

Changing the Rules of the Game: Strategic Institutionalization and Legacy Companies’ Resistance to New Media

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Drawing from communication research, history, and organizational studies, this article uses a new, interdisciplinary approach to study how legacy media companies—understood as established players in a specific media sphere—respond to the emergence of new media. The article examines the example of copyright legislation in news, using two case studies from Germany on radio in the 1920s and online news aggregators today. The article combines historical archival research with other qualitative research methods to explore when and why contemporary transitions follow similar patterns to the past. Our results show that legacy media companies frequently engage in what we term “reactive resistance” to reconstitute their media environment. Rather than just fighting new media companies on their own turf, legacy media pursue what we call “strategic institutionalization” to consolidate their business models.

Keywords: copyright, disruption, Germany, Google, legacy media, legislation, new media, old media, radio

This article examines how legacy media companies—defined as established players in a specific media sphere—actively seek to build institutions to safeguard themselves against new media. Although it might seem like legacy media just embrace developments in the media landscape or react defensively to them, in this article, we argue that these companies frequently engage in what we term *reactive resistance*. These firms seek not only to defend their business models, but also to create specific legal regulations to ward off new media companies’ gains. Beyond fighting new media on their own turf, legacy media pursue what we call *strategic institutionalization* to consolidate their business models. We thus propose a new framework for understanding legacy media’s reaction to challenges from new media.

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Date submitted: 2015–12–07

¹ We are grateful to Felix Oberholzer-Gee, Christian Pentzold, and the anonymous reviewers for their careful reading of drafts of this article and their valuable feedback.

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Here, we use the example of copyright legislation in news as a form of reactive resistance. Vested interests have long used the law to counter change as scholars of political economy have pointed out. In the 19th century, Karl Marx (1990) emphasized capitalists' resistance to "every conscious attempt to control and regulate the process of production socially" (p. 477). Nearly a century later, Joseph Schumpeter (2004) stated that barriers to economic innovation were not just part of innovation itself and the "psyche of the businessman," but also enforced by the social environment, especially by those "groups threatened by the innovation" (pp. 86–87). The Scribes Guild of Paris delayed the introduction of the printing press for 20 years (Mokyr, 1990, p. 179). With their conservative allies, they "sought laws to protect their monopoly" (Boorstin, 1983, p. 515) because they believed that printing presses destroyed the economic basis for calligraphy. The "invisible hand" of the market obviously does not determine the development of new media. In times of changing media, strategic institutionalization is commonplace.

This article takes a new approach to the well-researched area of new media in three distinct ways: object of study, geographical focus, and methodology. First, we study the reaction of legacy media, rather than new media, and argue that companies pursue active strategies to reconstitute the conditions of their media environment. We focus on one societal group—news publishers in Germany—and their strategies for reactively resisting new media. Second, we investigate the question of legacy media companies in Germany, giving scholars access to more case studies about media transitions. We also show that non-U.S. contexts can be equally valid testing grounds for new frameworks with broad applicability. Although the German legal system of civil law differs from Anglo-American common law, media companies pursue strategic institutionalization in both contexts. Third, we use an interdisciplinary approach combining communications studies, history, and organizational studies. The historical example examines the introduction of radio in the 1920s, and the contemporary case focuses on German media companies' reaction to online news aggregators, particularly Google. The first decade of radio actually looked surprisingly similar in the United States, Britain, and Germany despite their different legal traditions (Tworek, 2015). In both the 1920s and today, news suppliers reacted to the emergence of new media by pushing for novel legislation to protect their products.

By comparing strategies from different contexts, we tease out the factors that enable legacy media to succeed in strategic institutionalization. We use comparison across time, not space, to make our case. Rather than just battering down the hatches and defending their existing products, our cases show that companies actively seek to change the rules of the game. The active participation of politicians is vital here, we argue.

We first propose a framework for investigating organizations' strategies to combat new media. We then describe the methods for the original research in the two examples before examining the four types of reactive resistance: rhetorical, economic, political, and legal. In particular, we add the political dimension and argue that it is the vital enabling factor for reactive resistance.

Theoretical Framework

Obviously, new media companies do not suddenly replace older organizations in the realm of communications. Their interaction is much more complex, resulting in hybrid systems of old and new

media (Chadwick, 2013). This makes it difficult to provide rigorous categorizations and definitions (Peters, 2009). We use the term *new media* like our objects of study: Newspaper organizations saw emerging radio companies in the 1920s and online news aggregators today as new media.

