote for) shows that young, (formally) educated males use the tool most often—especially if they have a strong interest in politics in the first place.⁵¹ Nevertheless, the fact that 16 percent of the *Wahl-O-Mat* users state that they are “normally not interested in politics” points to the web's potential for political mobilization.⁵²

3.3 Assessments

The internet allows easy access to general news and fast information-searching for special interests. German newspapers and magazines are offering news on their websites that differs from the print edition. Online access to articles from the print edition is often restricted in order to avoid cannibalizing at the expense of the printed media.

German media companies in general allow syndication of their content by search engines and news portals. However, they are trying to get the copyright rules revised in order to extract a new source of revenue through syndication.

Due to new participative opportunities on the internet, civil society actors can engage in political discourse more easily. The professional media provide the opportunity to discuss the news, weblogs facilitate a greater degree of active news selection as well as creation on the part of the user in the form of reporting and comment. Political activists are using the web as a means for campaigns. This, too, adds more variety to the news and comment available to the public interested in a specific topic.

49. For another example of political discussion in the blogosphere about the blocking of websites with problematic content like child pornography, see below section 4.4.2.

50. M. Seifert, “Neue Demokratie durch das Internet? Zum Einfluss des Netzes auf die bürgerschaftliche politische Kommunikation” (New Democracy through the Internet? On the Internet's Impact on Citizen Political Communication), in *Neue Soziale Bewegungen* 2/2006, p. 54; T. Escher, “Wi(e)der die ‚üblichen Verdächtigen‘? Politische Beteiligung via Internet” (Again(st) the ‘Usual Suspects’? Political Participation on the Internet), in J. Wölling et al., *Politik 2.0?*, p. 145; T. Faas and J. Partheymüller, “Aber jetzt?! Politische Internetnutzung in den Bundestagswahlkämpfen 2005 und 2009” (But now?! Political Internet Use during the Federal Election Campaigns 2005 and 2009), in E.J. Schweitzer, S. Albrecht, *Das Internet im Wahlkampf*, p. 134.

51. S. Marschall, “Nutzer und Nutzen—Der Wahl-O-Mat zur Bundestagswahl 2009” (Users and Use—The Wahl-O-Mat for the Federal Election 2009) (hereafter, S. Marschall, “Nutzer und Nutzen”), in E.J. Schweitzer, S. Albrecht, *Das Internet im Wahlkampf*, p. 145.

52. S. Marschall, “Nutzer und Nutzen”, p. 145.

4. Digital Media and Journalism

4.1 Impact on Journalists and Newsrooms

4.1.1 Journalists

The impact of the internet is threatening the traditional basis, role and funding of journalism. Therefore, research into these developments and their consequences for (German) journalism has grown significantly in the past few years. The same is true for journalistic self-reflection: the structural challenges (e.g. declining audiences, new competitors online) and cyclical challenges (e.g. declining advertising revenues) that journalism has to face are to a large extent covered and discussed in the media itself.⁵³ Thus, one consequence of digitization as a major trend is the growth of debate about quality journalism, its unavoidable costs, and its fundamental importance for democratic society.⁵⁴

“Ever more and ever faster”: this sums up the major effect of digitization on journalism.⁵⁵ As a result, barriers between different media platforms have been (technically) overcome to a large extent and new platforms have emerged, expanding the space within which journalism operates. Equally, digitization stands for a (temporal) acceleration of journalistic work processes and an increase in now indispensable coordination processes:⁵⁶

The pressure of having to provide ever more updates, [...] the competition with internet, television and radio has become more severe. Previously the common attitude was to say “we won’t do it today, but tomorrow.” This attitude has gone, and that may be right in terms of good journalism. But as a consequence the pressure on the journalists has increased

53. Widely recognized was for instance the series “Wozu noch Journalismus?” (Journalism for what?), published in the German quality newspaper *Süddeutsche Zeitung*, available online: http://www.sueddeutsche.de/thema/Wozu_noch_Journalismus (accessed 5 April 2011).

54. K. Beck, D. Reineck, and C. Schubert, *Journalistische Qualität in der Wirtschaftskrise* (Journalistic Quality and the Economic Crisis), Berlin, 2010. See http://www.dfv.de/fileadmin/user_upload/pdf/Studie_Journalistische_Qualitaet_03_2010.pdf (accessed 5 April 2011).

55. B. Blöbaum, A. Kutscha, S. Bonk, and A. Karthaus, “Immer mehr und immer schneller. Journalistische Handlungen in innovativen Redaktionsstrukturen” (“Ever more and ever faster. Journalistic Routines in Innovative Newsroom Structures”), in J. Wolling, A. Will, and C. Schumann (eds.), *Medieninnovationen. Wie Medienentwicklungen die Kommunikation in der Gesellschaft verändern* (Media Innovation. How Media Change changes Society’s Communication), Konstanz, 2011 (forthcoming) (hereafter, B. Blöbaum et al., “Immer mehr und immer schneller”).

56. W. Loosen, “Zur ‘medialen Entgrenzungsfähigkeit’ journalistischer Arbeitsprozesse” (On the Ability to De-differentiate Journalistic Working Procedures), in *Publizistik* 3/2005, pp. 304–319.

significantly. Ten years ago a regular weekend was rather normal. Now it is an exception. There are fewer areas of freedom. It is difficult to take half a day off for calmly doing an investigation.”—Christian Krügel, *Süddeutsche Zeitung*⁵⁷

The developments referred to have various effects for journalists, production routines in the newsroom, as well as for news organizations as a whole. They have led to newsroom convergence and reorganizations of newsrooms, such as replacing editorial departments by news desks (or newsrooms) where journalists produce content that is “media-neutral” and for different outlets.⁵⁸ Against that background, two main strategic periods of newsroom innovation management in Germany may be differentiated:⁵⁹ from 1998 to 2006, the emphasis was on bridging departments (sometimes also with respect to cost-cutting by reducing staff); since 2006, a focus has been put on bridging media platforms within integrated newsrooms (with some investment in, for instance, media-neutral content management systems and online staff).⁶⁰

Journalists themselves judge such innovations ambivalently: in an online survey, 45 percent of a sample of 327 journalists judged the invention of the news desk structure as a benefit for journalistic quality,⁶¹ but 65 percent criticized the increasing numbers of editorial meetings due to issue management and other coordination processes.⁶² Furthermore, 58 percent of journalists who work on a news desk said that the news desk model has undergone a reduction of journalistic staff.⁶³

The fact that many newsrooms have integrated print and online production suggests that fewer journalists are providing greater output for more outlets. This is also one of the conclusions from the latest representative survey among German journalists, which is based on data from 2005 and a sample of 1,536 journalists.⁶⁴ The study replicates a 1993 survey, with a sample of 1,498 German journalists,⁶⁵ and therefore allows a longitudinal comparison. The findings suggest that the number of professional journalists⁶⁶ fell from 54,000

57. Cited in: B. Blöbaum et al., “Immer mehr und immer schneller”, translated by the authors.

58. K. Meier, “Germany: Newsroom Innovations and Newsroom Convergence”, in N. Fioretti and S. Ruß-Mohl (eds.), *Merging Media, Converging Newsrooms*, Lugano/Milano, 2009, pp. 37–49 (hereafter, K. Meier, “Germany: Newsroom Innovations and Newsroom Convergence”).

59. K. Meier, “Germany: Newsroom Innovations and Newsroom Convergence”, p. 41.

60. For examples for different strategies, see C. Neuberger, “Verlinkt” (“Linked”), in *Journalist* 7/2009, pp. 16–18.

61. The sample covered 15 newsrooms including many of the most influential media in Germany, such as the political news magazine *Der Spiegel*, the newspaper *Süddeutsche Zeitung*, the newscast *Tagesthemen* of the public service broadcaster ARD, as well as the newscast *RTL aktuell* of the private commercial broadcaster RTL (see B. Blöbaum et al., “Immer mehr und immer schneller”).

62. B. Blöbaum et al., “Immer mehr und immer schneller”.

63. B. Blöbaum et al., “Immer mehr und immer schneller”.

64. S. Weischenberg, M. Malik, and A. Scholl, *Die Souffleure der Mediengesellschaft. Report über die Journalisten in Deutschland* (The Prompters of the Media Society. Report on Journalists in Germany), Konstanz, 2006 (hereafter, S. Weischenberg et al., *Die Souffleure der Mediengesellschaft*).

65. S. Weischenberg, M. Löffelholz, and A. Scholl, “Journalism in Germany”, in D.H. Weaver (ed.), *The Global Journalist: News People around the World*, Cresskill/NJ, 1998, pp. 229–256.

66. Included are full-time journalists as well as professional freelancers, defined as journalists either deriving more than half of their income from journalistic work and/or spending more than half of their working time on journalistic tasks. See S. Weischenberg, M. Malik, and A. Scholl, “Journalism in Germany in the 21st Century”, in D.H. Weaver and L. Willnat (eds.): *The Global Journalist in the 21st Century*, London, 2011 (forthcoming) (hereafter, S. Weischenberg et al., “Journalism in Germany in the 21st Century”).

in 1993 to 48,000 in 2005.⁶⁷ In 2005, they worked for about 2,900 media organizations compared with 2,366 in 1993.⁶⁸ As a consequence, the workload has increased while time for research has decreased.⁶⁹

Overall, certain core tasks (such as information-gathering/investigation, selection of texts) have become less important, while others (such as writing texts) have turned out to be as important as they were in 1993. Additional tasks (technical, organizational and administrative) have increased significantly.⁷⁰

The relationship between professional and participatory media are widely discussed and researched in Germany, but little evidence has emerged that blogs and other forms of participatory media are replacing traditional journalism.⁷¹ A content analysis in 2006–2007 to identify the population of German journalistic websites revealed that the “core area of journalism on the internet is still occupied by news websites affiliated with traditional media (77 percent, N=503)”;⁷² while 22.9 percent were qualified as “internet-only websites.”⁷³ A subsequent online newsroom survey based on standardized interviews with 183 editors-in-chief showed that in 2007, many newsrooms limited user activities to comments on stories (40.4 percent of the websites examined offer that element of user participation). Almost 50 percent offer the opportunity to send in photos for publication.⁷⁴ More active roles (e.g. users supporting editors in writing and investigation or publishing their own contributions) were offered far less frequently.

Thus, on the one hand, the potential offered by the internet to establish a genuine two-way conversation between producers and users still seems to be at an experimental stage. On the other hand, most journalists have understood that they can no longer assume an attitude of passivity on the part of their audience: in an online survey among 2,572 German journalists across all media in 2010, over 50 percent stated that social media have a high or very high relevance for journalistic work (especially true for online and multimedia journalists); only 3.3 percent thought that they have no relevance at all.⁷⁵ As the three most frequently used social media sites for journalistic work, they chose YouTube, Xing and Facebook (in each case named by almost 40 percent); fourth choice was Twitter, named by almost 30 percent.⁷⁶ Over a third of the surveyed journalists follow different blogs with respect to sourcing news for their own coverage.⁷⁷

67. Due to the fact that there are no official data available on how many journalists work in Germany, numbers vary to large extent. The trade union German Journalist Union (*Deutscher Journalisten-Verband*) includes more areas of journalism in its statistics and estimates that 73,500 persons work as journalists. See German Journalist Union, *Arbeitsmarkt und Berufschancen* (Labour Market and Job Opportunities), <http://www.djv.de/Berufschancen.2572.0.html> (accessed 5 April 2011).

68. This increase includes an additional 348 online media, which weren't included in the first wave in 1993.

69. A. Kutscha, A. Karthaus, and S. Bonk, “Alles anders?” (“Everything different?”), in *Journalist* 8/2009, p. 17.

70. S. Weischenberg et al., “Journalism in Germany in the 21st Century”.

71. For example see C. Neuberger and C. Nuernbergk, “Competition, Complementarity or Integration? The Relationship between Professional and Participatory Media”, in *Journalism Practice*, Special Issue ‘The Future of Journalism’, 3/2010, pp. 319–332 (hereafter, C. Neuberger, C. Nuernbergk, “Competition, Complementarity or Integration?”).

72. C. Neuberger, C. Nuernbergk, “Competition, Complementarity or Integration?”, p. 323.

73. Including professional-edited news sites, portals, weblogs, community-edited news sites and news search engines. See C. Neuberger, C. Nuernbergk, “Competition, Complementarity or Integration?”, p. 322.

74. C. Neuberger, C. Nuernbergk, “Competition, Complementarity or Integration?”, p. 330.

75. news aktuell, *Medien-Trendmonitor 2010* (Media Trend Monitor 2010), <http://www.newsaktuell.de/pdf/medientrendmonitor062010berichtsband.pdf> (accessed 5 April 2011) (hereafter, news aktuell, *Medien-Trendmonitor 2010*).

76. news aktuell, *Medien-Trendmonitor 2010*.

77. news aktuell, *Medien-Trendmonitor 2010*.

Not surprisingly, online newsrooms make even more frequent use of social media. Conducting standardized interviews with editors-in-chief of online newsrooms, Neuberger and colleagues found that editors in nearly every surveyed newsroom frequently use Twitter (96.7 percent) and blogs (95 percent), followed by Facebook (83.3 percent) and social bookmarking services (85 percent).⁷⁸ Nevertheless, the example of Twitter shows that there are only some specialized editors per newsroom who use these services: in about 60 percent of online newsrooms, less than a quarter of all editors use Twitter, in another 21 percent of newsrooms this applies to 25 to 50 percent of editors.⁷⁹ The main function is to direct attention to one's own website (97 percent),⁸⁰ another is the use of Twitter as a tool for investigation (94 percent).⁸¹ In regard to their Twitter activity, the surveyed editors-in-chief show some interest in establishing two-way communication with their users: two thirds of them claim that their newsrooms regularly have contact with users via Twitter, including 21 percent who state that all of their user requests are answered.⁸²

4.1.2 Ethics

Ethical standards for journalistic research in Germany are set by the German Press Code, a voluntary agreement on guidelines for journalistic work monitored by the self-regulatory German Press Council (*Deutscher Presserat*).⁸³ In section 4 it states that “dishonest methods must not be used to acquire person-related news, information or photographs,”⁸⁴ including the acquisition of information by illegal means or undercover research. The latter is only justifiable if “in this way information of particular public interest is gained which cannot be procured by other means.”⁸⁵ Likewise, many German journalists are cautious when it comes to unusual or controversial research methods:

... most of the journalists interviewed thought that “claiming to be somebody else” (60%), “paying people for confidential information” (67%), “using hidden microphones or cameras” (67%), “badgering unwilling informants to get information” (87%), “agreeing to protect confidentiality and not doing so” (96%), and “making use of personal documents without permission” (92%), were not justified under any circumstances.⁸⁶

78. C. Neuberger, H.J. vom Hofe, C. Nuernbergk, *Twitter und Journalismus. Der Einfluss des ‚Social Web‘ auf die Nachrichten* (Twitter and Journalism. The Impact of ‘Social Web’ on News Production), Media Authority of North Rhine-Westphalia (LfM), Düsseldorf, 2010, p. 64. See http://lfmpublikationen.lfm-nrw.de/catalog/downloadproducts/LfM_Doku38_Twitter_Online.pdf (accessed 5 April 2011) (hereafter, C. Neuberger et al., *Twitter und Journalismus*).

79. C. Neuberger et al., *Twitter und Journalismus*, p. 44.

80. C. Neuberger et al., *Twitter und Journalismus*, p. 46.

81. C. Neuberger et al., *Twitter und Journalismus*, p. 54.

82. C. Neuberger et al., *Twitter und Journalismus*, p. 51.

83. See <http://www.presserat.info/> (accessed 5 April 2011).

84. German Press Code, see <http://www.presserat.info/service/english/press-code.html> (accessed 5 April 2011).

85. German Press Code, see <http://www.presserat.info/service/english/press-code.html> (accessed 5 April 2011).

86. S. Weischenberg et al., “Journalism in Germany in the 21st Century”. Percentages are based on a survey conducted in 2005 among 1,536 journalists in Germany.

Although it is no secret that not only tabloid media, but also leading newspapers or magazines, pay their informants on a regular basis,⁸⁷ German journalists—if questioned on the topic—often dismiss it as serious misdemeanor that only applies to their competitors.⁸⁸

While these ethical standards have not been affected by digitization, the German Press Council has had to investigate several complaints about ‘unethical’ journalistic practices in recent years, some of them made possible by digitization. In 2010, the print and online outlets of the *Spiegel* magazine (as one of five newsrooms worldwide) made a contract with the WikiLeaks platform, thereby gaining exclusive publishing rights to secret U.S. government documents illegally acquired by WikiLeaks. Following a complaint by thus disadvantaged journalists, the German Press Council stated that the *Spiegel* group did act according to the Press Code: first, because it was WikiLeaks who insisted on exclusive coverage, and second, because the online platform was not subject to the Press Code given that it wasn’t recognized as a journalistic-editorial actor by the Press Council.⁸⁹ Also in 2010, the online outlet of the popular German tabloid *Bild* published incriminating information regarding suspected welfare fraud by Brandenburg’s Minister of the Interior, Rainer Speer. The story was based on email correspondence that—according to Speer—could only have been obtained by illegally getting hold of his previously stolen laptop.⁹⁰ Again, the complaint about the acquisition of information by illegal means was rejected by the German Press Council, which could find no evidence that it was in fact the stolen laptop that had led to the information—thus strengthening the rights of the journalists and the principle of source protection.⁹¹

Altogether, it can be said that digitization has not directly affected the implementation of ethical standards in German journalists’ self-monitoring, but that recent examples hint at the growing importance of ethical responsibility among journalists equipped with new research methods. Furthermore, media institutions, for instance the ARD,⁹² are increasingly adopting social media guidelines to regulate the professional as well as the private use of social media by their employees and journalists.⁹³

87. See <http://www.evangelisch.de/themen/medien/das-moralische-dilemma-investigativer-journalisten11495> (accessed 14 June 2011).

