

## ANNEX 1 – B

### iii. Other EC Documents

1. EC internal document "The Copyright package College Meeting", 13.09.2016, Ref. Ares(2016)6334373, **p.2**
2. EC (slides)presentation of the Copyright reform at Business Europe, 11.10.2016, Ref. cnect.ddg2.i.2(2016)6592273, **p.4**
3. Letter from EC VP Ansip to MEP Julia Reda, 23.01.2018, Ref Ares (2017)400354, **p.21**
4. E-mail from the Joint Research Centre to the Interservice Group on Copyright of 28 June 2016 (Ref. Ares (2018) 1186485) and its attachment, **p.22**
5. An e-mail dated 25.10.2016 from the JRC to other Commission services asking their comments on a draft of the paper, Ref. Ares(2017)6256585, **p.38**
6. Early preliminary draft of the study attached to the email of 25.10.2016 (Ref. Ares(2018)1186485), **p.40**
7. An e-mail exchange from May-June 2017 between DG CNECT and the JRC on this paper (Ref. Ares(2017)6256585) and its attachment (Ref. Ares(2017)6256585), **p.64**
8. A draft scientific paper drafted by the Joint Research Centre entitled "The economics of online news aggregation and neighbouring rights for news publishers", Ref. Ares (2017)6256585 - 20/12/2017 **p.67**

# The Copyright package

College Meeting 13.09.2016

The Internet has changed the way in which copyrighted works are made accessible. A modern copyright framework needs to ensure that both the Internet users and copyright owners benefit from this dramatic change. The package aims to support cultural diversity, increase content available online and establish up to date and clear rules for all market players. The ultimate objective is a fair framework that delivers more in terms of access for users, opportunities for creators, competitiveness for the cultural and creative sector, and predictability for online players. We do not change the way consumers use and share content online.

We need to maintain a copyright environment in Europe that gives the incentives to invest in creative content. The revenues generated by creators, performers and those that invest in creative content are accruing disproportionately to a few large players who themselves do not engage in content creation. Over time, this risks leading to less creation, less diversity, less quality and also the disappearance of the free press, which is a keystone of our democracy.

The Copyright package adopted today (two Directives and two Regulations) provides concrete answers to all players along the value chain, from authors and performers to those that invest in creativity and to the citizens, who read, listen and watch Europe's creative output.

The copyright reform focuses on **three main objectives**:

1. More **cross-border access** for citizens to copyright-protected content online.
2. **Wider opportunities** to use copyrighted material for education, research, cultural heritage and disability (through so-called "exceptions").
3. **Fair rules of the game** for a better functioning copyright marketplace, which stimulates creation of high-quality content.

## 1. *Cross-border access to content*

A dedicated regulation will make it simpler and faster to clear rights for making **TV & radio programmes** available online across borders (broadcasters offering simulcasting and catch-up TV services) and for retransmission of packages of channels via Internet-based networks equivalent to cable (like IPTV), resulting in more broadcast content (like news, cultural or political programmes) being made available to users.

We are also asking Member States to have in place mechanisms that will make it easier to obtain licences to make more **European films available to viewers via video-on-demand platforms** across Europe and to digitise and disseminate the wealth of **out-of-commerce works that cultural heritage institutions** in Europe hold in their collections.

## 2. *Exceptions*

We aim to unblock the possibilities which digital technologies offer to research, education and heritage preservation and to bring a cross-border element into the use of protected material online. This will be achieved through new copyright exceptions for text and data mining, teaching, preservation of cultural heritage and for the benefit of people with print disabilities. These new exceptions will be mandatory for Member States and cover cross-border uses.

The new exception for **text and data mining** will allow research organisations to use new automated technologies to analyse large sets of data for scientific purposes in all legal

certainty. This will support scientific endeavours and innovation, e.g. helping find cures for diseases or new ways to address climate change.

With the new **teaching** exception, universities, schools and teachers will have clarity when using protected materials as part of their teaching through digital tools and in online courses, including across borders.

Thanks to a new exception, libraries, museums and archives will be able to make copies of copyright-protected works for the benefit of future generations, taking advantage of new **digital preservation** techniques.

Finally, we are opening up the possibility for people who are **blind or otherwise visually impaired** and the organisations serving their needs to make copies of works in formats that are accessible to them, and to exchange those copies with similar organisations within the EU and with third countries. With this we will implement the Marrakesh Treaty into EU law.

### *3. A fair marketplace*

Finally, we have provisions aimed at making the marketplace for copyright fairer and more transparent. These provisions stem from the principle that the investment of creators and creative industries has to be properly recognised and rewarded.

Introducing a new related right for **press publishers** for the use of their publications in digital environments will strengthen the bargaining position of publishers when they negotiate the use of their content with online players. The proposal aims to help preserve the viability of an independent and high-quality press, which is critical for a pluralistic society and for democratic debate. Without such a right, which other creative industries already enjoy, the future of the European press would be at risk. The new right will not change the way consumers share and link to news online as they increasingly do on social media (no "Link Tax"! ). We want the press industry to benefit from a fairer market place so that it can enjoy the best possible environment to develop innovative business models to continue offering quality content online, which is what consumers crave for.

**Video-sharing platforms** are important content distributors today. We aim to reinforce the position of right holders to negotiate and be remunerated for the online exploitation of their content on such platforms. This is why we ask the platforms to put in place systems such as content recognition technologies that allow them, in partnership with the right holders, to implement the agreements reached on the use of copyright-protected content, or the agreements to avoid the dissemination of content which the owners do not want to appear on the platforms. Our proposal is not targeting users and their possibility to upload content; it aims to address the platforms that make their business on that basis. For European consumers to continue to enjoy high quality content, we need to ensure that those who create and invest in the production of that content have a say in how their content is made available by the platforms and to enjoy a fair share in the benefits.

Finally, new rules are introduced that increase transparency and balance in the contractual relationships of **authors and performers** with producers and publishers. Mechanisms will be put in place to help authors and performers obtain a fair share when the remuneration originally agreed turns out to be disproportionately low when compared to the success of their work or performance.

-----Original Message-----

From: [REDACTED] (CNECT)  
Sent: Tuesday, October 11, 2016 1:36 PM  
To: [REDACTED]  
Cc: [REDACTED] (CNECT)  
Subject: RE: Copyright reform

Dear [REDACTED],  
Please find attached the slides used this morning at the meeting.  
Kind regards,  
[REDACTED]

-----Original Message-----

From: [REDACTED]  
Sent: Monday, October 10, 2016 6:04 PM  
To: [REDACTED] CNECT)  
Cc: [REDACTED] (CNECT)  
Subject: RE: Copyright reform

Dear [REDACTED]

This is fine!

Have a nice evening!

Best,  
[REDACTED]

-----Original Message-----

From: [REDACTED] @ec.europa.eu [mailto:[REDACTED]@ec.europa.eu]  
Sent: 10 October 2016 17:27  
To: [REDACTED] @businessseurope.eu>  
Cc: [REDACTED] @ec.europa.eu  
Subject: RE: Copyright reform

Dear [REDACTED]  
Thanks, we'll use some slides but if it's not a problem we'll bring them directly tomorrow on a USB stick.  
Best,  
[REDACTED]

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]@businessseurope.eu]  
Sent: Monday, October 10, 2016 1:03 PM  
To: [REDACTED] CNECT)  
Cc: [REDACTED] CNECT)  
Subject: Re: Copyright reform

Dear [REDACTED]

In case you plan to use any slides for tomorrow's discussions, please let me know so I can put them to the computer in the meeting room.

Otherwise, I am looking forward to seeing you and Agata tomorrow.

Best wishes,

[REDACTED]

[REDACTED]

7 Οκτ 2016, 11:06 πμ, ο/η "[REDACTED]@ec.europa.eu" <[REDACTED]@ec.europa.eu> έγραψε:

> Dear [REDACTED],

>

> We are coming back to you about our presentation of the copyright reform next Tuesday. Could you please let us know how much time we'll have for the presentation and for questions?

> We intend to present the Directive on copyright in the Digital Single Market and the Regulation on online transmissions and retransmissions, but not the other two legislative instruments related to the implementation of the Marrakesh Treaty on visually impaired persons, unless you think otherwise.

> Please do not hesitate to come back to us if there are specific topics which will be of particular interest for the participants.

> Many thanks

> Kind regards,

> [REDACTED]

>

>

> -----Original Message-----

> From: [REDACTED] [mailto:[REDACTED]@business-europe.eu]

> Sent: Tuesday, September 20, 2016 10:26 AM

> To: [REDACTED] (CNECT)

> Cc: [REDACTED] (CNECT)

> Subject: RE: Copyright reform

>

> Dear [REDACTED],

>

> Thank you for confirming the timing. I will get back to you on the topics.

>

> I am looking forward to meeting you on 11 October.

>

> Best regards,

>

> [REDACTED]

>

> -----Original Message-----

> From: [REDACTED]@ec.europa.eu [mailto:[REDACTED]@ec.europa.eu]

> Sent: 20 September 2016 10:23

> To: [REDACTED]

> Cc: [REDACTED]@ec.europa.eu

> Subject: RE: Copyright reform

>

> [REDACTED]

>

> Yes, 11 October at 10 am is fine for us. We can make a general presentation of the copyright package, and please let us know if there are specific topics of interest for you.

>

> Many thanks

>

> Best regards,

>

> [REDACTED]

>

> -----

> [REDACTED]

> European Commission

> Directorate General Communications Networks, Content & Technology Unit I2 - Copyright

> 1049 Brussels, Belgium

> [REDACTED]

> e-mail: e [REDACTED]@ec.europa.eu

> -----

>

>

> -----Original Message-----

> From: [REDACTED]mailto:[REDACTED]@businesseurope.eu]

> Sent: Thursday, September 15, 2016 4:43 PM

> To: [REDACTED] (CNECT); [REDACTED] (CNECT)

> Subject: Re: Copyright reform

>

> Dear [REDACTED],

>

> With reference to my email exchange below with [REDACTED], I was wondering whether you may be able to join our meeting on 11 October at 10.00am. If this is difficult we could adjust.

>

> Thank you in advance for your feedback,

>

> Kind regards

>

> [REDACTED]

>

> [REDACTED]

>

> 15 ??? 2016, 4:04 ??, ?/? [REDACTED]@ec.europa.eu<

> [REDACTED]

> [REDACTED]

>

> Dear [REDACTED]

>

> My colleagues [REDACTED], both in copy, will be happy to join your Copyright WG. Pls see with them in terms of timing.

>

> Kind regards.

>

> [REDACTED]

>

> From: [REDACTED] [mailto:[REDACTED]]

> Sent: Thursday, September 15, 2016 2:39 PM

> To: [REDACTED] (CNECT)

> Subject: FW: Copyright reform

>

> Dear [REDACTED]

>

> We would be delighted and grateful if you or someone from your team would be able to join our Copyright Working Group meeting on 11 October to discuss the copyright proposals package with us. We would foresee a morning intervention but could adjust if necessary.

>

> Thank you in advance for your response,

>

> Kind regards,

>

> [REDACTED]



# **Modernisation of EU copyright rules**

**Presentation of the copyright  
package adopted on 14/09/2016**



## Background

- **Digital Single Market Strategy** (May 2015): need to address in the EU copyright framework the key obstacles to the functioning of the DSM
- **Commission's Communication on the modernisation of the EU copyright framework** (December 2015): targeted actions and long-term vision
- **Proposal for a regulation on cross-border portability of online content services** (December 2015) – ongoing discussions in Council and EP
- **Second copyright package** adopted on 14 September 2016

## **Copyright modernisation package adopted on 14 September**

- 4 legislative proposals and an accompanying Communication:
  - ✓ Regulation on online transmissions and retransmissions of TV and radio programmes
  - ✓ Directive on copyright in the Digital Single Market
  - ✓ Implementation of the Marrakesh Treaty for people with print disabilities through a Directive and a Regulation

# Regulation on online transmissions and retransmissions

## Context

- Background: Satellite and Cable Directive from 1993
- Problem: complexity of rights clearance for broadcasters in the case of online transmissions and for retransmission service providers other than cable
- Objectives:
  - Facilitate rights clearance for transmissions of TV and radio programmes online and for retransmissions by means equivalent to cable
  - Offer EU citizens a wider variety of TV and radio programmes across the EU

# Regulation on online transmissions and retransmissions

## Proposed measures

- **Online transmissions of broadcasting organisations**
  - Country of origin principle for the licensing of broadcasters' ancillary online services (simulcasting, catch-up services)
  - Contractual freedom of broadcasters / right holders not affected – subject to applicable EU and national rules
- **Retransmissions**
  - Mandatory collective management for retransmissions by means other than cable over closed networks (e.g. IPTV, satellite, digital terrestrial, mobile)
  - Possibility for broadcasters to directly license their rights to retransmission service providers

# Directive on copyright in the DSM

Main objectives:

- 1) Modernising EU rules on key exceptions and limitations in the areas of research, education, and preservation of cultural heritage
- 2) Facilitating licences in order to ensure wider access to content
- 3) Introducing fairer rules of the game for a better functioning copyright marketplace

# 1 - Modernisation of exceptions

## Context

- The beneficiary of the exception is authorised by law to use protected content without the need to seek prior authorisation from right holders
- Harmonisation of a certain number of exceptions in the existing EU copyright legal framework – but most of them are optional for MS
- Reform: focus on exceptions which are relevant for access to knowledge and which have a significant cross-border dimension

→ **Introduction of new mandatory exceptions**

# 1 - Modernisation of exceptions

## Scope of the new exceptions

- Exception for **digital uses of protected content to illustrate teaching**, including across borders → to provide full legal certainty to educational establishments and teachers
- Exception for **text and data mining** → to allow research organisations to use new automated technologies to analyse large sets of data for scientific purposes in all legal certainty
- **Preservation** exception → to allow cultural heritage institutions to make copies (including digital) of protected works for preservation purposes
- Scope, conditions and beneficiaries of the new exceptions defined taking account of the impact on the licensing market

