

# “A shilling or a pint of wine?”: Copyright and the Flow of News

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Arts & Humanities  
Research Council



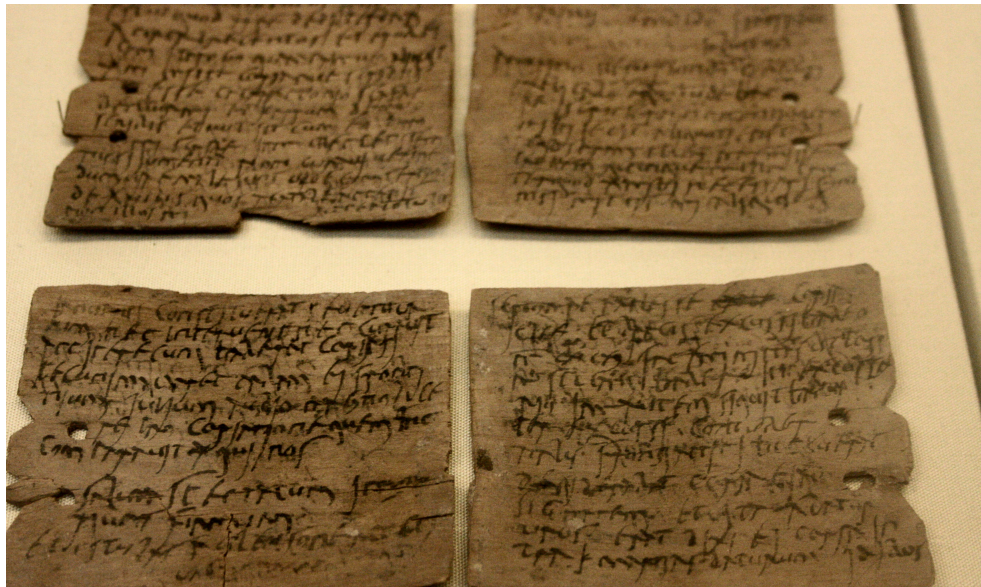
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# Appraising legal responses to threats to news in the digital environment

- 2 year project, started April 2014. AHRC (Arts and Humanities Research Council) funded
  - Examine shifting business models in order to appraise how the news industry is adapting to the digital environment.
- Consider the methods of assessing these changes, not just on the economy, but also on society.
  - Consider what role, if any, policy makers should play in this field in ameliorating the problems facing news institutions.
  - Principal Investigator Professor Lionel Bently (Cambridge University) collaborating with Professor Ian Hargreaves (Cardiff University), Dr Richard Danbury research associate.
  - [http://www.civil.law.cam.ac.uk/research/appraising\\_potential\\_legal\\_responses\\_to\\_threats\\_to\\_the\\_production\\_of\\_news\\_in\\_the\\_digital\\_environment.php](http://www.civil.law.cam.ac.uk/research/appraising_potential_legal_responses_to_threats_to_the_production_of_news_in_the_digital_environment.php)

How we got here.







<http://publicdomainreview.org/2013/08/07/the-lost-world-of-the-london-coffeehouse/>

“Persons are employed... to haunt coffee houses and thrust themselves into companies where they are not known ... to overhear what is said, in order to pick up matter for the papers ... the same persons hang and loiter about the publick offices ... waiting for an interview with some little clerk ...in order to come at a little news ...for which the fee is a shilling or a pint of wine ...”

- *The case of the Coffee-men* (London 1728)



