

**Press clipping and other information services:
Legal analysis and perspectives**

by
Loreto Corredoira y Alfonso
Profesora Titular
Universidad Complutense de Madrid
March 2007

Submitted to the International Symposium on Online Journalism

Abstract

This paper examines the legal framework of copyright in relation to the spread of “press clipping” businesses and activities with the development of digital or online journalism. It looks specifically at the international law and the situation in the European Union, with special attention to Spanish laws and cases. The paper shows that there is no uniform treatment or agreement in Europe over what type of copyright protection journalistic information should receive. The case of “press clipping” presents a fascinating debate between the right of access to information and the rights of editors and authors.

Contact information: loretoc@ccinf.ucm.es
Telephone: 91-3994411
Virtual Campus: <https://campusvirtual.ucm.es/portal/criticadecine.html>
Communication School: www.ucm.es/info/dinforma/loreto.htm
Blog: infosociedad.blogspot.com

1. Introduction

The copyright (©) is a legal framework, a framework that establishes certain exclusive rights over a work. As Dreier has indicated, a copyright, that for many laypeople is identified with “property rights” associated with tangible goods, can, in fact, be understood in two ways. It can be seen as facilitating the use or consumption of journalistic goods; or it can also be seen as an impediment to open access to information. These two positions are not irreconcilable, though the topic is complex, especially given the expansion of the Internet and digital journalism.

In order to understand the topic, first we will look at the state of “press clipping” activities in Europe. We see the following developments:

- Many newspapers are not just distributed through networks owned by their own companies, but also through third parties over the Internet and other newspaper abstracting services. Some of these services are free while others are paid subscriptions.
- Since the digitalization of newspaper contents, the abstracting and press clipping companies have dramatically increased their business activities since they can offer the content with little effort. When the products are derived from radio or television, they are known as “broadcast monitors.” In general, we call all of these “derived information services.”
- In recent years, new professional or business initiatives have started whose basis is to select and provide headlines and news to the public based on the contents of the periodicals.
- Without trying to categorize media or derived services, it is understood that (as they themselves affirm in order to differentiate themselves from others) portals or search engines (such as Google), news “webs” (IBInews.com, PeriodistaDigital.es), and “clipping” services (in the USA, Cyberalert, e.releases; Acceso or Almaclip in Spain) are all different.
- Within the activities of “press clipping,” there are different services—such as “alerts” or emails with news headlines, abstracts reproduced in paper or electronically, the re-editing or subsequent use of news stories, etc.—to which may apply different legal frameworks.
- For a certain clientele of newspaper readers, those who read several papers and, above all, institutions or businesses, it becomes much easier to read a report or abstract than to read the newspaper itself. If you forgive the metaphor, I personally consider that it is like a vitamin complex for those who cannot or do not want to eat right. This tendency not only is legal, but also generates other information businesses. This topic is related to the way in which Internet news readers consume information.

- The discussions in public, academic or professional forums of this topic are often painted in exclusionary terms: the authors and editors must be protected or the public must be permitted access to the information. This distortion generates two effects. On one side is confusion, since the rules governing CD or DVDs “taxes” are not the same as just remuneration to authors. On the other side, are actions that produce, especially among the youth, the violation of laws they consider unjust and rigid. We are seeing in the development of youths between the ages of 10 and 18 years a consumption of information and entertainment, often at the limit of what is permitted, which can be democratically and educationally corrosive.

From a legal standpoint, which we will develop more fully, the situation can briefly be described as follows:

