

Kluwer Copyright Blog

Copyright & the struggle against Google News

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Could copyright put an end to the challenges the news industry faces while it tries to manage its position on the Internet? This question lay at the heart of the conference “[Copyright, Related Rights and the news](#)”, organised by the Institute for Information Law in collaboration with CIPIL on April 23, 2016.

Threats faced by news publishers

The news industry is under great pressure. Proponents of copyright protection believe those to blame are news aggregators: services such as Google News, which gathers and presents “snippets”. A snippet contains the title and first sentences of a news article found somewhere on the web. Their argument is that, although snippets provide links to the original article, the public is sufficiently served by the overview of the gathered news announcements and doesn’t use the links anymore. This development decreases the news industry’s revenue, since the publisher’s income depends on selling full articles or attracting advertisers based on the number of visits. At the same time, news aggregators indirectly make remarkable amounts of money through gathering and indexing the news content. The question is whether the law should grant news publishers a right to share levies and generate their own revenue from the exploitation of the news articles by aggregators – and thus save the news industry?

The four (counter-)arguments

Should this right be designed as a neighbouring right for news publishers? Whether or not a copyright-based solution is desirable must be reviewed critically. The discussion centres on four main arguments:

1. The “equality of treatment”-argument: publishers should be treated the same as related right holders like broadcasters or phonogram producers and therefore receive a remuneration right as a reward for their investment in news production.
2. The classic “free riding”-argument: news aggregators should not be allowed to generate business from someone else’s content without consequences.
3. The “natural right”-argument: news aggregators should be accused of “thieving news” in relation to the natural right to property.
4. The “incentive”-argument: news is valuable and action needs to be taken in order to protect and maintain its quality.

Speakers at the conference opposed all of these arguments. In relation to the “free riding”-

argument, Matt Rogerson – Head of Public Policy at the Guardian – highlighted how news aggregators are actually heavily promoting news publishers. The services make news websites more visible on the web and stimulate their growth. Against the argument of theft, one can simply state that news was originally excluded from being copyrightable for both ideological as well as systematic reasons. However, a discussion could arise as to what extent snippets fall within copyright protection. As their factual bases cannot be covered by copyright, the latter could more easily apply to a creative selection of words for a title. Nevertheless, the quotation exception might be applicable. Therefore, as all kinds of hyperlinking are allowed – even linking to illegal content – it may already be difficult to decide on the applicability of, as well as the control provided by, the original copyright. Wouldn't the creation of a neighbouring right further complicate the situation? On top of this, the economic rationale of neighbouring rights should be questioned in any event, as explained in this [blog post](#) by Bernt Hugenholtz.

In my opinion, we must simply move back to basics and consider the actual motives of copyright. Creating neighbouring rights in the first place was an act to introduce levies, not to directly protect the creative author (with the exception of performing artists, who provide a direct creative act). It was designed as a second layer of rights in an attempt to compensate for weak copyright enforcement. Do we want to move further away from what copyright was originally about? What the news publishers are *actually* asking for is a way to increase their revenue by enforcing licences with Google. One could say that this is not about copyright at all. What we see here is a purely economic issue to which the answer might better come from another corner. We should either reform or innovate copyright as a whole, or look for other solutions.

An economic question?

Looking at the situation from a broader perspective, one can query whether the main enemies in this business model are really the news aggregators. There are countless news sources on the Internet. An increase in the production of news naturally makes people willing to pay less. Therefore, in the struggle of the news publishers against Google as their main target, it should not be forgotten that other smaller news aggregators will also feel the burden of introducing neighbouring rights. This might have negative effects on innovation. The ever-conflicting task of balancing the promotion of innovation on the one hand and the protection of creative authors on the other hand should be borne in mind while searching for solutions. In the film and music industry the answer has come from streaming services like Spotify and Netflix. What other kind of solutions could we come up with in relation to the news industry?

Solutions other than copyright

Of course the nature of news – especially in the form of quality journalistic items – should be considered. More than other creative content, news and the way it is expressed play an extremely important role within society and function as a vital democratic catalyst. Action needs to be taken. New business models should be explored. Why not just negotiate with Google? This has been tried and although there have been some arrangements in France and Belgium, not many results thus far. Particularly when copyright comes into the conversation, negotiations fail.

Another option suggested is to focus more on funding of quality journalism. Yet this always sounds easier than it is. The question arises as to what kind of funding is meant. Public funding? So ultimately Google makes money from the public's obligation to pay taxes? Or purely private, commercial funding – which immediately raises the moral debate on conflicting interests and bias

with regard to the democratic value of the media and particularly the news industry. In this context, it is interesting to point at Google's [Digital News Initiative](#): a €150 million-project to partner up with European publishers to promote high quality journalism, launched last year.

Another solution could involve a platform-based approach. Why don't the newspapers get together on a platform basis in order to stand up to news aggregators scraping their news without permission? One outcome of such an experiment is the already quite successful platform [Blendle](#), where anyone who signs up receives €2,50 to spend on articles (which cost about €0,29 per article).

At the close of the conference, the idea of a "24 or 48 hour exclusive right" for news publishers was brought up, in order to give publishers a temporary monopoly on the publication of their news items. Though this sounds interesting, its implementation might be impossible for practical reasons with regard to evidence.

The conference's concluding remarks mainly confirmed that copyright will not be the answer to the challenge raised. However, the fact that the original question of the conference was answered in the negative might have made the discussion even more fruitful than expected.

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