88. L.-M. Nagel, *Bedingt ermittlungsbereit: Investigativer Journalismus in Deutschland und in den USA* (Not quite Ready to Investigate: Investigative Journalism in Germany and the U.S.), Berlin, 2007, pp. 229; 251; 269.

89. See <http://www.presserat.info/inhalt/dokumentation/pressemitteilungen/pm/article/beschwerde-gegen-den-spiegel-abgelehnt/353.html> (accessed 14 June 2011).

90. See <http://www.sueddeutsche.de/politik/brandenburgs-minister-speer-in-bedraengnis-ein-laptop-wird-zum-politikum-1.1003271> (accessed 15 June 2011).

91. See <http://recherche.pressrat.info> (accessed 15 June 2011).

92. <http://www.journalist.de/ratgeber/handwerk-beruf/richtlinien-und-statute/ndr-social-media-guidelines.html> (accessed 24 June 2011).

93. S. Siegert, “Wenn Berufliches und Privates verschwimmen”, in *Der Journalist*, 31 January 2010, <http://www.journalist.de/ratgeber/handwerk-beruf/tipps-fuer-den-berufsalltag/wenn-berufliches-und-privates-verschwimmen.html> (accessed 24 June 2011).

4.2 Investigative Journalism

4.2.1 Opportunities

The culture of investigative journalism is not widespread in Germany. As a consequence, journalists' willingness to investigate is much less pronounced than, for instance, in the United States.⁹⁴ Much more relevant in German journalism is the key concept of *objective* reporting.⁹⁵

This does not mean that investigative journalism is not of interest or regarded as important: in 2001, journalists and editors founded the Network Research (*Netzwerk Recherche*) to foster investigative journalism.⁹⁶ Its activities include publications, courses and training for journalists, as well as conferences and political lobbying.

The means and tools made available by digitization influence journalistic research in general.⁹⁷ Meanwhile, search engines—primarily Google—are considered a technological minimum standard for journalistic research. Increasingly they displace other (printed) information outlets.⁹⁸ Therefore, the internet offers journalists quick and straightforward access to information and sources characterized by global and long-term availability, multimediality and hypertextuality.⁹⁹ The internet plays an important role when it comes to researching background information about sources and people engaged in a story.¹⁰⁰ However, it is noteworthy that the time journalists can spend investigating and gathering information has decreased: on average, German journalists spent 23 minutes less a day for this purpose in 2005 as compared with 1993.¹⁰¹ A methodological observation of 235 journalists in 2008 found that on average only 11 minutes per day were available for checking facts and sources.¹⁰² This development is bound to have a negative impact on investigative journalism as it is very time-consuming and expensive.¹⁰³

94. F. Esser, "Ursachen größerer Recherchebereitschaft im englischen Journalismus. Eine Analyse aus vergleichender Perspektive" ("Investigative Reporting in England. An Analysis in Comparative Perspective"), in *Rundfunk und Fernsehen* 2/1999, p. 203; J. Ludwig, "Investigativer Journalismus" ("Investigative Journalism"), in S. Weischenberg, H.J. Kleinstaub, and B. Pörksen (eds.), *Handbuch Journalismus und Medien* (Handbook of Journalism and Media), Konstanz, 2005, pp. 122–126.

95. S. Weischenberg et al., "Journalism in Germany in the 21st Century".

96. See <http://www.netzwerkrecherche.de> (accessed 5 April 2011).

97. C. Neuberger and M. Welker, "Journalistische Recherche: Konzeptlos im Netz" (Journalistic Research: Lacking Concepts on the Web) (hereafter, C. Neuberger, M. Welker, "Journalistische Recherche"), in A. Zerfaß, M. Welker, J. Schmidt (eds.), *Kommunikation, Partizipation und Wirkungen im Social Web* (Communication, Participation and Effects of the Social Web), Vol. 2, Cologne, 2008 (hereafter, A. Zerfaß et al., *Kommunikation, Partizipation und Wirkungen im Social Web*), pp. 19–46; T. Leif (ed.), *Trainingshandbuch Recherche* (Research Training Manual), Wiesbaden, 2010.

98. C. Neuberger, M. Welker, "Journalistische Recherche", p. 29.

99. C. Neuberger, M. Welker, "Journalistische Recherche", pp. 23f.

100. I. Cario, *Die Deutschland-Ermittler: Investigativer Journalismus und die Methoden der Macher* (Germany's Investigators: Investigative Journalism and the Methods of the Practitioners), Berlin, 2006, p. 187.

101. S. Weischenberg et al., "Journalism in Germany in the 21st Century".

102. M. Machill, M. Beiler, and M. Zenker, *Journalistische Recherche im Internet* (Journalistic Research on the Internet), Berlin, 2008, p. 325.

103. L.-M. Nagel, *Bedingt ermittlungsbereit: Investigativer Journalismus in Deutschland und in den USA* (Not quite Ready to Investigate: Investigative Journalism in Germany and the US), Berlin, 2007, p. 29.

One investigative research method that in Germany is still undeveloped, compared with the United States, is so-called computer-assisted reporting (CAR), which allows reporters to analyze large databases with the assistance of, for instance, spreadsheet programs and mapping software.¹⁰⁴ CAR has not taken off due to Germany's rigorous privacy policies and the reluctance of the authorities to release information.¹⁰⁵ One exception is the German news agency *dpa*,¹⁰⁶ which has its own computer-assisted research team.

On the other hand, blogs have an impact on journalistic investigation, as they—along with other participatory media—can serve as a source of inspiration for citizen journalism, as well as a means to identify current topics and monitor reactions to reporting.¹⁰⁷ Editors-in-chief, asked to identify those blogs that they acknowledge to be most important in terms of journalistic activities, mostly favored the media watchblog www.bildblog.de (see section 4.4.2).¹⁰⁸

Against this background, whistleblower sites like WikiLeaks as well as data-driven journalism in general are increasingly important for German journalists.¹⁰⁹ During the so-called “cablegate” affair, when Wikileaks began to publish confidential U.S. embassy cables in November 2010, the German news magazine *Der Spiegel* (along with the *New York Times*, *The Guardian*, *El Pais*, and *Le Monde*) received these documents from WikiLeaks and analyzed them for selective publication.¹¹⁰

4.2.2 Threats

Although the internet has undoubtedly enriched journalistic research methods, it has also spawned new risks, with particular consequences for investigative journalism. There is, for instance, the problem of the protection of confidential sources: on the one hand, there are websites such as WikiLeaks that optimize the (technical) concealment of sources. On the other hand, another problem arises: names—once they are published on the web—are globally accessible and hard to remove.¹¹¹ In addition, new technologies allow considerable intrusions into the work of investigative journalists, for instance by confiscating computers, by covert monitoring of phone calls and emails and through the retention of communications data which—again—threatens the protection of sources. One recent example is the covert monitoring of the email correspondence between the *Spiegel* journalist Susanne Koelbl and the Afghan minister Amin Farhang in 2006. Over a

104. J. Kluczniok, *Computer-Assisted Reporting in Deutschland*, M.A. thesis at University of Hamburg, 2009 (hereafter, J. Kluczniok, *Computer-Assisted Reporting in Deutschland*); J. Pavlik, “Innovationen bei der Recherche I: ‘Computer-Assisted Reporting’—ein Überblick” (“Innovations in Research I: Computer-Assisted Reporting—an Overview”), in S. Fengler and S. Kretzschmar (eds.), *Innovationen für den Journalismus* (Innovations in Journalism), Wiesbaden, 2009, pp. 93–110.

105. J. Kluczniok, *Computer-Assisted Reporting in Deutschland*.

106. See <http://www.dpa.com> (accessed 5 April 2011).

107. C. Neuberger, C. Nuernbergk, “Competition, Complementarity or Integration?”, p. 328.

108. C. Neuberger, C. Nuernbergk, “Competition, Complementarity or Integration?”, p. 329.

109. L. Lynch, “‘We’re going to crack the world open.’ Wikileaks and the future of investigative reporting”, in *Journalism Practice*, Special issue ‘The Future of Journalism’, 3/2010, p. 310.

110. See http://www.spiegel.de/thema/botschaftsberichte_2010 (accessed 5 April 2011).

111. J. Pavlik, “Ethische Anforderungen im digitalen Journalismus” (“Ethical Standards in Digital Journalism”), in S. Fengler and S. Kretzschmar (eds.), *Innovationen für den Journalismus* (Innovations in Journalism), Wiesbaden, 2009, p. 152.

period of six months the German Federal Intelligence Service (*Bundesnachrichtendienst*, BND) kept track of the correspondence by using Farhang's login data gained through 'keylogging' methods. Another recent discussion in Germany revolves around the retention of communications data: in June 2010, several German and European journalists' unions demanded in an open letter to the EU Commission that they resist from EU directive 2006/24, which allows the retention of communications data without suspicion of criminal activity. This directive, the unions argued, undermines journalists' professional secrecy, bears the risk of loss or abuse of data and discourages citizens from private communication via the internet (see section 3.2.2).¹¹²

4.2.3 New Platforms

Original investigative journalism is not prominent on the internet. Even though it is obvious that the internet offers a lot of tools for enabling and disseminating investigative research/journalism as well as journalistic content in general (see chapter 4.2.1). Nonetheless, a lot of mainstream media maintain blogs (not uncommon are different blogs per medium) written by journalists or editors-in-chief. Furthermore, there are a lot of more or less influential blogs run by freelance, entrepreneurial journalists (see for instance <http://www.jensweinreich.de/>; <http://www.regensburg-digital.de/>; <http://heddesheimblog.de/>). Blogs have their strength in commentary and subjectivity: to what extent they also provide investigative content is a question which needs to be answered empirically and can't be answered in general. Undoubtedly, blogs and other social media are for their part relevant sources for investigative journalism and are regularly monitored by a lot of journalists as well as during particular events such as elections, natural disasters, scandals, etc. Thus, the internet, and in particular social media, is an important amplification when it comes to investigation. (See also section 4.2.1)

4.2.4 Dissemination and Impact

The internet offers diverse tools for disseminating content, and thus also for investigative content. An illuminating example was the plagiarism scandal that led to the resignation of German Defense Minister Karl-Theodor zu Guttenberg in March 2011. His university doctorate thesis was reviewed with the aid of the internet: via the collaborative platform "GuttenPlag Wiki" (http://de.guttenplag.wikia.com/wiki/GuttenPlag_Wiki), Guttenberg's thesis was analyzed and large parts were found to be copied from other people's work. The Wiki and its progress in examining the Ph.D. dissertation of zu Guttenberg was widely covered in the media and the cause of intensive public debate. In June 2011, "GuttenPlag Wiki" won the "Grimme Online Award", a popular award in Germany for high quality online content (<http://www.grimme-institut.de/html/index.php?id=7>).

112. Joint letter to the EU Commission from 22 June 2010. See <http://www.vorratsdatenspeicherung.de/content/view/363/158/lang,de> (accessed 5 April 2011).

4.3 Social and Cultural Diversity

4.3.1 Sensitive Issues

One aspect of cultural diversity policy in Germany concerns the protection of autochthonous minorities and ethnic groups, as established by the Council of Europe's Framework Convention for the Protection of National Minorities. In Germany, these minorities are the Danes, the North Frisians, the Sater Frisians, the Sorbs and the German Sinti and Roma.¹¹³ However, as these groups consist of small populations, the most discussed issues in terms of cultural diversity focus on the much larger group of immigrants and Germans "with an immigrant background."

Among issues discussed in the media are language (German language skills as a condition for successful integration), equality (employment opportunities for immigrants), and debates around alleged "foreign domination" (prominent in 2010 when Thilo Sarrazin's provocative book *Deutschland schafft sich ab* [Germany Abolishes Itself] was published).¹¹⁴

4.3.2 Coverage of Sensitive Issues

The mass media play an important role in the integration of immigrants.¹¹⁵ Yet there are few regulatory provisions on minority coverage in the German media. Most of these aim to avoid negative impact from minority-related coverage on inter-ethnic relations and are based on voluntary agreements like the Press Code.¹¹⁶ This includes guidelines for journalistic work according to recommendations from the German Press Council.¹¹⁷ It states that there "must be no discrimination against a person because of his/her sex, disability or membership of an ethnic, religious, social or national group,"¹¹⁸ and includes specific guidelines for reporting on crimes. In contrast, television and radio broadcasters have developed no comparable instrument of self-regulation, but are subject to legal provisions, e.g. the radio and television acts of different states (*Landesmediengesetze*). The maintenance of social and cultural diversity are inscribed here as a general goal (e.g. Art. 31 sec. 4 LMG NRW). However, these provisions are very general and not backed up by formal sanction. In 1986, the Federal Constitutional Court demanded that public service broadcasters in particular ensure pluralism and diversity (summed up in the *Grundversorgung* concept). Corresponding provisions exist in the laws establishing public service broadcasters (e.g. Art. 7 sec. 2, Art. 5 sec. 2 NDR-StV).

One consequence of the relatively liberal legislation on minority media coverage is that certain topics are systematically neglected. Undertakings like the Initiative News Clarification (*Initiative Nachrichtenaufklärung*)

113. See <http://www.culturalpolicies.net/web/germany.php?aid=424> (accessed 5 April 2011).

114. J. Habermas, „Leadership and Leitkultur“, in *The New York Times*, October 29, 2010, p. A13.

115. R. Geißler and H. Pöttker, „Einleitung“ (Introduction), in R. Geißler and H. Pöttker (eds.), *Massenmedien und die Integration ethnischer Minderheiten in Deutschland* (Mass Media and the Integration of Ethnic Minorities in Germany), Bielefeld, 2009 (hereafter, R. Geißler, H. Pöttker, *Massenmedien und die Integration ethnischer Minderheiten in Deutschland*), p. 7.

116. H. Pöttker, „Wann werden Diskriminierungsverbote von Journalist(inn)en akzeptiert?“ (When are Bans on Discrimination accepted by Journalists?), in R. Geißler, H. Pöttker, *Massenmedien und die Integration ethnischer Minderheiten in Deutschland*, p. 161.

117. See <http://www.presserat.info/> (accessed 5 April 2011).

118. German Press Code, see <http://www.presserat.info/service/english/press-code.html> (accessed 5 April 2011).

keep track of such topics, which in 2009 included the situation of care recipients in hospitals, the compulsory admission of mental patients, and the lack of sign language courses in schools for the deaf.¹¹⁹

4.3.3 Space for Public Expression

The representation of immigrants and Germans with a foreign background in media production and media output is widely discussed and investigated.¹²⁰

In their study on ethnic diversity in German newsrooms, Geißler et al found that while one fifth of the population has an immigrant background, this is true of only one percent of daily newspaper journalists.¹²¹ In general, these journalists occupy the same positions as their German colleagues, are equally educated and cover the same topics—though a slightly higher number of them work as online editors.¹²² Oulios' study on 'immigrant' journalists in German mass media also revealed an underrepresentation in television news offices, where their presence ranges from 2.3 percent (ZDF) to 3.2 percent (RTL).¹²³

Regarding the representation of immigrants and Germans with a foreign background in media output, a large body of content analysis¹²⁴ shows that they are often linked to negative reporting (especially on crimes), and are shown in stereotypical roles and as part of a homogeneous group marked as 'foreign' or 'other'.¹²⁵ Nevertheless, recent studies show an improvement in the coverage of minorities: analysing crime reporting in daily newspapers, Müller finds that ethnicity is—in most cases—only mentioned if substantially justified.¹²⁶ Similarly, a long-term study by Fick shows that coverage of minorities in local daily newspapers between 1996 and 2006 improved significantly in terms of negativism, even though their representation is still problematic.¹²⁷

119. Initiative News Clarification, *Top-Themen 2009*, 12 February 2010, <http://www.nachrichtenaufklaerung.de/index.php?id=190> (accessed 5 April 2011).

120. E.g. R. Geißler, H. Pöttker, *Massenmedien und die Integration ethnischer Minderheiten in Deutschland*.

121. R. Geißler, K. Enders, and V. Reuter, "Wenig ethnische Diversität in deutschen Zeitungsredaktionen" ("Little Ethnic Diversity in German Newsrooms") (hereafter, R. Geißler et al., "Wenig ethnische Diversität in deutschen Zeitungsredaktionen"), in R. Geißler, H. Pöttker, *Massenmedien und die Integration ethnischer Minderheiten in Deutschland*, p. 112.

122. R. Geißler et al., "Wenig ethnische Diversität in deutschen Zeitungsredaktionen", p. 110.

123. M. Oulios, "Weshalb gibt es so wenig Journalisten mit Einwanderungshintergrund in deutschen Massenmedien? Eine explorative Studie" ("Why are there so few Journalists with an Immigrant Background in German Mass Media? An Exploratory Study"), in R. Geißler, H. Pöttker, *Massenmedien und die Integration ethnischer Minderheiten in Deutschland*, pp. 124–126.

124. For a comprehensive (though not quite up-to-date) list of content analysis see <http://www.integration-und-medien.de/bibliographien/deutschland.php?type=custom&number=4¶m=Inhaltsanalyse> (accessed 5 April 2011).

125. G. Ruhrmann, D. Sommer, and H. Uhlemann, "TV-Nachrichtenberichterstattung über Migranten—Von der Politik zum Terror" ("TELEVISION News Reporting on Migrants – From Politics to Terror"), in R. Geißler and H. Pöttker (eds.), *Integration durch Massenmedien. Medien und Migration im internationalen Vergleich* (Mass Media–Integration. Media and Migration: A Comparative Perspective), Bielefeld, 2006 (hereafter, R. Geißler, H. Pöttker, *Integration durch Massenmedien*), pp. 48f.

126. D. Müller, Daniel, "Inwieweit berichten Journalisten ohne begründbaren Sachbezug über die Zugehörigkeit von Strafverdächtigen zu ethnischen Minderheiten?" ("How far do Journalists report the Belonging of Crime Suspects to Ethnic Minorities without Reasonable Cause?"), in R. Geißler, H. Pöttker, *Massenmedien und die Integration ethnischer Minderheiten in Deutschland*, p. 213.