## 2 - Facilitating licences

### Out-of-commerce works

- Legal framework to help cultural heritage institutions to digitise and make available across borders **out-of commerce works**
  - Objective: reduce transaction costs in mass digitisation projects
  - Member States to introduce the possibility of extended collective licensing or presumption of representation for licensing OOC works for non-commercial uses
  - Safeguards for right holders: possibility to opt-out; publicity requirements
  - Cross-border effect
  - Stakeholders' dialogue to facilitate the use of such mechanisms for different categories of works



## 2 - Facilitating licences

### Negotiation mechanism

- Negotiation mechanism to be set up by Member States to facilitate the **licensing of European films on VoD platforms**
  - Objective: improve the availability of European audiovisual works on VoD platforms
  - Negotiation mechanism open to parties (VoD platform, producers, distributors) wishing to conclude an agreement, on a voluntary basis
  - Member States to identify or create an impartial body with relevant experience to provide assistance with negotiation and help reaching licensing agreements
- Additional measures in the context of the Creative Europe programme

## 3 –A better functioning copyright market place

### Rights in publications

- Introduction of a **new related right for press publishers**
  - Objective: strengthen the bargaining power of the press industry in the online environment
  - Rights granted: reproduction and making available for the digital use of the press publications
- Possibility for Member States to consider that transfers of authors' rights or licences allow publishers to receive a share of **the compensation for the uses of works under exceptions**

### 3 – A better functioning copyright market place

#### Use of protected content by user uploaded content services

- New rules requiring that **online services providing access to large amounts of content uploaded by users** put in place appropriate measures (such as content recognition technologies) and cooperate with right holders:
  - to ensure the functioning of agreements concluded with right holders
  - or to prevent the upload of works which have been identified by right holders
- Objective: allow right holders to better control the use of their content and to negotiate on a fairer basis with players which have become important content distributors

### 3 – A better functioning copyright market place

#### Remuneration of authors and performers

- New rules to ensure **increased transparency to authors and performers** on the exploitation and remuneration of their works and help them to obtain appropriate remuneration
  - Obligation for the direct contractual partner of authors and performers to share information on modes of exploitation and corresponding revenues
  - Contract adjustment mechanism when the agreed remuneration turns out to be disproportionate to the success of a work
  - Dispute resolution mechanism for disputes concerning transparency obligations and contract adjustment mechanism

ANDRUS ANSIP  
VICE-PRESIDENT OF THE EUROPEAN COMMISSION

Brussels, 23. 01. 2018  
Arcs(2017) 400354

Ms Julia REDA, MEP  
European Parliament  
Rue Wiertz  
1047 BRUSSELS

E-mail: 

Dear Honourable Member,

I am replying on behalf of President Juncker to your letter of 21 December 2017. In your letter you bring to mind the principles of transparency and integrity that should guide the copyright debate. I can only agree with you, and I am fully committed to acting in the most transparent way, with full respect for all opinions and positions expressed by the co-legislators, stakeholders and civil society.

The Commission uses studies to provide valuable input for its policy work and to contribute to an open and democratic debate on the initiatives undertaken by the European Union. It is therefore essential that studies are only published when they meet high quality standards, all the more when they relate to politically important discussions such as the ongoing copyright reform.

As to the draft study you specifically mention in your letter, "The economics of online news aggregation and neighbouring rights for news publishers", the Commission services found the draft containing a number of inaccuracies and not meeting the quality standards required for publication. More work had to be done to redress this situation and allow its publication. I understand that, in the context of an access to documents request, you have already received a copy of the Directorate General for Communications Networks, Content & Technology's detailed recommendations to the Joint Research Centre (JRC) aimed at improving the draft paper.

I trust that this addresses your concerns.

Yours faithfully,



Andrus ANSIP

(SG)

**From:** (COMP)  
**Sent:** Thursday 15 February 2018 9:12  
**To:** (COMP)  
**Subject:** FW: ISG on Copyright  
**Attachments:** Evidence on news publishing ISG 230616 pdf

**From:** (JRC)  
**Sent:** Tuesday, June 28, 2016 6:41 PM  
**To:** (TRADE); (SG); (SG); (CNECT); (CNECT); (CNECT); (TRADE); (GROW); (SG); (GROW); (GROW); (JUST); (RTD); (CNECT); (RTD); (SANTE); (ENV); (CNECT); (CNECT); (GROW); (SG); (ENV); (COMP); (COMP); (JRC); (JRC); (EPSC); (SJ); (EMPL); (SJ); (ECFIN); (JRC); (EAC); (GROW); (SG); (SG); (ESTAT); (EAC); (CNECT); (CNECT); (COMP); (GROW); (JUST); KLINGVALL (JUST); (TRADE); (JRC); (TRADE); (JRC); (JRC); (JRC); (JRC); (JRC);

**Subject:** RE: ISG on Copyright

Dear all,

Following yesterday's meeting, here are DG JRC's comments:

#### Rights in publications

As promised in yesterday's meeting, I enclose a short paper on 'the economic impact of online news intermediaries'. It has been prepared by [REDACTED] who is a researcher at the JRC working on the economics of copyright in digital media.

It should be stressed that this paper is for internal discussion among Commission services only. The main points are as follows:

1. The paper looks at the impact of news aggregators on the revenue of publishers. This is driven by two opposing forces:
  - The substitution effect, i.e. the extent to which unlicensed distribution displaces and reduces (the revenue derived from) unlicensed distribution.
  - The quantity effect, i.e. the extent to which unlicensed distribution increases revenue by re-directing traffic or sales to licensed channels.

The net effect of these two forces is an empirical question, which cannot be settled by economic theory or legal reasoning. Only data can answer it. The

paper therefore reviews the available empirical evidence, which suggests that the quantity effect dominates the substitution effect. In other words, aggregators are complementary, rather than competing, services to newspapers' original websites and convey more benefit to publishers than harm.

This explains why, even though they have technical options to exclude aggregators from referring to their articles, nearly all published have allowed aggregators to continue scraping their websites, without compensation. In other words, the empirical evidence can be linked to their observed behaviour.

2. The issue is whether it is possible, via regulatory intervention establishing neighbouring rights, to strengthen the bargaining power of the publishers, so that, in addition to the additional traffic that newspapers get through the aggregation websites (indirect compensation), they can also get direct compensation. The paper looks, in some detail, at the real-life experiments in Germany and Spain. It finds that, in both countries, the legal interventions granting neighbouring rights to news publishers have not so far been effective. This is because, while publishers may hold an ownership right, the price they can get for it is determined by market forces. In Germany, a zero price market emerged. In Spain, the legislation provided for mandatory payment of licence fees through a collection society by online news aggregators. This led Google to withdraw its new service from Spain.
3. The paper also explains the formal opinions of the Spanish and German competition authorities, which question the economic rationale for the introduction of neighbouring rights for news publishers vis a vis news aggregators.

We are submitting this study because we feel that the empirical evidence that it summarises, as well as the formal opinions of the Spanish and German competition authorities, should be referred to in the impact assessment.

Finally, we would add that consumers reap considerable benefits from news aggregators and social media news providers. They reduce transaction costs for users, especially mobile phone users, because they combine many news articles from different sources in a single location. The impact assessment does not perhaps adequately acknowledge this or consider in sufficient depth whether the favoured option might reduce these benefits.

OUT OF SCOPE

OUT OF SCOPE

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Regards,

[Redacted]  
Joint Research Centre, [Redacted]

**From:** [Redacted] (TRADE)  
**Sent:** Tuesday, June 28, 2016 8:01 AM  
**To:** [Redacted] (SG); [Redacted] (SG); [Redacted] (CNECT); [Redacted] (CNECT); [Redacted] (CNECT); [Redacted] (TRADE); [Redacted] (GROW);  
[Redacted] (GROW); [Redacted] (SG); [Redacted] (GROW);  
[Redacted] (GROW); [Redacted] (JUST); [Redacted] (RTD);  
(RTD); [Redacted] (CNECT); [Redacted] (RTD);  
(SANTE); [Redacted] (ENV); [Redacted] (JRC);  
(CNECT); [Redacted] (CNECT); [Redacted] (GROW);  
[Redacted] (SANTE); [Redacted] (SG); [Redacted] (ENV);  
[Redacted] (COMP); [Redacted] (COMP); [Redacted] (JRC);  
[Redacted] (JRC- [Redacted] (SG);  
(EMPL); [Redacted] (EPSC); [Redacted] (SJ);  
(EAC); [Redacted] (SJ); [Redacted] (ECFIN); [Redacted] (JRC);  
[Redacted] (GROW); [Redacted] (SG);



(SG); WOLFF Pascal (ESTAT); ZAMPIERI Walter (EAC)  
**Cc:** EWERT Thomas (CNECT); DE MENDOZA FERNANDEZ Jaime (CNECT);  
BANASEVIC Nicholas (COMP); KLEINWEGE Helge (GROW); TOMASZEWSKI Maciej  
(JUST); KLINGVALL Louisa (JUST); ALLIBERT Brice (COMP); IGLESIAS Maria (JRC);  
VELASCO MARTINS Pedro (TRADE); PERREAU DE PINNINCK Fernando (TRADE)  
**Subject:** RE: ISG on Copyright

Dear All,

Please find TRADE's comments given orally yesterday in the IS meeting on  
the three final topics of the review 'Part 2'...

**Rights in publications:** we support the preferred option (creation of  
neighbouring right and possibility for publishers to claim compensation ...).  
Since most news aggregators are from the US and copy devices are  
manufactured outside the EU, this issue will certainly be raised in discussions  
with the third countries in question.

[REDACTED]

OUT OF SCOPE

[REDACTED]

We look forward to receiving a copy of the 'final' IA which will be submitted  
to the IAB this Friday.

Thanks and regards,

[REDACTED]

[REDACTED]

Personal data



**European Commission**  
 DG TRADE  
 Unit B3, Intellectual Property

Rue de la Loi 170  
 CHAR 05/168  
 B-1049 Brussels/Belgium

[\[redacted\]@ec.europa.eu](mailto: [redacted]@ec.europa.eu)

**From:** [redacted] (SG)  
**Sent:** Thursday, June 23, 2016 3:09 PM  
**To:** [redacted] (SG); [redacted] (CNECT); [redacted] (CNECT); [redacted] (TRADE); [redacted] (GROW); [redacted] (GROW); [redacted] (SG); [redacted] (GROW); [redacted] (GROW); [redacted] (JUST); [redacted] (RTD); [redacted] (RTD); [redacted] (CNECT); [redacted] (SANTÉ); [redacted] (ENV); [redacted] (JRC); [redacted] (CNECT); [redacted] (GROW); [redacted] (SANTÉ); [redacted] (SG); [redacted] (ENV); [redacted] (COMP); [redacted] (COMP); [redacted] (JRC); [redacted] (JRC-); [redacted] (SG); [redacted] (TRADE); [redacted] (EMPL); [redacted] (EPSC); [redacted] (SJ); [redacted] (EAC); [redacted] (SJ); [redacted] (GROW); [redacted] (ECFIN); [redacted] (JRC); [redacted] (GROW); [redacted] (SG); [redacted] (SG); [redacted] (ESTAT); [redacted] (EAC); [redacted] (CNECT); [redacted] (COMP); [redacted] (GROW); [redacted] (JUST); [redacted] (JUST); [redacted] (COMP); [redacted] (JRC)

**Cc:** [redacted] (CNECT); [redacted] (COMP); [redacted] (GROW); [redacted] (JUST); [redacted] (JRC)

**Subject:** ISG on Copyright

Dear colleagues,

Please find attached the documents for the ISG meeting of next Monday.

Kind Regards,

[redacted]

[redacted]



**European Commission**  
 Secretariat-General  
 Unit E2 – Knowledge and Infrastructure  
 Tel: + 32 2 29 [redacted] – BERL [redacted]  
 B-1049 Brussels/Belgium  
[\[redacted\]@ec.europa.eu](mailto: [redacted]@ec.europa.eu)

# The Economic Impact of Online News Intermediaries<sup>1</sup>

(For internal discussion among Commission services only)

June 2016

## 1. Introduction

Some EU MS have taken action on news aggregators. Germany introduced a law<sup>2</sup> in 2013 that allowed publisher to charge news aggregators for using their text, unless it is reduced to very small snippets. The law creates an opt-in situation where original news content publishers need to explicitly agree that an aggregator can put snippets of news items on the aggregator website. Despite expressing concern about news aggregator sites and lobbying for the law, most German news publishers opted in<sup>3</sup>. A similar dispute between Google News and the Francophone Belgian newspapers was settled in 2012 with an agreement<sup>4</sup> for enhanced collaboration between Google and the newspapers to attract more traffic to newspaper sites and to increase advertising revenue, without copyright license payments. A settlement was also reached in France between Google News and newspaper publishers<sup>5</sup>. In Spain, the government introduced legislation in 2014 that goes a step further and provides for mandatory payment of license fees through a collection society by online news aggregators. Publishers are no longer free to opt-in to aggregation of their content. As a result, Google withdrew its News service from Spain. The law was opposed by another group of newspaper publishers who commissioned a report that shows that this new law damages the newspaper industry<sup>6</sup>. The experience in these countries provides a first indication that, rather than damaging the publishers, news aggregators are beneficial because they drive additional web traffic to the publishers' sites that otherwise would not have reached them.

This note aims to shed some economic light on the question of news aggregators. It is based on existing economic evidence and research; it does not offer new evidence. A narrow economics of copyright approach would focus on the impact of news aggregators on the revenue of publishers only and thus on the incentive to invest in news production. The key empirical question is whether the original content providers get more or less traffic as a result of news aggregation sites? Beyond this narrow approach, a wider economics of copyright approach would go beyond the question of publishers' revenue and examine the impact on consumer welfare and on the actual production of

<sup>1</sup> Written by [REDACTED], DG JRC [REDACTED]. The author is a researcher at the Joint Research Centre of the European Commission [REDACTED]. The views and opinions expressed in this note are the author's and do not necessarily reflect those of the JRC or the European Commission.