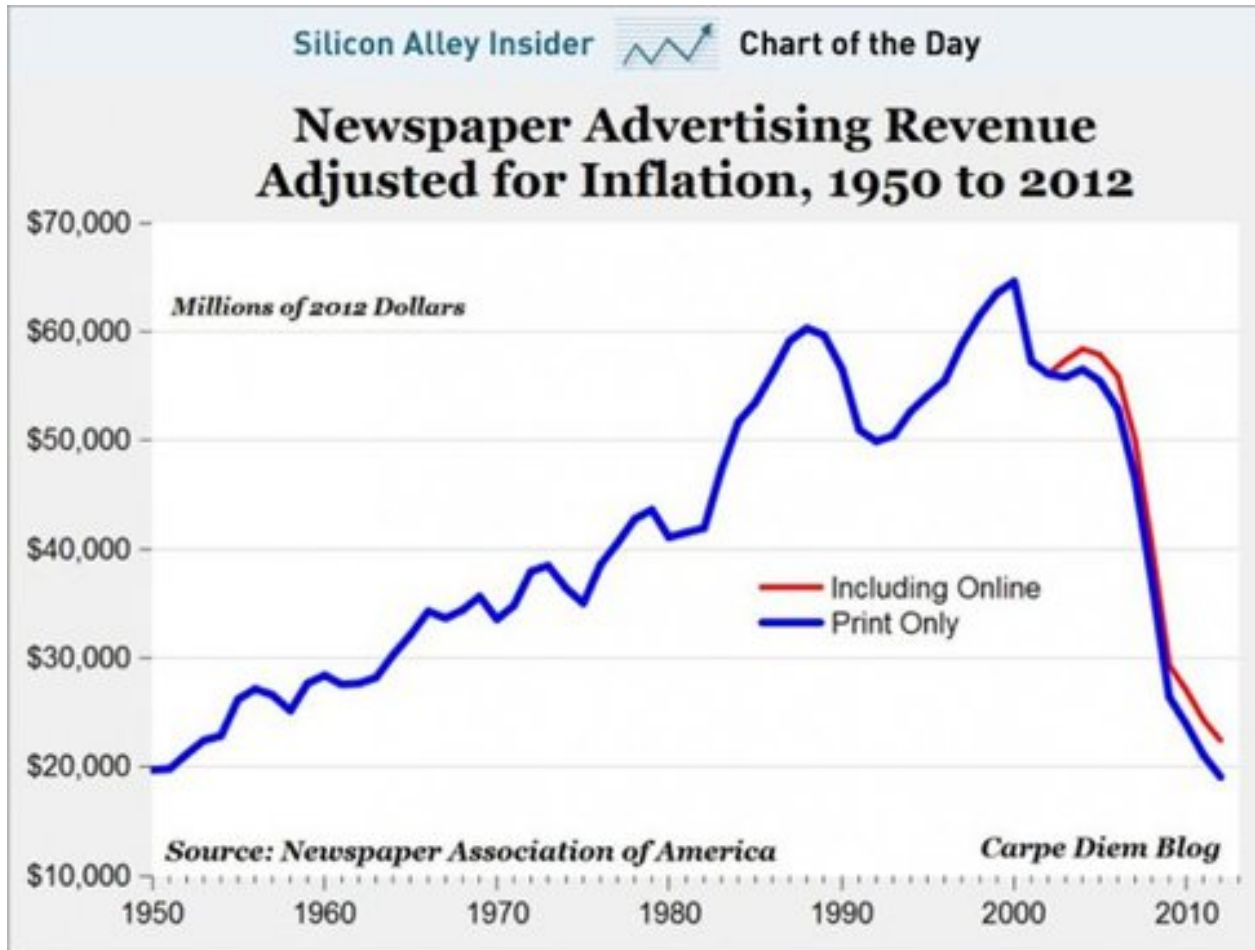
[Proprietors are]...paid by the advertisers for taking in Advertisements; and paid by the coffee men for delivering them out...‘Here’s luck, my lads!’ Never was there so fortunate a business.

- The Case of the Coffee Men (1728) [16]

Where we are now?



# Crisis



# What crisis?



Review article

## **Making sense of the newspaper crisis: A critical assessment of existing research and an agenda for future work**

**Ignacio Siles and Pablo J. Boczkowski**  
Northwestern University, USA

new media & society

14(8) 1375–1394

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### **Abstract**

This article analyzes recent research on the newspaper crisis. It discusses how authors have examined the sources, manifestations, and implications of this crisis, and the proposals to resolve it. In addition, the essay critically examines this body of work by assessing the main spatial and temporal contexts that researchers have studied, the theories and methods that authors employ, and the analytical tropes they have deployed to make sense of the crisis. Building on this assessment of existing research, the article outlines an agenda for future work that fosters an analysis of the process, history, comparative development, and manifold implications of this crisis, and advances various empirical strategies to examine some of its most under-theorized dimensions.

DAL Levy, R Nielsen and Reuters Institute for the Study of Journalism., *The changing business of journalism and its implications for democracy* (Reuters Institute for the Study of Journalism, Oxford 2010)

Intervention?



The 4. of November.  
 THE  
 P. E. A. C. E. O. F  
 F. R. A. N. C. E.  
 O R  
 THE EDICT, WITH THE  
 Articles of Peace, granted by the  
 French King vnto his Subjects  
 of the Reformed Religion.  
 For the establishing of a firme and generall  
 Peace throughout the whole Kingdome of  
 F. R. A. N. C. E.  
 Given at his Campe before Mompellier the  
 nineteenth day of October.  
 1. 6. 2. 2.  
 Faithfully Translated out of the  
 French Copie.  
 LONDON,  
 Printed by I. D. for Nathaniel Newbery, and are  
 to be sold at his Shop vnder S. Peters Church  
 in Cornehill, and in Popes-head Alley at the  
 Starre. 1. 6. 2. 2.