127. P. Fick, "Der Wandel der Darstellung von Migranten am Beispiel Siegener Lokalmedien in den Jahren 1996 und 2006" ("Change in the Representation of Migrants by the Example of Siegen Local Newspapers in 1996 and 2006"), in R. Geißler, H. Pöttker, *Massenmedien und die Integration ethnischer Minderheiten in Deutschland*, pp. 265f.

The effects of digitization on public expression by minorities can be illustrated both by the availability of services and the possible consequences for integration. As to the availability of services, digitization has led to an increase in the number of receivable programs specifically dedicated to ethnic minorities (*Ethnomedien*)—either as a result of new market entrants or transnational broadcasting via satellite or digital radio.¹²⁸ The internet also allows diaspora members to use media outlets from their countries of origin.¹²⁹ In addition, online platforms and communication tools have made possible new ways for (ethnic) communities to discuss otherwise neglected political topics and share common interests, thus making the political and cultural public sphere more diverse.¹³⁰ Examples from Germany are the Turkish discussion board www.politikcity.de, the Turkish/German online community www.turkdunya.de, or the Russian community website www.rc-welt.com. These sites accumulate a user base that far exceeds the readership of traditional ‘ethnic’ media.¹³¹

While digitization has thus improved communication within ethnic communities, the possible consequences for integration are debated. Some authors claim that the improved availability of ‘ethnic’ media is dysfunctional for successful integration,¹³² whereas others stress the possibilities that arise through the new technologies regarding (political) participation and integration.¹³³ Research on internet use among immigrants suggests that just 2.1 percent of them exclusively use websites in their native language, while 10.6 percent frequently visit German and native language sites. The largest group—28.1 percent—exclusively visit German sites on a regular basis.¹³⁴

Several motives for the use of ‘ethnic’ community websites have been identified. Schneider and Arnold surveyed Turkish immigrants who are active users of the online community www.turkdunya.de, finding that the most important factors for using the website are (1) fun to meet other immigrants, (2) staying in touch with the home country, (3) actively building a community, and (4) orientation for life in Germany—altogether strengthening their cultural identity.¹³⁵ In a similar survey, Hugger found that young Turkish immigrants use social networks (in this case: www.Vaybee.de, www.Bizimalem.de and www.Alevir.de) to assure themselves of their ‘precarious’ hybrid identity.¹³⁶ In more general terms, the representative survey *Migration und Medien*

128. See B. Schneider, A. Arnold, “Massenmediale Ghettoisierung oder Einheit durch Mainstream?” (“Mass Media Ghettoizing or Unity through Mainstream?”) (hereafter, B. Schneider, A.-K. Arnold, “Massenmediale Ghettoisierung oder Einheit durch Mainstream?”), in R. Geißler, H. Pöttker, *Integration durch Massenmedien*, p. 98; S. Weber-Menges, “Die Entwicklung der Ethnomedien in Deutschland” (“The Development of Ethnic Media in Germany”) (hereafter, S. Weber-Menges, “Die Entwicklung der Ethnomedien in Deutschland”), in R. Geißler, H. Pöttker, *Integration durch Massenmedien*, pp. 131f.

129. K. Kissau and U. Hunger, “Im ‚Long Tail‘ der Politik: Zum politischen Potential des Internet für Migranten” (“In the ‘Long Tail’ of Politics: On the Internet’s Political Potential for Migrants”) (hereafter, K. Kissau, U. Hunger, “Im ‘Long Tail’ der Politik”), in U. Hunger and K. Kissau (eds.), *Internet und Migration* (Internet and Migration), Wiesbaden, 2009 (hereafter, U. Hunger, K. Kissau, *Internet und Migration*), p. 27.

130. K. Kissau, U. Hunger, “Im ‘Long Tail’ der Politik”, p. 24.

131. K. Kissau, U. Hunger, “Im ‘Long Tail’ der Politik”, p. 27.

132. S. Weber-Menges, “Die Entwicklung der Ethnomedien in Deutschland”, pp. 131f.

133. K. Kissau, U. Hunger, “Im ‘Long Tail’ der Politik”, p. 29.

134. ARD/ZDF Media Commission, *Migranten und Medien 2007* (Migrants and Media 2007), 2007, http://www.unternehmen.zdf.de/fileadmin/files/Download_Dokumente/DD_Das_ZDF/Veranstaltungsdokumente/Migranten_und_Medien_2007_-_Handout_neu.pdf (accessed 5 April 2011), p. 19 (hereafter, ARD/ZDF Media Commission, *Migranten und Medien 2007*).

135. B. Schneider, A. Arnold, “Massenmediale Ghettoisierung oder Einheit durch Mainstream?”, p. 112.

136. K.-U. Hugger, „Suche nach sozialer Anerkennung und Vergewisserung von Zugehörigkeit: Junge Migranten und die Verarbeitung von Hybridität im Internet“ („In Search of Social Recognition and Assurance of Belonging: Young Migrants and Hybrid Identity on the Internet“), in U. Hunger, K. Kissau, *Internet und Migration*, p. 61.

2007 (Migration and Media 2007) also identified “information”, “communication” and “building a bridge to the home country” as the main functions of internet use for immigrants.¹³⁷ Even though traditional ‘ethnic’ media as well as ‘real life’ communities and associations still serve the same purpose, digitization (and the internet in particular) might diminish the importance of these institutions in the long run, especially among young ‘immigrants’ of the third or fourth generation.

4.4 Political Diversity

4.4.1 Elections and Political Coverage

Germany has no regulations on media coverage of elections beyond the general (media) legislation (e.g. plurality of opinion according to Art. 25 RStV; protection of human dignity and religious beliefs, Art. 3 RStV). An exception concerns electoral laws that prohibit the publishing of exit polls before the closing of polling locations on the day of elections (e.g. Art. 32 sec 2 Federal Elections Act [*Bundeswahlgesetz*, BWahlG]).

4.4.2 Digital Political Communications

Digital media have affected the diversity of political voices, actors and issues in diverse ways. Relevant research has analyzed different topics such as online campaigns in the context of elections,¹³⁸ politicians,¹³⁹ and parties in general.¹⁴⁰ Thus, a study of federal election campaigns from 2005 to 2009 revealed a professionalization of the online communication strategies of German political parties.¹⁴¹ As a consequence, typical social media features (such as YouTube, Twitter, social bookmarking, etc.) became standard tools on the websites of political parties and politicians. However, content is to a large extent still organized top-down and interactive

137. ARD/ZDF Media Commission, *Migranten und Medien 2007*, p. 7.

138. See for example, M. Bechedahl and F. Lüke, *Kurzstudie ‚Politik im Web 2.0‘* (Short Study ‘Politics and Web 2.0’), 2008, <http://www.netzpolitik.org/wp-upload/kurzstudie-politik-im-web-20.pdf> (accessed 5 April 2011) (hereafter, M. Bechedahl, F. Lüke, *Kurzstudie ‚Politik im Web 2.0‘*); M. Bechedahl and F. Lüke, 5. *Kurzstudie ‚Politik im Web 2.0‘* (5th Short Study ‘Politics and Web 2.0’), 2009, <http://www.netzpolitik.org/wp-upload/kurzstudie-politik-im-web-2-auflage5.pdf> (accessed 5 April 2011) (hereafter, M. Bechedahl, F. Lüke, 5. *Kurzstudie ‚Politik im Web 2.0‘*); C. Bieber, “Der Online-Wahlkampf im Superwahljahr 2009” (“Electoral Campaigns Online in 2009”) (hereafter, C. Bieber, “Der Online-Wahlkampf im Superwahljahr 2009”), in E.J. Schweitzer and S. Albrecht (eds.): *Das Internet im Wahlkampf. Analysen zur Bundestagswahl 2009* (The Internet and Electoral Campaigning. Analysis of the Federal Election 2009), Wiesbaden, 2011 (hereafter, E.J. Schweitzer, S. Albrecht, *Das Internet im Wahlkampf*), pp. 69–95.

139. R. Zeh, “Wie viele Fans hat Angela Merkel? Wahlkampf in Social Network Sites” (“How many Fans has Angela Merkel?”) (hereafter, R. Zeh, “Wie viele Fans hat Angela Merkel?”), in C. Holtz-Bacha (ed.): *Die Massenmedien im Wahlkampf. Das Wahljahr 2009* (The Mass Media and Electoral Campaigning. Elections in 2009). Wiesbaden, 2010 (hereafter, C. Holtz-Bacha, *Die Massenmedien im Wahlkampf*), pp. 245–257; B. Kunze, Y. Bauer, and F. Becker, “Der Online-Wahlkampf im Praxis-Test: Die Web-Aktivitäten von Direktkandidaten zur Bundestagswahl 2009” (“Online Campaigning in the Field Test: The Web Activities of Candidates for the Federal Election 2009”) (hereafter, B. Kunze et al., “Der Online-Wahlkampf im Praxis-Test”), in E.J. Schweitzer, S. Albrecht, *Das Internet im Wahlkampf*, pp. 244–263.

140. See for example B. Witte, K. Rautenberg, and C. Auer, “Marketing statt Mitmach-Netz? Web 2.0-Nutzer von Bremer Parteien und Medien” (“Marketing instead of Participation? Web 2.0 Users of Bremen Parties and Media”) (hereafter, B. Witte et al., “Marketing statt Mitmach-Netz?”), in J. Wolling, M. Seifert and M. Emmer (eds.): *Politik 2.0? Die Wirkung computervermittelter Kommunikation auf den politischen Prozess* (Politics 2.0? The Impact of Computer-Mediated Communication on Political Processes), Baden-Baden, 2010 (hereafter, J. Wolling et al., *Politik 2.0?*), pp. 241–260.

141. E.J. Schweitzer, “Normalisierung 2.0. Die Online-Wahlkämpfe deutscher Parteien zu den Bundestagswahlen 2002–2009” (“Normalization 2.0. The Online Campaigns of German Parties for Federal Elections 2002–2009”) (hereafter, E.J. Schweitzer, “Normalisierung 2.0”), in C. Holtz-Bacha, *Die Massenmedien im Wahlkampf*, pp. 189–244.

elements (such as chat rooms, guest books, online polls) were found less frequently—with the exception of the parties *Die Grünen* (The Greens) and the *Freie Demokratische Partei* (Free Democratic Party, FDP), as well as the marginal but internet-savvy *Piraten-Partei* (Pirate Party).¹⁴² This is true for politicians¹⁴³ and parties at a federal level,¹⁴⁴ as well as at the *Länder* level.¹⁴⁵

Another aspect of the professionalization of political communication is a clear trend towards *negative campaigning*, especially on the internet. Compared with the United States, however, these campaigns are formally less obtrusive and are run by backbenchers, that is: members of parliament who do not hold leading positions within their party.¹⁴⁶ While these politicians have also been the first to utilize social networks for political campaigning, in 2009 most senior politicians also had ‘fan pages’ or profiles on these networks.¹⁴⁷ The main social network sites in Germany (e.g. Facebook, StudiVZ, Wer-kennt-wen) permit different approaches to delivering political messages and getting in touch with users. But often the conflict of two different communication cultures (political campaigning versus personal networking) limits the effect of these strategies. Thus, political activities on networking platforms take place within a communicative setting that is governed by different rules of self-presentation and discussion rather than traditional political communication. For example, within social networks authenticity as well as openness to discussion and a self-critical demeanor are expected—an expectation that in most cases cannot be met by politicians whose time is limited and whose party discipline limits open and self-critical discussion.¹⁴⁸

Regarding political diversity, the internet on the one hand provides structural benefits for smaller political parties and their agendas. On the other hand, bigger and better-established actors with more resources obviously have more possibilities when it comes to generating awareness.¹⁴⁹ Zimmermann finds similar differences between the visibility of institutional and non-institutional actors on search engines: while civil society actors are more visible online than offline, this applies to a lesser extent to political actors who are less institutionalized or have fewer resources.¹⁵⁰ Furthermore, in the case of search engines, one important difference from offline media is that visibility is not (solely) a consequence of journalistic decisions, but

142. E.J. Schweitzer, “Normalisierung 2.0”, pp. 211ff.; A. Elter, “Doch kein Wundermittel?—Wahlkämpfe und das Web 2.0” (Still no Panacea? Electoral Campaigning and Web 2.0), in *Neue Soziale Bewegungen* 3/2010, p. 68.

143. B. Kunze et al., “Der Online-Wahlkampf im Praxis-Test”, p. 260.

144. See M. Beckedahl, F. Lücke, *Kurzstudie ‘Politik im Web 2.0’*; M. Beckedahl, F. Lücke, 5. *Kurzstudie ‘Politik im Web 2.0’*; C. Bieber, “Der Online-Wahlkampf im Superwahljahr 2009”.

145. See B. Witte et al., “Marketing statt Mitmach-Netz?”; J. Wölling, A. Schmolinsky, and M. Emmer, “Politiker vernetzt: Wie und warum sich Landtagsabgeordnete online präsentieren” (Politicians online: How and why Members of the Landtag present themselves online), in J. Wölling et al., *Politik 2.0?*, pp. 59–83.

146. E.J. Schweitzer, “Negative Campaigning im Online-Wahlkampf: Ein empirischer Vergleich zwischen Deutschland und den USA” (“Negative Campaigning Online: A Comparative Study of Germany and the U.S.”), in J. Wölling et al., *Politik 2.0?*, pp. 35f.

147. R. Zeh, “Wie viele Fans hat Angela Merkel?”, p. 255.

148. J. Kunert and J. Schmidt, “Hub, Fine-Tuner oder Business as Usual? Social Network Sites und die Bundestagswahl 2009” (Hub, Fine-Tuner or Business as Usual? Social Network Sites and the Federal Election 2009), in E. J. Schweitzer, S. Albrecht, *Das Internet im Wahlkampf*, p. 240.

149. M. Emmer and M. Bräuer, “Online-Kommunikation politischer Akteure” (Online Communication of Political Actors), in W. Schweiger and K. Beck (eds.), *Handbuch Online-Kommunikation* (Handbook Online Communication), Wiesbaden, 2010, p. 320.

150. A. Zimmermann, “Online-Öffentlichkeit und Zivilgesellschaft: Neue Chancen auf massenmediale Sichtbarkeit?” (Online Public Sphere and Civil Society: New Opportunities for Mass Media Awareness), in *Neue Soziale Bewegungen* 2/2006, pp. 27f. (hereafter, A. Zimmermann, “Online-Öffentlichkeit und Zivilgesellschaft”).

the outcome of a process of collective selection (that is: through linking, popularity, and search engine algorithms).¹⁵¹

Studies that address the question of how civil society actors (especially NGOs) use the internet show that—on the one hand—new internet applications are included on their websites but that, on the other, they use them as another inexpensive way of distributing conventional information material.¹⁵² One reason is the lack of interest that users show in participatory forms; another is the high cost of maintenance and support of such feedback channels. In addition, the internet is generally less used by older people who are an important donor constituency for NGOs.¹⁵³ Nevertheless, there are positive examples, too: the German website of the World Wildlife Fund (WWF) includes online polls and other interactive elements;¹⁵⁴ on www.campact.de, the focus lies in the organization of campaigns online; and a site like www.abgeordnetenwatch.de profiles politicians who can be questioned directly through the website.¹⁵⁵

Furthermore, the internet is of growing importance for the *internal networking* of civil society actors.¹⁵⁶ Examples from Germany include www.x-tausendmalquer.de, which enables anti-nuclear activists to organize themselves via forums and mailing lists,¹⁵⁷ and Greenpeace's German campaigning website www.greenaction.de, where registered as well as non-registered users can sign online petitions, get information about upcoming activities, or initiate their own campaign. Blog and Twitter posts by Greenpeace's editorial staff are prominent on the main page. Thus, campaigning websites have evolved substantially over recent years, as a comparison with Voss's 2007 study shows.¹⁵⁸

Another important channel (especially for non-institutional civil society actors) is political blogging. Compared with the United States, the German blogosphere is less politicized and only a small number of blogs attract a 'mass media' audience.¹⁵⁹ Exceptions are blogs focusing on special topics, as www.netzpolitik.de.

151. A. Zimmermann, "Online-Öffentlichkeit und Zivilgesellschaft", p. 31.

152. K. Voss, "Nichtregierungsorganisationen und das Social Web: Mittel der Zukunft oder Bedrohung?" (NGOs and the Social Web: Means of the Future or Threat?) (hereafter, K. Voss, "Nichtregierungsorganisationen und das Social Web"), in A. Zerfaß et al., *Kommunikation, Partizipation und Wirkungen im Social Web*, p. 244.

153. See K. Voss, "Nichtregierungsorganisationen und das Social Web".

154. K. Voss, "Alles online? Über die Auswirkungen von Online-Medien auf die interne und externe Kommunikation von Nichtregierungsorganisationen" (Everything Online? On the Impact of Online Media on the Internal and External Communication of NGOs), in *Neue Soziale Bewegungen* 2/2006, p. 69 (hereafter, K. Voss, "Alles online?").

155. K. Voss, "Alles online?", p. 71.

156. See M. Hamm, "Proteste im hybriden Kommunikationsraum. Zur Mediennutzung sozialer Bewegungen" (Protests in a Hybrid Communications Space. On the Utilization of Media by Social Movements), in *Neue Soziale Bewegungen* 2/2006, pp. 77–90; K. Voss, "Alles online?"; A. Zimmermann, "Online-Öffentlichkeit und Zivilgesellschaft"; J. Wimmer, "Gegenöffentlichkeit 2.0: Formen, Nutzung und Wirkung kritischer Öffentlichkeiten im Social Web" (Counter-Public Sphere 2.0: Forms, Use and Effects of Critical Public Spheres on the Social Web), in A. Zerfaß et al., *Kommunikation, Partizipation und Wirkungen im Social Web*, pp. 210–230.

