

# Copyright and the flow of news: since 1490?

Dr Richard Danbury  
University of Cambridge  
November 2015  
@richarddanbury



Arts & Humanities  
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# Centre for Intellectual Property and Information Law

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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

# What?

-



**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](#)



Category: [General](#)



Comments: [29](#)



Author: [Julia Reda](#)



A man in a suit and tie is smiling while wearing a Samsung VR headset. The headset has '00' displayed on the lens. He is at a trade show, 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**

# Where?

-

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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

# Spain

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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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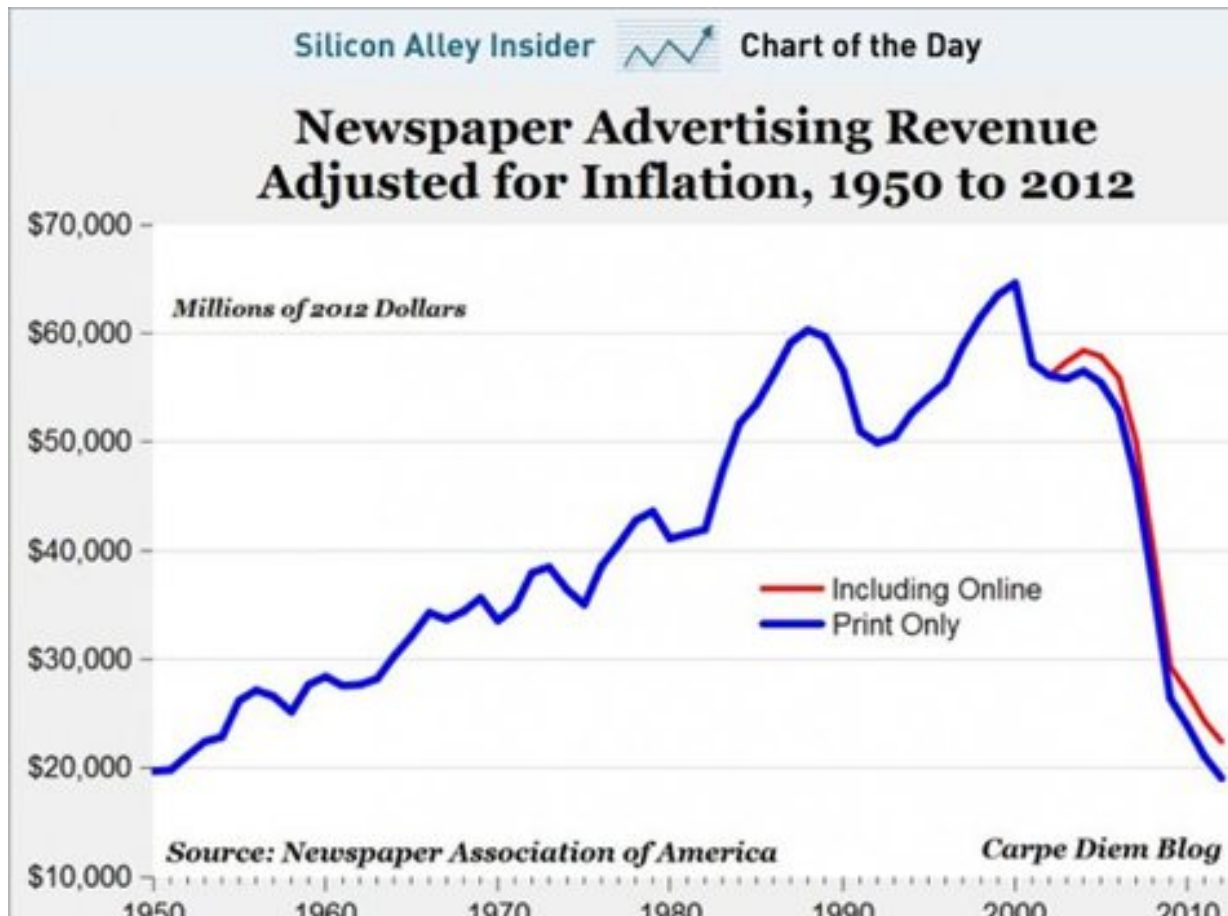
# Some prominent interventions

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)

# Why?

-

# 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)

# Are they a good idea?

-

# 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

# What do you think?

-

# Some historical context

Past debates echo current debates.

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

# Republishing news



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

# Case example: 1729: republishing news, advertising



# 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)

# Republishing 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

- 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

# How should we evaluate these things?

- Geographical
- Technological
  - New means of news gathering, selection, writing, publication and distribution
- Economic
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- Historical?

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Google

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

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## China Copyright and Media

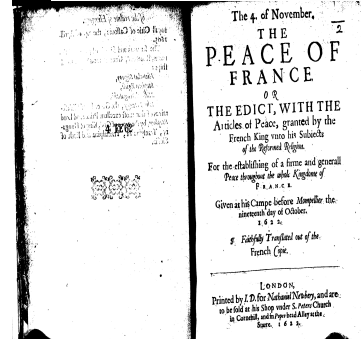
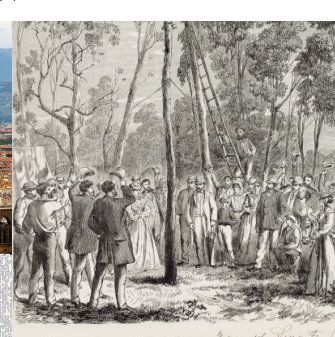
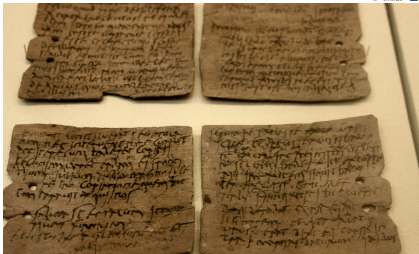
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# End thought: how should we evaluate evaluation?