- International laws hold that States may establish exceptions or limitations to the exclusive right of reproduction and public distribution with the “aim or purpose of journalistic information” (Berne Convention, Paris Act of 1971, WIPO Copyright Treaty of 1996, and European Union Copyright Directive 2001/29).
- News magazines are considered to be exercising the right of quoting or abstracting in the international realm, or in other words, are considered exceptions to reproduction and exclusive distribution in countries such as the United Kingdom, France, Germany, Denmark, and, of course, Spain.
- Specifically, as an application of this principle, the new Spanish Intellectual Property Law distinguishes “press clipping” with a strictly commercial purpose from other information activities based on quotes from or reproductions of newspapers.
- Since this Law 23/2006 entered into effect, at the end of July 2006, in Spain the relations between clients and fee-based “press clipping” services are changing. In general, now monthly fees or set rates are not charged; rather clients are charged on a per-item basis. It is possible to see an abstract of the information, but the downloading or the printing of the item is charged as a reproduction that the editors must receive compensation for.
- In Spain there have been two attempts by editors of news organizations to legalize a tax or price on these derived services. One, the Gedeprensa case, was not authorized by the courts in 2004; the other, a lawsuit brought by El Mundo against Periodista Digital resulted in unequal effects that we will analyze later.
- In other countries, where this exception is clearly defined, such as Belgium, Google has had to take from the Google News page the news from Copiepress, after it lost a case in the Belgium courts (Ruling on 5

September 2006, upheld in 2007). Google also had to come to an agreement with the Associated Press over the supply of news stories.

2. International framework of the exceptions and limitations to the rights of news editors and authors

The Paris Act of the Berne Convention for the Protection of Literary and Artistic Works, brought about by the World Intellectual Property Organization, dates to 1971. At that time in Paris, the original Convention signed in Berne in 1886 was updated to protect the authors of literary and artistic works.

Among the points introduced in 1971 in the Berne Convention that relate to the press we will look at two: the one related to the reproduction and communication in the press of speeches, conferences, etc. (Art. 2*bis*(2)), and above all, the exceptions to the right of reproduction of the author and/or editor for uses related to news of the day and other similar works.

Each of the aspects that we will examine is part of international multilateral agreements or treaties.

3. *Limitations and exceptions of the Berne Convention*

Protection of news of the day and press information

According to Article 2(8) “The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.”

As Ricketson (2003) states, and we agree, “The wording of this Article makes it difficult to discern its purpose. Is it a public policy exception to the Convention in the sense that it excludes news items and reports generally from the scope of the Convention, in the interests of freedom of information? Alternatively, does it embody a juridical conception of the nature of authors’ rights, which excludes these items from protection on the basis that they are incapable of constituting literary or artistic works in so far as they embody facts and information that cannot be the subject of protection? If the latter is the correct view, such an exclusion is strictly unnecessary as these items should not, in any event, be covered by the Convention—a point which is now expressly acknowledged in Article 2(2) of the [WIPO Copyright Treaty] and Article 9(2) of the [Agreement on trade-related aspects of intellectual property rights (TRIPS) of the World Trade Organization].” We will examine these treaties later and show that the last interpretation is not correct.

In this case, the declaration contained in the Report of the Main Committee I of the Intellectual Property Conference of Stockholm of 1967 emphasizes that the news and events, as such, are not protected, but, and this is the key, “the articles of journalists or other ‘journalistic’ works reporting news items are, on the other had, protected to the extent that they are literary or artistic works. It did not seem essential to clarify the text of

the Convention on this point.” This is the interpretation that has been included in the texts of different states, that journalistic works are yet another literary work.

Right to fair use of quotes

The Convention does not set limits to quotes, and because of this, it is inferred that this point must be determined on a case-by-case basis, with certain general criteria established, such as the purpose and fair use. The quotation cannot be exhaustive and should be “justified by the purpose.”

Article 10(1) establishes the following:

“It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.”

What does “fair use” or “fair purpose” mean? This expression indicates that the quote should be used for the purpose of analysis, criticism, or commentary. Specifically in the press, it isn’t very clear the application of “fair use,” because when Article 10.1 refers to “quotations from newspaper articles and periodicals in the form of press summaries” it does so while preserving “some of the wording of Article 10.1 of the Brussels Act, but not without a change in its meaning. The latter provision, in fact, referred generally to the making of short quotations, and then provided that this extended to the right to include such quotations in press summaries. The present wording does not have this meaning and makes little sense: while a summary of a newspaper or periodical Article may include a quotations from that Articles (as envisaged by the Brussels text), the making of the summary is not the same thing as the making of a quotations. It is difficult therefore to know what the present Article 10.1 means when it refers to a quotation in the form of a summary. This is a contradiction in terms, and plays no useful purpose in exemplifying the operation of the provision.” (Ricketson, 2003)

