

# Liberties and Constraints during the Transition Process of the Romanian Cultural Industries

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*Motto: As the freedom of the press is the result of the free market, there is a risk that the latter absorbs it.*

**A***bstract. The study analyses main economic, social and political problems concerning the transformation process of the editing, printing and publishing sector in Romania, as an important part of CORE copyright-based industries during the transition to market mechanisms. A series of economic, financial, institutional, social and political aspects of this sector are presented from the viewpoint of its well-functioning in a democratic society, in accordance with EU standards and sustainable development needs. It points out the way of optimal combination between economic contribution of the sector and its sound educational role for the whole society, trying to answer the question if free market does generate genuine free publishing activities.*

*Keywords: economic contribution of copyright-based industries; free market of publishing activities; technological and professional changes; relationship between publishing sector, ownership and political power*

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The cultural industries based on copyright (IC) have become subject of research<sup>38</sup> as a result of several factors requiring an in-depth analysis especially

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on the „CORE” segment<sup>39</sup> for the activities totally based on the protection of copyright.

The following are some of the internal factors of the IC industries requiring the research focus on their economic and financial framework:

- Extension of the items and processes protected by the copyright and intellectual property law;
- Development of technologies supporting the creative activities and influencing productivity and performance of the latter;
- Enlargement of the activities directly related to IC along the entire cycle – creation – production – distribution – use of a diverse portfolio of items protected by copyright.

The research on the copyright-based industries is also required by some external factors – feedback to the effects of IC on the social and economic environment:

- Economic and financial connections between the “sub-system” of IC branches (traditionally considered as „consumers” of resources) and the general social framework in the fields of production, value added, labour force and employment, domestic and external trade – during certain periods of time;
- Establishment of a dynamic relation – usually a contradictory one, sometimes complementary, in any case worth to be studied – between the traditional and the modern forms of IC strongly influenced by the evolution of ITC technologies;
- Multiplication of the social and professional fields that become users of the IC productions, which causes specific problems of adaptation, general compatibility and mitigation or increasing, respectively of the imminent collision with these industries.

The relation between the IC industries and the social, economic and business environment needs a complex approach focused on different periods of time.

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<sup>38</sup> Cătălin DĂRĂȘTEANU, Delia MUCICĂ, Rodica PÂRVU, Valentina VASILE, Gheorghe ZAMAN, Economic contribution of the Romanian copyright industries, *Romanian Office of Copyright, Center for Studies and Researches in the Field of Culture, Institute for National Economy*, Aprilie 2008.

<sup>39</sup> *Core Copyright-Based Industries in “Guide on Surveying the Economic Contribution of the Copyright-Based Industries, WIPO, Geneva, 2003.*

The social and economic framework impacts on the IC industries leading to different constraints and challenges, making requests and waiting for offers, which leads to some peculiarities that might be called *“media-morphoses”*.<sup>40</sup>

On the other hand, these industries determine in the general social framework several changes (adaptations, new forms of organisation, modernisations) that might be called *“socio-morphoses”*.<sup>41</sup>

The current research aims to analyse the challenges and the adaptations of the “core” of CORE<sup>42</sup> industries during the “transition” period of the Romanian society and economy towards a more or less regulated competition market.

The CORE industries represents the portfolio of those activities *“whose final products highly depend and are totally based on copyright”*.<sup>43</sup>

This research focuses mainly on the most representative activities in this portfolio, namely the publishing of newspapers and books (NACE 2211 and 2212).

### **“The matrix” of the economic status of the PUBLISHING OF NEWSPAPERS AND BOOKS**

A general picture of the CORE industries in Romania with a focus on the journalistic and publishing activities is presented in the Country Report 2004 of the EC, a year before Romania’s accession to the EU. This was the last Country Report before the signature of the Accession Treaty in April 2005.

The above-mentioned Country Report mentions 7 main topics concerning the “freedom of speech” including all press and publishing activities.

One should note that 4 of the 7 topics directly refer to the economic and financial situation of the actors in this field, which offers some benchmarks for assessing the economic contribution of these activities.

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<sup>40</sup> Octavian ȘTIREANU, The power beyond powers. The force and the vulnerability of mass media. *PhD thesis, SNSPA, 2009.*

<sup>41</sup> The concept refers to all changes in the IC industry and to the media and publishing activities following the impact of the external factors. Marian PETCU, *Typologies of Romanian media, Institutul European Publishing House, Iași, 2000.*

<sup>42</sup> Cătălin DĂRĂȘTEANU, Delia MUCICĂ, Rodica PÂRVU, Valentina VASILE, Gheorghe ZAMAN, *idem, page 8.*

<sup>43</sup> *Idem, pages 33-34.*

Once the Country Report was published, one of the organisations acting in the field of IC industries – namely the Association of the Romanian Press whose president I am – submitted to the Government and to other authorities an *Action Plan* based on the EC observations and on the realities in the field.

At the end of the electoral cycle, the political changes in Fall 2004 and the process of accession to the EU mitigated the interest for the above-mentioned *Action Plan* suggested for CORE. Therefore, several of the problems mentioned in the Country Report 2004 reached no solution and none of the proposed economic and financial measures has been adopted. Taking into consideration the topicality of the problems and of the proposed solutions, a synthesis of the topics in the Country Report 2004, of the necessary position of the authorities, of the proposed measures and their motivation is presented below.<sup>44</sup>

TOPIC 1. *Several media organisations “are not economically valid”, therefore “their existence may depend on the support for political or business interests” (Country Report 2004).*

Position: The Romanian media organizations can be structured based on their economic situation - according to the following typology:

- a) media organizations that operate within the ownership radius of major domestic industrial groups. They were created or bought as an accessory for their main activity, as tools for promotion and for defending their interests;
- b) media organizations that initially started as press institutions and, then, further created their extensions to other areas, diverting the resources allotted to their initial activity;
- c) media organizations that operate from resources extracted exclusively from the editorial activity, with no external business and no extensions to business groups.

The issue of economic viability is a topic to be discussed on each type presented above. Thus, the first two cases can be evaluated according to the risk assumed and which is specific to every classical private enterprise operating within a functional market economy.