157. K. Voss, "Alles online?", p. 72.

158. See K. Voss, *Öffentlichkeitsarbeit von Nichtregierungsorganisationen. Mittel—Ziele—interne Strukturen* (Public Relations of NGOs. Means—Ends—Internal Structures), Wiesbaden, 2007.

159. B. Berendt, M. Schlegel, and R. Koch, "Die deutschsprachige Blogosphäre: Reifegrad, Politisierung, Themen und Bezug zu Nachrichtenmedien" (The German Blogosphere: Maturity Level, Politization, Topics and Reference to News Media), in A. Zerfaß et al., *Kommunikation, Partizipation und Wirkungen im Social Web*, p. 94; J.-F. Schrape, "Web 2.0 und Massenmedien: Visionen versus Empirie" (Web 2.0 and the Mass Media: Wishes versus Facts), in *Neue Soziale Bewegungen* 3/2010, p. 79 (hereafter, J.-F. Schrape, "Web 2.0 und Massenmedien").

org does. The site gained popularity during the (online) protests against the blocking of problematic websites by the German government in 2009.¹⁶⁰ Other political blogs are so-called ‘watchblogs’ such as www.bildblog.de, which critically analyzes established (print) media outlets, or the *Spiegelfechter* blog by Jens Berger. While www.bildblog.de is specifically dedicated to identifying errors and false reporting in German’s leading tabloid newspaper *Bild* and a growing number of other print and online outlets, the *Spiegelfechter* blog casts a critical glance on political communication through media in general, typically by dissecting politicians’ hollow rhetoric or deceptive argumentation in political journalism. Another increasingly recognised example is the author blog *Carta* (<http://carta.info/>) that particularly deals with critical articles on media as well as on political and economic issues.

On the whole, blogs as agenda-setters or research tools have limited influence on German journalists.¹⁶¹ Nevertheless, social web applications in general have become increasingly important sources for journalists in terms of investigation and the cultivation of contacts with their audience. Additionally, one has to keep in mind one major problem for new actors on the internet: while the gatekeeping function of traditional journalism does not limit personal blogging on the internet, the attention of blog readers is focused only on a few established actors.¹⁶² Another consequence is the growing influence of non-journalistic ‘communication professionals’ (e.g. public relations companies) who publish ready-to-use content that is easily accessible through the web but does not measure up to journalistic standards such as autonomy and objectivity. Other established actors who use blogs as a political tool are political parties and politicians. But whereas in 2005 blogs seemed to be the most fashionable tool of political campaigning, during the 2009 federal election campaigns, most top-level politicians abandoned blogging in favor of Twitter, social networks or YouTube.¹⁶³

Aside from the effects of digitization on the number and kind of political actors, there are different findings regarding the interest generated in politics through digital media. Van Eimeren and Frees find that information-seeking is a strong motive for using the internet: users spend one-fifth of their online time searching for information, especially up-to-the-minute political or economic news.¹⁶⁴ This interest in political online news is accompanied by a decrease in the use of ‘traditional’ media for political information.¹⁶⁵ Similar trends (from offline to online) can be registered among forms of political *participation*: there is currently a resurgent protest movement against nuclear power in Germany, but compared with the previous anti-nuclear campaign in the 1970s and 1980s, there appears to have been a general decrease in most offline participatory

160. J. Schmidt, *Das neue Netz. Merkmale, Praktiken und Folgen des Web 2.0* (The New Net. Characteristics, Practices, and Consequences of Web 2.0), Konstanz, 2009, p. 152.

161. J.-F. Schrape, “Web 2.0 und Massenmedien”, p. 79.

162. B. Witte, “Journalismus—Partizipation—Öffentlichkeit: Das Social Web in der Politikberichterstattung” (Journalism—Participation—Public Sphere: The Social Web and Political Reporting), in A. Zerfuß et al., *Kommunikation, Partizipation und Wirkungen im Social Web*, p. 108.

163. S. Albrecht, “Wahlblogs revisited: Nutzung von Weblogs im Bundestagswahlkampf 2009” (Election Blogs Revisited: Use of Weblogs during the Federal Election Campaigning 2009), in E.J. Schweitzer, S. Albrecht, *Das Internet im Wahlkampf*, p. 191.

164. B. Van Eimeren and B. Frees, “Fast 50 Millionen Deutsche online—Multimedia für alle?” (Nearly 50 Million Germans Online—Multimedia for Everyone?), in *Media Perspektiven* 7–8/2010, p. 342.

165. M. Emmer, G. Vowe, and J. Wolling, “Ein Medium wird erwachsen: Die Entwicklung der politischen Internetnutzung der Deutschen von 2002 bis 2008” (A Media Matures: The Development of Political Internet Use Among Germans from 2002 to 2008) (hereafter, M. Emmer et al., “Ein Medium wird erwachsen”), in J. Wolling et al., *Politik 2.0?*, p. 96.

forms (e.g. going to the polls, protest marches). This contrasts with an increase in online petitions and online activities in the context of organizational membership.¹⁶⁶ While these political online activities may reach a broad audience, online engagement is often less ‘involving’ than offline engagement.¹⁶⁷ However, the scope of some recent examples of offline protest (e.g. against the government’s energy policy or against several urban planning projects) suggests that the offline protest culture might get stronger in the years to come, driven by growing disaffection with politics and a stronger willingness to protest even among the conservative middle class.

4.5 Assessments

Journalism in Germany is undergoing fundamental changes, as the business models for traditional media, in particular for newspapers, are endangered by the internet accompanied by behavioral changes of audiences. Against this background, it becomes more difficult to finance newsrooms and the creation of original content. This overall development is strongly induced by digitization and new technologies. The production of journalism changes radically with the concept of integrated newsrooms, where journalists have to deal with a range of different platforms and outlets. Interaction between journalists and ‘the audience’ is increasing. Journalists also have to deal with more sources, and need to integrate participatory features. These developments imply various changes in journalistic workflows, routines, and working conditions. These changes cannot be branded as simply positive or negative for the quality and accuracy of reporting. What has become obvious is that a rigorous cutback of journalistic staff, resources, time for research, fact-checking, and proofreading has negative consequences for the quality of content.

In Germany, these circumstances and their interrelations are widely recognized, discussed and investigated, as well as debated in public and in politics. They have also triggered discussions on quality journalism, its financial basis as well as its fundamental necessity to democratic societies.¹⁶⁸ All in all, the effects of digitization for journalism (in Germany) are to be qualified as ambivalent: on the one hand, they offer journalists many more sources, the opportunity to investigate issues faster and in much more detail, allow them to interact with their audience, and provide them with innovative opportunities for reporting and including social media processes, tools and platforms into their daily work. On the other hand, journalism has to face new non-professional or semi-professional competitors, has lost its gatekeeper monopoly, and can no longer rely on its traditional business model.

While the representation of immigrants in German media is largely independent from digitization (that is: bias in coverage on minorities can still be found), digital media and the internet in particular have made possible new ways of communication within ethnic communities or marginalized groups, strengthening

166. M. Emmer et al., “Ein Medium wird erwachsen”, p. 98.

167. M. Emmer et al., “Ein Medium wird erwachsen”, p. 99.

168. K. Beck, D. Reineck, and C. Schubert, *Journalistische Qualität in der Wirtschaftskrise* (Journalistic Quality and the Economic Crisis), Berlin, 2010. See http://www.dfv.de/fileadmin/user_upload/pdf/Studie_Journalistische_Qualitaet_03_2010.pdf (accessed 5 April 2011).

their hybrid identity as Germans with a particular background. However, there is some evidence that the growing importance of digital media might diminish the importance of traditional ‘ethnic’ media and ‘real life’ communities in the long run.

Regarding the coverage of elections, the internet has brought significant change to the overall number of voices, the strategies of political campaigning and the influence of civil society actors. The key problem for new entrants, however, is not the possibility of voicing their views and/or political programs but the problem of making themselves heard. Shortage of frequency or airtime has been substituted by a shortage of audience time and attention. Thus, at present, the most important advantage civil society actors have lies in adapting the opportunities the internet has to offer: participatory forms, interactivity and authenticity are still not sufficiently tapped by established actors, who often fail to integrate them into their conventional top-down campaigning strategies.

Altogether, the ‘promises’ of the internet are to a large extent based on its (technological) infrastructure (at least from the viewpoint of the democracy theory). That is, in particular: fast and easy access to almost unrestricted amounts of information, the breaking of restrictions concerning the communicator-recipient relationship, new possibilities for interactivity, and, overall, its basic impact on democratization and participation for everyone who has access to these communication technologies. In contrast, media development has always been accompanied by more or less rapid processes of commercialization and institutionalization, which is why the promise of democratization has never been fulfilled in the expected way. Within this process, the promises of the internet seem to ‘cancel’ or ‘neutralize’ each other to some extent: unrestricted documentation facilities have to be qualified by facilities and standards of information selection, processing and distribution, which in turn shape the web and its content. These ways of organizing content also shape patterns of media consumption and degrees of freedom in using the web. Nonetheless, the potential of the internet is expansive, and still requires a professional, responsible and high-quality journalism that makes sense of it—in a constant and recursive process with its audience.

5. Digital Media and Technology

5.1 Spectrum

5.1.1 Spectrum Allocation Policy

The basis of spectrum allocation in Germany is the Table of Frequency Allocations of the International Telecommunication Union (ITU). The Federal Network Agency (*Bundesnetzagentur*, BNetzA) sets up the National Table of Frequency Allocation and a Frequency Usage Plan in the form of a bylaw. The latter allocates the usage of frequencies either for broadcasting or for other communication purposes; if issues of broadcasting are concerned, consultation with the *Länder* authorities is required.¹⁶⁹

Whether a frequency can be used by public broadcasters or private broadcasters is decided according to procedures laid down in the specific media regulations set by the states (see section 7.2.3). The State Media Authorities are responsible for allocating spectrum to private broadcasters.¹⁷⁰

For both television and radio, the digitization of terrestrial broadcasting allows more channels for both public and private broadcasters, but the latter are reluctant to use this opportunity. In some rural areas, even private television broadcasters that previously had a license for analog television transmission did not apply for a license for DVB-T because the vast majority of the population can receive their programs with cable or satellite. For digital radio, private broadcasters lost interest when listeners did not buy the new receivers. In 2010, frequencies formerly used partly for terrestrial television were allocated to mobile internet access in rural areas and assigned by auction to the four mobile network operators: Deutsche Telekom, Vodafone, Telefónica O2, and E-Plus.¹⁷¹

169. See §55 sec 10 Telecommunications Act (*Telekommunikationsgesetz*, TKG).

170. The State Media Authorities („Landesmedienanstalten“) are the bodies competent for the regulation of broadcasting. They are not part of the state administration but independent agencies; they have internal bodies consisting of representatives of socially relevant groups or they are composed of experts.

171. See *epd medien* 39/2010, p. 11.

For usage of other frequencies available due to the digitization of broadcasting (“digital dividend”), the broadcasting commission of the states have announced they want to keep these frequencies for further development of terrestrial broadcasting. This commission is a forum consisting of representatives of all the states. Starting in 2014, the new terrestrial Digital Video Broadcasting standard DVB-T2 will be introduced in Germany.¹⁷² Overall, it can be said that there were no categories of users and institutions that were favoured by broadcast spectrum allocation policy.

5.1.2 Transparency

For frequencies assigned by auction, the procedure is transparent. The auction is announced and the bidders, their bids, and the results of the auction are published.

For broadcasting frequencies, the assignment is not done by auction but by an administrative act carried out by the broadcasting authorities. Private broadcasters require a license, and the process of licensing is structured by the state media laws, or, for nationwide television, by the Interstate Treaty on Broadcasting. The licensing process is designed to guarantee a maximum of programming diversity within the broadcasting market (“beauty-contest”; see section 7.2.3), or at least to ensure that the market power of any one broadcaster is held in check.

5.1.3 Competition for Spectrum

Competition for spectrum is dependent on the transmission path. For terrestrial transmission, digitization has increased the number of free-to-air television channels from five or six to between 12 and 30. Since only a small proportion of households depend on terrestrial transmission, the commercial broadcasters have circumvented terrestrial transmission in rural areas. The region of Stuttgart presents a special case; in October 2009, RTL started transmitting its channels RTL, RTL2, Super RTL, Vox, RTL Crime and RTL Passion, using encrypted MPEG-4. This technology is said to allow more efficient and less expensive use of spectrum.¹⁷³ On the other hand, it requires that viewers purchase a special receiver. The MPEG-4 standard will also be used in DVB-T2.

For cable, the number of analog channels transmitted is about 30, and the State Media Authorities, according to state media laws, determine the programs which have to be carried by cable network broadcasters. The same system applies to radio programming. For digital cable transmission, the assignment of channels is also ruled by State Media Authorities, which have been empowered to determine the programs that have to be carried by broadcasting cable network operators. The system still applies to analog cable systems and to radio programming. For digital cable networks, often able to carry more than 150 channels, the law designates a number of programs which every digital cable operator must carry: some programs by public broadcasters, local channels and so-called open channels for public access radio and television.

172. See *epd medien* 71/2010, p. 13.

173. See *epd medien* 82/2009, p. 11.

For satellite, there is no competition for spectrum. In spring 2012, the analog transmission via ASTRA satellite will be stopped and only digital transmission will remain. German media law does not provide must-carry rules for satellite service providers.

5.2 Digital Gatekeeping

5.2.1 Technical Standards

The standards for DVB (DVB-T, DVB-S, DVB-C) have been developed by an industry-led consortium of around 250 broadcasters, manufacturers, network operators, software developers, regulatory bodies and others in over 35 countries committed to designing open technical standards for the global delivery of digital television and data service.¹⁷⁴ The European Telecommunications Standards Institute (ETSI) was involved in turning the proposals into standards.

The DAB standards for terrestrial digital radio were developed between 1987 and 2000 in a European Eureka project. In Germany, the first pilot projects started in 1995, but have so far failed to attract consumer uptake along the lines of digital television. In summer 2011, a restart is scheduled with the enhanced standard DAB plus. It had been suggested that DAB plus be introduced in 2009, but the Association of Commercial Broadcasters and Audiovisual Services in Germany (*Verband Privater Rundfunk und Telemedia, VPRT*) protested, because the introduction of DAB plus would not be market-driven but a means to close down fm radio—the basis for the business of their members.¹⁷⁵ On the other hand, the Commission for the Assessment of the Financial Requirements of Public Broadcasters (KEF) had previously decided that further funding of the DAB plus activities of public broadcasters would only be allowed if the introduction of DAB plus this time had a better chance of being successful, and that would require the participation of private broadcasters. After 11 private broadcasters had applied for licenses for national DAB plus channels, the KEF decided to allow the public broadcasters to start DAB plus. The public broadcasters will also have their regional radio programs transmitted under the DAB plus standard.

For mobile television viewing, the Media State Authorities have tested DMB (Digital Multimedia Broadcasting), a derivative of DAB, and DVB-H (Digital Video Broadcasting-Handheld), a derivative of DVB-T. A joint venture of the market-dominating mobile phone companies T-Mobile, Vodafone and O2 had been allowed by the Federal Cartel Office, but the license for a DVB-H platform was finally granted by the State Media Authorities to another joint venture, one with the large media companies Burda and Holtzbrinck involved. In 2008 the first cell phones with integrated DVB-T receivers were launched. They allow mobile television viewing without extra charge for the transmission—bleak prospects for DVB-H. The license was given back.

174. See http://www.dvb.org/about_dvb/standards/ (accessed 5 April 2011).

175. VPRT press release, 25 June 2009, see <http://www.vprt.de/verband/presse/pressemitteilungen/content/außerordentliche-fachbereichsversammlung-radio-und-audiodi?c=4>.

5.2.2 Gatekeepers

Electronic program guides (EPGs) are expected to become important gatekeepers in digital television. But in Germany, the market is developing very slowly as a result of several obstacles:¹⁷⁶ The producers of receivers have little incentive to prepare the hardware for more EPGs than just the service information that is being provided by the broadcasters. The operators of platforms are interested in having one reliable EPG for their platform, but not a variety of EPGs. The public and private broadcasters ask for EPGs free of discrimination and free of advertising, making earning revenues from EPG services rather difficult. The viewers in most cases do not care for EPGs when buying a digital receiver. At last, the publishers of printed television program guides have developed television guide services on the web that have started cooperating with hardware producers, but they are not pushing for a common standard that would create a kind of kiosk for competing EPG services.

The use of television and radio program information for EPGs has caused controversy. In the past, EPG providers have used the information provided by broadcasters for their EPGs free of charge. In recent years, many private broadcasters require a special license and fees for such usage.

5.2.3 Transmission Networks

Transmission networks in Germany were traditionally operated by the Association of German Public Service Broadcasting Corporations (*Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland*, ARD)—for their radio channels and the first television channel—and by Deutsche Telekom with its affiliate company T-Systems Media Broadcast. In 2008, Deutsche Telekom sold this company to the French TDF Group and the name was changed to Media Broadcast. In 2009, Media Broadcast got approval to operate the national network for DAB plus. For radio companies interested in transmitting a program with enhanced DAB, the price for transmission may be prohibitive, but there are no competitors. Broadcasters get their admission to the DAB-multiplex granted by the State Media Authorities, so there is no bargaining with the network operator.

Transmission network operators have not intervened in any way in the distribution of spectrum resources.

5.3 Telecommunications

5.3.1 Telecoms and News

Since the liberalization of the telecoms market, Deutsche Telekom as the former monopoly company has retained a dominant market position. In 2009, 67 percent of 38.9 million landline connections were run by Deutsche Telekom.¹⁷⁷ There is a trend toward Triple Play (Voice, internet, television), as the cable television

176. See U. Hasebrink, H.D. Schröder and B. Stark, *Elektronische Programmführer im digitalen Fernsehen (EPGs in digital TV)*, Berlin 2008; F. Grothe and T. Grothe, *Kleiner Markt—große Hürden? (Small market—large barriers?)*, in ALM (ed.) *Digitalisierungsbericht 2009*, pp. 35–43.