Today and in the past, legacy media organizations in journalism, music, and film see new media as both opportunities and threats (e.g., Boczkowski, 2004; Hindman & Thomas, 2014; Picard, 2001; Spar, 2001; Wu, 2011). When technologies such as radio or television emerged, legacy organizations adapted to new audience expectations and changed their internal structure (Heflin, 2010; Patnode, 2011). However, in organizational culture and risk management, new media in their field of action are also frequently framed as a threat to businesses as well as organizations' societal and political power. These organizations are caught in a paradigmatic "lock-in" (e.g., Gilbert, 2005, 2006). Popular discussions often highlight organizational resistance to new media, characterizing it as "incumbent inertia" (Gilbert, 2005), "path dependency" (Koch, 2008), or "structural conservatism" (Bogart, 1995). However, studies using these theoretical approaches mainly focus on managerial strategies for overcoming, changing, or breaking these inertia and paths. Reactive resistance as an alternative strategy has received little sustained attention in this scholarship.²

Whereas Benkler, Roberts, Faris, Solow-Niederman, and Etling (2013) examine how civil resistance prevented legislation such as the Stop Online Piracy Act and the PROTECT IP Act, our article analyzes how legacy media sometimes succeed in their legal aims. In what follows, we propose a framework for investigating how legacy media companies use strategic institutionalization as a form of reactive resistance to new media.

Communication Studies: The Overall Development of the Media Environment

Communications scholars who examine media transitions generally focus on changing user behaviors and broader theoretical implications for the concept of the public sphere (e.g., Gerhards & Schäfer, 2010). Only a small body of literature considers how media companies react to new media. Our research incorporates resistance into models of the overall development of the media environment. Lehman-Wilzig and Cohen-Avigdor (2004) propose a life cycle of new media with "defensive resistance" as one of the central building blocks. The final stage of their natural life cycle model foresees three options for traditional media companies: adaptation, convergence, or obsolescence. However, legal and regulatory problems, as they call them, receive very little attention.

In his model, Napoli (1998, 2011) divides resistance to new media into three defensive categories. First, rhetorical resistance involves proposing certain arguments or narratives that support one's position in public discourse (Hindman & Thomas, 2014). Second, legal resistance uses current legislation to try to win court cases against new competitors. Third, economic resistance entails denying new media access to resources that they require (Napoli, 2011).

² Often firms pursue multiple strategies simultaneously to deal with new media and modify these strategies over time. Indeed, an outcome can appear strategic in retrospect, although it actually emerged through adapting to circumstances on the ground (Mintzberg & Waters, 1985).

These studies mainly focus on how new media develop or how legacy media operate within a given environment rather than exploring how these organizations seek to transform the regulatory environment. Our cases by contrast investigate how media organizations sought actively to create new laws rather than simply go to court based on the current judicial situation.

Communication History: Discovering the Political Field

Communication historians have long investigated how legacy media companies react to the power struggles with new media companies. McChesney (1993) reconstructed the political wrangling over the interwar U.S. broadcasting system between radio companies and reform movements. Companies tried to create dominant discourses about the media environment to legitimate the status quo where the state provided high power stations to large radio companies. Secretary for Commerce and later U.S. President Herbert Hoover established a regulatory system of corporate liberalism for radio that used "experts in integrating liberal ideals within a corporate economy dependent on consumer demand" (Slotten, 2000, p. ix; Streeter, 1996). Radio companies argued in the 1930s for continuing corporate liberal ideology. Similar arguments recurred in discussions about regulating news publishers in the 1940s (Pickard, 2015; for Germany, see Knoche, 1978; Richter, 1973). Yet, even in the United States, media companies had to toe a fine line between rhetorical praise of the free market and cooperation with regulatory authorities, principally the Federal Communications Commission (Moss & Fein, 2003; Tworek, 2015). Media companies' rhetoric of the free market often strongly contradicted their cooperation with government officials and agencies.

A historical comparison of Great Britain and the United States from the late 17th century to the present has argued that "institutional arrangements have been, on balance, more important than market incentives and technological imperatives in creating and sustaining the organizational capability necessary for high-quality journalism" (John & Silberstein-Loeb, 2015, p. 2). The arrangements could be private, such as cartels, or public, such as government monopolies or regulation. Firms might also pursue a mixture of public and private strategies.

Such historical studies emphasize that many vital decisions and discourses about media occur within the realm of politics (or political economy). We cannot understand media firms' reactive resistance without incorporating their interaction with government agencies and politicians. Our framework thus includes the political alongside Napoli's (1998) three categories of the economic, rhetorical, and legal.