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<sup>44</sup> *Some of the measures proposed in 2004 are no longer applicable because of the constraints assumed by the EU Accession Treaty. Mentioning them in this study has a double purpose: on one hand, it shows a way of viable approach at that time and, on the other hand, it points out that if the solution is not applicable, the problem persists”.*

The products of the type c) organizations have the greatest exposure, determined by the significant variation between the production price (based on material imported at the EU price level), on one hand, and the incomes (selling and advertisement), on the other hand.

### Proposed Measures

The economic viability of media activities might be consolidated through a „scissors“-like regulation framework destined to ensure an increase in the incomes against the gradual decrease in the production costs. In this respect, the publishers proposed the following measures:

#### 1.1. Setting up a Regulatory Agency in the area of printed press, with the following attributes:

- initiation and implementation of a substantial extension program regarding citizens' access (especially those from rural area) to printed culture;
- registering of the press distribution companies (the data might be presented in detail);
- prevention of market discrimination and contorsion in the case of the commissions perceived by the press distribution companies and the retail selling;
- respecting the discipline of the contracts between the editors and the press distribution companies; removal of delays in paying the editors, especially when the goods are sold instantaneously;
- protection of publishers (publishers' organizations) against the state institutions and state companies involved in press distribution (mail, transport companies, local administration);
- organizing public tenders for the newspaper stands and distribution networks more frequently;
- removal of local distribution monopolies by calibrating the distribution networks of the local media in order to provide access for national media at local level;
- developing, based on objective criteria, a written press audit, following procedures commonly agreed by the media organizations.

1.2. Subsidizing the printed culture transportation by the Romanian Railways:

- clarifying the ownership status over the mail rail cars that transport printed culture goods;
- establishing a modest tariff for the transportation of printed press - 1 leu/ton -irrespective of distance and removal of the transportation prices charged by the press distribution companies.

1.3. "Romanian Mail" National Company should get back to its commercial business in the area of press distribution, ensuring:

- transportation of the printed press from the counties' capitals to the local (rural and town) mail offices;
- subscription collection; providing financial bonuses to the mail workers (including a bonus part coming from the publishers), according to the quantity and variety of subscriptions collected;
- selling of printed media in the local mail offices.

### Motivation

- A. In order to become more viable from an economic standpoint (as its is stated in the Country Report), the publishing organization needs regulation for a proper balance between costs and incomes.
- B. The distribution of the printed cultural goods cannot be ignored by the Government any more, for at least two reasons:
- a) the constitutional right of every person to have access to any information of public interest; in the rural areas, where 45% of the population resides, the written press does not reach appropriately;
  - b) the incomes derived from selling and subscriptions should become the main source of revenue for the publishing companies such that they become more viable from an economic standpoint and, consequently, less dependent on the advertisement and commercial revenues.

TOPIC 2. *"The journalists' activity" can be influenced by financial constraints that lead to self-censorship*

**Position:** Compared to other professions with social recognition status (magistrates, doctors, professors, teachers, lawyers, auditors, etc.), journalists do not have a distinct paying and social services system according to their comparative social status importance.

The Government cannot interfere in the private publishing system, as it did for the other public funded employees.

However, the Government can regulate fiscal measures such that diminishing, at the individual level, those „financial constraints“ (see the Report) for the journalists' activities.

### Proposed Measures

2.1. The extension of basic individual deductibles from the global income is necessary, especially for spending related to:

- acquisition of computers and other professional tools;
- internet;
- a deductible amount spent for the exercise of the profession (protocol, „sources“, multiplying documents).

**Motivation.** The journalists' work program is 24 hours a day such that the payment of extra-work, according to the Labour Code, is quasi-impossible. For this reason, it is necessary to compensate this situation by implementing a fiscal deductible system.

2.2. The implementation of the Fiscal Code provision stating that every employee is free to decide on the 2% income tax for sponsoring NGOs and free associations.

- the „Methodological Norms“ of this Fiscal Code state that the provision will be implemented through a Finance Minister Order, an order that has not been enacted yet;
- the editors could decide that 2% of their income tax to be sent by their employer to a publishing association where the respective journalist is affiliated.

2.3. The payment of editors through copyright revenues should be clearly regulated within the current framework.

2.4. The regulation of the publishing industry associated jobs as liberal professions and the possibility to define them as „free lance”.

TOPIC 3. *The big publishing companies arrears “can discredit the independence”, including the TV stations (whose news are “significantly less critical to the Government than those from the printed newspapers”).*

Position: The diminution of arrears is a major concern for the Government. According to all international financial institutions, a fiscal incentive mechanism has been implemented (GEO no. 40/2002), comprising rebates, staggering, and dues payments delays, and the effectiveness of which has been confirmed through the revenues to the consolidated budget after 20 months from its implementation. It should be underlined that, **starting with December 1, 2003, these facilities were suspended**). The publishing organizations have benefited from these facilities as any other private companies (11,000 in all). When the proposals have been drafted, it has been evaluated that the implementation of the fiscal facilities had the following consequences in the publishing sector:

- a) it saved from bankruptcy many publishing organizations;
- b) it allowed the emergence of many new publishing organizations, as a result of the residual income of many business holdings that re-oriented the surplus to investments in the media sector;
- c) it allowed the extension of investments by publishing organizations in other business sectors.

On the other hand, it should be underlined that fiscal facilities have generated, especially at the level of the publishing community, dormant rivalries between those who benefited and those who did not benefit from these facilities.

### Proposed Measures

3.1. The removal of fiscal discrimination among the publishing organizations.

- compensating the publishing organizations with good fiscal record through mechanisms that were available to others as well;
- removal of state subsidies;



- calibrating fiscal measures according to the publishing organizations peculiarities;
- deducibility for returned newspapers to be established by law;
- an audit and accounting plan that is specially tailored to the publishing business specificities (basic assumption is that a newspaper is not a commodity, but information!).

Motivation. Given the fiscal situation and the spending, all publishing organizations should be treated on an equal basis.

Consequently, market distortions may occur. For instance, fiscal arrangements of an organization can be used for consolidating the market position through supplemental investments.