177. Federal Network Agency (ed.), *Jahresbericht 2009 (Annual Report 2009)*, Bonn, 2010, p. 77. See <http://www.bundesnetzagentur.de/cae/servlet/contentblob/152206/publicationFile/6683/Jahresbericht2009Id18409pdf.pdf> (accessed 5 April 2011).

companies—former affiliate companies of Deutsche Telekom—are diversifying their offer. In 2009, almost 6 percent of telephone connections were provided by cable television networks.

The German regulatory agency for networks, the BNetzA, monitors the dominant provider's market power and helps new competitors to enjoy the same opportunities. The regulatory tasks are specialized and cannot be resolved with the tools of general competition law alone.¹⁷⁸

Deutsche Telekom is offering very high speed digital subscriber lines (VDSL) with up to 50 MBit/sec; in 2009, it opened this network to its competitors. The BNetzA had previously decided that Deutsche Telekom must allow competitors access to its empty pipes for fiber optic cables.

5.3.2 Pressure of Telecoms on News Providers

One of the current issues of public debate in Germany regarding the internet is network neutrality. Internet traffic is rising sharply, and in order to avoid alleged congestion, internet providers are starting to assign priorities to certain kinds of information. Deutsche Telekom reportedly reserves the bandwidth necessary for Internet Protocol television (IPTV) and Voice over IP (VoIP) for its T-Home customers.¹⁷⁹ Cell phone providers that are offering flat rate data usage for internet access sometimes do not allow use of VoIP services. The providers are therefore already to some extent dividing bandwidth into quality classes.

Also being discussed is whether large content providers such as Google or YouTube should pay for the huge traffic they are generating. With IPTV and webcast traffic growing, the same discussion would also apply to the public and private broadcasters.

The abandonment of net neutrality may have further implications as well. Should internet providers introduce a reliable method for automatic classification and filtering of content for their billing purposes, then regulators might ask for appropriate classification of international content in order to apply national content regulation.

Other than that, there have been no cases to date of telecoms putting pressures on news providers.

5.4 Assessments

Spectrum allocation in Germany is somewhat politicized, with respect to the digital dividend. The federal regulators tend to allocate free spectrum for telecommunication, which is their field of regulation. The states, responsible for broadcasting as a field of culture, prefer to keep the digital dividend for further development of broadcasting, e.g. for the next generation of DTT.

178. Cf. Federal "Network" Agency, *Telecommunications*, 11 July 2007, www.bundesnetzagentur.de/cln_1912/EN/Areas/Telecommunications/telecommunications_node.html (accessed 5 April 2011).

179. See D. Bouhs, "Vorfahrt im Datennetz" ("Priority Net Traffic"), in *epd medien* 83/2010, pp. 5–7.

IPTV is gaining importance. In 2010, 2.3 percent of households used IPTV, more than twice as much as in 2009 (see above Table 3), and the broadcasters offer Video on Demand (VOD) for catch-up television viewing. Also, YouTube and other VOD services create growing traffic on the internet. A discussion about classifying and prioritizing different kinds of traffic has already started. The internet providers may try to introduce different types of charges depending on the class of content. The consequences of such new models remain to be seen.

6. Digital Business

6.1 Ownership

6.1.1 Legal Developments in Media Ownership

Currently, German media concentration law is based on an audience market share model. The system sets up a threshold of 30 percent of the broadcasting market. Owning more than this audience market share is regarded as having a compelling influence on public opinion and will subsequently lead to actions by the competent State Media Authority. A lower threshold of 25 percent of the audience market share applies if a company dominates a media-relevant related market (like newspapers, journals or internet services) or if the company's overall influence on the broadcasting market and media-relevant related markets can be compared to an audience market share of 30 percent. All programs are added to a company's audience market share if the company is related to the broadcaster in a way that is more closely defined by the RStV. Some of the media laws in the states have adopted the ownership rules of the Interstate Treaty on Broadcasting, while others still follow older models of multiple ownership restrictions.

Judging the influence a company has on public opinion is the responsibility of an expert commission, the Commission on Concentration in the Media (*Kommission zur Ermittlung der Konzentration im Medienbereich*, KEK). It is an independent regulatory body with nationwide jurisdiction, examining whether diversity of opinion is assured in connection with the nationwide distribution of television programs. The KEK is concerned principally with journalistic competition in order to prevent a group of affiliated companies from being able to exercise a predominant impact on public opinion. KEK decisions are binding for each state supervisory authority for commercial broadcasters.¹⁸⁰ Every three years, the KEK has to publish a report on concentration in commercial broadcasting.¹⁸¹

180. For details see www.kek-online.de/cgi-bin/esc/mission.html (accessed 5 April 2011).

181. For the latest report see Association of State Media Authorities (ed.), *Auf dem Weg zu einer medienübergreifenden Vielfaltssicherung. 4. Konzentrationsbericht der KEK* (Towards a Safeguarding of Diversity across all Media. 4th KEK Report on Concentration), Berlin, 2010. See http://www.kek-online.de/Inhalte/dlm-band-45_vierter_konzentrationsbericht.pdf (accessed 5 April 2011).

Besides the special regulation for broadcasters, competition law also applies to media companies. A primary concern here is excessive market power in sectors such as newspapers, television advertising, television cable, etc. For large companies, the Federal Cartel Office (*Bundeskartellamt*) has to approve mergers and takeovers for all newly formed companies with a turnover of €1.25 million or more. This threshold is considerably lower for media companies compared with other industries.¹⁸²

For television companies, this may imply a double hurdle. Thus, in 2005 the large newspaper and magazine publishing house Axel Springer Verlag attempted to acquire the commercial television company ProSiebenSat.1, but neither the KEK nor the Federal Cartel Office approved the takeover. Axel Springer Verlag abandoned the acquisition, but appealed against the interdictions. In 2010, the Federal Supreme Court (*Bundesgerichtshof*) upheld the decision of the Federal Cartel Office.¹⁸³ A final judgment of the court regarding the KEK decision is still pending.

In recent years there have been no digitalization-based amendments to media concentration laws. However, there is an ongoing debate regarding how media law should react to new forms of media concentration, new bottlenecks and new market structures. In short, two models are being discussed; one focusing on the traditional broadcasting-centered calculation of audience share, but incorporating market strength in other media markets, and the other following a calculation model that takes into account all media types.

6.1.2 New Entrants in the News Market

The most notable new independent actor on the news market in Germany is the news channel N24. In 2010, ProSiebenSat.1 sold it in a management buyout. In addition to its managers, Stefan Aust (a former editor-in-chief of *Spiegel* magazine and Spiegel TV) and Thorsten Pollfuß (former business manager of Spiegel TV) are among the new owners. N24 will produce the main news for three of the group's channels (Sat.1, ProSieben and Kabel 1) for the next seven years. However, the workforce has been reduced by about one third.

There are plenty new or renewed licenses in the German television market. The KEK decided about 50 cases in 2009 and about 30 in 2010. Among them were several programs dedicated to special interest information, but not to news.

The German newspaper market has not seen a new daily enter the market since *Financial Times Deutschland* was launched in 2000. *Cicero*, a monthly magazine on political culture founded in 2004, is published by the Swiss publisher Ringier (known as the publisher of the Swiss tabloid *Blick*) and in 2010 reached a paid circulation of more than 85,000.

182. Para 38 (3) Act against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, GWB).

183. See *epd medien* 45/2010, p. 9.

6.1.3 Ownership Consolidation

In 2007, ProSiebenSat.1 Media was taken over from P7S1 Holding L.P., an investment vehicle led by Saban Capital Group, by the finance investors KKR and Permira, two global private equity firms specialized in leveraged buyouts. Later in the same year, ProSiebenSat.1 took over SBS Broadcasting Group (of which KKR and Permira were majority shareholders) and became the second largest broadcaster in Europe after the RTL group.

Since 2008, Rupert Murdoch's News Corporation has held a stake in the pay-television company Sky Deutschland AG (at that time Premiere AG). After increasing the share gradually over the last three years, News Corp. now controls 49.9 percent of the company.¹⁸⁴

In 2010, the German service of Associated Press (AP) was taken over by the news agency Deutscher Depeschendienst ddp. The new name is dapd nachrichtenagentur. It announced a new sports service in 2011. The Federal Cartel Office has communicated that the turnover is below the threshold value for merger control.¹⁸⁵

6.1.4 Telecoms Business and the Media

In 2006, the leading German telecommunications provider Deutsche Telekom AG reintegrated its former separate internet provider, T-Online, into the company. In April 2000, during the dot-com bubble, T-Online had its IPO in order to raise capital for the growing business. When Deutsche Telekom AG bought up the T-Online stocks in 2006, the quotation was just a third of that at the IPO.

Kabel Deutschland, a subsidiary company of Deutsche Telekom AG until 2003, was taken over by international investors after selling some of its regional companies. Providence Equity Partners has been the majority shareholder since 2006, and in 2007 and 2008 Kabel Deutschland took over several cable networks of Orion Cable GmbH. The intended mergers with the regional cable providers Kabel BW and Unitymedia could not be achieved because the Federal Cartel Office had objections. In 2010, Kabel Deutschland became a publicly listed company and a year later the stock value had risen by 71 percent.¹⁸⁶

In the structure of television broadband cable in Germany, level four, distribution to households, is decentralized, i.e. it is often done by smaller local firms. Therefore, in many cases the regional cable network operators do not own the last-mile to the households. Against this background, Kabel Deutschland views consolidation, particularly at the local and regional levels, as central to its goal of maximizing consumer value, particularly in the context of the efficiencies and new services afforded by digitization.¹⁸⁷

184. Details of ownership of German private TELEVISION companies are published by the KEK on its homepage, see <http://www.kek-online.de/db/index.php> (accessed 5 April 2011).

185. See *epd medien* 56-57/2010, p. 13.

186. See Kabel Deutschland's press release, 22 March 2011, <http://www.kabeldeutschland.com/de/presse/pressemitteilung/unternehmensnachrichten/2232011.html> (accessed 5 April 2011).

187. H. Rohde, Interview with Paul Thomason, "Ein Zukauf verschiebt die Dividendenfähigkeit nicht" (An Acquisition doesn't affect the Ability to pay Dividends), *Börsen-Zeitung*, 31 July 2010, p. 11.

Unitymedia, another large cable company, resulted from a merger of the regional cable providers Ish, TeleColumbus West (both in North Rhine Westphalia) and Iesy (Hesse). In 2008 it took over local cable networks in Aachen and Wiesbaden from PrimaCom. Liberty Global took over Unitymedia in 2010.

6.1.5 Transparency of Media Ownership

As pluralism in broadcasting is a constitutionally enshrined objective, knowledge about media ownership is seen as a prerequisite for checking concentrated media power. Hence, there are some media-specific legal provisions obliging owners to ensure their ownership structures are transparent.

Nationwide broadcasters have to report their ownership structure to the state media authority that is responsible for their license. Much of this information is provided on application for a license as a requirement of the procedure (Art. 21 sec. 2 RStV). The provision lists the information and documents to be handed over, including a description of the direct and indirect interests of the applicant as defined in Article 28 and of the capital and voting rights of the applicant and associated companies as defined in company law. Furthermore, they are required to provide information about related persons as defined in the Fiscal Code, including representatives of persons or partnerships or of the members of a legal entity.

The State Media Authorities also have to be given copies of partnership agreements, the company statutes, and agreements between the parties holding a direct or indirect interest in the broadcaster, as well as those governing trustee relationships and other relevant relationships. Finally, a license applicant has to issue a written statement claiming that all documents and information have been provided in full. If a broadcaster does not hand in all information, the application can be refused (Art. 21 sec. 5 RStV). The company has to update this information every 12 months in case of any changing events (Art. 21 sec. 7 RStV). Violations of these duties may in theory lead to a revocation of the license (Art. 38 RStV).

If there are any planned changes in participating interests or other influences regarding a nationwide broadcaster, the relevant State Media Authority must be notified in writing and prior to their implementation (Art. 29 RStV). The responsible State Media Authority may then confirm that no objections exist to such changes on condition that a license could still be issued under those changed conditions. If these conditions are not met and the planned change is implemented, the license shall be revoked. The KEK can issue directives for cases of minor interests in stock corporations detailing exemptions concerning the reporting obligations. All broadcasting laws of the states (*Bundesländer*) feature comparable provisions or refer to those of the Interstate Treaty. Hence, the above-mentioned requirements apply to local and regional broadcasters, too.

As telemedia, i.e. non-linear services, undertakings require no license or registration, there are no comparable media-specific provisions regarding information on ownership structure. The content providers are, however, obliged to provide an imprint naming the responsible persons and a contact address (including telephone and email).

Regarding the periodical press, publishers of newspapers and magazines in most *Bundesländer* are obliged to provide a regular imprint in their printed products, stating the ownership structure of the publishing corporation.¹⁸⁸ As a general rule, such an extended imprint has to be incorporated once a year (e.g. within the first issue of the year).¹⁸⁹ All changes in ownership structure have to be published in the imprint of the next issue after implementation.

In the event of acquisitions or mergers between media and/or publishing companies that exceed certain volumes of sales, the Federal Cartel Office has to be informed and can prohibit the action prior to its implementation.

Businesses whose annual turnover exceeds €250,000 and whose annual profits exceed €25,000 are governed by the German Commercial Code (*Handelsgesetzbuch*, HGB). As a result, information on all bigger companies in Germany is registered in the Commercial Register (*Handelsregister*), where limited liability corporations and stock companies also have to be recorded, as the Commercial Register also contains the Register of Companies. The Commercial Register contains—among other information—the official name and address of the company, its legal form as well as proprietors or shareholders and an annual financial statements of corporations. The KEK offers a database that includes all information on the ownership structures of national broadcasting companies. As the German media system is strongly interwoven, the KEK database is able to show those linkages quite thoroughly. Print and online publishing corporations are listed there as well, as long as their publishing corporation is linked to broadcasters or their owners. Furthermore, the site lists all relevant KEK decisions and the specific shares of audience commanded by broadcasters.¹⁹⁰ The regulator is currently incorporating data on regional and local broadcasters via the websites of the respective State Media Authorities.

Transparency provisions are usually well implemented, both by the authorities and by the media businesses. The authorities are enforcing the respective provisions; in addition, at least every three years the KEK publishes a report on the development of concentration within the media sector as well as on measures to ensure diversity of opinion in private broadcasting. The last KEK report, entitled *Towards a Cross-Media Diversity Protection*, was published in October 2010.¹⁹¹

188. In the press laws of some *Bundesländer* such provisions are not included: Baden-Wuerttemberg, Lower Saxony, Saxony-Anhalt, Saarland and Bremen. In these *Länder* the provisions of common company laws are applicable only.

189. Art. 8 of the respective press law of the *Bundesland*, sometimes Art. 9.

190. <http://www.kek-online.de/cgi-bin/esc/zuschauer.html> (accessed 5 April 2011).

191. Association of State Media Authorities (ed.), *Auf dem Weg zu einer medienübergreifenden Vielfaltssicherung. 4. Konzentrationsbericht der KEK* (Towards a Safeguarding of Diversity across all Media. 4th KEK Report on Concentration), Berlin, 2010. See http://www.kek-online.de/Inhalte/dlm-band-45_vierter_konzentrationsbericht.pdf (accessed 5 April 2011).

6.2 Media Funding

6.2.1 Public and Private Funding

Most of the media activities in Germany are privately financed. The major exception is broadcasting, which now includes the internet activities of public broadcasters. Until 1984, there were no private broadcasters in Germany. The main funding for public broadcasters remains the broadcasting license fee, with some additional funding from advertising. In total, the revenues of public broadcasters are €8,617 million, which is more than the total revenues of commercial television and radio broadcasters combined (see Tables 18, 20, 21). The license fees for public broadcasters are fixed in an interstate treaty of the *Länder*, following a recommendation by the *Commission for the Assessment of the Financial Requirements of Public Broadcasters* (KEF). With this procedure, the public broadcasters are protected against arbitrariness with their funding.

Due to legal restrictions on the time used for advertising in their radio and television channels and a reduced audience share and competition for advertising, the advertising revenues of public broadcasters are rather small (Table 18). Currently they account for less than 10 percent of the television net advertising revenues in Germany (Table 19). For radio advertising revenues, the share of public broadcasters still is about 25 percent. The German international broadcaster Deutsche Welle is mostly funded by the federal government, with a budget of almost €300 million. Further revenue sources of the public broadcasters include sponsorship, sales of broadcasting rights, and profits of subsidiaries such as television studios and television production companies.

Table 18.

Revenues of public broadcasters in Germany 2005–2008 (€ million)

	2005	2006	2007	2008
License fees	6,923	7,152	7,091	7,060
Television advertising revenues	260	302	279	287
Radio advertising revenues	186	190	187	184
Other revenues (including state funding for Deutsche Welle)	904	861	1,185	1,086
Total revenues	8,273	8,505	8,742	8,617

Source: Bayerische Landeszentrale für neue Medien (BLM) et al. (eds.), *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009* (Economic Situation of Broadcasting in Germany 2008/2009), Berlin, 2010, pp. 66 ff. (hereafter, BLM et al., *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009*).

Table 19.
Net advertising revenues of broadcasters 2005–2008 (€ million)

	2005*	2006*	2007*	2008*	2009**	2010**
Net Television Advertising Revenues						
Public Broadcasters	260	302	279	287	253	278
Private Television Companies	4,088	4,144	4,093	4,007	3,386	3,676
Total	4,348	4,446	4,372	4,294	3,639	3,954
Net Radio Advertising Revenues						
Public Broadcasters***	237	245	187	184	228***	238***
Private Radio Companies	543	569	565	546	451***	454***
Total	780	814	752	730	679	692

Sources: * BLM et al., *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009*, pp. 38, 54, 70 .