The only forms of interpretation that help with this Treaty are the decisions of the dispute settlement panels of the World Trade Organization (WTO). The decisions of the TRIPS are also helpful. For example, one dispute settlement related to the United States, Section 110(5) of US Copyright Act, and published its report on 15 June 2000, considering the exception of “fair use.” The law firms that work for editors watch this principle and when a website or “clipping” service violates the fair use principle, they send a familiar complaint letter in the name of the editor or author, that asks for remuneration, with the threat of a lawsuit that would be even more costly.

Exceptions in favor of the press

Since its creation, the Convention has established regulations in favor of the press: see the limitations of Article 2(8) relative to “news of the day” and “events” to which have been made reference. The other regulations related to the use of press information are classified in two broad categories: the use of articles in periodicals or collections of

periodicals (Article 10bis(1)) and the use of works to transmit to or inform the public (Articles 2bis(2) and 10bis(2)).

The use of articles in periodicals and journalistic collections (Reproduction)

Here we come to the point that interests us the most, even though the solution is not readily apparent. Article 10bis(1) says

“It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.”

The flexibility of this Convention, I think that we are in agreement, is excessive, since even though it initially talks about an mandatory exception, actually the right ends up at the mercy of the internal laws each State. In the case of Europe, we must contrast the legal sources that specify how to resolve this obligatory right in Spain and the neighboring countries.

Now we will look at another international agreement that supports the principles of the Berne convention that we have explained.

2.2 Exceptions and limits for the press in the WIPO Copyright Treaty of 1996 and its relation with the World Trade Organization Agreement on trade-related aspects of intellectual property rights (TRIPS)

In the WIPO Copyright Treaty, the limitations and exceptions are dealt with in two ways, and both use the three-step test. The first, based on Article 1(4), is indirect, while the second is more direct in virtue of Article 10. I will briefly comment on these provisions, especially the second one, because they may point out solutions to the conflict between press editors and other press abstracting services as we apply some of the elements of the “three-step” test to authorize or prohibit the use of protected works.

Article 1(4)

This provision directly applies to the right of reproduction, since it requires that Union members comply with the Berne Convention Articles 1 to 21 and the Appendix. In consequence, if a State is not a member of the Berne Convention, it will have to apply the three-step test to the right of reproduction in virtue of Article 9(2) of the Berne Convention. Notwithstanding, it becomes more problematic the effect of an agreement declaration added in 1996 by the same Diplomatic Conference that adopted the text of this treaty and that supports the eventual broadening of the sphere of application of Article 9(1) and 9(2) under the following interpretation:

“The reproduction right, as set out in Article 9 of the Berne Convention, and the exceptions permitted thereunder, fully apply in the digital environment, in particular to the use of works in digital form. It is understood that the storage of a protected work in digital form in an electronic medium constitutes a reproduction within the meaning of Article 9 of the Berne Convention.”

In other words, as well as whatever obligation that those States may have under the Berne Convention, the parties of the WIPO Copyright Treaty require the interpretation of Article 9 of the Berne Convention because they are part of the Treaty. This is in accordance with what was established in that provision previously discussed because of its importance in the sphere of digital journalism.

The articles of the WIPO Copyright Treaty that we examined serve as a subsequent agreement among the signatory parties to the WTO Agreement on TRIPS, with respect that the interpretation of Article 9 of the Berne Convention is part of the TRIPS.

Article 10

As opposed to Article 1(4), the text of Article 10 clearly contains the three-step test and can have a much broader application than to the simple right of reproduction.

“(1) Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.”

“(2) Contracting Parties shall, when applying the Berne Convention, confine any limitations of or exceptions to rights provided for therein to certain special cases *that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.*”

These criteria, applied to this issue may allow editors to restrict the press abstracting or press clipping businesses, or the information websites. However, the definitive test will be these two criteria (harming of legitimate interests, and the conflict with the normal exploitation of the work).