TOPIC 4. *Public service position – both at local and national level – is used for influencing the publishing strategy, by “selectively granting public advertisement”.*

Position: The distribution and allocation of public funds for advertisements should be regulated in a completely new framework, such that the advertisement funds should be understood from the beginning as:

- a) a public information service in itself, by eliminating the idea of competition;
- b) an instrument of financial support that, given the current conditions, is absolutely necessary for reinvigorating the media.

## Proposed Measures

### 4.1. In the advertisement area:

- removal of the media audit monopoly: authorisation to institutions that perform media audit with the goal of streamlining the advertisement market; transparency relative to methods used;
- authorisation, based on transparent criteria, for the advertising agencies that work with public funds;

- The commission perceived by the advertising agencies should be placed with the advertisement beneficiary (the companies) and not with the service provider (newsroom).

**Motivation.** Currently, there is a significant opacity („black box”) relative to the measurement methods performed by several agencies.

The same opacity can be seen in the case of methodology drafting process, carefully monitored by European institutions.

#### 4.2. Publicly funded advertisement:

- it should be paid from a centralized fund, comprised of the amounts paid by the state institutions and state companies;
- it should be allocated through public tenders, with a specific procedure, similar to the acquisition of every other public service;
- it should be transparent in all forms: funds, tenders, procedures, tender winners, etc.

Many of the measures proposed in the 2004 Country Report are not applicable anymore due to the Accession Treaty constraints. On the other hand, others are still applicable, especially in the current financial situation, and could be critically evaluated for a possible use.

### **Intricacies of a partnership**

The relationship between CORE industries and public institutions in matters of financial and economic regulation is marked by the successive development stages of this industry according to a sinusoid curve of the interest in a mutually favorable partnership.

Taking into account as a criterion the degree of dependency of CORE industries on the level of government's regulation concerning their functioning, we assume that the evolution of these relationships may be split into three main stages.

Stage I (1990-1996) may be considered the “low dependency” stage of the CORE industries on the state. The increase in number of copies, of publishing houses and of publications, the establishment of private radio and tv stations, namely the checkless attack of the publishing organisations based on a high demand for information of the market of media consumers where the basic information needs had not been satisfied for years led to the rapid establishment

of the CORE industries with all levels of economic activities (and creative actions) related to the production, wrapping and distribution".<sup>45</sup> On the other hand, several branches of the IC industries could be consolidated: CORE (basic industries based on the copyright), then the interdependent industries, the partial ones and the non-dedicated ones.<sup>46</sup>

Stage II (1997-2004) may be called as the "increased dependency" stage of the IC industries on the level of economic and financial regulations in the field. The "bing-bang" of this increase in the dependency was the sudden depreciation of the national currency compared to USD (at that time, the main currency for imports). In October 1996, the average exchange rate was 3.295 Lei to 1 USD; in March 1997, the average exchange rate was 7.235 Lei to 1 USD!<sup>47</sup>

After a romantic period for the CORE industries, whose establishment, development and modernisation depended on imports paid in USD, the impact of the depreciation of the national currency increased the price of these imports, which led to an emasculation of the publishing houses and news rooms that had been so prosperous before. Under the pressure of a more and more vulnerable financial situation, the publishing houses became more and more focused on their accounting.

The new conditions of the transition process in Romania, including the reactions of the ITC industries, have been gradual and diverse; they can be split into the following categories:

(1) **Change of the institutional set-up**, by means of professional organisations (Romanian Press Club being the most significant example), trade unions, associations of owners, affiliations to international unions;

(2) **Opening the dialogue with public authorities**. After a period of media lack of interest for the governments, following the power change in November 1996, explicitly supported by the civil society, the publishing organisations manifested an increased interest towards the government and started a more coherent dialogue with public authorities. The pretext was "a more democratic opening of the new regime", the background being the worse economic and financial situation of most publishing organisations and ITC companies.

The initiative belongs to the Romanian Press Club (CRP) established in 1997 as an NGO of the main publishing companies (legal persons). The representatives

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<sup>45</sup> C. DĂRĂȘTEANU ș.a., *idem*, page 42.

<sup>46</sup> *Idem*, page 8.

<sup>47</sup> According to the website of the National Bank of Romania.

of those organisations were mostly general directors, public and journalistic personalities whose opinion was important for the political authorities.

The institutional dialogue between the CRP and the authorities took place on a quarterly basis, and the topics on the agenda were related to the facilities requested by the CORE industries.

A paradox was created in the sense that a community supporting the idea of privatisation and of eliminating the state from the economy explicitly requested the help from the state!<sup>48</sup>

On the other side of the table, the representatives of governmental authorities have adopted the strategy of „temporization” because the protectionist policies - of any kind, not just those related to CORE industries - contradicted the recently opened EU negotiation process.

(3) Consolidation of the privatization process. The IC organizational features have the advantage to be based, from the beginning, on private financing. Except the public TV and radio, none of the public publishing institutions did survive after 1989. Those that existed before 1989 changed their status, judicial form and stockholders, whereas the new ones were founded exclusively on private means.

The 2002-2004 economic growth rate, the most important recorded between 2002 and 2004, gave significant impetus to the IC industries. This sector consolidated relative to capitalization, markets and advertisement revenues.

The consolidation of the privatization process - a process that began in the 1990s - represents the main feature of IC-CORE industries development.

The 3rd stage (2005-2009) might be appreciated as a “conversed dependency” between the IC industries and the public authorities.

If until that moment the CORE industries were those awaiting a certain „attention” from the state, subsequently the entire situation changed. The public authorities have become „dependent” on the image and profile created by the IC industries.

This change can be explained by few processes and situations that are specific to this sector in this period of time, namely:

(1) CORE industries corporatization based on capital concentration, mergers, fusions among important elements of this industrial cycle (creation - production -

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<sup>48</sup> See Annex.

distribution), but also among different elements of the sector. Thus, important publishing houses, TV and radio stations have united under the umbrella of single stockholders and become real trusts. They had a decisive opinion not just in the industry, but also in the general public affairs.