** ZAW Werbung in Deutschland 2011, pp. 314, 330.

*** In 2009 and 2010 the advertising revenues of public broadcasters include those private broadcasters that have their advertising sales done by marketing subsidiaries of public broadcasters, thus in these years the net radio advertising revenues of the public broadcasters are about €50 million less and those of private radio broadcasters about €50 million higher than denoted in the table.

Commercial television broadcasters get most of their income from advertising and teleshopping (the latter mostly broadcast on separate shopping channels). Pay television now accounts for around 15 percent of their income.¹⁹² But Sky Deutschland, the largest pay television broadcaster in Germany with 2.47 million subscribers in 2010, still lost almost €408 million for 2010.¹⁹³

Table 20.
Revenues and expenditures of commercial television companies 2005–2008 (€ million)

	2005	2006	2007	2008
Advertising Revenues	4,096	4,041	4,093	4,007
Total Revenues of Free Television and Pay Television (national and regional)	5,757	6,001	5,918	5,944
Operational Expenditure for Free Television and Pay-Television	4,806	4,908	5,240	5,357
Teleshopping Revenues	1,226	1,296	1,347	1,448
Teleshopping Expenditures	1,257	1,333	1,394	1,406

Source: BLM et al., *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009*, p. 38.

192. In 2008, total pay television revenues amounted to €1,109 million; see BLM et al., *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009*, p. 103.

193. See Sky Deutschland, *Beyond Television. Annual Report 2010*, http://ir2.flife.de/data/sky2/igb_html/index.php?bericht_id=1000004&lang=ENG (accessed 5 April 2011).

Private radio has not grown in recent years (Table 20). In 2008, most revenues were gained from advertising (82 percent), with marginal income from sponsorship (5 percent), events (3 percent) and value-added telephone services like contests or votings (2 percent).¹⁹⁴

Table 21.
Revenues and expenses of private radio companies (€ million)

	2005	2006	2007	2008
Advertising Revenues	541	567	565	546
Total Revenues	650	678	661	624
Total Expenses	534	581	553	540

Source: BLM et al., *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009*, p. 54.

The overall statistics show that in 2008 and 2009 advertising revenues fell for almost every type of mass media (Table 22). In 2009, only online advertising was growing slowly. In 2010, most advertising vehicles showed some recovery in advertising revenues. Compared with 2005, however, daily newspapers, weekly and Sunday newspapers, newspaper supplements, magazines, trade journals, cinemas and direct mail advertising still had their net advertising revenues reduced by 5 percent or more.

On the other hand, only advertising papers and online advertising have gained more than 5 percent in their net advertising revenues since 2005. The gains for the advertising papers may be a reaction of advertisers to the declining media penetration of daily newspapers. Online advertising is the only advertising vehicle obtaining steadily growing advertising revenues, from €332 million in 2005 to €861 million in 2010. But the decline in the advertising revenues of the daily newspapers between 2005 and 2010 amounts to €839 million—that is more than the gains of advertising papers and online advertising combined. The decline in the circulation (see above Table 9 and Table 10) and advertising revenues of print media does not mean a specific disadvantage with digital media but a general disadvantage with electronic media.

¹⁹⁴ See BLM et al., *Wirtschaftliche Lage des Rundfunks in Deutschland 2008/2009*, p. 50.

Table 22.

Net advertising revenues of vehicles for advertising—not including production costs 2005–2010 (€ million)

Vehicles for Advertising	2005	2006	2007	2008	2009	2010
Daily Newspapers	4,476.6	4,532.9	4,567.4	4,373.4	3,694.3	3,637.8
Weekly and Sunday Newspapers	252.8	260.2	269.7	265.7	208.3	217.8
Newspaper Supplements	91.0	89.9	89.5	86.8	81.9	85.8
Advertising Papers	1,898.0	1,943.0	1,971.0	2,008.0	1,966.0	2,011.0
Magazines	1,791.4	1,855.9	1,822.5	1,693.1	1,408.7	1,450.0
Trade Journals, Professional Journals	902.0	956.0	1,016.0	1,031.0	852.0	860.0
Television	3,929.6	4,114.3	4,155.8	4,035.5	3,639.6	3,953.7
Radio	663.7	680.5	743.3	711.2	678.5	692.1
Online Advertising	332.0	495.0	689.0	754.0	764.0	861.0
Cinema	132.4	117.5	106.2	76.7	71.6	74.5
Advertising in Directories	1,197.0	1,198.6	1,214.3	1,224.7	1,184.0	1,154.6
Billboard Advertising	769.1	787.4	820.4	805.4	737.5	766.1
Direct Mail Advertising	3,398.1	3,318.9	3,347.3	3,291.6	3,080.5	2,983.8
Total	19,833.7	20,350.0	20,812.4	20,357.0	18,366.9	18,748.1

Sources: ARD-Werbung Sales & Services (ed.), *Media Perspektiven Basisdaten. Daten zur Mediensituation in Deutschland 2009* (Facts on the Media Situation in Germany 2009), Frankfurt am Main, 2009; ARD-Werbung Sales & Services (ed.), *Media Perspektiven Basisdaten. Daten zur Mediensituation in Deutschland 2010* (Facts on the Media Situation in Germany 2010), Frankfurt am Main, 2010; ZAW (ed.): *Werbung in Deutschland 2011* (Advertising in Germany 2011), Berlin 2011.

Statistics about subscription newspapers in West Germany show that with declining revenues from personal and corporate advertising, the proportion of sales revenues is growing (Table 23). Consequently, the sales revenues of these daily newspapers may be rising although the circulation is declining. But this cannot compensate for the decline in advertising revenues.

Table 23.

Structure of revenues of German subscription newspapers in West Germany 2005–2009 (in %)

	2005	2006	2007	2008	2009
Advertising	45.6	45.4	45.8	45.2	41.1
Sales	44.7	44.8	44.8	46.2	50.7
Advertising Inserts	9.7	9.8	9.4	8.6	8.2

Source: <http://www.bdzv.de/schaubilder.html> (accessed 5 April 2011).

To summarize, most helpful for the financial independence and sustainability of the media is the license fee for the public broadcasters, repeatedly protected by the Constitutional Court by a guaranty for continuance and development, including internet activities. For print media and commercial broadcasters, the problem

is the decline of readership and advertising revenues. And the strategy to use the internet as the field for new revenues is hard to implement because there is much competition, including quality journalism the public broadcasters provide free of charge.

6.2.2 Other Sources of Funding

In 2009, newspaper publishers demanded a new law on ancillary copyright publishers.¹⁹⁵ The copyright holders for articles are the journalists, and a subsidiary copyright for publishers would help to prevent the unpaid exploitation of information on their websites. In their coalition contract, the governing political parties CDU, CSU and FDP stated their intention to create just such a right for newspaper publishers.¹⁹⁶ But it is a controversial proposal. Critics argue that publishers—rather than simply closing their websites to access from search engines and news aggregators—are seeking a new basis for fee-charging, which would hinder the free flow of information.¹⁹⁷

Recently, some newspapers have begun to differentiate between their print and online products. The online products are available free of charge, whereas the archive and current editions (as PDF versions with the same layout as the print versions) are available as e-papers. There is a charge levied for this content, although it is sometimes free for subscribers to the print edition.¹⁹⁸ A subscription to the e-paper alone is often available at a reduced rate.

Meanwhile, German newspapers are also producing chargeable applications for mobile phones (especially iPhones and Android Smartphones) that are available on subscription. But on the market for applications, they are a small minority.

The only genuine German online daily newspaper without any print edition was *Netzeitung.de*. It started as an ambitious project in December 2000, but the revenues were so small that in 2004 *Netzeitung.de* could no longer afford the service of Deutsche Presse-Agentur dpa, the leading German news agency.¹⁹⁹ By the end of 2009, the editorial team was laid off and the service was closed. In 2010, *Netzeitung.de* was relaunched as an aggregator—an automated news portal similar to Google News.

195. See <http://www.bdzv.de/leistungsschutzrecht-verlage.html> (accessed 5 April 2011). For a more detailed discussion of the development of copyrights see Schulz and Büchner, *Kreativität und Urheberrecht in der Netzökonomie* (Creativity and copyright in net economics), Hamburg 2010, pp. 12–28.

196. CDU, CSU, and FDP, *Wachstum—Bildung—Zusammenhalt. Der Koalitionsvertrag zwischen CDU, CSU und FDP* (Growth—Education—Unity. Coalition agreement between CDU, CSU and FDP), 2010, <http://www.cdu.de/doc/pdfc/091026-koalitionsvertrag-cducsu-fdp.pdf> (accessed 5 April 2011).

197. <http://leistungsschutzrecht.info/> (accessed 5 April 2011).

198. See for example the *Hamburger Abendblatt*.

199. See S. Niggemeier, “Die Zukunft war gestern” (The Future is a Thing of the Past), *Frankfurter Allgemeine Sonntagszeitung*, 4 July 2004, p. 27.

6.3 Media Business Models

Digitization has compelled traditional media companies to strive for the attention of the public in new ways. But their e-papers and journalistic websites are additional competition for their own newspapers and magazines. However, the online news sector is highly competitive and there is little willingness on the part of users to pay for content. Not surprisingly, commercial media organizations lament the obstacles to online profitability.

Thus, the main methods of financing the new services were and still are advertising and cross-subsidization from other company branches. Some examples show that advertising may yield enough revenues to finance internet publications. Indeed by 2007, several subsidiary enterprises of media companies running internet activities, e.g. *Spiegel Online*, *Süddeutsche Zeitung*, *Rheinische Post* and *Berlin online*, did not rely on cross-subsidization but were yielding profits on their own.²⁰⁰

Another business model newspaper publishers are eager to realize is the exploitation of the ancillary copyrights the publishers strive to obtain by amending the Copyright Law. This would help to prevent the unpaid exploitation of information on their websites, but the matter is controversial (see above 6.2.2).

6.4 Assessments

Digitization has enhanced competition for the attention of news audiences in several respects. Perhaps the most significant threat to traditional media stems from web search engines. Many sources of content are available instantly and free of charge, and users have much more choice when it comes to finding the content they are looking for through the internet. As a result, search engines such as Google are attracting both consumers and advertisers away from the compilations of information and advertising that media companies offer in traditional media and their websites.

Transparency of media ownership in Germany is high.

The impact of ownership on media performance and independence seems to have changed. The importance of a publisher's political outlook has decreased, because in most cases publishers are no longer individuals but companies with shareholders demanding dividends. On the other hand, the media companies are seeking economies of scale. Therefore, small local newspapers can hardly do all the editorial work on their own but have complete sections of their paper provided by an editorial office working for several papers.

Another key development is the dramatic increase in the availability of information through digitization. In recent years, some newspaper companies have cancelled their supply relationship with the *Deutsche*

200. T. Knüwer, "Wie Verlage im Internet Geld verdienen? So wie bisher" (How Publishers earn money on the Internet? As before), in J. Krone (ed.), *Medienwandel kompakt 2008–2010* (Media Change compact 2008–2010), Baden-Baden, 2011, pp. 209–211.

Presse-Agentur dpa,²⁰¹ although the customers of *dpa* still command 95 percent of the circulation of daily newspapers.²⁰²

The most sustainable financial model for the production of publicly relevant news, besides the broadcasting license fees, seems still to be newspaper subscription and advertising. Recently, many media companies have introduced apps for downloading news to mobile phones. Since many users are used to paying small amounts for these apps, they can develop into an important source of revenue.

201. Deutsche Presse-Agentur (dpa), *Geschäftsbericht 2009* (Annual Report 2009), Hamburg, 2010, p. 68. See http://www.dpa.de/fileadmin/media/dpa_presse/dpa_Geschaeftsberichte/dpa_GB_2009.pdf (accessed 5 April 2011).

202. <http://www.dpa.de/Zahlen-Fakten.152.0.html> (accessed 5 April 2011).

7. Policies, Laws, and Regulators

7.1 Policies and Laws

7.1.1 Digital Switch-over of Terrestrial Transmission

7.1.1.1 Access and Affordability

On 25 November 2008, the nationwide transition from analog to digital terrestrial television transmission was completed. The DVB-T coverage of the population is about 90 percent.²⁰³

The public service broadcasters were authorized in 2001 to fulfil their obligation to supply the population with broadcasting by utilizing all means of transmission.²⁰⁴ In addition, they were empowered to switch off analog signals on reasonable conditions, allowing the progressive expansion of digital transmission capacity. Reasonable conditions for the switch-over included:²⁰⁵

- provision of timely information and advice to consumers
- a maximum number of subscribers in a given transition area still receiving programs by analog signals
- an adequate digital supply in the transition area
- an adequate range of available programs and other digital services
- parallel switching of channels allocated with both public and commercial programs in the particular transition area
- sufficient availability and affordability of receivers
- reasonable costs for network operators/content providers/consumers
- a minimum duration of analog/digital simulcast.

203. Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland. Bericht des Umstiegs von analogem auf digitales Antennenfernsehen in Deutschland* (10 Years of DVB-T in Germany. Report on the Switch-over to Digital Terrestrial Television in Germany), 2008, p.3. See http://www.ueberallfernsehen.de/data/dvb-t_abschlussbericht.pdf (accessed 5 April 2011) (hereafter, Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland*).

204. See Art. 52a para 2 RSTelevisonas amended by the 6th Amendment to the Interstate Broadcasting Treaty (6. Rundfunkänderungsstaatsvertrag, RÄndStV).

205. Official statement of reasons for 6th RÄStV, p. 4.

However, the fundamental right of individuals to access television can be ensured by other means than analog terrestrial. Accordingly, the transition rules emphasized the technical equivalence of transmission modes (Art. 52a para 2 sentence 1). Thus, by introducing Art. 52a paragraph two sentence three in the eighth RÄndStV of 2004, the shutdown of analog terrestrial sources has also been allowed where supply is limited to satellite or cable delivery. In such cases, the analog terrestrial transmission may, but does not have to, be replaced by digital terrestrial coverage.²⁰⁶ Nevertheless, consumer access to digital transmission is legally guaranteed by the Telecommunications Act (*Telekommunikationsgesetz*, TKG), which ensures the interoperability of television sets to allow for digital reception.

The uninterrupted broadcasting coverage of the population was ensured during the transition by six months of simulcasting before switch-off. However, due to a public information and advertising campaign, simulcast could be terminated from the end of 2005 in most regions, as television viewers had already upgraded to digital reception.²⁰⁷

7.1.1.2 Subsidies for Equipment

Although there was no formal grant scheme regarding terrestrial switch-over, in cases of social hardship, persons and/or families have received a grant from the social security offices to assist with switch-over costs. Moreover, social assistance institutions have the opportunity to contact the *Rundfunkhilfe e.V.*, an institution of voluntary welfare organizations that collects and hands out television sets and set-top boxes to the disadvantaged.

In Berlin-Brandenburg, the first German transition area, a socially acceptable form of switch-over has been secured by a framework agreement between the state media authority, the Media Institute Berlin-Brandenburg (*Medienanstalt Berlin-Brandenburg*, MABB) and social assistance agencies like *Rundfunkhilfe e.V.* According to this agreement, set-top boxes were provided for households that were eligible for a television under the social welfare law and able to receive terrestrial television only. The welfare agency bore 25 percent of the costs, with the rest covered by the MABB. About 6,000 units were procured in this way.²⁰⁸

7.1.1.3 Legal Provisions on Public Interest

The statutory conditions under which analog terrestrial transmission could be switched off also included implicit reference to the public interest. This was articulated in the context of specific requirements to ensure that the supply of digital services delivered public value at least comparable to that of analog.²⁰⁹ Thus, switch-over was contingent on the offer of an expanded digital program on the one hand, and on the other hand,

206. Official statement of reasons for 8th RÄStV, p. 7.

207. Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland*, p. 6.

208. Media Institute Berlin-Brandenburg (ed.), *Berlin goes Digital. The Switch-over of Terrestrial Television from Analog to Digital Transmission in Berlin-Brandenburg. Experiences and Perspectives*, 2003, http://www.mabb.de/fileadmin/user_upload/pdf/Projektbericht_engl.pdf (accessed 5 April 2011).

209. Official statement of reasons for sixth RÄStV, p. 4.

participation of both public and private providers. In this context, private broadcasters were given a financial incentive to participate in the switch-over in Berlin, as the first transition area, by being relieved of one part of the transmission costs for a period of five years.²¹⁰ However, the European Commission ruled subsidies by the MABB illegal in 2005 as they violated EC Treaty state aid rules and were liable to distort competition.²¹¹ The subsidies already disbursed had to be paid back by the broadcasters.

Similarly, in 2007 the planned subsidy in the state of North Rhine-Westphalia was prohibited by the European Commission.²¹² However, the switch-over in Berlin was so successful that in other states the private broadcasters participated even without financial support.²¹³

Digitization has led to an increasing acceptance of terrestrial transmission overall, which had been on a downward trend.²¹⁴ In particular, the possibility of mobile use via USB DVB-T sticks, e.g. in the car or via mobile phones, seems to make using DVB-T more attractive compared to analog terrestrial signals.²¹⁵

The technical costs of the switch-over were absorbed jointly by the project partners. Details of these partners are publicly available on the information page www.ueberallfernsehen.de. They include public and partly private broadcasters, the State Media Authorities, and one network operator—the Media Broadcast GmbH—as an associated partner. The expenditure of the public service broadcasters can also be tracked via the reports of the KEF.²¹⁶

7.1.1.4 Public Consultation

There have been several consultations regarding the switch-over options and amendment of laws, although these were regularly restricted to network providers and broadcasters only.

Due to the scarcity of terrestrial frequencies in Germany, an extended period of simulcast was not possible. Viewers therefore had to orient themselves and decide to switch devices at relatively short notice.²¹⁷ To facilitate this, the switch-over process was supported by an information campaign jointly developed by all project partners. The campaign was then implemented on behalf of public and private broadcasters and the

210. Media Institute Berlin-Brandenburg (ed.), *Deutschlands digitale Dividende, Fernsehen und Internet über Rundfunkfrequenzen, Fünf Jahre nach dem ersten Analog-Digital-Umstieg* (Germany's Digital Dividend. Television and Internet via Radio Frequencies. Five Years after the First Analog-Digital-Switch-over), 2008, p. 20. See http://www.iris-media.info/IMG/pdf/digdividend_d.pdf (accessed 5 April 2011).