The 4. of November.  
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Samuel Calvert (1828-1913) , wikipedia.org

L Bently, 'The Electric Telegraph, and the Struggle over Copyright in News in Australia, Great Britain and India' in B Sherman and L Wiseman (eds), *Copyright and the Challenge of the New* (Wolters Kluwer, Alphen aan den Rijn, The Netherlands 2012)





*International News Service v Associated Press 248 US 215 (1918)*

# Problems for publishers

Element of copyright	Problem posed for publishers
Subject matter	Is news information copyright? Is a headline a copyright work? Can you protect the news idea as well as the expression?
Criteria for protection	Is a snippet of text original, and therefore protected by copyright?
Authorship and first ownership	Can a publisher establish they have the right to sue, based on an author's copyright?
Nature of the rights	Do hyperlinking, and making temporary cache copies count as infringing acts?
Infringement	Is the taking of a small snippet of text an infringement?
Defences	Do press reviews and reporting current events (etc) protect those who take news?
Limits of exploitation of copyright	The opt-in and opt-out debate. If publishers post material to the web, can it be assumed that they consent to re-publication?
Related rights	Should publishers have ancillary copyrights? Do database rights assist?
Moral rights	Do these create costs for exploiting content in other formats?

R Xalabarder, 'Google News and Copyright' in A Lopez-Tarruella (ed) *Google and the Law* (T.M.C. Asser Press, The Hague 2012)

# Some prominent interventions

Country	Intervention
Australia	<i>Fairfax Media Publications Pty Ltd v Reed international Books Australia Pty Ltd</i> [2010] F.C.A. 984 (Federal Court of Australia)
Belgium	<i>Google v Copiepresse</i> Presented 11/5/2011, Cause List No: 2007/AR/1730 (Court of Appeal of Brussels, 9th Chamber)
Denmark	<i>Ilopaq v Danske Dagblades Forening I</i> C-5/08, [2009] EUECJ C-5/08; and <i>Infopaq II</i> C-302/10 (Order 17 Jan 2012) [2012] EUECJ C-302/10
Germany	“Paperboy” Judgment of 17 July 2003 (BGH I ZR 259/00), BGH [2001] GRUR 958 (German Federal Supreme Court)
Germany	Leistungsschutzrecht für Presseverleger (News Publishers’ Ancillary Right)
Spain	Art 32 Spanish Copyright Act
Sweden	<i>Svensson v Retriever Sverige AB</i> C-466/12, [2014] Bus LR 259, [2014] ECDR 9
UK	<i>Newspaper Licensing Agency Ltd and others v Public Relations Consultants Association Ltd</i> , (“Meltwater”) [2013] UKSC 18 and CJEU C-360/13
USA	<i>Barclays v Theflyonthewall.com</i> 650 F.3d 876 (US Court of Appeals Second Circuit)
USA	<i>AP v Meltwater</i> 931 F.Supp.2d 537 (US District Court for NY)

# These work in different ways, legally

Copyright area	Intervention
Subject matter, criteria for protection (originality), infringement	Australia <i>Fairfax</i> , Belgium <i>Copiepresse</i> , Denmark <i>Infopaq I</i> , UK <i>Meltwater litigation</i> , USA <i>AP v Meltwater</i>
The rights of copyright (hyperlinks, temporary copying)	Belgium <i>Copiepresse</i> , Denmark <i>Infopaq II</i> , Germany <i>Paperboy</i> , Sweden <i>Svensson</i> , UK <i>Meltwater litigation</i>
Limits of exploitation (implied licenses etc)	Belgium <i>Copiepresse</i> , Germany <i>Paperboy</i> , USA <i>AP v Meltwater</i>
Defence	Spain art 32 Spanish Copyright Act, USA <i>AP v Meltwater</i>
Related rights	Germany <i>Publishers' Ancillary Right</i>

# Summary of 3 country comparison

- Denmark
  - Successful use of litigation. No legislation. No Google News.
- Germany
  - Unsuccessful use of litigation. Legislation. Google and others at odds with publishers.
- Belgium
  - Successful use of litigation. No legislation. Publishers negotiated with Google.



11 December 2014 Last updated at 18:11



## Google to shut Spanish news service



Google News exits Spain after a new law would have forced it to pay publishers for their content

**Online search giant Google is shutting down its Google News service in Spain before a new intellectual property law is introduced.**

Google will shut the service on 16 December before the law comes into effect in January, the firm said.

The law allows Spanish publications to charge services like Google News if their content is shown on the site.

But Google has argued against the ruling, saying that it makes no money from its search-based service.