The emergence of „publishing cartels” has become a matter of concern, especially in the context of democratic debates, so that there are more and more voices from the civil society requesting an anti-trust law in this sector.

(2) The retrogression determined by the economic and financial crisis of October 2008 is the second feature of this period. It had two basic types of consequences. On the one hand, the crisis generated the atrophy of the „production” component (with radius effects to both creation and distribution) for the small and medium publishing organizations. On the other hand, it reinforced the major publishing companies share, both because these major actors dealt easily with the effects of the crisis, but also because they were left without significant competition on the market.

### From lead to Internet

In order to better understand the objective and subjective causes that determined the CORE industry economic and financial standing, it is mandatory to provide a background perspective of the twenty years of transition road.

There might be a *technological direction* of this road, namely an evolution in a technological sense, from the lead and zinc based printing shops to the technologically sophisticated ones of nowadays, where computers and the Internet represent the fundamental tools for any publishing house.

There might be also a *conceptual direction* which is tracing the distance between lead and Internet as the distance between two types of mentality and attitudes, two approaches in developing publishing goods: on the one hand, the ossified, rigid, mainly proganda oriented, and the new one, ideologically desinhibited, based on free information, on the other hand.

Last but not least, there might be even a third meaning of this transition road which would be marked by the *locators* that the Romanian publishing industry met along the way since December 1989. This long road has been marked with many challenges and constraints that the publishing organizations had to overcome and which can be structured into six main groups, presented below.

- *The organizational challenge* has spontaneously emerged once the publishing houses have had to shift from the strongly controlled and regulated

state system to new, difficult to define, forms, particularly in the first days and months of 1990. The break has been radical, namely from rigid and perfectly coordinated structures and entities, to something else, to „something else” that depended, in the end, of the inspiration and creativity of publishing house management, elected or self-imposed on various criteria and due to various contexts. The press institutions and their newsrooms were obliged to work continuously, under the pressure of events and high levels of information demands. At the same time, at internal level, they had to search and find new organization forms since the old newsrooms have been devastated by the wave of changes and the new, emerging ones, that have mushroomed in a legislative vacuum at the beginning of the 1990 did not possess a clear-cut internal organizational structure. The challenge was conveyed by the answer to the following question: what kind of publishing production, news or books?

- The professional challenge has been generated by the information explosion that generated continuously, at high speed and frequency, daily newspapers, weekly magazines and professional journals, without mentioning the publishing houses, radio and TV stations. Every new title meant a new newsroom. The demand for editors has grown accordingly and significantly surpassed the available number of professionals. Given the high rate of demand, the newsrooms have organized themselves as they could such that next to the old editors a younger generation entered. Some of these newcomers never thought they might take on such kind of endeavour before. Thus, “hundreds and hundreds of new, cursory, journalists surfaced, people with grammatical stupors, but also frustrated elders that want to end their careers in powerful terms. You would be highly surprised to see who is portraying you in strong colours, who is arrogant to you, who is breaking you, reprimand you, grade you, annul you”<sup>49</sup>. The high demand for quantity, especially in the beginnings, has inevitably raised the following question: who should you work with on publishing production?

- *The institutional challenge.* The third type of challenge is an institutional one. The new political reality has generated new relations among the institutional actors. It generated an innovative endeavour to create a different institutional, more democratic, framework for the state. Obviously, the news industry had to adjust accordingly. Within this new political and state institutional architecture, the legitimate question was the following: what should be the identity of the publishing houses within the new political and democratic framework? It is important to underline that in this process of searching for a new identity,

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<sup>49</sup> Andrei PLEȘU, Dilema, nr.21, 1993, apud M. PETCU, op.cit., pag.21.

especially in the first years of transition, fourteen professional associations have emerged<sup>50</sup>. None of them have had an effective and permanent activity. Their emergence has been possible due to liberalization, openness and recognition of the right of free association, but also within the framework of an old law of 1924 that was neither abrogated regime, nor implemented during the communist era.

▪ *The technological challenge.* Without getting into peculiar details, we should remind the reader that during this period of time the Romanian printing industry has been lagging behind at least 40-50 years if compared to the medium western technologies. The publishing houses, the newsrooms and media holdings had to permanently raise a question, a question with no final and clear-cut answer: Under what technological conditions you should appropriately do business? With what kind of technological tools? The technological constraint is directly linked to another one:

▪ *The economic challenge.* The fifth challenge - still valid today - has been an economic one. In the first months of 1990, in the context of a huge increase in information demands, especially those information that have been previously forbidden, the main and only source of income for newspapers has been derived from the pure selling. The circulations were amazingly high, even in the case of the newest newspapers, generating financial revenues that covered not only the production price, but also satisfied the material needs of the employees. However, this situation has radically changed gradually, meaning that the circulation started to diminish together with the selling curve such that, in the end, a new question emerged, especially in the case of the unaffiliated newsrooms to major holdings: with what kind of resources you should do media?

Claude-Jean Bertrand believes that “*the means of communication can better satisfy the public expectations if they have access to important financial resources*”, but he also warns that public interest might be endangered “*when means of communication are in the property of strong holdings, and an immense political influence belongs to persons that are not necessarily interested in informing the public opinion*”.<sup>51</sup>

The hidden side of free speech - fully enjoyed during the transition period - has been the lack of adequate financial resources such that when these resources expired two options remained: closure or “self-delivery” into the arms of the strongest. The price included a particular “quota” regarding the free speech, of

<sup>50</sup> Marian PETCU, *Tipologia presei românești*, Editura Institutul European, Iași, 2000, pag.25.

<sup>51</sup> Claude-Jean BERTRAND, op.cit., pag.50.

course. For this reason, it was not surprising that the real question was “what is the worst”: to find yourself under the state pressure, based on politics and ideology, or under the private pressure, based on economic and ideological leverage?

