

Copyright and the flow of news

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December 2015
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Arts & Humanities
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Appraising Potential Legal Responses to Threats to the Production of News in the Digital Environment (AHRC)

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About

Research

> Appraising Potential Legal Responses to Threats to the Production of News in the Digital Environment (AHRC)

Like music and other branches of publishing, news journalism has faced radical challenges over the last two decades. There is talk of the "death of the newspaper" and questions raised about the very future of journalism. While with music, books and films, the greatest threat to existing business models have been seen as the unauthorised and unremunerated home copying and peer to peer distribution, with news journalism the challenge derives from the fact that advertising has not followed the shift of print-newspapers to the Internet. Given that more than half of newspaper revenue traditionally comes from advertising, newspaper profit margins have suffered badly, many jobs have been lost and titles closed. Consequently, news journalists, including photographers and associated freelance creators, have expressed dismay at their increasingly fragile economic and unsatisfactory legal position.

But, if the central problem has not been copyright piracy, the big question is whether copyright-related business models are part of the solution. Certainly, some newspapers are starting to deploy copyright and para-copyright as part of their business strategies: using firewall systems, bringing actions against news aggregation sites (such as Yahoo!, Google News), which are seen as "siphoning off" advertising revenue; and, most radically, calling for additional legal rights, including rights in news per se. At the same time, aggregators and others are pursuing new business models arising from the use of news archives and other news text and image assets. Because on-line news organisations increasingly use multi-media techniques, there is growing overlap with copyright concerns in television and film.

The research is intended to have three dimensions:

PI: Prof Lionel Bently, and Prof Ian Hargreaves.
Funded by the AHRC

A man in a suit and tie is smiling while wearing a Samsung VR headset. The headset's display shows the number '00'. He is at a trade show or conference, with other people and exhibition booths visible in the background. The text 'IT HAS BEEN' is overlaid at the top.

IT HAS BEEN

**DAYS SINCE I CREATED AN EXISTENTIAL
THREAT TO THE INTERNET**

Summary

- What?
- Why?
- Legal background
- Evaluation – are they a good idea?
- Historical context: 1490, 1621 and 1728

What?

- Current EU Commission proposal
- “Reaction”

Commission communication Dec 2015



Brussels, 9.12.2015
COM(2015) 626 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Towards a modern, more European copyright framework

- The Commission is reflecting and consulting on the different factors around the sharing of the value created by new forms of online distribution of copyright-protected works among the various market players. The Commission will consider measures in this area by spring 2016. The objective will be to ensure that the players that contribute to generating such value have the ability to fully ascertain their rights, thus contributing to a fair allocation of this value and to the adequate remuneration of copyright-protected content for online uses.
- In this context, the Commission will examine whether action is needed on the **definition of the rights** of ‘communication to the public’ and of ‘making available’. It will also consider whether any action specific to news aggregators is needed, including intervening on **rights**. p10



JULIA REDA

search ...



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Ancillary Copyright 2.0: The European Commission is preparing a frontal attack on the hyperlink

The European Commission is preparing a frontal attack on the hyperlink, the basic building block of the Internet as we know it. This is based on an absurd idea that just won't die: Making search engines and news portals pay media companies for promoting their freely accessible articles.

Earlier attempts at establishing this principle resulted in Germany's and Spain's ancillary copyright laws for press publishers. These attempts [backfired](#) – with tremendous collateral damage. In the European Parliament I was able to defeat [repeated attempts by EPP MEPs](#) to sneak into my copyright report text passages asking for an extension of these laws to the European level. **But this newest attempt is the most dangerous yet.**

**THE NEWEST
ATTEMPT FOR
ANCILLARY
COPYRIGHT IS
THE MOST
DANGEROUS
ATTACK ON THE**



Date: [6.11.15](#)