Organizational Studies: Focusing on Companies' Strategies

In economics as well as organizational and management studies, there is a growing body of literature on how organizations react strategically toward their external conditions. Economics scholars and political economy studies speak of organizations' "rent-seeking behaviors" (Krueger, 1974) or "directly-unproductive profit seeking activities" (Bhagwati, 1982) when companies use established institutional powers to protect their markets and vested rights. Recently, scholars have built on these approaches to explore "nonmarket strategies" that aim to alter the rules of the game to a company's advantage (Lawton & Rajwani, 2015). Revenues from non-market-based activities are increasingly seen

as an important driver of economic value. Although these activities aim to influence non-market-based negotiations first, the results can eventually expand a company's market-based revenues (Buschow & Winter, 2012).

Contrary to older organizational theories such as the contingency approach, Baron (2013) stresses that companies can actively manage their environment. We draw on this insight to argue that media companies often actively plan to lobby to change the regulatory environment. However, media companies differ from companies in other industries in their strategic measures and competencies (Buschow, 2012). Due to their unique ability to publicize their own priorities, they can apply rhetorical strategies more efficiently than other actors who need to buy attention via PR, advertisement, or lobbying. Because the media mediate between politicians and the public, politicians orient themselves to these companies and depend (to some degree) on them. Thus, we also incorporate the political perspective emphasized by historians to understand why politicians and lawmakers choose to cooperate with media companies on legislation.

***Strategic Institutionalization:
A New Framework to Understand the Creation of Institutions***

The concept of strategic institutionalization³ integrates arguments from these three disciplines and combines them in a neoinstitutional framework (Buschow, 2012; Lawrence & Suddaby, 2006; Ortmann & Zimmer, 1998). Institutions are defined as systems of regulatory, normative, and cognitive rules, codified in forms of law or implicitly grounded in people's taken-for-grantedness (DiMaggio & Powell, 1983; Scott, 2013). Whereas the theory of neoinstitutionalism had previously understood institutions as fixed and mainly explored the effects of institutions, scholars now also examine the processes and drivers involved in the creation, maintenance, and disruption of institutions (Lawrence & Suddaby, 2006; Lawrence, Suddaby, & Leca, 2009). Our article focuses on how certain actors sought to create new institutions as a strategic measure of reactive resistance.

Strategic institutionalization provides a lens for understanding the four methods of reactive resistance:

1. Economic: Building coalitions with powerful and wealthy actors, denying access to resources, countering accusations of monopoly.
2. Rhetorical: Defining boundaries, memberships, standards, and constructing identities; demonizing new competition; symbolizing a need for action; normative, moral, and economic justifications of institutions.

³ The concept differs from the processes of institutionalizing new media described in communication sciences (e.g., Meyrowitz, 1986). Our work focuses on the institutionalization of new laws and regulations, not on media in general.

3. Political: Cooperation with politicians, lobbying, demonstrating potential international prestige to politicians.
4. Legal: Taking others to court, pushing for new laws, creating new legal institutions.

We now use this broad framework to reconstruct strategies used in two case studies: a historical example on the introduction of radio in the 1920s and a contemporary case on news aggregators.

Method

Both cases focus on reactions to the development of new media companies in Germany. One examines an attempt to promulgate a law to protect news against misappropriation over radio in the 1920s and early 1930s; the other examines the first successful creation of an ancillary copyright law ("Leistungsschutzrecht für Presseverleger") to protect press publishers against online news aggregators, especially Google News, which replicate snippets (small excerpts) of online news articles (e.g., Jasiewicz, 2012; Kowol & Picard, 2014). The new technologies underpinning these companies—radio and Internet—are surprisingly comparable. They both reached multiple recipients simultaneously and could operate as (sometimes wireless) technologies that crossed borders. Both technologies were also used to send news from sources to news suppliers, but ran the risk that the news could be swiftly appropriated by competitors. Both technologies also inspired similar reactions from legacy media companies that sought to reconstitute the legal environment. Finally, in both cases, politicians became invested in changing the media landscape for their own pragmatic reasons that we discuss below.