<sup>2</sup> See [http://www.nytimes.com/2013/03/02/technology/german-copyright-law-targets-google-links.html?\\_r=0](http://www.nytimes.com/2013/03/02/technology/german-copyright-law-targets-google-links.html?_r=0)

<sup>3</sup> See <http://techcrunch.com/2013/08/01/google-publishers-love-hate/>

<sup>4</sup> See <http://www.googlepolicyeurope.blogspot.jp/2012/12/partnering-with-belgian-news-publishers.html>

<sup>5</sup> See <https://googleblog.blogspot.co.uk/2013/02/google-creates-60m-digital-publishing.html>

<sup>6</sup> See <http://www.aeepp.com/noticia/2272/actividades/informe-economico-del-impacto-del-nuevo-articulo-32.2-de-la-lpi-nera-para-la-aeepp.html>

news content<sup>7</sup>. From a public policy perspective, copyright protection should strike a balance between the interests of the content producers and users and maximize overall social welfare in society, not only the welfare of a single interest group.

## 2. The narrow economic approach to aggregator websites

The impact of aggregators on the revenue of rights holders is the result of two opposing forces: a positive quantity and a negative substitution effect. The substitution effect measures to what extent unlicensed distribution displaces and reduces (the revenue derived from) licensed distribution. The quantity effect measures to what extent unlicensed distribution increases revenue by re-directing traffic or sales to licensed channels. If the unlicensed product is a close substitute of the licensed version, the substitution effect will be strong. The degree of substitution depends on the quality and the quantity of news available on the aggregator's site.

Most news aggregators offer snippets or small extracts of the original news article only. This may stimulate the interest of at least some readers to read more and click through to the original website. That increases traffic again to the original newspaper website (the quantity effect). Because all this content is already freely available on the newspaper site the impact translates into ad revenue on the newspaper publisher's site. Aggregators may also provide a re-worked and edited version of one or several original articles, for instance in user-aggregated and blog aggregator sites (Isbell, 2010). That shifts more consumer value to the aggregator site and affect users' interest to look for the original article (Delarocas et al, 2015). A key factor in the substitution effect is the difference in quality between the aggregator service and the original service offered by the publisher or rights holder. If the aggregator offers a lower quality service than interested users may be inclined to go for the full quality service. The wider the quality gap between the two services the more likely that the quantity effect prevails. Unlicensed intermediaries often deliberately provide lower quality or incomplete services because they cater to the needs of the long tail of news readers with a low willingness to pay for content. Stopping that unlicensed distribution channel will not bring these customers back to fully licensed distribution websites. A similar mechanism is at work in YouTube music and audio-visual media: YouTube music and video quality is usually lower than the original version and therefore constitutes an imperfect substitute for the original in the eyes of many consumers. If it would be a perfect substitute there would be no incentive to go to the original content producer site. Consumers who consider it to be a sufficiently high quality substitute will not be attracted to the original. They would often not be willing to pay the full price for the original. Differences in willingness to pay among consumers drives market differentiation. In that sense, aggregators and original content producers play on price and/or quality discrimination between users. This may be welfare optimising for all parties concerned. The net effect is an empirical question that cannot be settled by economic theory or legal reasoning; only data can answer that question. We turn to this in the next section.

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<sup>7</sup> The distinction between the narrow and wider economic approach can be linked to the Continental European "authors rights" ("droit d'auteur") approach to copyright that emphasizes the interests of the original author and the Anglo-Saxon approach to copyright that seeks a balance between the interests of the authors and society at large. The economic tradition on copyright is situated in the latter approach.

Besides the economics of copyright, the role of news aggregators can also be seen in the context of the emergence and rapid growth in online platforms or multi-sided markets on the internet (Caillaud & Julien, 2003; Rochet & Tirole, 2006; Parker & Van Alstyne, 2005). Platforms bring new and innovative business models to the internet, enabled by the dramatic decline in information costs that digital technology offers. They bring together different types of users in a single online place. For instance a news aggregator platform brings together news content publishers looking for clients for their content, news consumers looking for interesting articles and advertisers looking for consumers who may be interested in buying their products. Bringing all these groups together in a single site facilitates matching between different users and their interests. Traditional newspaper websites only contain the content from one publisher; aggregators offer content from many publishers. They lower search and information costs for news consumers. They provide more efficient matching opportunities to all types of users, compared to scattered presence of users on the internet. Aggregators curate all that content and classify it in ways that reduces search time. This enables users to consume more content in a given time period, spending less time on search and switching. This attracts more consumers to the aggregator site. At first sight, this may be interpreted as a loss for traditional newspaper sites because it shifts traffic away from these sites and towards the aggregator (the substitution effect). In the US for example<sup>8</sup> Yahoo and Google News feature prominently at the top of the online news sites ranking. However, news aggregators do not offer exactly the same content as the original newspaper publisher website.

Moreover, contrary to single newspaper websites, news aggregator platforms generate beneficial network effects across user groups. The more newspapers are covered by an aggregator, the more consumers will be attracted to it. Conversely, the more consumers use an aggregator, the more publishers will be interested in having their material covered by the aggregator platform. For the platform operator, the more users are operational on his platform the more data he can harvest to improve the efficiency of his matching algorithms and the curation of media products on his site.

On the other hand, aggregator platforms may also induce welfare re-distribution effects between users, both within and across different user groups. They may have a stronger beneficial effect for some type of content providers, for instance local newspapers and high-quality newspapers than for middle-of-the-road publishers of mass content (Chiou & Tucker, 2015; Jeon & Nasr, 2015). They may increase the audience of less popular news outlets that otherwise would not have received attention. They may also depress revenue for middle-of-the road news publications. That re-distribution may lead to perceptions of inequalities in the distribution of welfare effects. It may trigger socio-economic disruption and calls for action by policy makers – for instance calls by artists for "fair remuneration" and by newspapers publishers for re-distribution of the benefits reaped by new aggregation platforms. Public policy interventions in the market-based distribution of income should be justified in principle by market failures or social concerns.

### 3. The available empirical evidence

The available empirical evidence suggests that the quantity effect dominates the substitution effect and thereby confirms the rationale behind the response of the German, French and Belgian publishers – as well as the opposition of some Spanish newspapers to the Spanish law. Aggregators are complementary rather than competing services to newspapers' original websites and convey

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<sup>8</sup> See the Top-15 US news sites <http://www.ebizmba.com/articles/news-websites>

more benefit to publishers than harm. In the following paragraphs we briefly present the most relevant empirical economic studies available to date.

Chiou & Tucker (2011/2015) start from the observation that the digitization of content has led to the emergence of platforms that draw information from multiple sources and the possible policy consequences of this change in media dynamics. Policymakers are concerned that these new platforms threaten incentives for the production of original content. As a result, policymakers are contemplating regulations that would force aggregation platforms to pay or require an explicit "opt-in" for content providers. To understand the possible consequences and underlying rationale of such laws, the authors explore whether aggregation of content by a single platform encourages users to "skim" content or to investigate in depth. The study uses data related to a contract dispute in 2010 that led a major aggregator (Google News) to remove news articles from a major content provider (Associated Press). These articles were typically shortened versions of stories that appeared in a select number of AP-associated newspapers. They compare users' website visits before and after this contract dispute relative to traffic from Yahoo! News, which continued to provide Associated Press content during this period. In theory, on one hand, consumers may use platforms to scan the extracts of content without clicking through to pursue more in-depth material ("scanning effect"). On the other hand, consumers may use platforms to explore new material more deeply ("traffic effect.") The data allows measuring both of these effects. The authors find that after Associated Press content was removed from Google News, fewer users subsequently visited news sites after navigating to Google News relative to users who had used Yahoo! News. Over a seven-week period 80 million monthly visits were lost to newspaper websites that carried AP content. They find evidence that the traffic effect is large, as aggregators may guide users to new content. There is no evidence of a scanning effect, as overall traffic to Google News and Yahoo! News remained relatively comparable during that time period. Websites with stronger ties to AP suffered a drop in traffic after the dispute.

Chiou & Tucker (2015) conclude that the "fair use" exemptions relied on by aggregator sites in the US are potentially less damaging to the original copyright holder than often thought. Moreover, the decision to opt-into (or out of) an aggregation platform should depend on whether the content provider is considered high-quality or highly unusual. Both these characteristics appear to encourage users to use the aggregator to explore content more deeply instead of scanning content. Horizontally or vertically differentiated content from high-quality newspapers or from very local or specialized themes newspapers are likely to benefit from news aggregator sites while more bland middle-ground news producers may stand to lose. These findings are in line with earlier research by Bar-Isac et al (2012) on the impact of reductions in search costs on the distribution of online consumption. Top performing products as well as long-tail rare products are likely to gain when search costs diminish while the middle ground may lose out. New aggregators reduce search costs for consumers and seem to have a similar impact of the distribution of news consumption.

Athey & Mobius (2012) study the introduction of a "local news" feature in Google News France in late 2009. Users could enter their zip code and on all subsequent visits they see news from local outlets prominently featured. The authors compare the news consumption of users who enable this feature to the usage of a set of "control" users, over a 2-week and an 8-week period. Adoption of this Google news feature leads to greater consumption of local news by more than 26% though Google news explains a substantial portion of the increased traffic to local sites. We see a 5%

increase in direct navigation to local outlets (bypassing Google news altogether) and a 13% increase in clicks on local outlets from the Google news home page. Over an 8 week period the local news treatment effect is attenuated somewhat but remains high (over 14%). Over time the incremental local news consumption derives primarily from increased utilization of Google News. There is a 12% increase in the number of local outlets used. The Google local news feature cuts into the “curation” role of newspapers; users are sent to the article directly, bypassing the profitable home page of the news outlet. They may subsequently read other articles in the outlet through following links they see on the same page as the original article, and thus their browsing may never take them to the outlet’s home page. Even though our results broadly support the hypothesis that news aggregators are complements for local news outlets, it is important to emphasize that the impact on local news outlets is mixed overall. Some outlets gain more than others, users spread their consumption over a larger number of outlets, and the curation role of news outlets is diminished.

Delarocas et al (2015) conduct a series of field experiments about readers' allocation of attention between news aggregator and the original articles they links to. They examine how the length of the text snippet, the presence of images and the number of related articles on the same story, affect a reader’s propensity to visit the content producer’s site and read the full article. Their findings suggest that longer aggregator snippets reduce the probability that readers will read the full articles. However when several related snippets compete for user attention, a longer snippet and the inclusion of an image increase the probability that an article will be chosen over its competitors.

Huanga et al. (2013) in their assessment of the relationship between aggregators and news websites in Taiwan find that aggregators do not compete with news websites, with one exception. Newspapers worldwide often serve as content providers for news portals, but portals outperform most newspaper sites in audience share. Whether this is a zero sum game or a win-win scenario deserves scholarly attention, because the phenomenon constitutes a unique case of intra-media competition. Based on empirical data collected through a large-scale survey, this study systematically examines the delicate relationship among and between news portals and newspaper sites in Taiwan. The results document non-competitive relationships among most news sites, with the exception of Yahoo! News. Such counter-intuitive findings carry theoretical and strategic implications for the study and practice of online journalism.

Lee & Chyi (2015) use a national survey of 1,143 U.S. Internet users to study the demand for aggregators and other media outlets in the USA. They find a non-competitive complementary relationship between three major news aggregators and 13 major TV, print and social media news outlets. Google News, Yahoo! News, and Huffington Post do not compete with other media outlets. They recognize that this finding is at odds with industry sentiment.

The Spanish Association of Publishers of Periodical Publications asked NERA Economic Consulting (UK) to assess the impact of a new article in the Spanish Copyright Act (Art 32.2) that established a compulsory fee to be paid by online news aggregators to publishers for linking their content within their aggregation services. Publishers cannot opt out of receiving this fee and payments are to be made through a copyright collecting society. This fee was promoted by a small group of publishers affiliated with the Association of Publishers of Spanish Newspapers despite opposition from many industry players. The theoretical motivation for this new article was that aggregators benefit from the publishers’ efforts without remunerating them. The underlying assumption is that news

aggregators compete with newspaper publishers, reduce the number of visits to newspaper websites and consequently their advertising revenues. The publishers' inability to refuse payment was justified to prevent a repetition of what occurred in Germany where publishers finally decided to opt in for fear that news aggregators would exclude publishers from their services in order to avoid the fee. The Spanish law became effective on 15 December 2014. NERA (2015) examined newspaper website traffic during the first few months of 2015 using ComScore traffic data. They found a decrease in traffic of more than 6% on average, going up to 14% for small newspaper publications. The decrease in traffic was confirmed independently by web-analytics service Chartbeat within hours of their removal from the Google service<sup>9</sup>. Chartbeat tracks about 50 Spanish newspaper sites ranging from small media outlets to the largest newspaper publishers. These sites saw their external traffic fall by 10-15 percent. Overall traffic did not fall as the amount of internal traffic coming from other Spanish newspapers rose. This suggests that readers are moving between different Spanish news sites more than they did previously, rather than coming directly from links at Google News. This could be another indication that user search costs increased as the Google aggregator site stopped providing links. Users have to generate their own news aggregation instead of Google News doing it for them.