The inherent tension between the freedom of enterprise (right of private property and entrepreneurship) and the freedom of speech (the right to be informed and right to opinion) is among the oldest. The tension has been solved many decades ago in more than half of the world states by „*eliminating one of the colliding freedoms. Thus, the fascist dictatorships suppress the free speech without suppressing the right of private property over communication means, whereas the communist regimes suppress the free enterprise, but pretending they preserve the right to free speech*”.<sup>52</sup>

- *The political challenge.* Finally, a sixth challenge - also valid today - has been the political one. This type of challenge is best understood when trying to answer the following questions: Is media objective and neutral? What is the boundary between fact and opinion? How this distinction should be established? Speaking in terms of transactions, the six challenges that Romanian media institutions faced during the transition period have generated both *influence* and *vulnerabilities*. Hence, the *organizational, institutional* and *political* challenges have reinforced the influence of the publishing houses, whereas the *professional, technological* and *economic* have increased the vulnerabilities, especially in the first phase of transition.

### Does the free market makes the media free?

The findings of the 2004 European Commission Report regarding the Romanian media industry underline both the need to identify solutions, but also theoretical approaches relative to the relationship between market and the CORE industries.

The utopian idea that market by itself can ensure the media services quality belongs to the US Constitution fathers. This idea has been largely embraced two centuries later in most of the East European countries as “*a corrective to censorship and state controlled economy. In this model, the bad guy is the government, whereas media plays the role of the liberator or at least the main archange*”<sup>53</sup>. The authors of the Report emphasize that, in its most nocuous

<sup>52</sup> Claude-Jean BERTRAND, op.cit., pag.19-20

<sup>53</sup> Sarah BUCHANAN, Luitgard HAMMERER, Oliver MONEY-KYRLE, Libertate și responsabilitate: protejarea libertății de exprimare prin autoreglementarea presei, *Asociația ARTICOLUL 19 and Federația Internațională a Jurnaliștilor (Ed.), March 2005, report on the proiect Către o presă liberă și independentă prin reformă legislativă și autoreglementare,*



form, *“this type of argument denies any kind of regulation in media activities that bars free competition in the market”*.

The argument for completely free media has been based on the idea that *„citizens are free as long as they can exercise their free initiative in the social and political realms”*, but this free exercise of initiative proved to be dependent more and more on the full access to the increasing and diversified communication means.

The principle of *free media* has been born out of the requirement for a *free market*, where the defenders of the latter became the apostles of the first.

The assertion that, from a given historical moment, the development of the free market and the capital accumulation are depending on free information and opinion is demonstrating why when James Madison was drafting the First Amendment to the US Constitution, the topic of free media is already there, written in very harsh words. Thus: *„The people shall not be impeded or hindered in expressing, writing or publishing opinions. The freedom of the press, as the bastion of Liberty, shall be intangible”*<sup>54</sup>.

John Keane does an elegant critique towards this „gospel”, a „gospel” that is preached by all those that are defending the principle of free media, and finds that the statements of the „free media defenders” *„have neglected some facts related to how the life within the modern societies was, is, and will be”*. They are also ignoring the fact that *„citizens cannot write, speak and read at the same time”*, and also *„cannot be in the same place, at the same time, in order to express their opinions”*.

The same author<sup>55</sup> arrives at the conclusion that *„in the course of history, those who defended the principle of free media focused their arguments [only] on the state regulation practices of the [private, or commercial] media sector”*. However, nowadays, these critics should recognize that *„the communications market is restraining the freedom to communicate by generating entry blocks, monopolies, and a curtailment in the possible number of choices”*. Within this context, even the very notion of information is changing its very definition and is being

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*initiated by the Stability Pact for South-East. Quote of the Romanian version posted on the [www.cji.ro/userfiles/file/documente/Autoreglementarea %20presei.pdf](http://www.cji.ro/userfiles/file/documente/Autoreglementarea_%20presei.pdf). Quoted by Raport ART. 19.*

<sup>54</sup> *“Letter to Edmund Randolph (31 mai 1789)”, in The Writings of James Madison, Gaillard Hunt (ed.), vol.5 (New York, 1904), p.377. Quoted by John KEANE, op.cit., pag. 49-50.*

<sup>55</sup> *John KEANE, op.cit., pag.81.*

transformed from „a public good into a consumption good to be acquired through private means”.

As in a damnation of history, it seems that freedom of the press, born out of the freedom of the market, is now under the risk to be absorbed by the latter.

The tension among the requirements for a very competitive market brings into discussion the topic of the accountable publishing activity. The accountability requirement can bring the editors in front of an ethical dilemma, a dilemma that is generated by the different concepts that are governing the innovation component of the CORE industries. It might be asserted that solving ethical issues is an integral part of the editorial activity because the basic principles, such as the freedom of the press, objectivity, honesty and privacy can sometimes enter into conflict.

In journalism, for instance, the goal sanctifies the means, but the information must be collected through legal and ethical means. In his/her relations with the representatives of the public sector or different economic areas, there still is a risk of connivance that might influence the independence, impartiality and, consequently, the credibility of the journalist.

In order to preserve its control over the informational resources, „mass media should deserve this and also provide high quality services”, according to Bernard<sup>56</sup>. Evaluating this type of influence as „ a sort of magistrateship” that should perform the roles of „overlooker, judge, and even inquisitor for the political power”, the media should also assume the avatars associated to any kind of magistrateship, namely to be „surrounded by assurances regarding competence and impartiality”, according to Revel<sup>57</sup>.

The freedom to publish is derived from the freedom of expression. The link between the two is immanent, but their philosophy is different. Thus, whereas the freedom of expression is *an individual right*, the freedom to publish refers to *its relations to other social components*, starting from the political freedom to the right to privacy, for instance.

The freedom of speech and the freedom of the press have been imposed by the requirements of a market that wanted to be more free, a market that saw itself more and more dependent on the means of communication. At the same time,

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<sup>56</sup>Claude-Jean BERTRAND, *Etica mass-media și sisteme de responsabilizare / Media Ethics & Accountability Systems*, Transaction, 2000, pag.25. Quoted by Raport ART 19.