The sources for each case determined the methods of data collection. Data collection on the contemporary case happened in 2011. Semistructured interviews were conducted and transcribed in May and June 2011 (Buschow, 2012). Interviewees had to be experts in the field, operationalized by involvement in the legislative process (Flick, 2014). Texts relevant for investigation were selected on the basis of keywords. In-depth archival research for the historical case occurred from 2009 to 2011. The archival material included the relevant files on an international Conference of Press Experts in 1927 that addressed the legal protection of news as well as on the drafting of a national law in Germany to protect news. There are very few publications on the legal protection of news in Germany (Prantl, 1983).

We applied a qualitative content analysis of the original material and derived analytical categories both deductively from the theoretical framework as well as inductively from our data (Kohlbacher, 2006; Mayring, 2000). Coding happened separately for each case. Afterwards, we compared our results for each category to tease out the similarities and differences that we describe in the following section.

Table 1. Data Sources.

Source	Historical case: Legal protection of news across borders	Contemporary case: Ancillary copyright for press publishers
Trade journals, magazines and newspapers	<i>Deutsche Presse, Zeitungs-Verlag, The London Times, The New York Times</i>	<i>epd Medien, Heise.de, Horizont, Kress Report, Der Spiegel, Die Welt, Financial Times Deutschland, Focus, Frankfurter Allgemeine Zeitung, Frankfurter Rundschau, Hamburger Abendblatt, Handelsblatt, Stuttgarter Zeitung, Süddeutsche Zeitung, taz</i>
Archives	League of Nations Archive, Geneva; Bundesarchiv (German Federal Archive), Berlin; Politisches Archiv des Auswärtigen Amts (Political Archive of the Foreign Office), Berlin; Bundesarchiv-Militärarchiv (German Federal and Military Archive), Freiburg; Archives Nationales (National Archives), Paris	-
Interviews	-	Eight semistructured interviews with managers, public affairs directors, lawyers, and politicians involved in the legislation process
Contemporary academic publications	<i>Zeitungswissenschaft</i> , contemporary books by media law experts	Various books, expert opinions, and journals, especially from German law studies, e.g., <i>Zeitschrift für Urheber- und Medienrecht</i> (ZUM)
Citation for these primary sources	Tworek (2014)	Buschow (2012)

Results

Since 2006, publishers' associations such as the World Association of Newspapers and News Publishers have demanded global regulation against news search engines and other aggregators. Mainly new media companies launched these very popular platforms in the early 2000s. These services pull headlines and short snippets (text excerpts) of original news content from thousands of online news sources worldwide and aggregate them on one website based on the user's individual search terms. In Germany, the discussion on potential regulation started in 2009, when major German publishing houses began to advocate for legislation publicly and in the political realm because the publishers believed that aggregators' practices went beyond fair use (Buschow, 2012). Beforehand, publishers had negotiated the prices for snippets with Google, but the search engine company rejected the idea of paying to list the content excerpts. Google argued that it actually provided a service for publishers by directing millions of users to the original content.

Publishers saw things differently. They felt threatened by Google and wanted to force new media companies to pay for using snippets by establishing a new exclusive property right: an ancillary copyright for press publishers. They were opposed by corporations that would be negatively affected by the new regulation as well as by trade associations and online activists. After four years of a drawn-out legislative process, the law was watered down in March 2013 to allow news aggregators to display "very short excerpts" of news articles for free. However, that created a very unclear legal situation. Google responded by threatening to opt all German publishers out of Google News and asking them to waive their right to compensation if they opted back in. In October 2014, publishers decided to allow Google to show their snippets for free. However, they simultaneously sued the search engine for allegedly failing to implement the law. Currently, German publishers do not benefit from the law that they prompted and courts will decide on implementation.

The 1920s saw an astonishingly similar attempt at strategic institutionalization following the introduction and rapid spread of radio. Public radio began in Germany in 1923. By 1928, there were two million registered listeners. Although little news was available on the radio, news agencies used radio to disseminate news to newspapers and they also provided some news for the radio. The main news agency, Wolff's Telegraphisches Bureau (hereafter: Wolff), sent news over radio to its newspaper clients to provide news as fast as possible. But it could not control who received the news and someone might use the news commercially without paying for it. According to Georg Bernhard, chief editor of the prestigious *Vossische Zeitung* during the 1920s, journalists and newspaper publishers were less concerned about these problems. Newspapers kept their sales high by printing a news item first and gaining a reputation for scoops. A news agency, however, had to keep its thousands of newspaper subscribers by making them pay for wireless news rather than letting them copy that news from the radio for free (Tworek, 2014).