The studies cited above cover news aggregation sites only. However, copying news items is not limited to websites that claim to be news aggregators. It is widely practiced by all news media, including traditional newspapers publishers, radio and TV news channels. This is well-documented in a study of French news media by Cage et al (2015) who investigate the speed and modalities of online news dissemination. On average, it takes two hours for information published by an online media outlet to be published on another news site, but less than 45 minutes in half of the cases and less than 5 minutes in 25% of the cases. At least half of online dissemination is copy-and-paste and does not follow rules for citing and crediting. Information is costly to produce but cheap to reproduce. Copyright law does not protect facts, only the particular expression of facts by an author in a news article. Some re-writing, reduction to short excerpts or an appropriate reference to the original publisher might go a long way to satisfy the law.

#### 4. Why are neighbouring rights not effective in Spain and Germany?

In this section we link that empirical evidence to the observed behaviour of newspaper publishers in their strategic interaction with the aggregators. We combine arguments from the well-known Coase Theorem in law & economics with the economics of platforms or multi-sided markets to explain why the news publishers could not make effective use of their newly acquired neighbouring rights and why it is in their interest to work around the legal solution. We focus in particular on the outcome of the real-life experiments with neighbouring rights in Spain and Germany. The section starts with a discussion of the opinions of the Spanish and German competition authorities on the neighbouring rights. Both use economic arguments and come to similar conclusions.

The Spanish competition authority (CNMC, 2014) issued an opinion that questions the economic foundations for the introduction of a neighbouring right for news publishers vis à vis news

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<sup>9</sup> See <https://gigaom.com/2014/12/16/traffic-to-spanish-news-publishers-plummets-after-google-move/>



aggregators in the Spanish intellectual property law. First, the CNMC observes that there are technical solutions (the introduction of a robot.txt file in a web page) that newspapers can apply to avoid that their articles are aggregated by online news platforms, or to select specific aggregators that are included or excluded (as German newspapers do). The fact that newspapers do not use this means could be considered as an indication that they perceive this aggregation as beneficial and not a competitor but rather a complement to their own news distribution efforts. The introduction of other and "irrevocable" legal means to achieve the same purpose would then be not only superfluous but could be harmful. Second, the CNMC notes that it is inefficient to fix an a-priori price for the remuneration of newspapers and not let the market work out a price. News aggregators generate traffic and revenue for news publishers' websites; that is part of the remuneration. It is difficult to determine the revenue that news aggregators gain from specific news articles. Hence it would be difficult to work out the basis for the calculation of compensation. The CNMC concludes that there is no indication of a market failure in news aggregation because news publishers do not seem to actively oppose news aggregators. Consequently, there is no reason for regulatory intervention in that market. Moreover, the intervention through the modification of the Spanish intellectual property law creates new market access barriers, both for existing news aggregators and for new service providers. The CNMC recommend carrying out a more profound economic analysis and to drop at least the irrevocable character of the provisions and the intermediation of copyright management societies.

The CNMC report explains why the Spanish neighbouring right fails to generate any additional revenue for Spanish newspaper. The newspapers' behaviour shows that they are interested in maintaining their presence in news aggregators, even without remuneration, by not blocking the aggregators' access their websites and articles. The law introduces a right to remuneration - on top of the additional traffic that newspapers get through the news aggregation websites – but the aggregators have no incentive to pay more for something that they can get for less. However, by making the remuneration irrevocable, the law disrupts the status-quo that emerged in the market and declares it illegal.

A similar situation occurred in Germany when a revocable neighbouring right was introduced. The German case is more complex than the Spanish case because it involves the Google Search engine too. Part of the debate is about the length of the news snippets that Google can extract from the article and put in Search. After the law came into force, VG Media, the collecting society for the German news publishers, introduced a tariff of 11% on all (ad) revenue derived from news search and news aggregation activities in June 2014. The tariff was subsequently reduced to around 6% in October 2014. There was also a debate about the legality of the robot.txt protocol and what to do about the newspapers that do not include such a protocol in their webpages. Google eventually asked all publishers to sign a written contract with a zero price license under the "opt-in" clause, and all of them did in order to allow Google News and Google Search to continue linking to their news articles.

The news publishers then filed a complaint at the German competition authority about the alleged abuse by Google of its dominant position in the German market. The competition authority (Bundeskartellamt, 2015) ruled that there was no need to take action in this case. Because the complaint went beyond Google News that is not ad-driven and also covered news articles snippets ranked in

Google Search the BKarA examined the question from a multi-sided online platforms perspective. The different sides or user types in the market (newspaper publishers as suppliers, consumers, advertisers) cannot be considered as separate markets; they are linked by indirect network effects. One side (advertisers) may subsidize the other side (consumers), thereby increasing the welfare of all sides. Although the news publishers are not remunerated for their contribution to the platform, the BKarA still considers this to be a market, though with a zero price. It also considered that the "opt-in" procedure as a proportional measure that leaves newspapers free to decide whether they want to participate in the market or not. It concluded that Google does not abuse its market position and that there is no reason for intervention in this market. After the competition authority rejected their claim, the publishers around VG Media filed a new complaint against Google in a civil court in January 2016, claiming that Google owes them remuneration. This case is still pending.

Even if the German civil court would rule that Google owes the publishers remuneration, a first economic question is whether zero is an acceptable market price? The BKarA reached the conclusion that zero can still be a market price because there are on-going transactions at that price. By bringing the collecting societies as intermediaries into the market process, the legislators in Spain and Germany have tried to increase this price to a positive non-zero figure. Collecting societies will obviously not work for zero remuneration, partly because they are private companies that have to cover their own operational costs and would like to earn a profit margin too. As the Spanish competition authority pointed out, the collecting societies create additional costs in the functioning of the market. That in itself is an inefficient solution because the market can clear at a lower cost, as it currently does with the robot.txt protocols. More importantly, the question is whether a legal or regulatory intervention in the market, implemented via a collecting society, makes the market more efficient or helps to overcome an externality that distorts the market. Clearly, both the Spanish and German competition authorities did not think this was the case.

The wider public economic policy question is how all this affects social welfare. The price dispute between the news publishers and the aggregators is after all only a welfare transfer question: who gets which part of the cake? It does not increase the size of the cake or the total amount of economic welfare to be distributed in society. As the German authority noted however, these transactions take place in multi-sided online platforms with several types of users: news publishers, advertisers, consumers, and the platform operator. Consumers and advertisers may be negatively affected by the dispute between the platform and the publishers, and by a price increase on that side of the platform. If newspapers withdraw their consent, consumers and advertisers will suffer. So far newspapers still consent and there is no loss of social welfare in Germany. In the Spanish case however, newspapers are legally not allowed to consent at a zero price and the entire market disappeared as a result. Consumers, advertisers and news publishers suffer a reduction in welfare as a consequence of the law.

The consumer welfare dimension got a bit lost in the debate on neighbouring rights. News aggregators are rapidly becoming the preferred entry gate for consumers into news media, especially mobile phone users. What attracts consumers to news aggregators? First, news aggregators give an overview of news across different sources while consumers who go to a newspaper website get only one source. In this way, they may get different perspective on a single news event. To get different perspectives in ordinary news sites consumers would have to incur

more transactions costs and hop to several websites. Second, news aggregation snippets are more appropriate for mobile phone users with small screens. Users who want to read the full article can still click through. However, loading full articles from newspaper websites onto mobile phones takes time. Some providers have started to improve the experience with fast-loading technologies (see below).

Ultimately, this is a question of market power. As Parker & Van Alstyne (2005) demonstrated in their seminal paper on network effects in multi-sided platforms, the pricing structure in platforms depends on the price elasticities of the different sides and user groups in the market. The side with the lowest price elasticity – i.e. their participation is less sensitive to entry pricing - will usually end up paying the highest price for market access. In Google Search, advertisers pay a price for the ads they place, information suppliers and consumers pay no price – though they both pay a relatively low price by contributing their private information. In Google News there are no ads and only publishers and consumers. Neither of them pays a monetary contribution<sup>10</sup>. However, publishers pay an opportunity cost in the sense that they are not remunerated. That shows that they are price inelastic too: a lower price, even a zero price, does not affect their participation. That lowers their market power and reduces their remuneration, in this case to zero. Market participants with high price elasticities – i.e. their participation will be very sensitive to price increases – end up paying the lowest price. Consumers pay nothing. If aggregators would charge them they would probably unsubscribe in large numbers from the service. The zero price for news publishers could thus be considered as an economically efficient market outcome from the perspective of the Parker & Van Alstyne (2005) model.

Whether it is a "fair" outcome is something that economic theory cannot answer. Policy makers can try to intervene in a market, even at the cost of economic inefficiency, to change the outcome because they consider the open market outcome unfair. The question then is whether such intervention can be made effective. In Spain and Germany the legal interventions by means of neighbouring rights for news publisher were so far not effective and did not change the market outcome because market forces were stronger than the law. Merges (2008) would label this as cases of "legal centrism": the idea that laws determine market outcomes rather than market forces.

Economists have another label for this. They attribute this outcome to the Coase Theorem. The theorem states that if trade in an externality is possible and transaction costs are sufficiently low, bargaining will lead to an efficient outcome regardless of the initial allocation of property rights<sup>11</sup>. The news aggregation case fits very well into this theorem. Transaction costs between Google and the publishers are relatively low, especially when a simple device like robot.txt is used. The publisher perceive an externality – the unremunerated use of the news content that they produced – and want to internalize that externality, at least partly. The law accords them a property right to this externality in the form of a neighbouring right. Bargaining starts but unfortunately their property rights are valued at a zero market price. The benefits of the property right have ended up in the hands of another party, the news aggregators, irrespective of the initial allocation of rights that was in favour of the publishers. Nevertheless, this is an efficient market outcome. It is hard to

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<sup>10</sup> In other news aggregation platforms, for instance in Yahoo News, publishers receive a remuneration because Yahoo News can afford to pay from its advertising revenue.

<sup>11</sup> See [https://en.wikipedia.org/wiki/Coase\\_theorem](https://en.wikipedia.org/wiki/Coase_theorem)

see how this can be changed through regulation, unless at great costs to societal welfare and economic efficiency.

Technological evolution may however be about to change this situation. The Google, Apple and Yahoo news aggregation models are gradually replaced by new business models such as Facebook's Instant Articles. In some countries, social media account for 75% of all news distribution activities, especially among the younger generations. Facebook is the clear market leader for social media news consumption. About 40-50% of users consume news through their mobile phone (Reuters, 2016). Instant Articles gives mobile phone users fast access to complete newspaper articles, not just titles and snippets. More importantly from a news publishers' perspective, Instant Articles allows news publishers to retain 100% of the ad revenue on their own ads and 70% of the revenue on Facebook-produced ads. Facebook claims that users read more Instant Articles than ordinary articles and are less likely to abandon the article<sup>12</sup>. That explains why hundreds of newspapers have already signed up for this distribution channel since Facebook opened it up to all newspapers in May 2016. This is a business proposition that Google News cannot beat. Google is trying to compete with its own mobile news version through Accelerated Mobile Pages, a technology that enables fast-loading of entire news articles onto mobile phones. However, Google's YouTube media platform has only half the market share for news consumption of Facebook (Reuters, 2016, p 11). Google might soon have to offer better terms to news publishers in order to remain competitive in the market.

It may well be that the battle over neighbouring rights for newspaper publishers will soon become a side show as better distribution technologies and channels become available for consumers, with a more interesting business proposition for news publishers too. However, there is no guarantee that Facebook will continue to offer such generous financial terms to news publishers in the future. A typical strategy of multi-sided platforms is to start with low prices in order to boost the network effects and conquer the market. Once they are in a dominant position the terms and conditions may change again and online news markets will be back to business as usual.

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<sup>12</sup> See <https://instantarticles.fb.com/>

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**From:** [REDACTED] (JRC-SEVILLA)  
**Sent:** 25 October 2016 16:55  
**To:** [REDACTED] (JRC); [REDACTED] (JRC); [REDACTED] (TRADE);  
 [REDACTED] (JRC); [REDACTED] (CNECT); [REDACTED] (EAC); [REDACTED]  
 [REDACTED] (COMP); [REDACTED] (EPSC)  
**Cc:** [REDACTED] (JRC-ISPRA)  
**Subject:** The economics of online news aggregation and neighbouring rights for publishers  
**Attachments:** Online news intermediaries Oct 2016.pdf

Dear all,

Please find attached a draft JRC paper on "The economics of online news aggregation and neighbouring rights for publishers". This paper examines the question of neighbouring rights for news publishers from an economic angle, taking into account two different perspectives on copyright. It is based on a review of existing and mostly empirical research work on this issue. Earlier and shorter versions were circulated to some of you in March this year, and in June to the inter-service working group on copyright. The current version has been shared with a small group of academics working on this subject for the purpose of scientific feedback.

We would be grateful for any comments you may have on the contents of this paper, preferably by mid-November.

With best regards,

[REDACTED]

**Abstract:**

This paper takes an economic perspective on the copyright debate in online news. The creation of a neighbouring right for news publishers follows the logic of the civil law approach to copyright that emphasizes the right to remuneration for all forms of digital reproduction and communication. Empirical evidence shows that news aggregators already have a positive impact on publishers' advertising revenue. It is difficult to see how publishers could gain more revenue from a neighbouring right, as the Spanish and German cases show. The economics of multi-sided platforms may provide a better explanation for this situation than the alleged abuse of a dominant market position by news aggregators. The common law view on copyright emphasizes the purpose of copyright as a financial incentive to ensure production of news. While several factors have driven the decline in newspaper revenues and in the number of legacy newspapers, news aggregation has an opposite effect. There is no evidence that declining revenues reduced the production of news articles as many new sources of digital news production have emerged. However, news aggregation platforms may create risks for media plurality in news consumption, more so than in the supply of news. Article rankings in platforms are driven by ad revenues. This weakens the editorial choices and branding of newspaper publishers. Rankings might trigger superstar effects that reduce the variety of news consumption. These risks cannot be addressed through copyright.