- “I conduct myself as if law should be taken seriously, but in my bones, I have my doubts.”  
– *Monroe Price, Objects of Remembrance, 2009, Central European University Press, 125*

# Facts from history?

- Copyright has frequently been an attractive prospect for news publishers
- But it has frequently been a two-edged sword, as publishers re-use the material of others.
- Advertising has always been central financing of the commercial publication of general interest news.

Walter v Steinkopff (1892) 3 Ch 489, 500





# USA, 1918

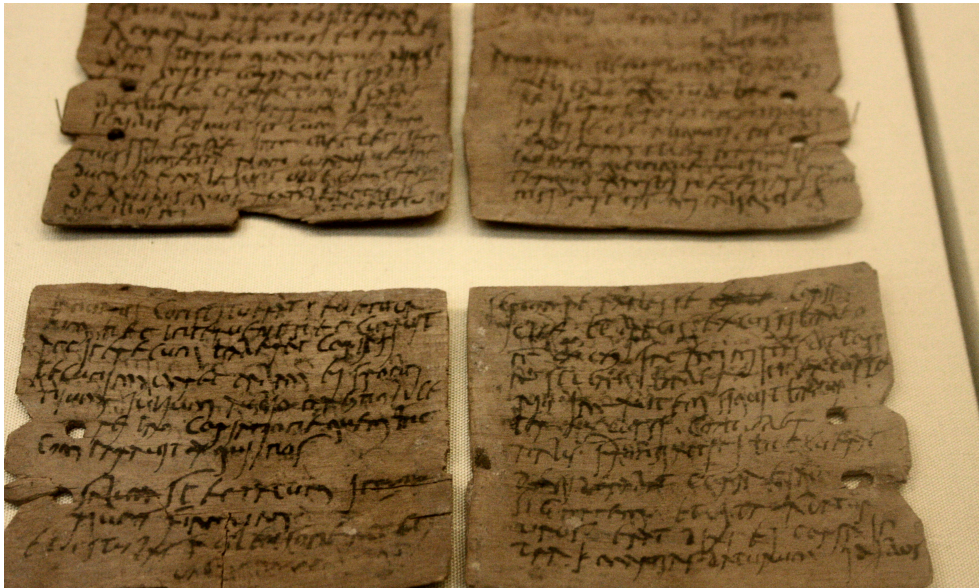


*International News Service v Associated Press* 248 US 215 (1918)

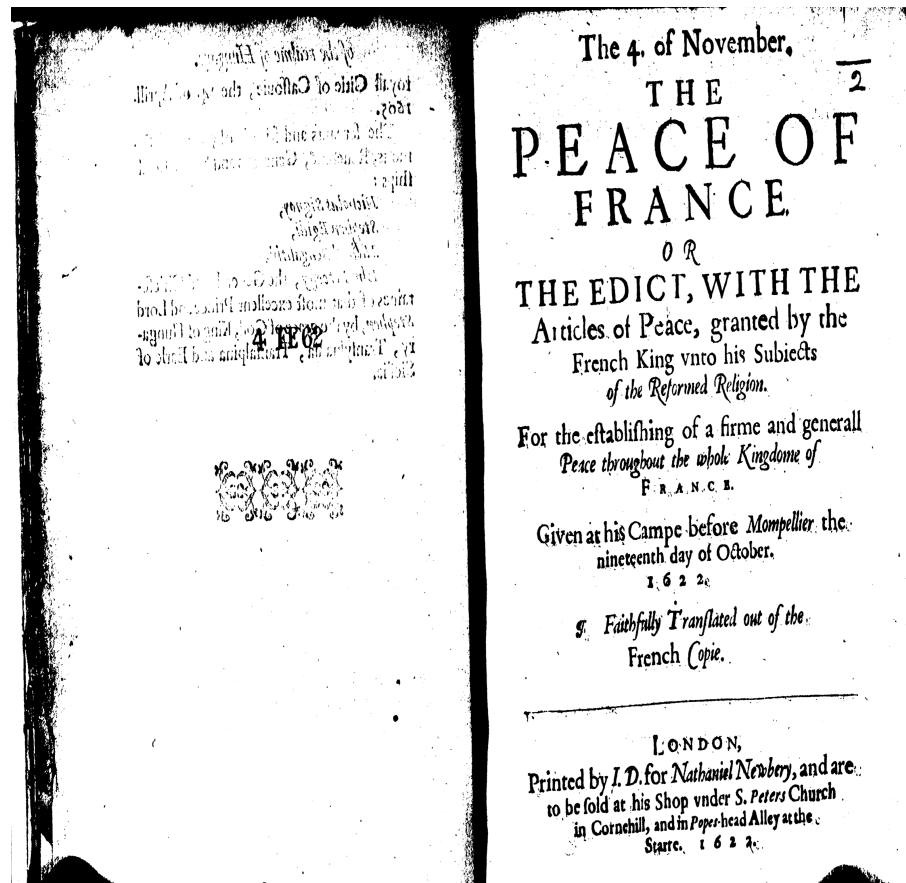
# Lessons from history?

- Lawmakers should be wary of the claims of news publishers for news copyright laws
- Publishers should be wary of the unexpected costs of news copyright laws.
- But if advertising is dead, there is a problem with the financing of commercial general interest news production.

# Some limitations



# Use of 'copyright' by news publishers



*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*