News agencies had worried since the mid-19th century about the misappropriation of their news. They had sought legal protections for news in vain through international agreements such as the Berne Convention of 1886, although certain limited protections from reprinting began to emerge in countries such as the United States in the first decades of the 20th century. Concerns about misappropriation became particularly acute with radio. In 1927, the League of Nations convened an international

Conference of Press Experts to discuss cross-border issues facing journalists (Lange-Enzmann, 1991). The German delegation included politicians and press representatives from newspapers and news agencies. One major agenda item addressed the legal protection of news across borders. The conference's final resolution stated that unpublished news should be protected internationally, but each national government could regulate published news as it wished. Starting with preparation for that international conference, the German government and news agencies worked to create a national law to protect "mixed news of factual content and news of the day." The Germans prevented the passage of any international law at the League of Nations so that they could promulgate their own national law at home. The German government intended this law to serve as a model for other countries wishing to protect news. After five years of intense debates, a final public draft was complete in April 1932. The law would have been enacted, but the Nazis came to power in January 1933. The Nazis restructured the German press and claimed in 1936 that this made any legal protection of news unnecessary.

Rhetoric

To enact legislation, legacy media companies had to argue for the illegality of the current situation. In both cases, the rhetoric of theft proved vital. Axel Springer's chief executive, Mathias Döpfner, compared Google's business model with "shoplifting." Christoph Keese, public affairs manager at Springer, said the search engine acted as if it were "a kind of Taliban," but later apologized for the comparison. These statements piggybacked on discussions about copyright violations in the music and film industries (using keywords such as "Internet pirates," "complimentary exploitation," and "creeping dispossession"), which in 2009 still played a vital role in Germany. An interviewee from the political arena stated, "This was an opportune moment because the demand for an ancillary copyright coincided with the parallel debate about copyright on the Internet."

These measures aimed to demonize new media and create boundaries between new and established competitors. The idea of news theft was integrated with the assertion that the practice was widespread, although it was trickier to provide direct evidence of financial losses or widespread copying. One government official in the 1920s, Kurt Häntzschel (1928), claimed that news theft occurred at "a previously unimaginable volume" (p. 78) since news agencies had started disseminating news over radio in 1924. In the contemporary case, the journalist and feuilletonist Hendrik Werner wrote in the national German newspaper *Die Welt* in 2009,

The robber barons of the Internet, who can hardly be countered effectively with cloudy cant and not at all through legal regulations, are also interested in other media products than books. The online services of several daily newspapers and periodical magazines are copied too and marketed to such an extent that it makes a mockery of any belief in the dignity of authorship. (p. 27)

Regardless of the actual data, these moral measures were presented to illustrate an urgent need for action. In the 1920s, the Interior Ministry argued that the German government would achieve a "moral victory" if it could create the space for national legislation on news during the Conference of Press Experts

at the League of Nations (Tworek, 2014, p. 567). From the publishers' perspectives, in the 1920s as well as today, the current laws were insufficient to tackle the challenges presented by new media.

In both cases, managers proclaimed that legal measures were the most important means to counter "news theft." Heinrich Mantler, head of the semiofficial news agency Wolff, called the proposition to protect news at the League of Nations "one of the most important, if not the most important item on the agenda" (Tworek, 2014, p. 567). For Mantler, it was imperative to find a legal solution that worked for news providers. Managers today also portray law as the only viable method to combat new media. Bodo Hombach, former managing director of the WAZ media group, has called the German ancillary copyright law "the most important political initiative for media for decades" (cited in Bouhs, 2009, p. 33) and the law's "strategic significance can hardly be overestimated" for Mathias Döpfner (cited in Renner, 2009, p. 7). Forecasts and speculation about deadlines in public also emphasized the urgency of the plans and the need for fast legal implementation.

Economics

As we might expect, economic resistance to new media played a central role for legacy media. The main news agency, Wolff, had worked as the semiofficial news agency of the Prussian, then German government since the late 1860s. Wolff was privately owned, but held a monopoly on disseminating governmental news. The agency cooperated with the government and journalists to send a delegation to the League of Nations conference. The final delegation was a powerhouse of German media. It included Wolff's director Heinrich Mantler, civil servant in the Interior Ministry and media law expert Kurt Häntzschel, and Georg Bernhard. The German delegation had worked behind the scenes before the conference to create a draft law and to build a coalition supporting the German resolution to mandate national legislation. The delegation had used the train journey to Geneva to secure agreement from the International Union of Journalists and the Association of Accredited Journalists. Indeed, the German delegation argued that so many other delegations had signed its resolution that it could no longer be considered a German proposal at all. After the conference and during the drafting process, news organizations coalesced around economic interests. Wolff often took the same positions as its main domestic rival, the Telegraph Union, and did not complain that the Telegraph Union was included in the consultation process (Tworek, 2014).