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# THE ECONOMICS OF ONLINE NEWS AGGREGATION AND NEIGHBOURING RIGHTS FOR NEWS PUBLISHERS



DRAFT, OCTOBER 2016

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## Abstract

This paper takes an economic perspective on the copyright debate in online news. The creation of a neighbouring right for news publishers follows the logic of the civil law approach to copyright that emphasizes the right to remuneration for all forms of digital reproduction and communication. Empirical evidence shows that news aggregators already have a positive impact on publishers' advertising revenue. It is difficult to see how publishers could gain more revenue from a neighbouring right, as the Spanish and German cases show. The economics of multi-sided platforms may provide a better explanation for this situation than the alleged abuse of a dominant market position by news aggregators. The common law view on copyright emphasizes the purpose of copyright as a financial incentive to ensure production of news. While several factors have driven the decline in newspaper revenues and in the number of legacy newspapers, news aggregation has an opposite effect. There is no evidence that declining revenues reduced the production of news articles as many new sources of digital news production have emerged. However, news aggregation platforms may create risks for media plurality in news consumption, more so than in the supply of news. Article rankings in platforms are driven by ad revenues. This weakens the editorial choices and branding of newspaper publishers. Rankings might trigger superstar effects that reduce the variety of news consumption. These risks cannot be addressed through copyright.

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[REDACTED] The views and opinions expressed in this paper are the author's and do not necessarily reflect those of the JRC or the European Commission. [REDACTED]



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### 1. Introduction

The shift from offline printed newspapers to online digital media has led to a decline in revenues for legacy newspapers. Several factors have contributed to that decline (Cornia et al, 2016). Readers moved their news consumption online and, in recent years, to mobile screens. This led to a steep decline in print edition revenues. Newspapers are struggling to compensate this through online subscriptions, trying to find a "freemium" balance between freely accessible and paywall protected content. Advertising spending also moved online and is more dispersed since advertisers have a wider choice of media channels to promote their products. Online ad revenue for newspapers only partly compensates the loss in offline ad revenue. Up to 90% of revenues in most newspapers still come from print, even after years of decline in print advertising and circulation and almost 20 years of investment in digital media (Cornia et al, 2016, p 7-8). Newspapers experiment with paywalls, native advertising and product branding, diversification into merchandising and e-commerce activities, video advertising, etc. Others are experimenting with distribution through social media and mobile platforms though some are reluctant and fear becoming too dependent. More sources of news have moved online, including TV and radio broadcasters, new ad-driven online newspapers, social media websites and blogs. They all compete for the attention of news consumers and drive down the market price of news. Unbundling adds to that competitive pressure. While offline readers bought a bundle of articles in a print edition, online readers can chose freely between articles from a variety of online news sources.

In this thriving online news market, news aggregation platforms have emerged that combine short snippets of news articles from many publishers, with links to the original full article. Readers are attracted to these because they reduce search costs for a wider variety of sources of news. Some are ad driven but Google News, the main operator, is ad-free. Recently, full text articles, combined with

ads, have emerged on the Facebook social media platform. The shift to mobile news reading adds further complications for publishers. Small mobile screens, slow loading articles and the very short attention spans of mobile users are a challenge. The Google News and Facebook platforms have become major gateways to a wider online audience. Publishers feel uncomfortable with that situation.

The contrast between thriving platforms and struggling news content publishers has led some publishers to claim a larger share of the platform revenue cake, on top of the benefits from the additional reach and ad traffic that news aggregators provide. Publishers want remuneration for the copyrighted content that they provide to news aggregation platforms. That explains the origins of the debate on ancillary or neighbouring rights for newspaper publishers.

Some EU MS have taken action. Germany introduced a neighbouring right in law in 2013 that allowed publisher to charge websites for using their text, unless that text is reduced to very small snippets. The law creates a situation where original news content publishers need to explicitly agree that an aggregator or search engine can put snippets of news items on a website. Despite expressing concern about Google sites and lobbying for the law, German news publishers eventually opted in and the market situation did not change. In Spain, the government introduced legislation in 2014 that goes a step further and provides for mandatory payment of license fees by online news aggregators through a collection society. Publishers are not free to opt-in to aggregation of their content. As a result, Google withdrew its News service from Spain, though it keeps displaying news article snippets in its search pages. In other countries courts intervened. After a court decision in a dispute between Google Search and the Francophone Belgian newspapers, the case was settled in 2012 with an agreement for enhanced collaboration between Google and the newspapers to attract more traffic to newspaper sites and to increase advertising revenue. A similar settlement was reached in France between Google and newspaper publishers.



This paper aims to complement the legal approach taken in the copyright debate with an economic perspective. It starts from the civil law perspective of copyright as an authors' right to remuneration

and examines the empirical evidence on the impact of online news aggregators on the revenue of news publishers. It finds an overall positive impact on audience reach and ad revenue for newspaper publishers. Moving to a common law or economic perspective on copyright as an instrument to promote innovation in society, it finds no conclusive evidence that weak copyright has contributed to a lack of incentives for new production.

A better explanation for the fact that news publishers were unable to monetize their legal rights in Spain and Germany may be found in the economics of multi-sided markets and the weak market position that publishers have in online platforms. Last but not least the paper examines the impact of news aggregators on media plurality. Aggregators may promote plurality because they reduce transactions costs for consumers to access a wider variety of press sources and articles. On the other hand, search rankings in aggregation platforms may trigger superstar effects and other distortions that affect the consumption of a variety of news sources. Again, there is insufficient evidence on this. This is not an issue that can be addressed through copyright reforms.

This paper is structured as follows. Section 2 provides a brief introduction to the rapidly evolving online news markets and technologies. Section 3 addresses the question whether online news aggregators add or divert revenue from newspapers' own online outlets. Section 4 goes beyond the remuneration debate and takes a wider economic look at copyright protection and the impact on innovation and social welfare. Section 5 explores potential market failures in online news aggregation markets that may justify the intervention of competition authorities and regulators. Section 6 investigates the impact of aggregators on media plurality in news production and consumption. Section 7 concludes.

## 2. The evolution of online news distribution models

Nearly all newspapers now have an online presence, either jointly with a print edition or online only. Not all readers come directly to the website of a newspaper. Some get there by clicking on the search results of a general search engine, others come via news aggregators or via links embedded in social media or other webpages. There are different types of new aggregation business models. They show only short snippets of news articles. Some display ads next to the articles or snippets and share the revenue (Facebook, Yahoo, MSN); others do not display ads (Google News) and have no direct revenue to share. Google News is a stripped-down search engine that displays only newspaper article links for a particular country, without ads. Even with ad revenue sharing commercial agreements fall short of a full copyright license.

Publishers pay attention to sources that direct traffic to their news sites and claim a share of the revenue of these referral sites. For example news publishers argue that although Google puts no ads on the News aggregator pages, it draws indirect traffic and revenue to the Google Search pages by displaying links and snippets of news article text in the search ranking. That generates ad revenue for Google through ads placed on the Search page. It is hard though to trace a direct link between

Google Search ads and clicking on search results for news articles. Users either click on the ad or on the search result; they cannot do both.

Referral traffic led to a first court case in Belgium<sup>2</sup> (2006), and later in France, where publishers claimed remuneration for the use of their content in Google News, despite the fact that Google News carries no ads. Google refused to pay and de-listed the newspapers from its Search and Google News results. That caused a drop in traffic to newspaper websites and in ad revenue. Some of these ads were placed through Google AdWords; Google also lost revenue as a consequence. Google and the newspapers in Belgium and France finally came to an agreement whereby Google provided some financial means, short of a license agreement, and helped newspapers to get more traffic to their websites. Similar cases emerged in Spain and Germany. In these countries, law makers decided to intervene and create an explicit neighbouring right for news publishers that enables them to claim remuneration for the (partial) reproduction of their content in news aggregation sites. In Spain, the law made remuneration mandatory; in Germany, publishers were left a choice to accept or reject reproduction without remuneration. To date German and Spanish news publishers have been unable to monetize these rights. After an initial rejection and chilling effect on traffic to their websites, German publishers finally agreed. Spanish publisher did not have that option and suffered a decline in traffic.

Recently, the shift in download speed in mobile phones has enabled consumers to shift news reading from fixed computers to mobile, especially mobile users who are active in social media. About 40-50% of users consume news through their mobile phone (Reuters, 2016). In some countries, social media account for 75% of all news distribution activities, especially among the younger generations (Reuters, 2016). Facebook is the clear market leader for social media news consumption. Its newsfeed attracts a substantial volume of traffic. End-2015, Facebook introduced a new service: Facebook Instant Articles (FBIA). It displays the full text of a news article, with ads in the article. The articles are loaded onto Facebook servers and into the Facebook app environment. That puts Facebook in a position to observe user behaviour and control ad revenue. Facebook claims that users read more Instant Articles than ordinary articles and are less likely to abandon the article. Instant Articles allows news publishers to retain 100% of the ad revenue on their own ads and 70% of the revenue on Facebook-produced ads. In this way, newspaper publishers passing through Facebook receive the same ad revenue as they get on their own websites, with the added advantage of reaching a wider audience. That explains why hundreds of newspapers have already signed up for this distribution channel since Facebook opened it up to all newspapers in May 2016. Ad revenue from newsfeed now represents a large share of Facebook revenue growth (Nieborg, 2016). However, there is no guarantee that Facebook will continue to offer such generous financial terms to news publishers in the future.

Google responded to the challenge of FBIA by introducing Accelerated Mobile Pages (AMP). This is a technology that improves the mobile user experience with faster loading pages in their mobile browsers. That facilitates not only newspaper reading but also many other types of content. Today there are over 650k mobile pages that use AMP in all sectors. Slow loading mobile pages were diverting mobile traffic from browsers to apps, including search-directed traffic in browsers, and the ad revenue that comes along with this traffic. Google has a strong position in advertising in

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<sup>2</sup> See [https://en.wikinews.org/wiki/Google\\_convicted\\_in\\_case\\_brought\\_by\\_Belgian\\_press](https://en.wikinews.org/wiki/Google_convicted_in_case_brought_by_Belgian_press)

browsers; Facebook has a strong position in mobile advertising. News pages loaded through FBIA don't allow Google ads to be displayed; they display Facebook ads – or ads produced by the news publisher. By improving mobile page load speed, consumers will be more inclined to search and load more pages in mobile browsers – and that brings more traffic and ad revenue back to Google. Consumers will click more on ads if they are confident that they will be loaded fast; that improves ad click-through rates. It boosts revenue for news publishers and many other content publishers on mobile pages. Google AMP caches the news articles on a Google server but does not control audiences and revenue. Ad revenue accrues to the ad publisher – where Google may also have a stake through AdWords. Last but not least, AMP pages get a rank boost in mobile search (read: Google Search), bringing mobile searchers quicker to faster pages.

The ad revenue battle continues on other fronts too. Ad blockers become a major risk for many ad-driven online business models, including news publishers. Some news publishers have already introduced a "no ads, no views" policy: they block access to free online news for users who have installed ad blockers (Cornia et al, 2016).

### 3. Newspaper revenue and the substitution debate

Legacy newspaper publishers have suffered a steep fall in revenue in the transition for print editions to online news consumption. Online ad revenue has somewhat softened the fall but has not been able to stop it and turn it around. Newspapers observe the thriving online social media business, powered by ad revenue and partly driven by newsfeed produced by the publishers – and they want a (larger) share of that revenue.

Whether online news aggregators have contributed to a decline – or an increase - in revenue for news publishers is an empirical question. In this section we review the existing empirical evidence and conclude that it has a positive effect.

The impact of online news aggregators on the revenue of original news publishers is the result of the net effect of two opposing forces: a quantity and a substitution effect. The substitution effect measures to what extent aggregators displace online traffic and reduce the revenue generated by the publishers' own website. The quantity effect measures to what extent aggregators increase revenue by re-directing traffic towards the publisher's own website. If the substitution effect dominates, the original news publishers lose revenue; if the quantity effect dominates they gain revenue. The net effect is an empirical question that cannot be settled by economic theory or legal reasoning; only data can answer that question. In the remainder of this section we summarize the available empirical evidence to date. The main finding is that the quantity effect dominates the substitution effect. Aggregators are complementary rather than competing services to newspapers' original websites. On balance, they direct additional traffic to news publishers' websites and thereby increase rather than reduce their online revenue.

News aggregators offer snippets or small extracts of the original news article only. This may stimulate the interest of readers to click through to the full article on the original publisher's website. That increases traffic and ad revenue on the original newspaper site (the quantity effect).

Aggregators may also provide a re-worked and edited version of one or several original articles, for instance in user-aggregated and blog aggregator sites (Isbell, 2010). That shifts more consumer value to the aggregator site and may reduce users' interest to look for the original article (Delarocas et al, 2015). The substitution effect depends on the difference in quality between the aggregator service and the original service offered by the publisher. The wider the quality gap between the two services the more likely that the quantity effect prevails. Aggregators often deliberately provide incomplete services because they cater to the long tail of news readers with less interest in full articles and a low willingness to pay for the full content. Tapping into that long tail may give original news publishers new audiences that they would otherwise not reach. Stopping that unlicensed distribution channel will not bring these customers back to fully licensed distribution websites. Aggregators and original content producers play in slightly different markets characterised by quantity and quality discrimination between different types of news readers. A more recent generation of mobile service news aggregators, such as Facebook's Instant Articles and Google's Accelerated Mobile Pages, offer the full news article for reading. In return, they offer the original newspaper publisher between 70 and 100 per cent of the ad revenue generated by the article so that there is no revenue substitution effect at all: the publisher receives the same ad revenue as on his own website.