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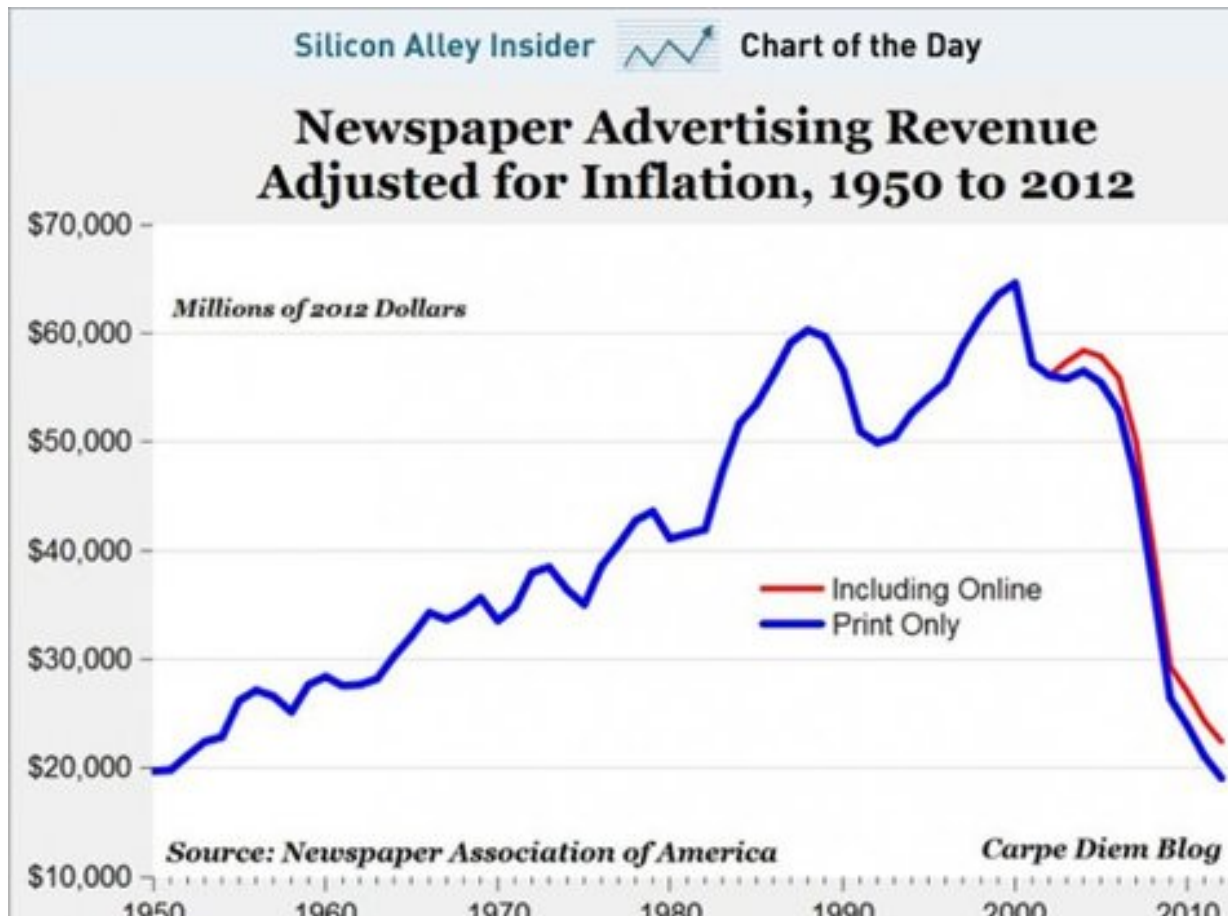
Author: [Julia Reda](#)



Why?

- Crisis
- What crisis?