211. See the European Commission's press release from 9 November 2005, IP/05/1394, available online at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1394&format=HTML&aged=1&language=EN&guiLanguage=en> (accessed 5 April 2011).

212. See the European Commission's press release from 24 October 2007, IP/07/1587, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1587&format=HTML&aged=1&language=EN&guiLanguage=en> (accessed 5 April 2011).

213. mabb 2008, p. 20.

214. Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland*, p. 8.

215. Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland*, p. 9.

216. See http://www.ueberallfernsehen.de/kosten_neu.html#a3 (accessed 5 April 2011).

217. Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland*, p. 7.

State Media Authorities by regional project offices.²¹⁸ Thus, the audience affected by the change, as well as the press and trade corporations, were informed at an early stage. Using the claim “DVB-T: The anywhere-television” (“*DVB-T: DasÜberallFernsehen*”), DVB-T was established as a brand with considerable name recognition and positive image.²¹⁹ It is being said that thanks to this broad information campaign, the analog switch-off led to wide acceptance and public resistance remained much smaller than was initially feared.²²⁰

However, all in all the transition policy has not been accompanied by public hearings, leading to little input from civil society or consumer rights groups. There were only a few critical remarks from this sector, mentioning in particular the cost to the less well off consumer for set-top boxes.

7.1.2 The Internet

7.1.2.1 Regulation of News on the Internet

Telemedia providers, i.e. content providers and host providers in general—except those serving personal or familial purposes only—have to provide information regarding the publisher of the service, including their name and address (Art. 55 sec. 1 RStV). If the content publisher is a legal entity, he has to inform about the entity’s legal representative as well.

News-specific provisions apply to telemedia providers of journalistic edited content, especially those who replicate the text or visual content of print media editions, either completely or partly. These providers have to offer a name and address of a person responsible for the content. In the event that several persons are named, it must be made clear which of the named persons is accountable for which part of the service. Art. 55 sec. 2 RStV requires that such named accountable persons must have permanent residence in Germany, are fully legally competent, without a court judgment against them, and are allowed to be prosecuted without restrictions.

Moreover, these content providers have to stick to common journalistic standards. News must be verified by the provider prior to publication with such diligence as is appropriate to the circumstances concerning content, source and truthfulness (Art. 54 sec. 2 RStV). Art. 56 applies a right of reply to people affected by the news content. Furthermore, advertising has to be made clearly recognizable as such and must be distinctly separated from the journalistic parts of the service (Art. 58 RStV).

On the other hand, there are specific provisions granting rights to telemedia providers of journalistic edited content. They have a media-specific right to information (Art. 55 sec. 3 RStV) and they are widely exempted from the application of data protection provisions as far as they collect, process or use personal data for their own journalistic and literary purposes.

218. Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland*, p. 7.

219. Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland*, p. 12.

220. Task Force DVB-T Germany by ARD and ZDF, *10 Jahre DVB-T in Deutschland*, p. 12.

However, a practical problem within this field is the application of these rules to specific web services. The definition of a news website has not been fully resolved. Blogs are especially resistant to formal categorization.²²¹

Provisions from the Interstate Treaty on the Protection of Minors in the Media (*Jugendmedienschutz-Staatsvertrag*, hereafter, JMStV) are also applicable to all telemedia providers. JMStV provisions ban certain content (violent/child pornography, hate speech, etc.) and foresee limitations regarding the distribution of harmful content. However, regarding news content, Art. 5 sec. 6 allows harmful news broadcasts and similar content available online to the extent that a justifiable interest in this specific type of presentation or report exists (“press privilege”).

Prohibitions regarding specific forms of content can also be found in common criminal law, as in the German Criminal Code (*Strafgesetzbuch*, hereafter, StGB). This covers—but is not limited to—content that can be labelled as hate speech, libel, or defamation.

The Interstate Treaty on the Protection of Minors (JMStV) lays down rules for the providers of internet and broadcasting services. It states which types of content are illegal outright, and which require appropriate instruments to be implemented in order to restrict access by minors. It also stipulates how content that is not suitable for certain age groups has to be provided in such a way so as to ensure that children and young persons of the restricted age do not usually have access.

Supervisory powers lie with the State Media Authorities. In order to ensure a consistent application of the Treaty, a centralized organ was established in 2003, the Commission for the Protection of Minors in the Media (*Kommission für Jugendmedienschutz*, KJM). The State Media Authorities execute the Commission’s decisions.

7.1.2.2 Legal Liability for Internet Content

Articles 7 to 10 of the Telemedia Act (*Telemediengesetz*, TMG) constitute basic liabilities on the one hand as well as limitations of liability for specific internet services and providers on the other hand. The law distinguishes—in accordance with the corresponding E-Commerce-Directive—between different providers (content, host and access provider), resulting in specific ranges of liability depending on the type of provider. In general terms, content providers are liable for information which they distribute on the internet.²²² It is in principle irrelevant for the purposes of determining liability whether the provider has produced the content or whether it originated elsewhere. Service providers that simply host the information (host provider), or provide access to it (access provider) are—as a rule—not responsible.

221. W. Hahn and T. Vesting (eds.), *Beck’scher Kommentar zum Rundfunkrecht* (Beck’s Commentary on Broadcasting Law), 2nd edition, Munich, 2008, §54, recital 39.

222. Information in the sense of the TMG means information in a textual, acoustic, visual or in any other kind of version (§ 2 No. 1 TMG).

The law is much less clear when it comes to specific aspects of content that were intentionally left out of the liability provisions in the TMG (as well as at the European level). For instance, liability is subject only to case law for the following types of content:

- hyperlinks and snippets (especially regarding search engines)²²³
- the admin-c of a second level domain²²⁴
- User Generated Content on discussion boards and photo or video platforms.

Hence, there are many court decisions in these areas, stemming from many different courts. These decisions sometimes contradict each other quite significantly, resulting in legal uncertainty for the content providers and search engines.²²⁵

A provider offering external information is not obliged to check that information or monitor it for illegal acts. Host and service providers are only liable for external content once they have positive knowledge concerning the illegal content.²²⁶ However, courts in Germany have decided that these liability privileges do not apply in the case of injunctive relief,²²⁷ leading to uncertainty for both the content producer as well as service providers that facilitate UGC. These uncertainties have provoked strong criticism from both sides of the debate.

Although they do not directly influence the independence of the media, it can be questioned whether a “culture of injunctive reliefs” can produce certain chilling effects. This view is underpinned by the increasing occurrence of legal actions against amateur sites, particularly in cases of personal rights infringements.

Legal declarations to cease and desist in the field of competition law have become a commonly used instrument between competitors. As German competition law is rather open, infringements of youth protection laws or personal rights can result in a legal procedure against the publisher by a competitor on the grounds of competition law as well. This, too, may lead to cautious behaviour by content publishers on the internet.

223. See U. Sieber and M. Liesching, “Die Verantwortlichkeit der Suchmaschinenbetreiber nach dem Telemediengesetz” (The Responsibility of Search Engine Providers according to the Telecommunications Act), in *Multimedia und Recht* (MMR), 8 /2007 (supplement), pp. 1–30 (hereafter, U. Sieber, M. Liesching, “Die Verantwortlichkeit der Suchmaschinenbetreiber”). The author is advocating for an analog application of the §§8–10 TMG for search engine providers.

224. U. Sieber, M. Liesching, “Die Verantwortlichkeit der Suchmaschinenbetreiber”. Admin-c is the administrative contact for a German second level domain (“.de”) besides the official owner; the postal address of this administrator has to be given on registration of the domain at the German Network Information Center (DENIC).

225. E.g. on the one hand a court states that search engines can be sued for claims arising from personal injury law through search result entries („snippets”) as interferer (cf. LG Berlin, decision of 9.9.2004—27 O 585/04), while another court states that the liability of an operator as an interferer presupposes that he has violated his own inspection duties; he is certainly not required to any form of general examination (cf. OLG Zweibrücken, decision of 14.5.2009–4 139/08 U).

226. Federal Supreme Court, decision from 23 September 2003—VI ZR 335/02, in *Multimedia- und Recht* 2004, p. 166: Content of the decision: The defendant was an internet provider, who was sued by the claimant for damages amounting to nearly €4,858. The background of this claim was that two other persons, to whom the defendant offered access to internet and webspace, published racist opinions against the claimant on their website. The appeal from higher regional court rejected the liability of the defendant, because there were not enough facts that could evidence the positive knowledge of the internet provider (defendant).

227. Federal Supreme Court decision from 11 March 2004—I ZR 304/01 in *Multimedia- und Recht* 2004, p. 668. Injunctive relief is a court act to ensure that no injustice is done to either party in a case until such time as final judgment is passed.

7.2 Regulators

7.2.1 Changes in Content Regulation

In Germany, content regulation for all media falls within the legislative powers of regional states. This is in contrast to technical aspects of communication, infrastructure and transmission, which are governed by federal law.²²⁸

With regard to commercial broadcasters and internet service providers, the State Media Authorities are responsible for ensuring adherence to the content-related provisions in the RStV and the JMStV.²²⁹ In most states, the task of supervising the provisions of the Telemedia Act has also been delegated to the respective State Media Authorities.²³⁰

It is noteworthy that the authorities in the states strongly cooperate within the Association of State Media Authorities for Broadcasting (*Arbeitsgemeinschaft der Landesmedienanstalten*, ALM). In recent years, several centralized organs have been established to ensure consistency among decisions in transmission allocation and platform assignment (GVK), nationwide broadcasters' licensing and supervision (ZAK), diversity and media concentration (KEK), and youth media protection (KJM). However, no significant changes have been made to the structure of the State Media Authorities themselves during the last five years.²³¹

In contrast to private broadcasters, public service broadcasters are regulated by internal bodies.²³² While the director of the broadcaster (*Intendant*) is usually responsible for the program content and exercises executive powers, the Broadcasting Councils (*Rundfunkrat*, *Fernsehrat*) have supervisory control and power to appoint senior managers. Pluralistically composed of representatives of socially relevant groups, these councils have advisory and supervisory powers concerning programs, organization, personnel, and budgetary matters. Their agreement is required for relevant fundamental issues such as the development and adoption of guidelines for both programs and advertising.

228. S. Müller and C. Gusy, *Background Information Report. Media Policies and Regulatory Practices in a selected Set of European Countries, the EU and the Council of Europe: The Case of Germany*, 2010, p. 12. See http://www.jura.uni-bielefeld.de/Lehrstuehle/Gusy/Institute_Projektel/Germany.pdf (accessed 5 April 2011).

229. Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemedia (Interstate Treaty on the protection of minors—JMStV), dated 10 to 27 September 2002, in the version of the 11th Treaty for amending the Interstate Treaties with regard to broadcasting law (13th Interstate Broadcasting Treaty) in force since 1 April 2010; translation by the KJM “for information purposes only”, available at http://www.kjm-online.de/files/pdf1/_JMStV_Stand_13_RStV_mit_Titel_english.pdf. There is a cooperation between Hamburg and Schleswig-Holstein and also between Berlin and Brandenburg.

230. Exceptions can be found in Baden Wuerttemberg, Bavaria, North Rhine-Westphalia, Rhineland-Palatinate and Saxony. Here, parts of the state governments are responsible. See B. Lorenz, *Aufsicht über die Telemedien* (Supervision of the Telemedia), JurPC Web-Dok. 171/2010, <http://www.jurpc.de/aufsatz/20100171.htm> (accessed 5 April 2011).

231. The merging of the authorities in Hamburg and Schleswig-Holstein led to one authority for two *Bundesländer*. However, the overall structure of the MA HSH has not changed compared to the former authorities HAM and ULR.

232. A. Hesse, *Rundfunkrecht* (Broadcasting Law), 3rd edition, Munich, 2003, p. 174, recital 112 (hereafter, A. Hesse, *Rundfunkrecht*).

Beyond the internal control instruments, the public service providers are subject to limited legal control through the State chancelleries: this subsidiary oversight is confined to questions of legality and must not relate to broadcasting content.²³³

In the press sector, there is no press-specific regulatory authority. However, infringements of press law provisions can be prosecuted by general administration authorities. They are responsible for launching investigations into infringements and (where appropriate) they impose fines. Beside these non-media-specific forms of state regulation, there is a strong tradition of press self-regulation. The German Press Council is the central self-regulatory body in the press sector for which membership is voluntary. It investigates and adjudicates on complaints about individual newspapers, magazines or press services which break the self-regulation based German Press Code (*Deutscher Presskodex*).

7.2.2 Regulatory Independence

The 14 regional State Media Authorities, responsible for supervising private broadcasters and internet service providers, are separate legal entities under public law, established between 1984 and 2007. They have general policy-implementing and decision-making powers, ensuring the broadcasters and content providers comply with their obligations under the RStV and JMStV. They have information-collection powers and might use a range of sanctions, from warnings up to fines of €500,000 and the suspension/revocation of licenses.

The highest decision-making organs of the State Media Authorities are the Councils, or in some cases Assemblies or Executive Boards. These bodies range from five to 47 members, depending on whether they are an expert council or a pluralistic council. Pluralistic councils are composed of: representatives of civil society (the majority of members), members of parliament, experts, and a maximum of one government representative. Board members are either directly supplied by eligible socially relevant groups or nominated and elected in various ways, usually including the parliament of the respective state. The chairman is elected by the Council/Assembly or by the regional parliament. The other members are in general delegated by their organization. The terms of office for chairs/presidents of State Media Authorities range from five to seven years and those of the Council/Assembly members from four to six years, with reappointments usually permissible. The chair/president has to have experience in the media sector, and in some cases must be qualified as a judge.

Regarding the appointment process, there are rules against conflicts of interest. State officials (including EU level) and employees from stakeholders (commercial and public service broadcasters) are not eligible for the board. There are a range of justifications for potential dismissal of the chairman, for which the Council/Assembly has sole discretion. As regards the other Council/Assembly members, they can be recalled from their function by the relevant organization that they represent.

233. A. Hesse, *Rundfunkrecht*, p. 176, recital 121.

The budgetary resources of the State Media Authorities mainly derive from a set percentage of the public broadcasting license fees, administrative fees and fines. They are subject to annual financial external auditing regarding their spending by the relevant courts of auditing, and are sometimes subject to checks by private auditors. However, they are not specifically accountable to an entity, as they are under (limited) legal supervision by the relevant regional state authorities. There are some reporting obligations for some of the authorities, though these are not backed up by the threat of sanction. As a rule, only the courts have the power to overturn the decisions of the State Media Authorities.

The public service Broadcasting Councils consist of between 26 and 77 members. They are composed of members of different social groups and organizations, mostly represented by officials (e.g. trade unions, women's associations, churches, and political groups). The Broadcasting Council is intended to reflect a cross section of the population. The members are mostly delegated directly by each respective organization entitled to a seat on the council by law. They are only accountable to the public at large and not bound to orders by the organizations they represent. Council membership for members of national or regional governments or parliaments (including EU-level) is limited to a certain number determined by law. In the case of ZDF, the council members are nominated only and then get appointed by the minister president, a minister appointed by the prime minister of the Land in charge. There is an ongoing debate in relation to this appointment process, focusing on factual or possible government and political influences during nomination and appointment procedures (see section 2.2.1).

The terms of office for Council members range from five to nine years and reappointments are usually possible. There are established rules to guard against conflicts of interest, especially holding positions in government—with explicit exceptions for those delegates from government that were appointed according to the law.

The Councils are equipped with staff and budgets. In principle, they are not accountable to any entity although they are under (very limited) legal supervision by the relevant regional state authorities.

In sum, the law does ensure that broadcasting regulation is independent. With regard to the press sector, the German Press Council is a self-regulatory body. Hence its independence is assured by virtue of it being neither part of state governance nor dependent on state-related financing.

7.2.3 Digital Licensing

There are distinct licenses covering the right of commercial operators to broadcast in general, and access to specific frequencies on which their services are to be provided. As already mentioned, the process of licensing is structured by the media laws of the states, and, for nationwide broadcasters by the Interstate Treaty on Broadcasting (RStV). Regarding market entry, the broadcaster has to fulfil only general requirements (e.g. reliability, sincerity). Moreover, the RStV (see Art. 26-30 RStV) as well as the media laws of the states contain provisions designed to prevent the licensing of an individual broadcaster that is likely to command excessive market power. Based on the audience market share model, the system establishes a cap at 30 percent of the broadcasting market in general, with some more specific exemptions and considerations. It is the responsibility

of the Commission on Concentration in the Media (*Kommission zur Ermittlung der Konzentration im Medienbereich*, KEK) to determine whether prospective licensees will satisfy this requirement.

Regarding the allocation of frequencies to broadcasters, the media laws of the states implement two-step procedures:

- In the first step, it has to be decided whether a freed-up frequency gets allocated to public service or to private broadcasters. Usually media laws permit procedures resulting in mutual consent between private broadcasters and public service broadcasters. If there is no agreement, the laws provide relevant criteria for a state decision, e.g. ensuring that the license will further the statutory broadcasting provisions for diversity, consideration of local and regional concerns, minority interests, etc.
- In the second step, available frequencies are advertised for allocation publicly by the State Media Authorities. Private broadcasters and telecom providers can then apply for these frequencies. The decision of allocation is made by the appropriate State Media Authority on pre-defined legal grounds, e.g. preferring applicants who have the ability to promote diversity, who report on local and regional events, who consider diverse opinions, whose proportion of self-produced content is relatively high (“beauty contest”). The decision on which of the applicants will be awarded the license is open to appeal by the competitors. All in all, the allocation procedures can be seen as fair.