<sup>57</sup> Jean-François REVEL, *Cunoașterea inutilă*, Ed. Humanitas, București, 2007, pag.240.

the freedom of speech can be found among the Enlightenment ideas and it cannot spread without freedom

Besides, a small paradox of the liberal democracies is that, although at the beginning the press was founded on the generous principle of the freedom of speech, its main role has been to spread the dominant ideas in the society and thus communicating especially the propaganda manifestos of the political elites, maintaining the activities of typographies that controlled the newspapers of the time, justifying the government decisions or motivating the activities of the opposition parties.

As Keane mentioned, the context of communication is continuously changing, and the state has enough indirect means to control mass-media by controlling information, limiting or closing publications, by public funded advertisements or by encouraging the corporatization of the media. (Besides, „also in a utilitarian spirit, the first blocks and restrictions that were imposed on the media in England, starting in 1712, are financial. The taxes levied by the state on publications led many times to their quiet disappearance“.)

The model of *mass media as a public service* has been formulated in order to prevent this type of criticism. Thus, the development of a post-capitalist model of civil society is firmly guaranteed by the state institutions that ensure „the resistance against censorship and commercial pressures<sup>58</sup>. The critics of this model maintain that this type of media is against the principles of the free market and is easily controlled by politics.

This problem is an old one, and the disputes and arguments are not new either. In 1947, a group of researchers, among them H. Laswell and Reinhold Niebuhr, published a Report (*A Free and Responsible Media*), where they advanced a set of principles that would be mandatory for a functioning democracy: *maintaining the free competition through anticorporate and antitrust regulatory policies*, the extension of the protection provided by the First Amendment to all the information sources, the extended distribution of information related to political and governmental activities, *the development of a critical attitude among the journalists* and a better self-assessment of the media activities, the enhancement of the educational system.

The free press can exist only in a free society and is founded on the free circulation of ideas, on a free market of opinion exchange and on the principle of informing as a source of equilibrium within the social processes as a whole. The

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<sup>58</sup> Doru POP, op.cit., pag.37.

freedom of press is equivalent to the freedom of media institutions to gather information and present them to the public.

„*The history is full of suppressed truths*”, said John Keane<sup>59</sup>. The current problems of the media are amplified by the corporatist tendencies and the conglomeration of information, but also through the inevitable errors and the circulation of inaccurate information. Revealing these truths involves economic, financial, political and institutional efforts.

### **The media, the property and the power. theoretical aspects**

„*The press is free when it depends neither on the government power, nor on the power of the money*” anticipated Albert Camus in 1944.<sup>60</sup>

It is true that the communication institutions can serve the public better when they have access to significant financial resources. Bertrand reveals one of the major problems of current journalistic activity, namely the situation when the media institutions „*embark themselves on the service of a rich minority*” and send to an undistinct mass of people „*what they dislike less*”.<sup>61</sup> The same rich minority that has no other responsibilities except those related to the basic economic activities of a stockholder, has also the power to decide what it is going to be presented in their own media institutions. Besides the „*exploitation for profit of a service with a public role*”, the rich minority of media owners denies any attempt of regulation under the guise that „*the media must be entirely free*”.<sup>62</sup>

This is how the universal principle of citizenship freedoms is going to be invoked for the advantage of the most private enterprise of a natural public service! „*It is always inappropriate that a given sector of the economy falls under the control of an oligopoly. What else can we say when this is the case of the means of communications, which are the very nervous system of a society?*”<sup>63</sup>

Serge Halimi has an even more radical view, stating that behind all kinds of deontological codes of conduct we find nothing but a means to hide the reality, namely that „*information has become a product like any other, a product that is transactioned, with profit or not, and immediately condemned when ceasing to*

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<sup>59</sup> John KEANE, op.cit., pag.35.

<sup>60</sup> Quoted by John KEANE, *Mass-media și democrația, Editura Institutul European, Iași, 2000, pag. 125.*

<sup>61</sup> Claude-Jean BERTRAND, op.cit., pag.40.

<sup>62</sup> Idem.

<sup>63</sup> Claude-Jean BERTRAND, op.cit., pag.50.

*bring the expected profit*".<sup>64</sup> The contradiction identified by the French journalist can be synthesised as follows: on the one hand, there are discussions related to communications and information society, where the information becomes the rule; on the other hand, "deontologism" would tend towards a „spectacular syllogism" such that the information, which is more and more privatized, "extract itself from the rules that are structuring the social realm". In this case, the information will exclusively depend on a „ethics committee"<sup>65</sup>, a Utopia that is evaluated by Halimis as „aberration". In these conditions, suddenly, a certain „deontological" issue emerges. The issue would be „how to tell a journalist that he has less control on the information than a supermarket cashier when it comes to the terms and strategies of the media enterprise?". This question is not at all purely rhetorical, since „the journalist, caught between the hammer and the anvil, struggles within an even more unpleasant contradiction when this fact is reminded by the politicians themselves". This is how Halimis details the condition of nowadays' journalist.<sup>66</sup> The endless debates and arguments relative to deontology and ethical norms - „so many rules, so much precariousness, so many limited contracts" - did not prevent the occurrence of a sad and rough conclusion that is expressed in a purely journalistic style by the director of *Le Monde Diplomatique*: „we were dreaming we are Bob Woodward's offsprings, but we are actually Martin Bouygues' employees"<sup>67</sup>.

In the transition societies, the case starts to look rather similar as well: politicians, big companies and interest groups that are struggling for influence and access regard the media institutions as powerful instruments for reaching their private goals. On the other hand, the journalists that are struggling to be perceived as professionals and credible participants in social life, ceaselessly are proclaiming their independence and objectivity, claiming a demarcation between the „news activity" and „stockholders" and between „newsroom" and „cashier office". The struggle that the journalists maintain fight against those that are holding the power by occult means has become more complex once the society is changing. The public confidence in journalists is increasing and decreasing in time and it is almost directly connected to the capacity to expose and unveil the abuse of the power.

The international press associations are recognizing that the ownership might be a problem for the written media since „the ownership gives the right for the last

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<sup>64</sup> Serge HALIMI, op.cit., pag.10.

<sup>65</sup> Idem, pag.11.

<sup>66</sup> Serge Halimi, op.cit., pag.38.

<sup>67</sup> Serge Halimi, op.cit., pag.11.