3. Situation in the European Union

As can be seen from the previous discussion, the international commercial law permits and creates different legal situations. As Dreier stated, “The European Union has not created a ‘copyright’ Europe or community, similar to that of the trademark or patent. Moreover, an author acquires a tangled collection of national laws.”

Furthermore, the Directive 2001/29 maintains the principle of minimums, by which it permits monopolistic situations over the exploitation of a work by authors or

editors, even though it greatly opens the field of exceptions. European countries, as will be seen, have similar laws, but certainly have not come to a complete “harmonization” of copyright laws.

In the Directive, the European norm establishes two principles (the emphasis in mine) that have served the countries as an outline to adopt laws that favor the public, or on the other hand, favor editors and producers.

“(32) This Directive provides for an exhaustive enumeration of exceptions and limitations to the reproduction right and the right of communication to the public. *Some exceptions or limitations only apply to the reproduction right, where appropriate.* This list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning internal market. Member States should arrive at a coherent application of these exceptions and limitations, which will be assessed when reviewing implementing legislation in the future.”

“(34) *Member States should be given the option of providing for certain exceptions or limitations for cases such as educational and scientific purposes, for the benefit of public institutions such as libraries and archives, for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings.*”

These same points are those that explain the diverse solutions of the European countries, which calls into question the legal “harmonization” that supposedly is happening.

Returning to the international agreements and the Directive, as Diaz Noci says, “the fragmentation of the normative framework is a problem that affects all aspects surrounding information.”

Finally, looking at one more point of the Directive, there is nothing that would stop the copyright holders, that is to say, the editors and periodicals, to set up adequate compensation, despite the exceptions noted in the Directive.

“(45) *The exceptions and limitations referred to in Article 5(2), (3) and (4) should not, however, prevent the definition of contractual relations designed to ensure fair compensation for the rightholders insofar as permitted by national law.*”

Press abstracts

As we know, the Directive does not detail exactly how press abstracts should be considered, at least not in the way the Spanish law of 1996 and its 2006 revision does. The Directive (Art. 5(3)(c)) differentiates between

“(c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author’s name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author’s name, is indicated, unless this turns out to be impossible;”

So we have two types of “works” in periodicals with distinct protection:

- “articles on current economic, political or religious topics”
- “works or other subject-matter in connection with the reporting of current events”

In the first case, the condition of use is that the work does not carry the ©. In the second, the work can be used, even if it has the © if the source and author are indicated. As we have tried to establish, there is not a world-wide uniform treatment on how and what kind of protection should be given journalistic information, and these two criteria do not prevent all types of infringement situations that may occur in various countries.

Vincent Porter, in preparatory works during the 1990s on the Green Book that served as a basis for this Directive, and on which I had the chance to collaborate, reflected on the tensions and actions of the “lobby” during all of the process. The unequal situation among countries is based on the idea of if they permit or do not permit the reproduction of works produced in communication media. Even though the tendency is to protect newspapers, that is to say to limit the unauthorized reproduction, the laws allow the use of images, texts, etc., in whatever reporting on current events if the material is relevant and has already been published. As we said before, this is one of the principle exceptions of the Directive 2001 (Art. 5(c)) and current laws.

It should not be forgotten, moreover, that the Directive, and the common right, is not static and may require, with the changes of the market, that revisions are made, and that the application of norms is reevaluated, seeing how it affects the situation in one part of the market. Definitively, the Directives and other European legislative acts are at the service of the antecedent Right of the EU, the treaty signers. With regards to the Internet and digital media, to project a legal system onto future markets results, in any case, imprudent and not adapted to reality.

One case initially foreseen in a way in the Directive and that now is being reviewed is the licensing regarding the rights of the author in new musical services based in Internet (Webcasting, etc.). It is very probable that, with the growth on on-line video, what will be modified will be the parts regarding broadcasting, and the center of attention of the information businesses will shift toward convergent platforms of the press, radio, and television.