In the contemporary case, publishers tried to build a coalition of news companies and other organizations around protecting snippets (Buschow, 2012). They did this by directing public pleas to legislators. The initiating companies recruited more than 100 publishers to sign the "Hamburg Declaration on Intellectual Property Rights" in summer 2009, for example. These companies were the most profitable publishing houses in Germany, especially Axel Springer, one of the biggest European newspaper publishers. Publishers also offered their own expert knowledge and information on ancillary copyright that they had mainly gathered from the legal experts they had hired. The publishers' offer of support was also made public, for example, by Wolfgang Fürstner, CEO of the German magazine association VDZ, who said that the association would support "establishing an ancillary copyright for press publishers" (cited in Elfers, 2009, p. 8).

Such initiatives by publishers are expensive in time, money, and labor (e.g., in terms of staff costs, for the organization of conferences or meetings, gathering external legal advice, etc.), making economic resources central in the contemporary legislation process.

Politics (National)

In both cases, the economic interests of publishers coincided with the political goals of government officials. Officials hoped to promote the public interest by protecting companies that created news. It was also a response to lobbying by major media companies.

Newspapers have long attempted to use copyright to protect their products. In 1855, editors of 14 prominent German newspapers and the news agency Wolff petitioned the Federal Convention (Bundesversammlung) for copyright protection to stop smaller newspapers from copying news telegrams for 24 hours after publication. It was to no avail (Wadle, 1996).

Only when politicians and government officials were willing to intervene could reactive resistance actually be institutionalized. A law to protect news seemed to government officials to cement the social role of the press while protecting publishers' economic interests from the new technology of radio. Officials understood news as more than a commodity because it combined "economic with non-material interests" (Häntzschel, 1932, p. 210). The justification for the law argued that "an effective, self-sufficient and independent German news service" lay "in the public interest" (cited in "Ein Gesetzentwurf zum Schutze," 1932). Officials worried that if newspapers could copy news agencies too easily, news agencies would lose their customers and no longer have the funds to collect news in the first place.

German publishers and news agencies were consulted extensively during the drafting period and their fingerprints were all over the subsequent legislation. In 1927, the Press Department drafted the law to protect news in cooperation with the Ministry of the Interior. But government officials swiftly requested feedback from Wolff (Tworek, 2014). The publishers' association and other media organizations were also consulted during the drafting process.

Today's debate too revolves implicitly around connecting news' social importance and publishers' financial health. Publishers have framed the discussion around the ancillary copyright law as a battle for "high-quality journalism" and the public interest and emphasized how an ancillary copyright would help to finance this kind of journalism (Buschow, 2012).

Then as now, the press and politicians cooperated on the issue. The current law emerged partially from lobbying by the biggest European publisher, Axel Springer. Springer helped to develop the idea of regulating news and to ensure that it reached the relevant ministers. The political parties formed stances on the issue in the run-up to a German election, which enabled press publishers to gain a lot of attention and political approval for ancillary copyright. An association's representative stated in an interview, "From my perspective, it was a very interesting mechanism that would launch and clearly push this idea during a federal election, when each political party obviously depends to a certain degree on good press coverage."

After the German election in 2009, the coalition contract between Germany's then two ruling parties, the Christian Democratic Union of Germany/Christian Social Union in Bavaria and the Free Democratic Party, included a clause promising to promulgate a law to protect news. Publishers and their associations even created their own draft law in late 2009, presumably to serve as a model for the German government's legislative efforts.

Politics (International)

Wireless technologies are particularly likely to provoke international discussions on protecting news. News clearly had crossed borders for centuries. But wireless technologies such as radio and the Internet presented new issues. With radio in the 1920s, unauthorized listeners could access wireless news without paying the news provider. Although newspapers had copied each other rampantly during the 19th century, they could not copy a newspaper before it had printed an item supplied by a news agency. Now wireless theoretically allowed illicit listeners to scoop newspapers that had subscribed to a news agency. Because wireless could cross borders, it seemed clear that strategic institutionalization had to occur internationally. Furthermore, in both cases, Europeans worried about the technological and economic power of the United States. Legal measures seemed a method to counter concerns about American dominance.