"It's with real sadness that on 16 December we'll remove Spanish

### Related Stories

**Who wins from Google tax?**

**Wikipedia founder backs 'Google tax'**

**Google changes 'to fight piracy'**

### Business Live

15:13: Israel interest rates



Another day, another central bank cuts interest rates. This time the Bank of Israel has unexpectedly cut from 0.25% to just 0.1% in an attempt to stop the shekel appreciating and to tackle deflation. It was the first rate move by the bank in six months and sent the currency down 1%. Turkey is expected to follow suit on Tuesday.

14:53: Wall Street falls



Live from 06:00 to 18:00

### Top Stories



**Tories suspend Rifkind after 'sting'**

**Syria trio 'not radicalised' at school**

**Birdman, Redmayne, Moore lead Oscars**

**UK Ebola medics under investigation**

**Some Church of England below living wage**

R Xalabarder, 'The Remunerated Statutory Limitation for News Aggregation and Search Engines Proposed by the Spanish Government; Its compliance with International and EU law' (infojustice.org 2014) <http://infojustice.org/archives/33346>

Where we should be?

# Arguments against

- Functionally redundant
- Creative destruction
- Commercially unnecessary



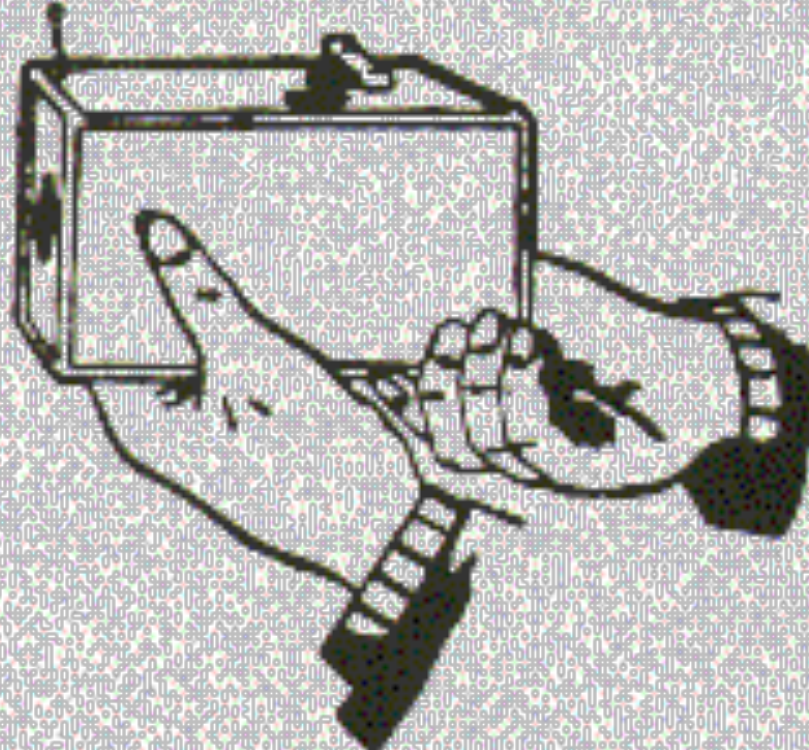
<http://www.nls.uk/collections/rare-books/collections/popup/pamphlets>



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**ROCHESTER, N. Y.**



And, if the coffee houses were to be shut up, I would ask what would become of advertisements? Whether they would not be driven to their old habitations, the city gates, the corners of streets, tavern doors and pissing-posts? And what they would be worth in such situations? The Coffee Men, therefore, are the only persons who deserve to reap the profits of 'em.

*The Case of the Coffee Men (London, 1728) [18]*

# Commercially unnecessary?

- Copyright not useful tool given low contribution of copyright to profit. Because:
  - Scoop! first to market is the source of profit
  - Increase copyright, increase data costs too, decreases profit
  - Killing the golden goose: news which requires copying to be valuable.
  - Revenue flow shown to be small from evidence in *Meltwater*.

# Underlying questions?

# Why it might be a good thing – useful distinctions

- Depends on the type of content
- Depends on the activity in question
- Depends on assumptions about the function of the press.

# Content

- Copyright content
  - Text, image, video, recording etc
- Freedom of speech content
  - Political speech, commercial speech, pornography
- Extent to which protection is merited depends on freedom of expression conceptions of content, rather than copyright ones.

# Business Element

- Newsgathering
- News selection
- News writing / producing
- News arrangement
- News publishing
- News dissemination

# Function of the press

- Habermas
  - – conduit for true facts
  - investigator and discoverer of true facts
- 4<sup>th</sup> Estate
  - active participant in political debate, polemicist, partisan
  - the idea of the press as a tribune of the people



# Thanks to

- AHRC
- Professor Lionel Bently
- Professor Ian Hargreaves
- A number of interviewees from legal academia, legal practice, journalism and business.