Comparison of European countries

	Authorized use	Prohibited use
United Kingdom	“reporting current events”	“reproducing photographs”
France	“press reviews”	The government may establish some prohibited uses (Ministry of Culture, CSPLA)
Germany	“Newspaper articles and radio commentaries for inclusion in press digests” “For use in reports on current-day events; extended to cover reports in all kinds of media, including the Internet”	
Denmark Portugal Italy	“news” (in the copyright framework)	
Finland	“reuse in newspapers” “recording news events”	
Spain	Journalistic compilations in forms of reviews or press reviews (quotes) The author has the right to receive adequate remuneration	Expressly prohibits the compilations of journalistic articles that basically consist of copies of the original articles, and when such activities are done <u>for commercial purposes</u>

3.1. Spanish legal framework after Directive 2001

Since the summer of 2006 there is a law in Spain that clarifies, more than in other surrounding countries, the rights of editors in the use of quotes or derived uses of the periodicals. As we can see in the comparison of European countries, the situation in Spain is clearer, and in a way, more beneficial to the authors than to the “clipping” services. Moreover, it specifies a right to an adequate remuneration or compensation that can be established through contracts.

We know of various solutions and legal cases, which we will briefly review, that will complete the legal panorama, allowing us to draw some conclusions and establish a plan of action for the various parties involved.

The origins of a solution that turned out to not be adequate, GEDEPRENSA 2003

In 2003, a conflict arose between the editors of the press and the “press clipping” businesses or web sites, based on news items from 2002. The press editors wanted to challenge the right to quotations of the Spanish Intellectual Property Law that was in

force (Law 16/1996, Reworked text of the 1987 Law), setting out the creation of a company called GEDEPRENSA that would develop press abstracts.

According to the ruling of the Tribunal de Defensa de la Competencia (Court in Defense of Competition) on May 13, 2004, the organization was not allowed to go forward. The editors' plan—that to my understanding was not well developed—was denied because it was an agreement that could undermine free competition and “close off” the use of abstracts by other competitors. The underlying issue, if there is or is not a right to remuneration for a derived work, in any case, was left unresolved.

The legal framework of this issue relative to the right to quote are Articles 11 (“derived works”) and 12 (“Collections, Databases”) in the Intellectual Property Law, which have been maintained intact in the new revision. According to Articles 11 and 12, indices and collections of other works are protected now that these new works (as indices of press abstracts, web sites of links, etc.) are considered derived works, that is to say works created on the basis of original works by others.

The key to the arguments of what GEDEPRENSA asked for is the question if press journals are derived works, then their contents can be created without harm to the copyright holders of the original work; or, in other words, if these derived works should have the same rights as the original work (newspapers, electronic versions, etc.).

Copiepresse, on the other hand, the development company for the rights of authors of the Belgium editors had better fortune, in part because a technical report requested by the court, said that in the case of Google News, the advertising was not included, which was an important part of the benefit to the editors. This ruling was upheld in February 2007. The arguments appear to be better worked out than the Spanish periodical editors' arguments in their case.

The arguments of GEDEPRENSA would have been more solid if they had considered the three-step criteria of the WIPO Copyright Treaty and the TRIPS, always demonstrating that the derived use of periodicals, with the sole exception for information, severely damages the authors' rights to compensation or exploitation of their works.

This would not have been a difficult example, given the “photocopy” debate that happened in Spain after the Intellectual Property Law of 1987 since this proves the damage to the book publishing business with the spread of photocopy machines.

El Mundo v. PeriodistaDigital, Commercial Court No. 2 of Madrid, 2006

Another case was decided on June 12, 2006, between Unidad Editorial SA, and MUNDINTERACTIVOS, SA, against PERIODISTA DIGITAL S.L. These companies asked the Judge for compensation for the “reproduction of contents of their publications in the web of periodistadigital.com,” probably hoping that with the law under revision the Courts would consider the “link to the page of El mundo.es” as plagiarism or illegal reproduction. This did not occur.