*word on the journalistic product*", on one hand, and, on the other hand, *„it obliges to market requirements that might not be fully compatible with the standards of a deontological code*". Although the media ownership and the journalists are involved in an apparent process of regulation based on different grounds, if the respective regulation aims to serve the public interest, then „control mechanisms should be put in place that to guarantee that the owners will not abuse the power that ownership brings".<sup>68</sup>

Until this requirement, although a little bit utopian, of implementing control mechanisms on the media private ownership (what then about the right to free enterprise?) will come into life, we must admit that *„the market competition generates market censorship*" and *„the private control over the communications means generates private caprices*". However, from a liberal perspective, this situation is acceptable. Liberalism believes that there is nothing to attribute to the fact that *„censorship is rather natural in private enterprises*", meaning that those responsible decide, before the production and dissemination of information, *„what kind of goods (books, magazines, newspapers, TV shows, etc.) will be produced on large scale and, consequently, what opinions are supposed to get access to the „opinions market*".<sup>69</sup>

The liberal vision on „information as commodity" is fully shared by the international institutions. The Report published by the ARTICLE 19 Association and the International Federation of Journalists denounce the concentration of media power in the hands of a small group of people because this trend can produce consequences on the public options and choices, but also on diminishing the journalists' accountability<sup>70</sup>.

In its Resolution 1003 of 1993, the Parliamentary Assembly of the Council of Europe provided a set of recommendations relative to these ethical issues. The document underlines that information is an individual fundamental right, and it is not a right of the government, nor of the editor or the journalist. At the same time, the Resolution 1003, provides a warning to the media institutions that they should *„treat information not as a privilege, but as a fundamental right of every citizen*". At the same time, the Resolution states that the private media

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<sup>68</sup> Report ART.19.

<sup>69</sup> John KEANE, op.cit., pag.82.

<sup>70</sup> In late 1980s, for example, three very active British newspapers owners (Robert Maxwell, Rupert Murdoch and Sir Jocelyn Stevens) set general parameters for 82% of what could be written in the Sunday press and 72% of what could be written in everyday press. These three gentlemen tried to shape both the story and the comments in their newspapers to cope with interests.

enterprises, even „corporated”, „should see themselves as special and particular socio-economic agents. Their economic and profit objectives should be balanced by the condition to provide free access to a fundamental right”. Recognizing the fundamental role that the journalist plays in the process of gathering and disseminating information, the Parliamentary Assembly believes that „we must enforce the protection relative to the journalists' free speech since it is the fundamental source of information”. However, this protection is balanced against a fundamental duty and obligation for the journalists themselves: to provide the information in an „authentic manner, when it comes to the news, and in a honest manner, when it comes to opinions”.

Without attempting to extract more or less general conclusions, I would like to underline, in the end, the importance of the economic and financial variable for the news and journalism activities within a larger context of social, political, technological factors. These factors operate at local and global level and their interference inculcate a sui generis character to the creative-cultural industries in the process of creating value added both on the labour market and in the international trade of goods and services.

# Annex

## **The economic and social call addressed by the Romanian press club to the Romanian government**

Under the increasing pressures created by the difficult economic conditions, and taking into account the diminishing circulation of publications, starting with this decade the news organizations have turned more and more to the state for „support” and requested, within an institutional framework, the granting of different types of incentives.

Below, we present, a short history of the financial and economic mechanisms that the representatives of the CORE industries have presented to the Romanian Government in different formats, including many meeting that took place between 1999 and 2004. The issues were presented to different ministers, including the Finance and the Economy ministers, and even to some of the prime ministers of the time.

We organized the anticipated decisions and measures according to the particular segment of the industrial cycle.

### **Actions in the area of creativity**

1. The professional activity of journalists and contributing editors, understood as edited articles and press photos, but excluding the news that come through the news agencies, to be considered as copyrights and remunerated accordingly.
  - It is a situation that coincides with the specific features of the journalistic activities that include the productions of contributing editors, cultural personalities.
2. VAT exemption for subscriptions to the domestic and international news agencies flows that are used in the activity.
  - The proposal would have envisaged the removal of discrimination. At that time, the VAT exemption was aimed only at international news agencies subscriptions and only at radio and TV activities.



3. The per diem should be fully deductible as it has been the case in 1999, at a level established by the leadership of private enterprises.
  - Here is one of the arguments put forward by journalists: *„When the per diem is higher, there will be a higher spending, and thus an increase in income for those that sell goods and which will pay a higher value in income tax”.*

### **Actions in the area of productivity**

1. It is not fair to pay a tax on inflation.
  - With the aim of presenting the real and exact financial balance in domestic currency, it is necessary to adjust all values according to the inflation rate. Thus, the artificial interest would be eliminated. At the same time, the real estate would be expressed in the purchasing power in the balance sheet.  
(In 1997, „Adevărul” newspaper, to give just one example, was included in the sample of an experiment aimed at the application of assets and liabilities to the inflation rate. By performing a huge workload apart from their job task, the financial-accounting department of S.C. „Adevărul” S.A. accomplished the task and sent to the Ministry of Finance the results of this experiment, hoping that the norms would be approved and implemented starting in 1998. It should be underlined that nothing has been heard about it since).
2. The costs related to returns should be deductible.
  - The proposal took into account that a high proportion of circulation (10-140%) is not sold, it does not bring income, but only spending. Consequently, in the Governmental Ordinance would sound as follows: *„The costs for the daily newspapers and the economic, science, technical, cultural and education magazines that are not sold represent costs that are deductible”.*
3. The exclusion from non-deductible costs of „the costs related to the damaged and non-imputable goods, but also for the non-insured corporal assets”.
  - The book and publication printing activity implies, due to the technology applied in the process, the deterioration of important quantities of paper, especially during the circulation. The costs related to these objective technological loses should be deductible (similar to those related to circulation and returns).