International conferences on copyright to create the Berne Convention in the 1880s explicitly excluded "news matter or current topics" (*faits divers*). In the 1920s, news agencies tried several routes to create international legislation through the International Convention on Industrial Property and the Conference of Press Experts. For news agencies, international conferences were a way to raise awareness among national governments. The acting director of the legal section at the League of Nations, McKinnon Wood, found it

difficult to resist the impression that the press agencies are agitating on the international field, not because the question which they raise is really an international question, but because they do not know how to promote their ideas in the field of national legislation. (Tworek, 2014, p. 563)

McKinnon Wood was right that only the Conference of Press Experts piqued the German government's interest. Prior to the conference, the German government had shown little interest. Once the protection of the press was discussed internationally, the German government became invested because it offered a chance for Germany to shape international law. Importantly, the American Associated Press proposed internationalizing the American approach of protecting news through property rights (Silberstein-Loeb, 2014). Germany had just joined the League of Nations in 1927, and this conference would provide the German delegation with one of the first chances to show that Germany could be a major player on the world stage after defeat in World War I.

The German government hoped that a national law would serve as a model for other countries and increase Germany's international standing. The German government created press laws by collecting laws on the same matter from other countries. German law did not necessarily copy foreign laws, but

drafts might cite them or use them for inspiration. If Germany drafted a national law, officials thought, then other countries would surely consult it. One representative of the German news agency Wolff reported back from an international conference of news agencies in 1929 that the German draft law had created "great regard" for Germany (Tworek, 2014).

Contemporary German officials' interest was also sparked by global developments. The strength of multinational companies, particularly Google, spurred the German government to cooperate with media companies. In the 1920s, the Foreign Office and Interior Ministry hoped that a national German law would serve as a model for other countries just as German politicians today see themselves at the forefront of the fight against new media's invasion of privacy and "brutal information capitalism" as Sigmar Gabriel, federal economics minister, said (cited in Garside, 2014).

Discussions on the protection of news are omnipresent in Europe. Spain adopted a national law in December 2014 that forced Google to pay for snippets, leading to Google News closing in the country. An Austrian law based on the German model could be introduced in 2016. In France, Google paid a one-off sum of €60 million into a fund for innovative news deals to avoid government regulation. Not surprisingly, one of the interviewees emphasized that Germany was a kind of "a test balloon" (interviewee from civil society) for regulations on the EU level. This discussion recently began with the promotion of German politician Günther Oettinger to European Commissioner for Digital Economy and Society. However, it is still uncertain if the planned European copyright reform could contain an EU-wide ancillary copyright for press publishers.

Legal

Legal measures were clearly the ultimate aim in both instances. But each time, those pressing for the law did not think through the implementation. Both instances show the difficulty in legally defining news. Without a sufficiently watertight legal description of the object that needs protection, it is impossible to enforce legislation. In the 1920s and today, definitions proved debatable. The same terms and questions caused similar problems. Two major points proved contentious: the targets of the law and the length of protection. Even in the 1920s, no one concurred on whom the law should protect. The first German draft law simply protected authors of news items. The concept of a professional journalist remained contentious in Germany during that period and journalism was not a particularly respected career compared with, say, diplomacy or law (Requate, 1995). Even in Britain and the United States, the idea of a professional journalist was relatively new. Unlike lawyers or doctors, there are no specific qualifications to determine who would deserve protection under a law. Bloggers and interactive media have blurred the contemporary boundaries of professional journalism (Carlson & Lewis, 2015). But in the late 1920s, too, it was hard to define the creators of news. Did retired civil servants providing news count as professionals, for example? Later drafts changed the language to protect all "professional collectors of news," because this incorporated freelance journalists too (Tworek, 2014, p. 573). Originally, today's ancillary copyright law was only supposed to protect publishers. But after protests from bloggers and others, the law now protects anything "characteristic of a publisher." The law has also remained vague about what exactly counts as a search engine or as a news provider (Buschow, 2012).

The length of protection was similarly contentious. Debates raged for months about whether 12, 18, or 24 hours after publication would provide sufficient protection. It was even unclear whether publication occurred when a news item arrived at a newspaper office or when a newspaper landed in the hands of a reader. Many newspapers in the 1920s also published several editions per day. The timing varied, making it impossible to determine in retrospect precisely how many hours since publication had actually passed on a particular day (Tworek, 2014). Today, the ancillary copyright law in Germany protects news for a year. During discussions, however, journalists' trade unions had suggested protecting news for 15 years. Publishers had hoped for 50.