The references by the defense of El Mundo S.A. to illegal competition (or the “imitation”), as well as illegal acts by Periodista Digital (“plagiarism” and others) lead the Judge of the Commercial Court to deny the claim of both journalistic editors on grounds of previous jurisprudence or “solvencia argumental.” The ruling affirms that consumers will not mistake these press abstracts for the original publications based on the difference in prices, that the abstracting service does not discredit the image of the original media, and that the press clipping activity does not try to eliminate the original media that it selects and reproduces.¹

Exceptions or limitations of the use of journalistic information in Spain

As we stated earlier, there is a legal exception to the © with regards to journalistic information (Art. 5(c) of the Directive).

Let us examine the new Spanish Law, whose Article 7 revises Article 32 of the 1996 Law. The article establishes the right to quotations of “fragments” of other works that have already been published, with the citation of source and original author, on the basis of analysis, commentary, or criticism. Press clipping or abstracts will be considered as falling under this “quotation” provision; however, when compilations are made that basically consist of reproductions of the news articles, and this reproduction is for commercial gain, the author that has not expressly opposed the activity has the right to receive adequate or just compensation.² Part 1 is the general principle of quotations, and part 2 is the specific application to the concrete activity of journalism, even though it indirectly refers to the “press clipping” businesses.

The application of this legal principle now is being incorporated into the legal-business realm with new means of contracting or developing these rights.

4. Conclusions and future prospects on the debate surrounding “press clipping”

¹ Text in Spanish: “el Fundamento de Derecho 6º que: “*no parece que una revista de prensa sea capaz de inducir a los consumidores a error en relación con el nivel de precios de las publicaciones periodísticas cuyos artículos aquella se limita a reproducir, una vez seleccionados con criterios periodísticos. B) Esto (..) no sólo no desacredita la imagen de los medios sino que más bien realza o potencia la importancia de dichos medios y, por ende, su imagen pública. C) Finalmente, por razones obvias que ni siquiera es preciso pormenorizar, nada autoriza a pensar que la divulgación de una revista de prensa como la que explota la demandada forme parte de una estrategia encaminada a eliminar del mercado a los medios de comunicación cuyos artículos selecciona, incluye, reproduce y difunde”*”

² Text in Spanish: «Artículo 32. Cita e ilustración de la enseñanza.

1. Es lícita la inclusión en una obra propia de fragmentos de otras ajenas de naturaleza escrita, sonora o audiovisual, así como la de obras aisladas de carácter plástico o fotográfico figurativo, siempre que se trate de obras ya divulgadas y su inclusión se realice a título de cita o para su análisis, comentario o juicio crítico. Tal utilización sólo podrá realizarse con fines docentes o de investigación, en la medida justificada por el fin de esa incorporación e indicando la fuente y el nombre del autor de la obra utilizada.

Las recopilaciones periódicas efectuadas en forma de reseñas o revista de prensa tendrán la consideración de citas. No obstante, cuando se realicen recopilaciones de artículos periodísticos que consistan básicamente en su mera reproducción y dicha actividad se realice con fines comerciales, el autor que no se haya opuesto expresamente tendrá derecho a percibir una remuneración equitativa. En caso de oposición expresa del autor, dicha actividad no se entenderá amparada por este límite.”

The case of “press clipping” presents a lively, fascinating debate between the right of access to information and the rights of editors and authors. This debate is not limited to Spain or Europe, but applies throughout the world.

More than the rights of the authors, journalists, collaborators, or photographers, this topic affects the editors, the owners of the newspapers, magazines or media. I say this always and when the contracts between journalists and editors are regulated and there was also planned use of journalistic works by other media in the business group. Even though this topic—as an agreement between authors and editors—constitutes a challenge to the legal framework for information, we will not examine it more. We will say that the solution to this issue probably may come from a more complete agreement on the rights of the original owners of the media materials.

Let us focus on the concrete issue of this problem: Editors are worried that their goods (newspapers) may be distributed without any type of remuneration; thus they are tempted to completely limit or block all reproduction in the market.

Under the threat of losing income, readership, and circulation figures, it is clear the temptation they feel, as Dreier says, to close off all the market. What is initially seen as good—giving to the readers, the classic final users, the possibility of added value—has a great challenge: the growth of possible competitors that develop those niche markets and expand them out of control of the initial producer. These niches that we see have an umbrella of legal protection to their business, and from that, you can see why the editors are worried.

