Evaluating legal responses to threats to news in a digital environment

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The Problem

I don't know if newspapers are really dying, but I don't like the looks of the new paperboy.
Somewhat ironic
Making sense of the newspaper crisis: A critical assessment of existing research and an agenda for future work

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Northwestern University, USA

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.

Keywords
advertising, audiences, business models, crisis, journalism, media transition, news circulation, news consumption, newspaper economics, newspapers, online news

Throughout their history, newspapers have accomplished important functions in democratic societies (Anderson, 1991; Habermas, 1989). They have provided valuable knowledge about various affairs that help individuals to make informed political decisions, offered a space of deliberation among citizens, and investigated the concentration of power by various institutions (Schudson, 2008). However, in recent years the newspaper industry in certain countries has experienced significant decreases of revenue from

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The focus of our study
Always the starting point
What’s Hegel got to do with this?
Do we look at this?
Arbitrary?
What copyright is.

- Subject matter,
- Criteria for protection,
- Authorship and first ownership,
- Nature of the rights,
- Duration of copyright,
- Infringement,
- Defences,
- Moral rights,
- Exploitation and use of copyright,
- Limits on exploitation, and
- Related other rights

What news is – possibly. Probably.

- Gathering of news,
- Its selection and editing (also sometimes called curating)
- Its writing,
- Publication and
- Dissemination.
Copyrighting the news

(!)
One particular problem for publishers
Why?

• Subject matter
  – News exempt
  – Idea / expression dichotomy
  – Words
  – Originality
• Authorship and first ownership
  – The German problems
• Infringement
  – Substantial taking - snippets
• Defences
  – Fair dealing for the purpose of reporting current events
• Limits on exploitation
  – Implied licences.
Marvin.
What’s happened

• **UK**
  – *Public Relations Consultants Association v Newspaper Licencing Agency (Meltwater)* [2013] UKSC 18

• **Germany**
  – "*Paperboy*" Judgment of 17 July 2003 (BGH I ZR 259/00), BGH [2001] GRUR 958 (German Federal Supreme Court)
  – German Copyright Act §87 f: publishers’ ancillary right. Leistungsschutzrecht für Presseverleger.

• **Denmark**
  – *Infopaq v Danske Dagblades Forening* C-5/08, [2009] All ER (D) 212 (Aug)
  – *Infopaq v Danske Dagblades Forening* C-302/10, [2012] EUECJ

• **Belgium**
  – *Google v Copiepresse* 13 February 2007; No 06/10/928/C of the general roll (Court of First Instance, Brussels)
What’s happened (con’t)

• **France**
  – Proposed litigation/ legislation
  – February 2013 Google’s €60m (£52m) settlement with French Government

• **USA**

• **EU**
  – Database right
  – *Svensson v Retriever Sverige AB* C-466/12, [2014] Bus LR 259, [2014] ECDR 9

• **Australia**
What might be happening

• Spain
  – Summer 2014: Artículo 32. Citas y reseñas e ilustración con fines educativos o de investigación científica.

• Italy
  – Proposed amendment to quotation exemption Autumn 2013
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... and by news activity

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What should be going on?
• Will it work?
  – News robots

• Who would it work for?
  – Gatherers, editors, writers, publishers, distributors?
Part 2...

• Does it matter?
  – Why?

• Is it right?
  – Free expression: article 10 European Convention on Human Rights
  – etc