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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DOI: 10.1177/1461444812455148

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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)

Legal background

- Problems for news publishers in copyright law
- Interventions in other countries
- Germany
- Spain
- China

Copyright and news publishing

- Subject matter
 - Idea/expression
 - Headlines as works
 - Originality
- Authorship and first ownership
- Nature of the rights
 - Communication to the public
- Exceptions

Where it's been happening

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)

Germany

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Lex Google: Germany Waters Down Search Engine Legislation



Last-minute changes to a planned German law on search engines mean that Google will not be subjected to fees from newspaper publishers for its current indexing practices. dapd

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Google

Spain moves to protect domestic media with new 'Google tax'

Newspapers in Spain will now be able to demand a monthly fee from the search engine before it can list them on Google News

Alex Hern

[@alexhern](#)

Friday 31 October 2014
15.21 GMT



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China

China Copyright and Media

The law and policy of media in China – edited by Rogier Creemers

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Notice concerning the Standardization of the Online Reprinting Copyright Order

POSTED ON **APRIL 17, 2015** UPDATED ON APRIL 27, 2015

In order to implement the CCP Central Committee General Office and State Council General Office "Guiding Opinions concerning Promoting the Converged Development of Traditional Media and New Media", encourage lawful and sincere business between newspaper and periodical work units and Internet media, promote the establishment and completion of copyright cooperation mechanisms, and standardize the online reprint copyright order, on the basis of the relevant regulations of the "Copyright Law of the People's Republic of China", the "Copyright Law Implementation Regulations of the People's Republic of China", and the "Regulations to Protect the Right of Distribution Through Information Networks", matters concerning standardizing the online reprint copyright order are hereby notified as follows:

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Are they a good idea?

- How should we evaluate them?

How should we evaluate them?

- Geographical
 - See previous slides
- Technological
 - New means of news gathering, selection, writing, publication and distribution
- Economic
 - Schumpeter's creative destruction of business models
- Democratic & sociological
 - Benkler's Networked Public Sphere
- Legal
 - Copyright law – international, regional, national
 - Freedom of speech law

Work so far

- 1) Comparative study of interventions in Belgium, Denmark and Germany.
- 2) Evaluation of the normative questions about whether intervention in general is appropriate to assist the commercial news industry
- 3) Evaluation of the extent to which some copyright laws – in particular the Spanish – comply with international and regional legal requirements.
- 4) Preliminary evaluation of the extent to which copyright laws can be challenged using freedom of speech law.

Historical context

Past debates echo current debates.

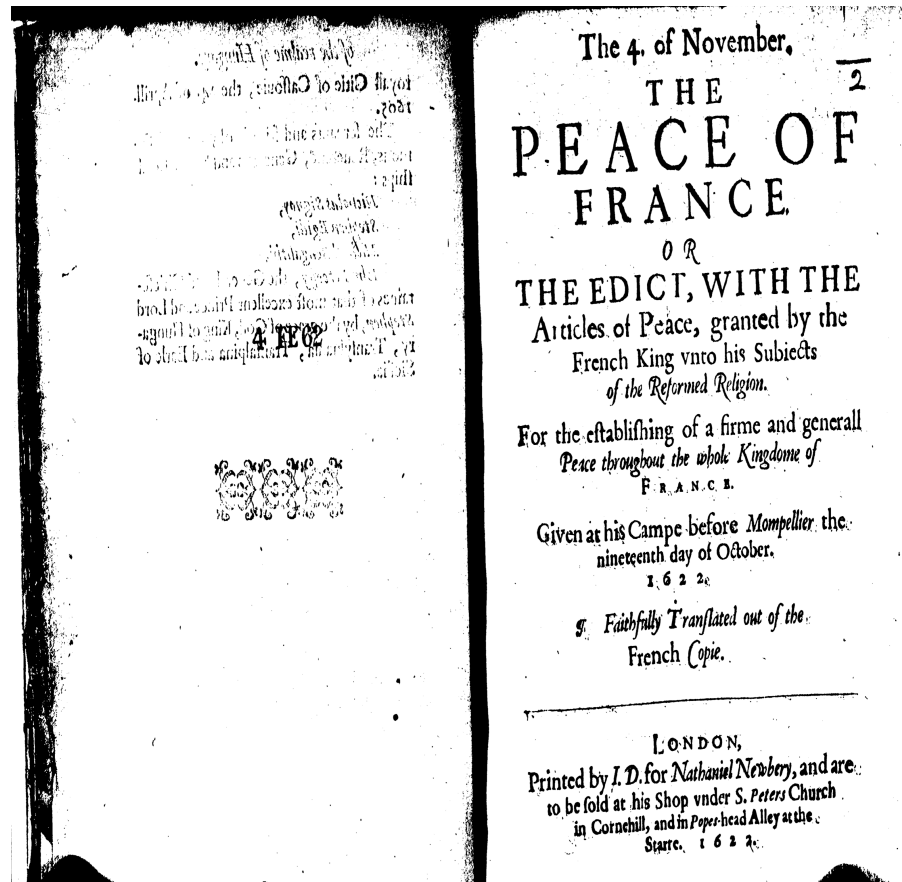
- Publishers take from other publishers
- The creative destruction of advertising-funded business models.