So we can now look at the risks and possibilities in the future.

- It could be bad news for the periodicals that the clients want press information without news, as has now happened in several countries.
- It could also be bad news for all, that the business owners, as they see the disappearance of incentives for their costs and investments, will disinvest in “public goods,” concentrating their work in “private goods,” and as a consequence, will lower the value of the newspaper, which would be bad for all of the society.

And if this happens, independent of the laws that have been discussed, what will be the problem of exclusion, of not permitting the access to information?

- The most severe problem, which would not happen in the European case, would happen in political and international contexts where there is only source of information, or in markets without plurality of information.

There are some positive prospects in the literature in favor of digital use of copies of periodicals: ecological benefits, or in other words, more forests and fewer trucks contaminating the freeways, but this does not stop the worries of the business people faced with the loss of business, even though it may make them think twice.

Without a doubt, there are solutions for a better future scenario for editors of the press, which can be described as follows:

- Maintain the quality of the periodicals and, from that point, develop agreements with the editorial staff over the exploitation of the published articles or materials; contract with the derived information services (all of those that we have been describing) so that there is just compensation.
- Change the model in the editorial business so that the periodicals and derived services “share” the table, the development of the digital periodicals, an increasing tendency in Internet. The “clipping” services and “broadcast monitoring” services contract with the editorial businesses and these facilitate the use of their contents, in formats already digitalized, for a price.
- Or even better, that the medium itself creates this added service for the new “reader” or types of “readers” and develop more services. They should incorporate into their websites search engines, better databases, groupings of news; they will quickly and easily provide the service that third-parties now do.
- There is an increased interest in more access to the contents of traditional newspapers, and a growing participation in culture by the public and other entities.
- Allow and accept that these third-parties live by the “exceptions” of the copyright that are part of the market, and consider that their added value falls back on the original periodical, giving it more notoriety or publicity.
- In any case, it is not desirable that the periodicals disappear, even for the only reason that there will not be added value in derived services.

It would be necessary that journalistic groups or research institutions study or promote the rigorous study of different factors that may affect the market from these initiatives, such as the loss of readers and circulation, or the loss of sales or income.

It would have to be seen how many consumers in the “sector” of added-value are consumers of derived information services of the daily newspapers. That is to say, who are they and how many are there that prefer to use vitamins and fail to go to the store for basic food. Will they choose to combine both methods, based on lack of time and the presence of economic resources? Why do they do it and what value will it have?

References

Brown, Ian. *Implementing the European Union Copyright Directive*. Foundation for Information Policy Research, (British Think Tank). URL: <http://www.fipr.org/>

Corredoira, Loreto and Bel, Ignacio (Editors), *Derecho de la Información*, Ariel: Barcelona, 2003.

Díaz Noci, J. *Los resúmenes de prensa en los gabinetes de comunicación. Una aproximación jurídica*, La Coruña: NetBiblos, 2004.

Dreier, Thomas, *Overview of legal aspects in the EU Institute for Information Law*, University of Karlsruhe, 2003.

Available here: <http://www.codata.org/archives/2003/03march/papers/Dreier.pdf>.

Porter, V., *Beyond the Berne Convention. Copyright, Broadcasting and the Single European Market*, John Libbey, 1991

Ricketson, Sam, Professor of Law, University of Melbourne and Barrister, Victoria, Australia. Report. *WIPO Study on Limitations and Exceptions of Copyright and Related Rights in the Digital Environment*, Geneva, June 23 to 27, 2003. URL: http://www.wipo.int/edocs/mdocs/copyright/en/sccr_9/sccr_9_7.pdf.

Web and URLs:

Copiepresse v. Google: <http://www.copiepresse.be> (Procedure)

Green Paper - Copyright and Related Rights in the Information Society, COM (95) 382, July 1995, available at: http://europa.eu/documents/comm/green_papers/index_en.htm

WTC and TRIPS: http://www.wto.org/english/tratop_s/trips_s/