4. The urgent approval of a 10.000 ton import of newspaper paper, exempt from custom tax and VAT.
  - At that time, the only domestic facility that procured newspaper paper - Letea - was not functional, leading to a generalized crisis of paper.
5. The exemption from customs duties for printing equipment and other audio and video equipment.
  - By this decision, an important economic sector with significant implications in the democratisation process would be supported. Additionally, this sector would have a chance to improve, given the technological gap when compared to the EU countries.
6. The decrease or exemption from customs duty for newspaper and book paper.
  - The level of the customs duties is altering the final cost of the product. The discrimination on the prep imports from the Russian Federation (15% duties), as compared to those from the CEFTA and EU countries should be eliminated. The level of these duties influences the cost of the final product.
7. 75% exemption for the reinvested revenue.
  - Romanian media must become more performant from the technological point of view as well. The high level of taxation quotas diminishes removes the possibility to improve the technological level, the acquisition of new installations, etc.
8. 50 % reduction in the costs related to journalists' traveling.
  - The high traveling and transportation costs led to a contraction in the activities of traveling and field documentation. This issue affects the information gathering process and the reflection of reality in the newspapers. The majority of the European countries provide significant incentives to journalists when traveling for information gathering (ex. France - 70%, Belgium - 75%).
9. The removal of restrictions and redundant provisions related to the acquisitions of school handbooks through public tenders, but also for the college handbooks from the free market by the Ministry of Education and Research.

- The Ministry of Education and Research imposes an exclusive price threshold that creates the opportunity for monopolies and the establishment of the unique handbook. At the same time, the same Ministry has exclusive rights for materials in electronic format and Internet-based ones, introducing this type of provision in the public tender documents which is against the copyright law provisions.

(In 2002, the procedures are open to criticism and restrictive, leading to a decrease in the overall quality of the handbooks and the teaching process).

10. An assessment at the level of the Ministry of Education and Research is mandatory, especially relative to the strategy regarding the school handbooks and the set up of a dialogue mechanism with the editors, the authors and the professionals.

- The Ministry of Education and Research has appropriate strategies and programs, but the huge delay in response generates significant problems to the education process and to the handbook industry.

### **Actions in the area of distribution and use**

1. VAT should not be higher than 11% for newspapers, books and magazines.

- Starting on January 1, 2000, VAT for written industry was raised from 11% to 19%. The journalists underlined that „it would be normal to have an alignment with the civilized countries - the EU member states - where the situation is different. In these countries mass media is, practically, exempt from VAT or applied at a very low rate”. For instance, below you can find some instances regarding the VAT on newspapers in some of the EU member states:

➤ Belgium	0%	➤ Luxembourg	3%
➤ Denmark	0%	➤ Netherlands	6%
➤ Germany	7%	➤ Austria	10%
➤ Greece	4%	➤ Portugal	5%
➤ Spain	4%	➤ Finland	0%
➤ France	2.1%	➤ Sweden	6%
➤ Ireland	12.5%	➤ UK	0%
➤ Italy	4%		

(Since 1995, there have been successive discussions with all prime ministers on these issues that might impede the full access to information. There have been requests sent by the International Associations that support the request for ensuring an as large as possible base for information consumers. There have been formal positive answers to these requests, and additional unfulfilled promises.)

2. The subscription billing cashed in 1999, but allotted for 2000, should be taxed at a 11% VAT. The differential should be booked in the monthly balance, under the „regularisations” column.
  - The subscriptions in the whole written media for 2000 shrunk further in the next year, even though the VAT was 11%. The readers paid the subscription price and it is impossible to tax them in retrospective. The subscriptions flow, understood as delivery and billing of newspapers - is performed in 2000, when the VAT was raised to 19%. The difference between the cashed VAT (11%) and the paid VAT (19%) will fall on the publishing house shoulders.
3. Exemption from the 3% local tax for newspaper advertisements.
  - The representatives of mass media believed that this tax, which is cashed by the local councils, could not have been paid after the VAT for advertisements expanded from 11% to 19%. Although this tax is included in the tariff as well and it is collected from the customers, they - once the VAT will increase - will not have enough resources in order to pay for the commercials and advertisements at a level similar to the previous year unless there will be an exemption from the 3% tax. On the other hand, it is not normal that the media institutions to collect a local tax that they will be later paid to the local authorities of residence, as long as the newspapers are actually printed in Bucharest and then the newspapers are circulated around the country and even internationally.
4. The payment of the VAT and the revenue tax should be executed when the invoices are cashed not when they are issued.
  - Currently, the companies pay to the state budget the VAT at the delivery date, and, on the other hand, the revenues tax. These two taxes (first one direct, the second, indirect) are due at invoicing. Actually, the stalling generates delays. In these conditions, the company does not have access to the necessary solvency to pay the taxes since there is no income cashed from the customers. The journalists lamented: „*It is abnormal to claim that companies should pay taxes for amounts that have not yet been*

*encashed*". They asked for evaluating whether „these two taxes might be paid at the level of the amounts actually encashed, as it has been the case until 1993”.

5. Solving the RODIPET<sup>71</sup> issue.

- In December 2001 (11 December, during a meeting with the prime minister and December 15, during a meeting with the management of APAPS and RODIPET that took place at SNPR), the representatives of the media requested regulations for the payment of RODIPET dues and for professionalizing this company.

**The advanced proposal:**

Privatization or transfer under the National Mail Service Company (Poșta Română); converting the debt into stocks.

6. The adjustment of RODIPET tariffs to the existing measure for the railway transport for the newspapers, which is 1 leu/ton (partially solved).

- In 1990, based on the Government involvement, RODIPET split from Poșta Română. In 1995, the Ministry of Transportation issued an order stating that the publications should be transported at 1 leu/ton. Since RODIPET took over the rail cars - which were previously owned by Poșta Română - it also considered itself above this regulation and demands higher taxes for the transportation of publications.

7. Normalizing the distribution and delivery process for publications and books.

8. The state of the newspaper stands is rather unclear. They might be evaluated as constructions and, consequently, special authorisations are needed. This is why the distribution based on newspaper stands is performed according to the city mayors' interpretation of the laws.

No taxation for press delivery and mailing (mail exchange with the readers, mail exchange with public authorities according to the readers' requests, etc.).

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<sup>71</sup> State-owned company for press distribution and delivery.