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

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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.
How we got here.
http://publicdomainreview.org/2013/08/07/the-lost-world-of-the-london-coffeeshouse/
“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?
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

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 PEACE OF FRANCE

OR THE EDICT, WITH THE Articles of Peace, granted by the French King unto his Subjects of the Reformed Religion.

For the establishing of a firme and general Peace throughout the whole Kingdom of FRANCE.

Given at his Campe before Mompellier, the nineteenth day of October,

1624

Faithfully Translated out of the French Copie.

LONDON,
Printed by I. D. for Nathaniel Newbery, and are to be sold at his Shop under St. Peters Church in Cornhill, and in Poultry Alley at the Starre. 1624.
Samuel Calvert (1828-1913), wikipedia.org

## Problems for publishers

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

<table>
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<tr>
<th>Country</th>
<th>Intervention</th>
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<tbody>
<tr>
<td>Australia</td>
<td><em>Fairfax Media Publications Pty Ltd v Reed international Books Australia Pty Ltd</em> [2010] F.C.A. 984  (Federal Court of Australia)</td>
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<td>Denmark</td>
<td><em>Iopaq v Danske Dagblades Forening I</em> C-5/08, [2009] EUECJ C-5/08; and <em>Infopaq II</em> C-302/10 (Order 17 Jan 2012) [2012] EUECJ C-302/10</td>
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<tr>
<td>Germany</td>
<td>“Paperboy” Judgment of 17 July 2003 (BGH I ZR 259/00), BGH [2001] GRUR 958 (German Federal Supreme Court)</td>
</tr>
<tr>
<td>Germany</td>
<td>Leistungsschutzrecht für Presseverleger  (News Publishers’ Ancillary Right)</td>
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<tr>
<td>Spain</td>
<td>Art 32 Spanish Copyright Act</td>
</tr>
<tr>
<td>Sweden</td>
<td><em>Svensson v Retriever Sverige AB</em> C-466/12, [2014] Bus LR 259, [2014] ECDR 9</td>
</tr>
<tr>
<td>UK</td>
<td><em>Newspaper Licensing Agency Ltd and others v Public Relations Consultants Association Ltd</em>, (“Meltwater”) [2013] UKSC 18 and CJEU C-360/13</td>
</tr>
<tr>
<td>USA</td>
<td><em>Barclays v Theflyonthewall.com</em> 650 F.3d 876 (US Court of Appeals Second Circuit)</td>
</tr>
<tr>
<td>USA</td>
<td><em>AP v Meltwater</em> 931 F.Supp.2d 537 (US District Court for NY)</td>
</tr>
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</table>
These work in different ways, legally

<table>
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<tr>
<th>Copyright area</th>
<th>Intervention</th>
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<tbody>
<tr>
<td>Subject matter, criteria for protection (originality), infringement</td>
<td>Australia <em>Fairfax</em>, Belgium <em>Copiepresse</em>, Denmark <em>Infopaq I</em>, UK <em>Meltwater litigation</em>, USA <em>AP v Meltwater</em></td>
</tr>
<tr>
<td>The rights of copyright (hyperlinks, temporary copying)</td>
<td>Belgium <em>Copiepresse</em>, Denmark <em>Infopaq II</em>, Germany <em>Paperboy</em>, Sweden <em>Svensson</em>, UK <em>Meltwater litigation</em></td>
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<td>Limits of exploitation (implied licenses etc)</td>
<td>Belgium <em>Copiepresse</em>, Germany <em>Paperboy</em>, USA <em>AP v Meltwater</em></td>
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<tr>
<td>Defence</td>
<td>Spain art 32 Spanish Copyright Act, USA <em>AP v Meltwater</em></td>
</tr>
<tr>
<td>Related rights</td>
<td>Germany <em>Publishers’ Ancillary Right</em></td>
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</tbody>
</table>
Summary of 3 country comparison

• Denmark

• Germany
  – Unsuccessful use of litigation. Legislation. Google and others at odds with publishers.

• Belgium
Google to shut Spanish news service

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

Where we should be?
Arguments against

• Functionally redundant
• Creative destruction
• Commercially unnecessary
The KODAK Camera

100 Instantaneous Pictures!

Anybody can use it.

No knowledge of photography is necessary.

The latest and best outfit for amateurs.

Send for descriptive circular.

Price $2.50.

The Eastman Dry Plate & Film Co.

ROCHESTER, N. Y.

1888
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\textsuperscript{th} 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.