Then as now, many journalists were skeptical of using the law to protect news. In the 1920s, journalists outside the consultation process began to question the law's rationale entirely. Some believed, like many today, that current laws of copyright or unfair competition provided enough protection. Others thought that the law would simply consolidate the position of the major players in the news business, particularly news agencies and larger newspapers. One journalist from the Ruhr argued that current law prevented news monopolies: News on important events reached the "widest public" of all German people because smaller newspapers could appropriate reporting from publications (Quix-Mülheim, 1929). Critics have claimed that the ambiguities in ancillary copyright law today will benefit one profession in particular: lawyers. The trials and juridical discussions will simply supply employment for lawyers and courts. Ironically, the German publishers' association in the interwar period also warned that a law would lead to "a flood of trials" (Tworek, 2014, p. 573) that it did not want.

Outlook and Future Research Agenda

Our interdisciplinary framework proposes four elements to strategic institutionalization: rhetorical, economic, political, and legal. Politicians and lawmakers frequently differ in their approaches to strategic institutionalization. But this article has argued that the political dimension is key to understanding when legacy media companies succeed at institutionalizing their resistance to new media. Furthermore, politicians are likelier to act when the issue involves competition from international companies and the problem attracts attention on the global stage. That resistance may not shore up legacy media's business models in the long run, but it changes the rules of the game.

To build our framework, we examined how legacy media companies actively seek to build new laws to reactively resist challenging media developments. Communication research has so far spent little time on this question. Our article examined two case studies from the same country, but from different time periods and using different methodologies. Of course, the context differed radically in significant ways, ranging from the instability of the interwar German government to Germany's place in international organizations. The intention is not to be ahistorical, but to bring together different disciplines discussing a similar phenomenon. History offers a wealth of similar developments demonstrating the complex interdependency of variables over time (Wadhvani & Bucheli, 2014). Most significantly, we employed a methodology of comparison across time rather than across space. Historical comparisons offer new material for research on myriad aspects of communications and press policy.

Future research might work comparatively geographically as well as chronologically. It might tackle a broader range of case studies from places such as Australia or the United States, contemporary cases from Spain, Austria, or the European Union as well as examine other forms of strategic institutionalization, such as cartel law, data protection, or the right to be forgotten. Future work might also use the concept of strategic institutionalization to explore content taxes (Kowol & Picard, 2014). It would also be worth applying the framework to other media such as music, film, or television. Finally, research might investigate how the new ecosystem of social media and in-app news on platforms such as Facebook and Snapchat present new challenges, including the problem of generational differences in news consumption. The legislative process' relative slow-moving nature makes it hard for publishers to reactively resist new developments as fast as they emerge.

Publishers and news agencies have frequently tried to change their legal environment to protect their news. Although they operated within different legal frameworks of common and civil law, news agencies and publishers have pursued legal mechanisms to protect their news in multiple countries around the world. Australia introduced the first copyright law to protect telegraphic news in Victoria in 1871. A group of newspapers and the Australian Associated Press lobbied for the law in advance of the arrival of the first submarine cable to Australia. Because cables from Britain telegraphing news were expensive, the Australian Associated Press in particular wished to ensure exclusivity for the news that it had purchased from the British news agency Reuters. The law forbade unauthorized republication of news sent by telegraph for 24 hours after publication. The law was only temporary and lasted for a year, but similar laws were introduced permanently in South and West Australia. In Australia too, newspapers and the Australian Associated Press claimed that their investment in foreign news created a property right that should be legally protected from "theft" (Bently, 2004).

Similar attempts failed elsewhere. The American Associated Press lobbied unsuccessfully for a law to protect news in the 1880s (Brauneis, 2009). Newspapers such as *The Times* in Britain or the American Associated Press also pursued court cases to protect their news (Silberstein-Loeb, 2012). Reactive resistance pushed legal change onto the agenda in a surprising number of places. The point here is not that every new technology will provoke the same reactions from legacy media. "Technological change does not map neatly on to legal change" (Bently, 2012, p. 76). However, media organizations are more active and innovative in resisting new developments than previous communications science frameworks have acknowledged. Strategic institutionalization was the key form of reactive resistance.

More broadly, our article argues for a new methodological approach to legacy and new media. Media transitions have occurred at least since print emerged in the 16th century. History provides another rich vein of material to understand how new media have shaped society and the media landscape. Scholars in organizational studies increasingly realize the importance of using history as another source of comparison and insight alongside contemporary cross-sectional variation (Jones & Khanna, 2006; Wadhvani & Bucheli, 2014). It is time that communications scholars did too.

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