Chiou & Tucker (2011/2015) explore whether aggregation of content by a single platform encourages users to "skim" content or to investigate in depth. The study uses data related to a contract dispute in 2010 that led a major aggregator (Google News) to remove news articles from a major content provider (Associated Press). These articles were typically shortened versions of stories that appeared in a select number of AP-associated newspapers. They compare users' website visits before and after this contract dispute relative to traffic on Yahoo! News, which continued to provide Associated Press content during this period. In theory consumers may use platforms to scan the extracts of content without clicking through to pursue more in-depth material ("scanning" or substitution effect). On the other hand, consumers may use platforms to explore new material more deeply ("traffic" or quantity effect). The authors find that after Associated Press content was removed from Google News, fewer users subsequently visited news sites after navigating to Google News relative to users who had used Yahoo! News. Over a seven-week period 80 million monthly visits were lost to newspaper websites that carried AP content. They find evidence that the traffic or quantity effect is large, as aggregators may guide users to new content. There is no evidence of a scanning or substitution effect, as overall traffic to Google News and Yahoo! News remained relatively comparable during that time period. Websites with stronger ties to AP suffered a drop in traffic after the dispute.

Chiou & Tucker (2015) conclude that the "fair use" exemption relied on by aggregator sites in the US is potentially less damaging to the original copyright holder than often thought. The decision to opt-into (or out of) an aggregation platform should depend on whether the content provider is considered high-quality or highly unusual. Both these characteristics appear to encourage users to use the aggregator to explore content more deeply instead of scanning content. Horizontally or vertically differentiated content from high-quality newspapers or from very local or specialized themes newspapers are likely to benefit from news aggregator sites while more bland middle-ground news producers may stand to lose. These findings are in line with earlier research by Bar-Issac et al (2012) on the impact of search cost reductions on the distribution of online consumption. Top performing products as well as long-tail rare products are likely to gain when search costs

diminish while the middle ground may lose out. New aggregators reduce search costs for consumers and seem to have a similar impact of the distribution of news consumption.

Athey & Mobius (2012) study the introduction of a “local news” feature in Google News France in late 2009. Users could enter their zip code and on all subsequent visits they see news from local outlets prominently featured. The authors compare the news consumption of users who enable this feature to the usage of a set of “control” users, over a 2-week and an 8-week period. Adoption of this Google news feature leads to 26% increase in consumption of local news sites over a 2-week period and Google News explains a substantial portion of that increase. There is a 5% increase in direct navigation to local outlets (bypassing Google News altogether) and a 13% increase in clicks on local outlets from the Google news home page. Over an 8 week period the local news treatment effect is attenuated somewhat but remains high (over 14%). Over time the incremental local news consumption derives primarily from increased utilization of Google News. There is a 12% increase in the number of local outlets used. However, the Google local news feature cuts into the curation role of newspapers. Users are sent directly to the article, bypassing the profitable home page of the news outlet. They may subsequently read other articles in the outlet through following links they see on the same page as the original article, and thus their browsing may never take them to the outlet’s home page. Even though these results broadly support the hypothesis that news aggregators are complements for local news outlets, it is important to emphasize that the impact on local news outlets is mixed overall. Some outlets gain more than others and users spread their consumption over a larger number of outlets. George & Hogendorn (2013) come to similar conclusions for the re-design of Google local News in the US.

Delarocas et al (2015) conduct a series of field experiments about readers' allocation of attention between news aggregator and the original articles they links to. They examine how the length of the text snippet, the presence of images and the number of related articles on the same story, affect a reader’s propensity to visit the content producer’s site and read the full article. Their findings suggest that longer aggregator snippets reduce the probability that readers will read the full articles. However when several related snippets compete for user attention, a longer snippet and the inclusion of an image increase the probability that an article will be chosen over its competitors.

Huanga et al. (2013) assess the relationship between aggregators and news websites in Taiwan. Newspapers worldwide often serve as content providers for news portals, but portals outperform most newspaper sites in audience share. Based on empirical data collected through a large-scale survey they find that aggregators do not compete with news websites, with the exception of Yahoo! News. Lee & Chyi (2015) use a national survey of 1,143 U.S. Internet users to study the demand for aggregators and other media outlets in the USA. They find a non-competitive complementary relationship between three major news aggregators and 13 major TV, print and social media news outlets. Google News, Yahoo! News, and Huffington Post do not compete with other media outlets.

At the request of the Spanish Association of Publishers of Periodical Publications NERA Consultants (2015) assessed the impact of the introduction of a newspapers publishers' right in the Spanish Copyright Act that became effective on 15 December 2014. It was promoted by a small group of publishers despite opposition from many industry players. The revision of the Spanish law was motivated both by the observation that aggregators benefit from the publishers’ efforts without remunerating them, and the assumption that the substitution effect dominates the quantity effect.

The revised Article 32.2 of the Act established a compulsory fee to be paid by online news aggregators to publishers for linking their content within their aggregation services. Unlike the German case, Spanish publishers cannot opt out of receiving this fee and payments are to be made through a copyright collecting society. This was justified to prevent a repetition of the German case where the opt-in option led to a status quo. Using ComScore web traffic data, the NERA study found a decrease in traffic to Spanish newspapers' websites by 6% on average during the first few months of 2015, going up to 14% for small newspaper publications. Independently, Chartbeat, that tracks 50 Spanish newspaper sites ranging from small media outlets to the largest newspaper publishers, confirmed that these sites saw their external traffic fall by 10-15 percent. Overall traffic did not fall immediately as the amount of internal traffic coming from other Spanish newspapers rose. This suggests that readers are moving more between Spanish news sites than previously, rather than coming directly from links at Google News. This could be interpreted as an indication that user search costs increased as the Google aggregator site stopped providing links. Users had to generate their own news aggregation instead of Google News doing it for them.

Calzada & Gil (2016) use a more sophisticated dataset from SimilarWeb to study both the Spanish and German cases. The data do not only track the volume of web traffic but also the sources that generate the traffic (direct access to the news pages, aggregators, search engines, social media sites, links from other web pages, etc.). They find an 11% drop in Spanish newspaper traffic (quantity effect) and an 8% drop in the number of newspaper pages visited (a reduction in the variety of news) following the change in the copyright law. The latter could be interpreted as evidence that news aggregators increase access to a plurality of media resources rather than reduce it. More surprisingly, the authors find a drop in search and direct traffic to newspaper sites by 12% and 14% respectively. This is inconsistent with a substitution effect. It may show that users quickly grew tired of the additional transaction costs to do their own news aggregation via search and direct access to newspaper sites and simply reduced the number of news sources that they consulted. That would once more confirm the variety or media plurality effect of news aggregators. Aggregators may actually increase the number of direct visits to news outlets by allowing consumers to rediscover new sources of information. For the German case they find a 7% reduction in daily visits to news outlets controlled by the Axel Springer group that initially opted out of Google News during a 2-week period. There was also a 10% reduction in visits via search engines and 7% direct visits.

These empirical studies cover only the impact of news aggregators on traffic and revenue for the original content publishers – the producer surplus. They do not examine the impact on the production of original news content – the long-term dynamic effect of (weakened) copyright protection on the supply of innovative products - or the impact on consumer welfare through reduced search costs, availability of a wider variety of news sources and lower prices. Jeon & Nasr (2015) are the first to explore these wider welfare implications in a theoretical model. They examine how the presence of news aggregators affects the quality choices of newspapers, using an economic model to capture the "business-stealing effect" and the "readership expansion effect" of the aggregator. They find that the presence of the aggregator leads newspapers to specialize in news coverage and changes quality choices from strategic substitutes to complements. This shift is likely to increase the quality of newspapers and overall social welfare, though the effect on newspapers' profits is ambiguous. Unfortunately there is no empirical evidence yet in support of this model.



We can conclude from this overview that there is no empirical evidence in support of the substitution hypothesis and thus no evidence that online aggregators have a negative impact on original newspaper publishers' revenue. On the contrary, aggregators may actually be complements to newspaper websites and may help consumer discover more news and boost the number of visits. This structured empirical evidence is corroborated by more qualitative and anecdotal evidence collected through interviews with newspaper managers (Cornia et al, 2016). They confirm that newspapers collaborate with large social media platforms like Facebook, Snapchat, Google, Yahoo and Apple because they bring them in touch with large online audiences that channel a substantial volume of traffic and ad revenue to their articles. News publishers may of course want to reach further and claim a share of indirect ad revenue related to snippets of news text that appear in general search engines – as Belgian and French newspaper publishers tried to do. The German competition authority (BKartA, 2015) pointed out that indirect ad revenue via search is hard to verify (see below). Rather than claiming copyright and a share in ad remuneration, the evidence (Delarocas et al, 2015) suggests that reducing the length of snippets – with the help of courts - may be an easier way to get there. It will not diminish the audience reach that search engines bring to newspapers and it will boost the expansion effect by directing more search traffic to newspapers' own websites and ads.

The decline in revenue in legacy news publishing started long before online news aggregation. It was caused by a shift in readership and advertising from offline print editions to online news sites. It is difficult for news publishers to find a good balance between free and paid online content. Many are experimenting with the positioning of paywalls on their online news sites. Chiou and Tucker (2013) find that the introduction of a pay wall leads to a 51% decrease in online visits and thus advertising revenue. It is not clear how much of that loss would be compensated by an increase in subscription revenue. Only news producers with a strong reputation and/or specialisation and a high price elasticity of demand for their news items are in a position to put up a pay wall to increase revenue. Moreover, moving online has resulted in unbundling of newspapers: while articles were sold as a package in print editions, consumers have more choice in making their own selection of articles online as they can freely move between different newspapers. Subscription fees limit that unbundling and reduce competition between newspaper sites. Still, the volume of freely available content is huge. Inevitably, the price of online content goes down as the volume of free supply increases.

#### 4. The economic view on copyright

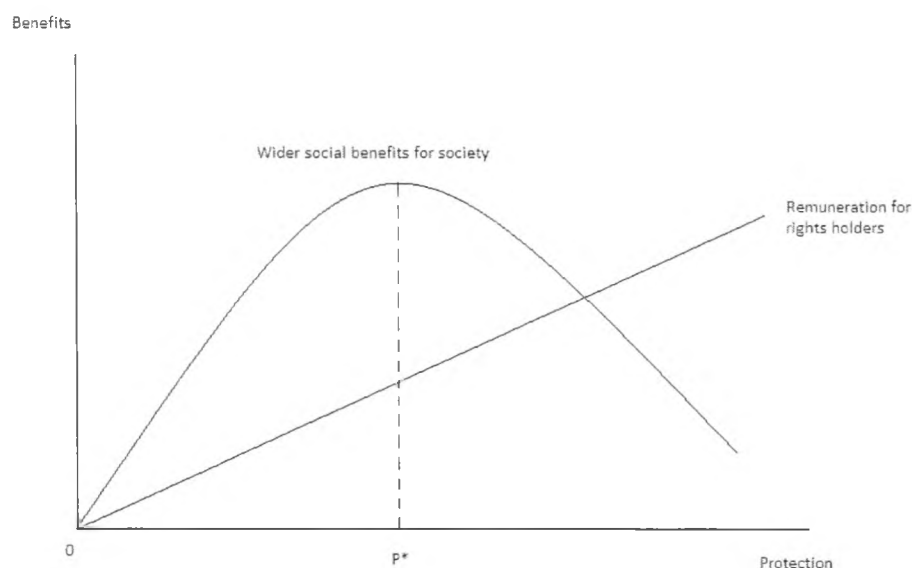
The strong focus on the revenue or substitution effect is a result of the Continental European civil law approach to copyright that emphasizes the rights of authors and publishers ("*droit d'auteur*") to decide on reproduction of their works and communication to the public, as well as the remuneration they want to receive for that use (Hugenholtz & Quintais, 2016). These rights have been put under stress in the digital age with the invention of many new forms of reproduction and communication to the public, including through hyperlinking and other forms of re-transmission and re-mixing, accidental and transient copying, text and data mining (Poort, 2016) and the same is happening with online news aggregation. The civil law tradition seeks to obtain remuneration for all digital

reproductions that are publicly available, subject to some exceptions that are justified by transaction costs. Lawyers and courts are struggling to bring these new technologies in line with that right or design extensions and modifications of copyright law to bring them into the fold of that remuneration right paradigm.

The civil law approach can be contrasted with the common law view on copyright that is more aligned with the economic view (for instance in Landes & Posner, 1989). The economic view sees copyright as an economic policy instrument to stimulate innovation for the benefit of society as a whole, not only for authors or private rights holders. The civil law and common law view coincide in the argument that, without copyright protection, authors would have no incentive to invest in the production of artwork because everybody else could benefit from that investment by paying only the cost of a copy. That externality creates a market failure because it would stop production. The common and civil law views start to split ways when it comes to the economic interpretation of copyright as an exclusive monopoly right granted to the authors to decide who can use a copyright protected work, under which conditions and at what price. For economists, monopoly rights are by definition inefficient because they cause deadweight losses: potential benefits that cannot be realized in society. However, these short-term or static losses in copyright protection are compensated by longer-term dynamic gains because it produces a steady stream of innovative artwork. Contrary to the Continental European civil law view that emphasizes the rights of authors, at the expense of rights of consumers or society, the common law and the economic view seek a balance between the rights of authors and the overall welfare of society. For that reason, copyright is limited in time and scope. Exceptions to copyright protection determine circumstances where no payment to the author is due. In the Continental view, these exceptions should be limited to circumstances where transaction costs exceed the benefits of licensing for the rights holders (Charles River Associates, 2014). In the economic view, exceptions can go further in order to ensure an appropriate balance between the static losses and dynamic gains of copyright protection and promote wider dissemination of the benefits of innovation in society.

Digital technologies create new means to reproduce and communicate copyright protected works to the public. The civil law approach would seek to extend authors' rights to claim remuneration for all these new uses. For example, the creation of a neighbouring right for newspaper publishers constitutes a *de jure* extension of the scope of copyright protection. The common law or economic view on copyright would not automatically grant an extension of authors' rights to remuneration for uses under these new technologies. Extending copyright protection to all forms of digital reproduction may defy the purpose of copyright as an instrument to promote innovation, not necessarily to maximize revenue of the rights holders. Economists would carefully examine the balance between static deadweight losses and dynamic welfare gains in the copyright equation. They would go back to the purpose of copyright and ask whether these new technologies affect that balance and reduce the incentive to produce innovation (Bechtold, 2016). A reduction in innovation has a negative impact on societal welfare. In the case of newspapers for example, a reduction in the number of new articles and in the variety of views expressed in news publications would constitute a welfare loss that requires intervention through further copyright protection. However, if no such negative effect on the supply of innovative artwork can be observed there is no *a priori* reason to extend claims.

