Conference

Copyright, related rights and the news in the EU
Assessing potential new laws

CIPIL University of Cambridge, hosted at IViR University of Amsterdam
Date: 23 April 2016, 10.00-17.30
Venue: University of Amsterdam, Agnietenkapel, Oudezijds Voorburgwal 229 – 231, 1012
          EZ Amsterdam, The Netherlands
Registration at www.ivir.nl/newsconference2016 (max. capacity 70 persons)

The difficulties of commercial journalism

Like music and other branches of publishing, commercial news journalism has faced radical challenges over the last two decades. There is talk of the "death of the newspaper" and questions have been 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 commercial news journalism much of the challenge derives from the fact that advertising has not followed the shift of print-newspapers to the Internet. Such difficulties are compounded, from the point of view of news publishers, by the relatively free availability of news from other online sources. And they've been further compounded by the recent rise of social media, particularly Facebook, as a main route to the news.

Given that more than half of newspaper revenue (in many countries, generally speaking) 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 position.

This sort of crisis in other industries would lead to calls for intervention, including legal intervention. This is true in relation to news, but news invokes additional arguments for intervening. This is because of the widespread presumption that the flow of news is a necessary commodity in a democracy, and that commercial journalism is an integral feature in the flow of news. Hence the arguments for intervention to protect news engage democratic, as well as economic, rationales.

Copyright and related rights

But, if the central problem has not been copyright piracy, a big question is whether copyright-related business models, and indeed copyright itself, are part of the solution. The issue has become extremely timely, with the European Commission publishing a Communication on the 9th December 2016 (COM (2015) 626 Final). This, amongst other things, indicated that the Commission is considering the place of news aggregation services and news publishers in the wider scheme of copyright reform. The Commission says they will 'consider whether any action specific to news aggregators is needed, including intervening on rights'. Such intervention is likely to be controversial. There was controversy when copyright related laws were passed in Germany and Spain, with the intention of benefitting the news publishing industry. Nonetheless,

the Commission's plans seem to be developing, for on the 14th March 2016, Vice-President Ansip was reportedly on the verge of announcing a consultation in respect of EU wide right for press publishers.

Questions that arise
Is there sufficient rationale to alter copyright or related laws in a way that benefits news publishers? Should commercial news publishers benefit from any change in the law, given that other means exist for gathering and disseminating news? How strong is an economic case for such a right? To what extent is any economic case for change supplemented by other arguments, such as reward and natural rights arguments, and arguments about media plurality? Should European law treat news publishers in a similar way to other content producers, such as phonogram producers and broadcasters, who benefit from a related right? Would individual journalists benefit from a right afforded to news publishers, and if so, to what extent? Should news publishers benefit from levies and compensation schemes designed to benefit author-journalists?

Conversely, is it inappropriate to use content and actor specific rights to address problems that technology has caused to an established business model? Would it not be better to let the forces of creative destruction replace old inefficient business models?

What would the impact of the Berne Convention be on any such law, or the Information Society Directive, or the fundamental rights laws of the EU? Would it raise issues in relation to international trade law?

What, if any, would the impact be of such a law on the efficient functioning of the Internet? How relevant are changes in the way news is gathered and disseminated – in particular the disintermediation of established news publishers by citizen journalists, and their displacement by digital native publishers and distributors of news? What costs would any new law place on the development of novel means of gathering and distributing news that are valuable to society? How does the rise of social media platforms, and in particular Facebook, alter the picture?

A one day conference at IViR will seek to address these questions. The conference is part of a two-year, AHRC funded project at CIPIL, Cambridge University, entitled *Appraising Potential Legal Responses to Threats to the Production of News in a Digital Environment,* which the IViR will kindly host and facilitate.

The conference brings together an interdisciplinary combination of academics and practitioners to discuss the issue. Representatives from news producing, publishing and disseminating organizations, both traditional and online, have been invited and speakers will include Andrew Hughes from the NLA Media Access. Academic speakers include Lionel Bently and John Naughton from Cambridge; Bernt Hugenholtz and Mireille van Eechoud from IViR; Ian Hargreaves from Cardiff University; Raquel Xalabarder (UOC Barcelona) and Jan Hegemann (FU Berlin).

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