Republishing news: 1490



A Pettegree, *The invention of news : how the world came to know about itself* (Yale University Press, New Haven ; London, England 2014), 110

Republishing news: 1621



JEE Boys, London's News Press and the Thirty Year War (Studies in Early Modern Cultural, Political and Social History, Boydell Press, Woodbridge 2011) 90. fn 69, 70

Republishing news: 1729



Early description of journalist

“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)

Republication of news

- A third method taken by these dexterous sons of mercury, to supply themselves with matter, is to steal from one another. They copy every tale that is published to their hands, good and bad, without distinction; and the most bare-faced lie, as well as the most pitiful trifle, once published, has the sanction of them all. But every body knows this so well, that 'tis needless to dwell on it. *The case of the coffee men (1728)*

The rise of one advertising funded business model ...

[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]

.... that creatively destruction destroyed another?

- The coffee men are they who circulate the advertisements, and direct them to their proper ends. The coffee men pass them from hand to hand, and make them know to the whole town. 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 (1728)

Other echoes from history

- Technological development as a motivating force for proposed news copyright laws
- Lower barriers of entry to news market as a motivating force for proposed news copyright laws

Technological change leads to proposed news copyright laws



L Bently, 'Copyright and the Victorian Internet: Telegraphic Property Laws in Colonial Australia' (2004) 38 Loyola of Los Angeles Law Review 71

Lowering barriers of entry leads to proposed news copyright laws



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)

How relevant are these echoes?

‘History rarely, if ever, reveals immutable laws about human behaviour, or about the necessary relationships between practices and ideas, or between technology and the law.’

- L Bently, 'Copyright and the Victorian Internet: Telegraphic Property Laws in Colonial Australia' (2004) 38 Loyola of Los Angeles Law Review 71 171

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Google

Spain moves to protect domestic media with new 'Google tax'

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Alex Hern
@alexhern
Friday 13 October 2014
15:21 GMT

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China Copyright and Media

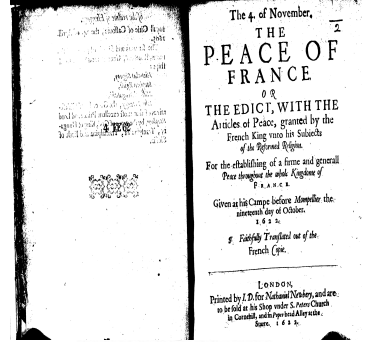
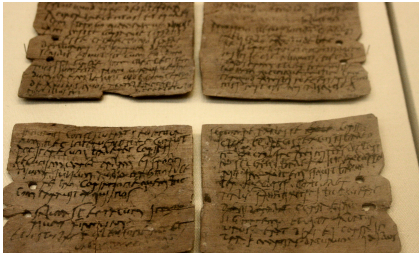
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Walter v Steinkopff (1892) 3 Ch 489, 500



USA, 1918



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

Some limitations