Some state media laws quote different additional requirements. For instance, in some states it is stipulated by media law that broadcasters must provide assurance that a given quota of their program contents will be produced in the respective state, a condition which has been challenged by the European Commission as being discriminatory. Foreign broadcasters, however, do not need a license for retransmission via cable or satellite, if their program observes the rules of the European Convention on Transfrontier Television. However, these broadcasters also have to be aware of the regulations laid down in the Interstate Treaty on Broadcasting.

There are no licensing obligations for press outlets or for telemedia services, provided they do not require allocation of spectrum. Art. 20 sec 2 RStV contains procedural rules for the decision as to whether a service falls under the provisions for broadcasting or telemedia services.

7.2.4 Role of Self-regulatory Mechanisms

The print sector is characterized by self-regulation: The German Press Council is the central organ when it comes to the self-regulation of the press. It issues the Press Code, which contains rather ethical rules for journalists and publishers. Though the code is not a formal law, it is binding for journalists and publishers that have accepted and signed it. Since 2008, the Code can be signed by publishers of online content, too. Before that, only publishers of printed press products could join the Code. However, the ethical standards the Code sets up have not been changed in view of digitization content-related provisions do not differentiate between printed press and online press. As mass media outlets are privileged in the field of privacy (data protection laws are not applicable to a great extent to journalistic publications), the Press Council is responsible for ethical standards in the field of privacy and data protection in editorial offices since 2001. The Privacy Code does not differ between online or offline data processing during journalistic work.

As the Codes of the Press Council are only applicable to publishers who have signed it, other outlets are not obliged to follow these rules. Court decisions, however, often refer to the contents of the Codes when interpreting standard press laws. By doing so, the ethical standards of the Press Council become formal jurisdiction to some extent, resulting in de-facto standards for all journalists (see also section 4.1.2). In the field of youth protection, following the regulatory concept of “regulated self-regulation”, the KJM can certify self-regulatory bodies in advance. As long as broadcasters and providers of telemedia that are members of these approved institutions act in accordance with the judgments of the self-regulatory bodies, the state authorities are not allowed to impose sanctions on the broadcaster or provider. However, this self-regulatory “protection shield” depends on the decision of the self-regulatory body being within the scope of their discretionary power itself. For television, the Voluntary Self-Regulation of Television (*Freiwillige Selbstkontrolle Fernsehen*, FSF) is the certified self-regulatory body, whereas for telemedia services, the Voluntary Self-Regulation of Multimedia Service Providers (*Freiwillige Selbstkontrolle Multimedia-Diensteanbieter*, FSM) has gained certification by the KJM. The co-regulatory system was evaluated in 2007 and was found to be working properly all in all, albeit with some room for improvement.²³⁴

7.3 Government Interference

7.3.1 The Market

To our knowledge, there are no cases of interference by state authorities that distort the media market. There is one case where the parliaments of the states decided not to raise the broadcasting license fee by as much as the KEF had proposed. The Constitutional Court later claimed this decision unconstitutional. The proposed rise in fees has been implemented retroactively.

The online activities of public service broadcasters in Germany have been in the center of political debates during the last years. The Constitutional Court has made clear that the notion of broadcasting is open to technological developments. As the public service providers are obliged to provide basic broadcasting services, this understanding resulted in the extension of their activities to online environments, too, where private broadcasters and print publishers feared market distortions. The issue of the growing merits of German PSBs came to a climax with the agreement reached between Germany and the European Commission in April 2007 (“*Beihilfekompromiss*”, state aid compromise).²³⁵ The legal implementation of this compromise resulted in the so-called Three-Step-Test. In the Interstate Treaty on Broadcasting, the procedures for public service broadcasters starting new online services or modifying existing online services are now specified. The broadcaster has to examine in advance whether the new service is part of its mission and thus corresponds to the democratic, social, and cultural needs of the society, whether it contributes to the quality of media competition, and what the expenditure planned for providing the service will be.²³⁶

234. See Hans Bredow Institute (ed.), *Analyse des Jugendmedienschutzsystems. Jugendschutzgesetz und Jugendmedienschutz-Staatsvertrag. Endbericht* (Analysis of the Protection of Minors. Protection of Young Persons Act and Interstate Treaty on the Protection of Minors. Final Report), Hamburg, 2007. See http://www.hans-bredow-institut.de/webfm_send/104 (accessed 5 April 2011).

235. K (2007) 1761 endg. in the procedure E 3/2005; Press Release IP/07/543, Brussels, 24 th April 2007.

236. Cf. W. Schulz, *The Public Service Broadcasting Mandate Seen as the Process of Its Justification*. Berlin, 2008.

7.3.2 The Regulator

There are no cases known of regulators abusing their powers.

7.3.3 Other Forms of Interference

There are no known cases involving the exertion of extra-legal pressures on digital media.

7.4 Assessments

German media laws provide technology-neutral norms that are linked to different services. As such, digitization has not presented significant problems for the regulatory or legal framework. Regarding digital television, the switch-over has been accomplished in a relatively orderly and organized manner.

However, the service-centered regulation approach is being challenged by an increasing number of hybrid services, and there is a question over whether the current regime is adequate in the context of a converged media environment.

Moreover, the traditional subject of German media law has been the provider of a service or content. While this approach has been functional in the pre-digital age, recent developments present a challenge to this concept. Interconnected, aggregated and platform-based micro-information, produced by many and through structurally different entities, may render this regulatory focus ineffective. These issues converge on the critical challenge confronting German media law at present: who is the *provider*? And further, what is the provider—especially intermediaries like search engines, user-generated content platforms, forum administrators—responsible for when it comes to content by third parties? It cannot be ruled out that legal uncertainties provoked by the limitations of existing laws in this field may threaten the digital promise of open and free-flowing information.

The German government and states do monitor new developments quite thoroughly and try to react to them. Platform regulation for new intermediaries in the broadcasting sector is a case in point. However, fast and ever-changing developments, new technologies, services and content types put a strain on law-making procedures. To optimize the responsiveness of media policy in the current climate, some fundamental changes in regulation approaches would have to be made.

Regarding broadcasting and press, no noticeable changes have been observed. There are more procedures against harmful content on the internet, particularly as regards the protection of children and minors. This is partly the result of a shift in supervisory authorities in this field, from regional governments to State Media Authorities and their centralized organ KJM, leading to a stronger enforcement of legal provisions.

Besides this, some new legal acts have been proposed or implemented in the field of digital media that were affecting civil rights (e.g. data retention provisions in the Telecommunications Act, which were declared

unconstitutional by the constitutional court in 2009; provisions for DNS blocking procedures in the case of child pornography, which are not enforced because of doubts over their constitutionality; a draft for an amended Interstate Treaty on Youth Media protection that has not been ratified by all state parliaments, also owing to an outcry from net activists). As in many other countries, there is an ongoing debate regarding the balancing of freedom on the one hand and security on the other.

There have been no remarkable changes when it comes to formal consultations. However, the German “net community”, i.e. bloggers and activists in the field of digital media and net policy, is strengthening and becoming more vocal in its criticism of public policy decisions concerning digital media. It is foreseeable that future law-making processes, at least those that affect media policy, will have to consider how to incorporate these forums into their procedures.

Regarding digital broadcasting, three main legal provisions have had a positive impact on diversity and pluralism:

- The change from one-step broadcasting licensing to a two-step procedure (less requirements for the sole permission to broadcast, higher requirements when it comes to allocation of frequencies to a broadcaster). This led to lower licensing hurdles and more legal certainty regarding the operations of webcasters.
- Must-carry rules for digital cable providers, and diversity-related selection procedures regarding DVB-T program lists, have helped to foster diversity to some extent, as more channels have become available via terrestrial distribution.
- Strong safeguards against monopolies and concentrated media power have ensured a degree of healthy competition in new media markets. In conjunction with possible positive considerations for providing regional news and/or ensuring a quota of independent producers, these established legal provisions can potentially become more effective still in fostering pluralism and diversity.

8. Conclusions

8.1 Media Today

The digitization of terrestrial television is complete; the reception of digital satellite television is widespread; and in 2012, all analog satellite reception will cease. The digitization of cable television is lagging somewhat, because cable subscribers have to pay an extra charge for digital channels. The digitization of radio so far has failed altogether and in 2011 there will be a new start with the advanced standard DAB plus. Overall, the digitization of broadcasting has brought more choice of both public and private channels to the public. With the new channels the broadcasters are trying to better serve special interests, but the audience is moving slowly.

The internet is providing better and faster access to a broader supply of information, entertainment and advertising, to a critical mass user-base. Access in some rural areas is still patchy, however, and specific spectrum frequencies were assigned to redress this in 2010.

Newspaper and magazine circulations are declining. But all major news providers offer a wealth of content via the internet—often free of charge—where they face strong competition principally from public broadcasters, search engines and content aggregators. Whereas access to the newspaper market is hardly possible for new entrants, the internet opens plenty of possibilities to address a target audience.

8.2 Media Tomorrow

The media system in Germany is diverse in a number of respects and includes offers for all social groups and minorities. Digitization heralds greater plurality and diversity as traditional media lose their dominant market positions in news selection and interpretation.²³⁷

237. Cf. O. Jarren, „Krise der Eliten“ („Crisis of the Elite“), in *epd medien* 39/2010, pp. 23–24.

The business model for the press will come under increasing strain, however, as both readers and advertisers continue to migrate online. It remains to be seen whether conventional media companies will be able to offset declining newspaper revenues through online advertising, subscriptions, and/or content syndication.

IPTV and web television will be used more widely, creating more internet traffic and rising costs for broadcast transmission. The consequences may be different payment models for internet traffic, with specific payments for high-quality and high-speed transmission.

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List of Abbreviations, Figures, Tables, Companies

Abbreviations

3G	Third Generation
AGF	Television Research Partnership (<i>Arbeitsgemeinschaft Fernsehforschung</i>)
ALM	Association of State Media Authorities for Broadcasting in Germany (<i>Arbeitsgemeinschaft der Landesmedienanstalten</i>)
ARD	Association of German Public Service Broadcasting Corporations (<i>Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland</i>)
AS&S	ARD Sales & Service GmbH
BLM	Bavarian Regulatory Authority for Commercial Broadcasting (<i>Bayerische Landeszentrale für neue Medien</i>)
BNetzA	Federal Network Agency (<i>Bundesnetzagentur</i>)
BWahlG	Federal Elections Act (<i>Bundeswahlgesetz</i>)
CAR	Computer-Assisted Reporting
CDU	Christian Democrat Union (<i>Christlich Demokratische Union</i>)
CSU	Christian Social Union (<i>Christlich Soziale Union</i>)
DAB	Digital Audio Broadcasting
DNS	Domain Name System
DSL-TV	Digital Subscriber Line TV
DVB-C	Digital Video Broadcasting—Cable
DVB-S	Digital Video Broadcasting—Satellite
DVB-T	Digital Video Broadcasting—Terrestrial
EPG	Electronic Program Guide
ETSI	European Telecommunications Standards Institute
EU	European Union
FDP	Liberal Party (<i>Freie Demokratische Partei</i>)
FSF	Voluntary Self-Regulation of Television (<i>Freiwillige Selbstkontrolle Fernsehen</i>)
FSM	Voluntary Self-Regulation of Multimedia Service Providers (<i>Freiwillige Selbstkontrolle Multimedia-Diensteanbieter</i>)

GDP	Gross Domestic Product
GNI	Gross National Income
GVK	Conference of Chairpersons of the Decision-Taking Councils (<i>Gremienvorsitzendenkonferenz</i>)
GWB	Act against Restraints of Competition (<i>Gesetz gegen Wettbewerbsbeschränkungen</i>)
HGB	German Commercial Code (<i>Handelsgesetzbuch</i>)
IPTV	Internet Protocol Television
ITU	International Telecommunication Union
IVW	Information Association for the Ascertainment of Distribution of Advertising Media (<i>Informationsgemeinschaft zur Feststellung der Verbreitung von Werbeträgern</i>)
JMStV	Interstate Treaty on the Protection of Minors in the Media (<i>Jugendmedienschutz-Staatsvertrag</i>)
KEF	Commission for the Assessment of the Financial Requirements of Public Broadcasters (<i>Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten</i>)
KEK	Commission on Concentration in the Media (<i>Kommission zur Ermittlung der Konzentration im Medienbereich</i>)
KJM	Commission for the Protection of Minors in the Media (<i>Kommission für Jugendmedienschutz</i>)
LMG	State Media Law (<i>Landesmediengesetz</i>)
MABB	Media Institute Berlin-Brandenburg (<i>Medienanstalt Berlin-Brandenburg</i>)
MPEG	Moving Picture Experts Group
NGO	Non-Governmental Organization
PC	Personal Computer
PDF	Portable Document Format
PPP	Purchasing Power Parity
RÄndStV	Amendment to the Interstate Broadcasting Treaty (<i>Rundfunkänderungsstaatsvertrag</i>)
RStV	Interstate Treaty on Broadcasting and Telemedia (<i>Rundfunkstaatsvertrag</i>)
RTL	Radio Télévision Luxembourg
StGB	German Criminal Code (<i>Strafgesetzbuch</i>)
T-DMB	Terrestrial Digital Multimedia Broadcast
TKG	Telecommunications Act (<i>Telekommunikationsgesetz</i>)
TMG	Telemedia Act (<i>Telemediengesetz</i>)
TV	Television
UGC	User-generated Content
U.S.	United States (of America)
USB	Universal Serial Bus
VDSL	Very High Data Rate Digital Subscriber Line
VOD	Video on Demand
VPRT	Association of Commercial Broadcasters and Audiovisual Services in Germany (<i>Verband Privater Rundfunk und Telemedia</i>)
VoIP	Voice over IP
WWF	World Wildlife Fund
ZAK	Commission on Licensing and Supervision (<i>Kommission für Zulassung und Aufsicht</i>)
ZAW	Central Association of the German Advertising Industry (<i>Zentralverband der deutschen Werbewirtschaft</i>)
ZDF	Second German Television (<i>Zweites Deutsches Fernsehen</i>)

Figures

Figure 1.	Rural urban breakdown 2008 (% of total population)	11
Figure 2.	Ethnic composition (% of total population)	11
Figure 3.	Religious composition (% of total population)	12

Tables

Table 1.	Economic indicators 2005–2012 (estimates start after 2009)	13
Table 2.	Electronic media equipment at home 2005–2010	14
Table 3.	Platforms for the main television reception and digital take-up 2005–2010.....	15
Table 4.	Total internet subscriptions as % of total population and total active SIM cards as % of total population, 2005–2010	16
Table 5.	Expenditure of time for selected media use 2005 and 2010	17
Table 6.	Percentage of internet users in different age groups 2001, 2005 and 2010	18
Table 7.	Television news providers 2005–2010 (market share of viewing time in %).....	19
Table 8.	Radio news providers 2005–2010 (daily reach in million)	20
Table 9.	Newspapers 2005–2010 (paid circulation in ‘000)	21
Table 10.	Magazines 2005–2010 (paid circulation in thousands)	22
Table 11.	Websites with news reporting 2005–2010 (visits per month in million)	22
Table 12.	Viewers and market shares of television news 2005–2010 (viewers aged 3+ years)	23
Table 13.	Percentage of information and infotainment of the total output in the main television channels of Das Erste, ZDF and the regional television channels of the public broadcasters 2005–2009 (in %)	27
Table 14.	Images of public and private television programs 2005 and 2010 (in %)	29
Table 15.	Top 10 most popular websites that among other types of content provide user-generated content according to IVW in 2010	31
Table 16.	Number of users and of visits of social networks in Germany in 2010	33
Table 17.	Frequency of using specific functions in social networks with their own profile 2010 ..	35
Table 18.	Revenues of public broadcasters in Germany 2005–2008 (€ million)	66
Table 19.	Net advertising revenues of broadcasters 2005–2008 (€ million)	67
Table 20.	Revenues and expenditures of commercial television companies 2005–2008 (€ million)	67
Table 21.	Revenues and expenses of private radio companies (€ million).....	68
Table 22.	Net advertising revenues of vehicles for advertising—not including production costs 2005–2010 (€ million).....	69
Table 23.	Structure of revenues of German subscription newspapers in West Germany 2005–2009 (in %).....	69

Companies

ARD Sales & Service

Associated Press AP

Axel Springer

dapd nachrichtenagentur

Deutsche Bahn

Deutsche Presse-Agentur

Deutsche Telekom

Deutscher Depeschendienst

E-Plus Gruppe

Google

iesy Hessen

ish NRW

Kabel BW

Kabel Deutschland Holding

Kohlberg Kravis Roberts & Co. (KKR)

Liberty Global

Media Broadcast

News Corp.

Orion Cable

P7S1 Holding L.P.

Permira

Premiere

PrimaCom

ProSiebenSat.1 Media

Providence Equity Partners

RTL Group

Saban Capital Group

SBS Broadcasting Group

Sky Deutschland

T-Systems Media Broadcast

TDF Group

TeleColumbus

Telefónica Germany (Telefónica O2)

Unitymedia

Vodafone D2

Mapping Digital Media is a project of the **Open Society Media Program** and the **Open Society Information Program**.

Open Society Media Program

The Media Program works globally to support independent and professional media as crucial players for informing citizens and allowing for their democratic participation in debate. The program provides operational and developmental support to independent media outlets and networks around the world, proposes engaging media policies, and engages in efforts towards improving media laws and creating an enabling legal environment for good, brave and enterprising journalism to flourish. In order to promote transparency and accountability, and tackle issues of organized crime and corruption the Program also fosters quality investigative journalism.

Open Society Information Program

The Open Society Information Program works to increase public access to knowledge, facilitate civil society communication, and protect civil liberties and the freedom to communicate in the digital environment. The Program pays particular attention to the information needs of disadvantaged groups and people in less developed parts of the world. The Program also uses new tools and techniques to empower civil society groups in their various international, national, and local efforts to promote open society.

Open Society Foundations

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 70 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

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