**Figure 1: Social versus private benefits of copyright protection**



The policy gap between the civil law legal doctrine and the common law and economic view is illustrated in Figure 1. Too little protection stops innovation; that is bad both for authors and society. More protection boosts benefits for authors and society. The civil and common law view go hand in hand up to the optimal degree of protection  $P^*$ . Beyond  $P^*$  they split ways: more protection still benefits authors but reduces the wider benefits to society because it slows down further innovation. Consequently, in the economic view, the crucial test for an appropriate level of copyright protection is not the impact on revenue for authors but the longer-term dynamic impact on the supply of innovation for society.

Finding the optimal degree of protection  $P^*$ , or the point where more protection becomes inconsistent with wider societal benefits from innovation, is an empirical question that cannot be settled through economic theory or legal reasoning. The impact of protection on the production of innovation or the supply of news articles is a crucial - but difficult - test for the justification of a possible ancillary copyright for newspaper publishers. German and Spanish news publishers did not reduce the production of news articles when Google News refused to pay a fee. They are under financial pressure because of other factors that affect newspaper revenues and that may affect the production of newspapers and news articles. It would be an error of attribution to hold news aggregators responsible for a decline in news output, if any, and give publishers additional copyright protection against aggregators in order to boost output.

Proponents of the civil law legal doctrine often argue that revenue for rights holders and the supply of innovation are positively correlated. In the digital age that is not necessarily true. The cost of production and distribution of media products has fallen substantially (Waldfoegel, 2013). In that case, a fall in revenue does not necessarily depress production. Music is a good example: revenue from recorded music sales declined significantly with digitization in the early 2000s but music

production increased (Aguilar & Waldfogel, 2014). A similar phenomenon may have occurred in news. The vast increase in online news sources may be an indication.

There are no statistics on the production of newspaper articles. There are statistics on the evolution of the number of newspapers and their circulation that show that both have declined (Cornia et al, 2016). That does not necessarily mean that the supply of news has declined as many more new sources of news have become available online: TV broadcasters have moved online, new fully digital newspapers have emerged and a myriad of blogs comment on current events. Moreover, news articles are a heterogeneous product market with some degree of substitution between articles. Articles are not entirely unique products. They can cover the same event in different ways. The absence of statistics on news production creates a gap in our understanding of the dynamics of the newspaper industry in the digital age. It makes it difficult to judge whether there is a need to boost news production through additional copyright protection or other means.

Before concluding this section it is worth pointing out that copying news items is widely practiced in the digital age by all news media, including legacy newspapers publishers, radio and TV news channels. This is well-documented in a study of French news media by Cage et al (2015) who investigate the speed and modalities of online news dissemination. On average, it takes two hours for information published by an online media outlet to be published on another news site, but less than 45 minutes in half of the cases and less than 5 minutes in 25% of the cases. At least half of online dissemination is copy-and-paste and does not follow rules for citing and crediting. Information is costly to produce but cheap to reproduce. Copyright law does not protect facts, only the particular expression of facts by an author in a news article. Some re-writing, reduction to short excerpts or an appropriate reference to the original publisher might go a long way to satisfy the law though it may not change the information content of the article. Automated online aggregators do not re-write articles; that creates conflict with copyright law.

## 5. Market failures in online news publishing

In order to understand the potential impact of the introduction of a neighbouring right it is worth looking into the Spanish and German experience and why both failed to change the market situation. The European Commission (2016) argues that inequality in bargaining power between online news aggregator platforms and newspaper publishers contributed to this failure. In economic terms this could be translated into an abuse of dominant position by the news aggregators, or a market failure. If such a market failure is observed, this would justify government intervention in the market, either through competition policy instrument or regulatory interventions – such as a reform of the copyright law. The Spanish and German competition authorities addressed the issue of possible abuse of a dominant market position by Google Search and Google News and the need for intervention by the competition authorities or the regulator. Both come to a negative conclusion.

The Spanish competition authority (CNMC, 2014) issued an opinion that questions the economic foundations for the introduction of an irrevocable neighbouring right for news publishers in the Spanish intellectual property law. First, the CNMC observes that there are technical solutions (the introduction of a robot.txt file in a web page, or paywalls) that newspapers can apply to avoid that

their articles are aggregated by online news platforms. This boils down to an opt-in/opt-out procedure, similar to the German newspapers case. The fact that newspapers do not use this means is an indication that the perceived benefits of aggregation exceed the costs – in line with the evidence presented in the previous section. The introduction of "irrevocable" legal means to achieve the same purpose would then be not only superfluous but could be harmful. Second, the CNMC notes that it is inefficient to let collecting societies fix an a-priori price for the remuneration of newspapers and not let the market work out a price. News aggregators generate traffic and revenue for news publishers' websites but it is very difficult to determine the revenue that news aggregators gain from specific news articles. Hence it would be difficult to work out the basis for the calculation of compensation. The CNMC concludes that there is no indication of a market failure in news aggregation because news publishers do not seem to actively oppose news aggregators. Consequently, there is no reason for regulatory intervention in that market. Moreover, the intervention through the modification of the Spanish intellectual property law creates new market access barriers, both for existing news aggregators and for new service providers. The CNMC recommends dropping at least the irrevocable character of the provisions and the intermediation of copyright management societies. The CNMC report correctly predicted the failure of the Spanish neighbouring right to generate any additional revenue for Spanish newspaper. Aggregators have no incentive to pay more for the news articles than the market price which happens to be zero. By making the remuneration irrevocable, the law disrupts the status-quo that emerged in the market and thereby introduces a new market failure.

A similar situation occurred in Germany when a revocable neighbouring right was introduced. The German case is more complex because it involves the Google Search engine too. Part of the debate is about the length of the news snippets that Google can extract from the article and put in Search. After the law came into force, VG Media, the collecting society for German news publishers associated to the Springer group, introduced a tariff of 11% on all ad revenue derived from news search and news aggregation activities in June 2014. The tariff was subsequently reduced to around 6% in October 2014. There was also a debate about the legality of the robot.txt protocol and what to do about the newspapers that do not include such a protocol in their webpages. Google eventually asked all publishers to sign a written contract with a zero price license under the "opt-in" clause, and all of them did in order to allow Google News and Google Search to continue linking to their news articles. The news publishers then filed a complaint at the German competition authority about the alleged abuse by Google of its dominant position in the German market. The competition authority (Bundeskartellamt, 2015) ruled that there was no need for action. Since the complaint went beyond Google News that is not ad-driven and also covered news articles snippets ranked in Google Search the BKartA examined the question from a multi-sided online platforms perspective. The different sides of the market (newspaper publishers as content suppliers, consumers, advertisers) cannot be considered as separate markets; they are linked by indirect network effects. One side (advertisers) may subsidize the other side (consumers), thereby increasing the welfare of all sides. Although the news publishers are not remunerated for their contribution to the platform, the BKartA still considers this to be a market, though with a zero price. It also considered that the "opt-in" procedure is a proportional measure that leaves newspapers free to decide whether they want to participate in the market. It concluded that Google does not abuse its market position and that there is no reason for intervention in this market. After the competition authority rejected their

claim, the publishers around VG Media filed a new complaint against Google in a civil court in January 2016, claiming that Google owes them remuneration. This case is still pending.

Prices are settled in the market at the confluence of supply and demand. Market conditions may be such that the equilibrium price turns out to be zero, even if the producer of the copyright protected works has a clear and enforceable claim. Whether it is a "fair remuneration" is something that economics cannot answer. The BKarA reached the conclusion that there is no market failure and that zero can still be a market price because there are on-going transactions at that price. By bringing the collecting societies as intermediaries into the market process, the legislators in Spain and Germany have tried to increase this price to a positive non-zero figure. Collecting societies will obviously not work for zero remuneration, partly because they are private companies that have to cover their own operational costs and would like to earn a profit margin too. As the Spanish competition authority pointed out, the collecting societies create additional costs in the functioning of the market. That in itself is an inefficient solution because the market can clear at a lower cost, as it currently does with the robot.txt protocols. Regulatory intervention in the market, implemented via a collecting society, would make the market less efficient. If newspapers withdraw their consent, consumers and advertisers will suffer. So far newspapers in Germany opt-in and there is no loss of social welfare. In the Spanish case however, newspapers are legally not allowed to consent at a zero price and the entire market disappeared as a result. Consumers, advertisers and news publishers suffer a reduction in welfare as a consequence of the law.

This still leaves the question why news publishers could not monetize their newly acquired neighbouring rights in Spain and Germany.

Market power in multi-sided platforms may be one possible answer. Aggregators are platforms or multi-sided markets that bring different types of users together in a single market place: news producers, consumers and advertisers (Caillaud & Jullien, 2003; Rochet & Tirole, 2006). Typically, platforms benefit from direct (and indirect) network effects: the more users join the platform (on one side of the market), the more want to join (on other sides). Platforms also benefit from economies of scope in data aggregation (Martens, 2016). They can aggregate information across a wide variety of products and preferences across many users. That information can be plugged into algorithms in order to reduce the cost of matching different types of users: matching consumers with news articles, matching advertisers with consumers, etc. Bigger datasets often increase the efficiency of matching in very heterogeneous markets. The advantage for consumers is a reduction in search costs and lower switching costs between different suppliers of news. The advantage for news producers is access to a much larger potential audience than offline newspapers and individual online websites can reach (Cornia et al, 2016). News aggregation platforms enable more efficient matching between suppliers, consumers and advertisers, more efficient than individual newspaper websites and print editions. As such, they provide a compelling value proposition to all user groups. The flip side of the coin is that platforms seek to internalize part of externality benefits that they can provide to users by driving a wedge between the interests of different user groups (Parker & Van Alstyne, 2006). They maximise their own profits by eroding some of the potential benefits that users could achieve. This can be done for example through pricing strategies and the manipulation of search rankings (Ursu, 2015).

Parker & Van Alstyne (2005) demonstrated in their seminal paper on network effects in multi-sided platforms that the pricing structure in platforms depends on the price elasticities of the different sides and user groups in the market. The side with the lowest price elasticity – i.e. their participation is less sensitive to entry pricing - will usually end up paying the highest price for market access. In Google Search, advertisers pay a price for the ads they place. Information suppliers and consumers pay no price – though they both pay a relatively low price by contributing their private information. In Google News there are no ads and only publishers and consumers. Neither of them pays. However, publishers receive benefits from additional traffic and ad revenue to their websites. That makes them price inelastic too: a lower price, even a zero price, does not affect their participation because they still get benefits. That lowers their market power and reduces their remuneration, in this case to zero. Market participants with high price elasticities – i.e. their participation will be very sensitive to price increases – end up paying the lowest price. Consumers pay nothing. If aggregators would charge them they would probably unsubscribe in large numbers from the service. The zero price for news publishers could thus be considered as an economically efficient market outcome from the perspective of the Parker & Van Alstyne (2005) model.



## 6. News aggregators and media plurality

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] That ranking is a form of news curation, similar to the role played by editors in legacy newspapers. Editors format and position articles and ads to reflect editorial preferences, newspaper branding and commercial interests. They decide to put some articles on the front pages or with bold headings that attract more attention while others are moved to less eye-catching formats and places. News aggregator platforms have no editorial line or brand reputation to defend; they mix articles from many newspapers. They only pursue their commercial interests which are linked to traffic and ad revenue. To the extent that they personalize rankings in function of consumer profile information, their rankings will be to some extent constrained by consumer preferences. Trending news articles will be pushed up the rankings and attract more expensive advertising. This drives a wedge between consumer preferences, news content suppliers' attempts at building editorial profiles and branding, and the commercial interests of the platform. Unlike in general search engines, such as Microsoft Bing and Google Search, there are for the time being no news aggregation platforms with an organic ranking of news articles, based on reader preferences and independent from advertising revenue.

There are two opposing approaches to rankings (Grimmelman, 2012, 2014). The "conduit" theory sees search engines as a passive intermediary that makes an "objective" selection of relevant articles in response to user preferences. The "editor" theory sees search as a subjectively curated ranking of articles with the algorithm as an active editor. The editor view implies that there is no such thing as search neutrality because any ranking represents the editor's view of what is best. Grimmelmann (2014) reformulates these theories in terms of freedom of speech, a relevant metaphor in the context of newspaper publishing: the conduit view lets newspaper publishers speak and the editor view lets the news aggregator's ranking algorithm speak. Search results are necessarily a combination of objective conduit and subjective editing. The ideal search engine – from a consumer point of view – would be a "trusted advisor". It should not mislead the consumer and present results



that match his preferences. A search engine should fulfil that fiduciary role towards the user by "not letting its own conflicts of interest shape the results; it should not deliberately return results it knows not to be relevant; it must not misuse the search queries that it collects and must not conceal important results about how it generates results" (Grimmelmann, 2014). In other words, he reformulates the concept of search neutrality from the perspective of the consumer. Finally, he notes that a problem with search rankings may be that they are insufficiently personalised and cater to the average consumer only. Personalized rankings require access to more personal information, beyond the historical record of previous queries. This creates a trade-off between privacy and search efficiency. Can bias in news rankings be excluded? Supermarkets place products in ways that maximize supermarket revenue. Newspaper editors select articles that maximize sales. We accept these commercial strategies in offline markets but seem to be critical when they happen in online markets.

Several studies (Ursu, 2015 for Expedia; Chen et al, 2015 for Uber; Fradkin, 2014 for AirBnB) have found empirical confirmation for the view that search rankings in commercial platforms drive a wedge between the interests of suppliers and consumers, to the benefit of the platform operator. There are no empirical studies yet on news article rankings in aggregator platforms and how they affect the interests of the publishers and news readers. Such studies would be very useful to assess the impact of news aggregators on media plurality.

Even if an ideal news articles ranking could be defined, there is another problem. Rankings suffer from an inherent problem called "superstar economics" (Rosen, 1981). Rankings have a top and a tail end. Top-ranked products are called superstars. Empirical evidence shows that consumers have a tendency to consume top-ranked products as a way of reducing search costs. However, search rankings are endogenous and the direction of causality is not clear (Moraga-Gonzales et al, 2013): Does higher ranking increase consumption or do more frequently consumed items rank higher? Rankings may create a lock-in effect: popular products become more popular.

An important question is to what extent digitization and online search engines have favoured superstars versus long tail sales. Building on the contribution of Johnson and Myatt (2006), Bar-Isaac et al. (2012) address the relationship between search costs and sales concentration. Search engines and aggregators reduce search costs. They conclude that long-tail and superstar effects arise simultaneously, at the expense of the "middle" group of products. This increases the skewedness of the sales distribution though not necessarily the ordinal ranking of products in a popularity-based ranking. Lower search costs may also bring in more consumers. That may increase total demand but also upset the relative popularity of products and thus their rankings. There is a debate among economists whether search engines and rankings increase or decrease the diversity of products consumed. Much depends on the design of the search algorithm. This is an empirical question to which there is no a-priori theoretical answer.

The Faustian deal that news aggregation platforms offer to publishers is a more important source of concern than their impact on revenue. Platforms increase audience reach and ad revenue for publishers; they reduce transaction costs for consumers. Neither party can refuse that deal because there are no better alternatives. The flip side of the deal is the loss of independence for publishers (Cornia et al, 2016). This may weaken their brand name as their content gets mixed with that of other newspapers and consumers lose awareness of the newspaper that produced the article. They

lose editorial control over ranking that may be driven by superstar effects ("click baiting") and the platform's drive to maximize revenue from ads. Platforms collect a wealth of data on news readers. That enables them to do more targeted advertising. The news publishers have no access to these data. That weakens their own attempts at branding and marketing of their publications and further increases dependence on the aggregator platform.

Consumers gain in transaction costs but may lose because they get less of what they prefer and more of what generates ad revenue for the platform. It is not clear if aggregator platforms lead to more or to less variety in consumption. Economists have researched other media industries such as music and books to find out if a reduction in information costs results in more or less variety in consumption (for an overview of the literature, see Duch-Brown & Martens, 2014). There is no empirical research on this question yet in digital news.

In any case, these issues cannot be addressed through copyright or neighbouring rights. In fact, it is not clear if & how they can be addressed at all at this stage in our understanding of online news media markets.

## 7. Conclusions

The debate between newspaper publishers and online news aggregators is primarily driven by concerns about the decline in revenue and the longer-term financial sustainability of the newspaper industry as consumers and advertisers move from print editions to online news consumption. Copyright is perceived as a tool that could contribute to improving that financial situation. The introduction of a neighbouring right for news publishers would give a more solid legal footing to the right to remuneration for the reproduction of text snippets from their articles and communicating them to the public in general search engines and specialised news aggregation websites that reproduce parts of or entire news articles. That is what the German and Spanish government attempted and what the European Commission (2016) is now proposing at EU level. The Continental European civil law perspective on copyright does indeed emphasize the right of authors to remuneration for their works and the neighbouring right extends this to online publishing.

Whether they will be able to effectively monetize that right is not clear, as the German and Spanish cases show. The law creates a right but market forces have effectively valued this right at zero. In this paper we investigated if market failures are to blame for this situation. Based on the analysis of the Spanish and German competition authorities there is evidence that abuse of dominant market positions by news aggregators has led to this situation. On the contrary, regulatory intervention in the market to determine the price of a license and channel the remuneration via collecting societies might create a new market failure. Alternative explanations may be found in the mechanics of (news aggregator) platform economics. Platforms benefit from network effects and economies of scope in data aggregation across many users. This results in wider reach and lower transactions costs that individual newspaper websites cannot match. Platform services pricing will be driven by the price elasticities of different types of users, which may put newspapers in a weak position to leverage the value of their content. We should heed Merges' (2008) warning against "legal centrism", the belief that laws rather than market forces determine market outcomes.

There is no evidence that news aggregation platforms have a negative effect on revenue of newspaper publishers. The decline in newspaper revenue is driven by other factors such as increased competition between ubiquitous (free) online news channels, the shift in advertising revenue from offline newspapers to a variety of online services and the unbundling of print editions into separate news articles online. In fact, empirical research shows that newspapers benefit from news aggregation platforms in terms of increased traffic to newspaper websites and more advertising revenue. This has not entirely solved the question of ad revenue in general search. However the bulk of online news consumption is shifting to mobile news in social media platforms. Recent business models that focus on mobile news consumption share between 70 and 100% of ad revenue with newspaper publishers. It is hard to see how newspaper publishers could get a better deal, with or without neighbouring rights. Aggregators will never pay more to publishers than their own ad earnings. The flip side of these improved reach and revenue prospects is that publishers become more dependent on platforms as online distribution outlets. It weakens their brand image and their control over marketing and data. This may be a cause for concern in the longer run.

From a common law or more economic perspective on copyright, the key issue is not newspaper revenue but the supply of news articles. There is no empirical evidence that despite the fall in the number of newspapers and in revenue, the production of news articles has decreased. The decline in news distribution costs has led to new forms of news production and online distribution that complement and compete with legacy news publishers. From that perspective, an extension of copyright protection, for instance by means of neighbouring rights for publishers, might have a negative impact on social welfare in society, including on the distribution of news and on innovation in new production and publishing models. There are currently no statistics on the evolution of news markets that currently permit us to judge if there is a policy gap between the actual and the optimal level of copyright protection in news markets.



Another important dimension of the policy debate on online news aggregators is their impact on media plurality and the diversity of news production and consumption. This subject has been somewhat side-lined by the focus on copyright extensions as a tool to boost the revenue of newspapers. While the evidence suggests that aggregators have increased overall revenue, it remains silent on the distribution of that revenue across articles and newspapers. Aggregators may promote diversity because they provide an overview of news across different sources. Consumers who go to a newspaper website would get only one source. However, aggregators' algorithms determine the ranking of articles and newspapers. This creates superstar and long-tail effects that are inherent to search rankings. As such they become "speech engines" (Grimmelman, 2014) that drive the composition of the basket of news articles that consumers access. We don't know enough about how the shift from legacy newspaper editors, who also put their editorial and commercial

stamp on the ranking and formatting of articles and ads in newspapers, to algorithm-based ranking of articles affects news consumption patterns.

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**From:** [REDACTED] (JRC-SEVILLA)  
**Sent:** 14 June 2017 18:04  
**To:** [REDACTED] (CNECT)  
**Cc:** [REDACTED] (CNECT); [REDACTED] (CNECT)  
**Subject:** RE: Online News Aggregation and Neighbouring Rights for News Publishers  
**Attachments:** 170608 JRC study publishers\_I2 comments questions BM.docx

Dear [REDACTED],

Many thanks for these comments on the news aggregators study.

In the attached version I reply to some of your comments, and add a few questions for you. I think there is scope for improving the paper along several lines that you suggest:

- Exploring the differences between the DE and ES cases on the one hand and the COM proposal on the other hand. I would be grateful if you could elaborate on that point.
- The question of indirect revenue generated by newspaper advertising, in particular for search on Google. I will further elaborate on that. Grateful if you could provide a source for the 100M€ figure that you mention.
- The quantity and quality of news production: I mention these issues in the paper but could further elaborate on it. To what extent we can link quantity & quality to revenue is another matter.

Where I cannot follow your comments is with regard to your doubts that revenue follows the clicks. The link between clicks and revenue is determined by the click-through rate (CTR) which, by definition, is necessarily positive. We can try to find empirical evidence on CTR, they will all be positive though they may be very small. But even the smallest CTR will increase revenue. This is not a question of empirical proof, it is simply a definition issue.

With best regards,

[REDACTED]

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**From:** [REDACTED] (CNECT)  
**Sent:** Monday, June 12, 2017 2:53 PM  
**To:** [REDACTED] (JRC-SEVILLA)  
**Cc:** [REDACTED] (CNECT); [REDACTED] (CNECT)  
**Subject:** RE: Online News Aggregation and Neighbouring Rights for News Publishers

Hi [REDACTED],

Please find attached our main comments in relation to your paper "Online News Aggregation and Neighbouring Rights for News Publishers".

All the best,

[REDACTED]

---

**From:** [REDACTED] (JRC-SEVILLA)  
**Sent:** 29 May 2017 17:35  
**To:** [REDACTED] (CNECT)  
**Subject:** RE: Online News Aggregation and Neighbouring Rights for News Publishers

OK, thanks, I will be waiting for your comments then.



[REDACTED]

---

**From:** [REDACTED] (CNECT)

**Sent:** 29 May 2017 10:37

**To:** [REDACTED] (JRC-SEVILLA)

**Cc:** [REDACTED] (CNECT); [REDACTED] (CNECT); [REDACTED]  
(CNECT); [REDACTED] (CNECT)

**Subject:** Online News Aggregation and Neighbouring Rights for News Publishers

Dear [REDACTED],

Sorry for coming back late, last week was a short one and we were busy preparing the launching of the consultation on the Database Directive ([here](#)).

As discussed over the phone, we will share with you our comments on the study on publishers in the course of this week and would be happy to discuss them with you. Also, as confirmed with our hierarchy, we would like to ask you to refrain from the publication until further notice.

All the best,

[REDACTED]

"Online news aggregation and neighbouring rights for news publishers" – [REDACTED], April 2017.

The study takes an economic perspective on the introduction of news publishers' rights, focusing on the impact of the news aggregators on the traffic referral to publishers' websites. It provides for a wide and interesting literature review on the latter and usefully considers some theoretical and empirical issues linked to the multi-sided market dynamics.

Empirical studies summarised in this paper show that news aggregators already have a positive impact on publishers' advertising revenue because they refer traffic to publishers' websites, hence providing additional viewers of publishers' advertisements, with no substitution effect between services. It is important to note that there is no evidence presented on the direct impact on news publishers' revenue as such: it is assumed that the revenue follows the clicks: "On balance, they [news aggregators] direct additional traffic to news publishers' websites and thereby increase rather than reduce their online revenue. (...) If the substitution effect dominates, the original news publishers lose revenue: if the quantity effect dominates they gain revenue."

The study refers broadly to the introduction of a new neighbouring right, without providing clear distinctions between the DE and ES law and the COM proposal: everything (including the ES and DE legislation) is called "the introduction of a new neighbouring right", without a proper prior analysis of the content of the proposal. This is likely to confuse readers or give a biased view of the topic.

The main, if not the only, empirical test for the introduction of an ancillary right is the traffic referral and the analysis of multi-sided market dynamics which concludes that price at the level of zero can be a market efficient outcome. Also, the analysis of the positive impacts of news aggregation on press publishers' websites is rather incomplete (it is only based on referral traffic, which is considered positive as no substitution effect is found in the literature of the subject). The paper fails to explain why more traffic equals more revenues for press publishers. This is not necessarily the case today and it may be even worse in the future, if publishers do not manage to attract more advertisers.

There is no equivalent analysis of the positive impacts of the use of news publications for platforms and social networks. The paper mentions specifically that Google News is ad-free and has no direct revenue to share, which is an oversimplification of the discussion. Google News, although it is free and has zero ads, is worth about \$100 million to Google, as it directs readers to Google search engine, where they do searches that do produce ads.

The paper also emphasises that the new rights may entail economic costs in terms of reduced innovation and protect incumbents at the expense of innovators. This is a theoretical statement which, notwithstanding its pervasiveness in the paper, has not yet been confirmed by any empirical studies, as confirmed by the author: "These empirical studies cover only the impact of news aggregators on traffic and revenue [n.b. the studies are only on traffic referral – whether the revenue follows is not established] for the original content publishers – the producer surplus. They do not examine the impact on the production of original news content or the long-term dynamic effect of on the supply of innovative products. (...) They find that the presence of the aggregator leads newspapers to specialize in news coverage and changes quality choices from strategic substitutes to complements. This shift is likely to increase the

**Comment 1** The impact of clicks on advertising revenue can only be positive, it cannot be negative, by definition. How strong the positive effect is depends on the click-through rate. This is highly variable across articles, ads and newspapers. We can try to find some empirical evidence on CTR for newspaper online advertising, but – however small they are – they will all be positive and therefore show an increase in ad revenue.

**Comment** This is indeed an important point. I would be grateful if you could elaborate on these distinctions and explain what, in your view, the main differences are.

**Comment 1** See my comment 1.

**Comment** Grateful if you could give me the source for this figure.

More generally, I think that indirect effects might be the only potentially and theoretically valid economic argument that could be used in favour of an ancillary right. However, there is no empirical evidence yet that supports this claim. The German BKA has rejected this argument in its opinion – as I explain in the paper. The Spanish CNMC report also underplays this argument. I would be happy to adjust the text on this point and leave some wider margins for interpretation there. However, it opens a much wider debate on the extent to which rights holders can claim a share in indirect revenue. In economics, this debate is covered under the externalities question. News aggregators, and platforms in general, try to internalize as much as they can of the externalities generated by suppliers and users. Whether other users can claim part of that externality depends on their market power. As the DE and ES cases show, newspapers have very little, if any, market power in online news markets. Trying to strengthen their market power through regulation has so far not proven to be effective.

**Comment** I will add evidence from Spain that several smaller news aggregator start-ups had to close down as a result of the legislation. The only remaining start-up news aggregator, Meneame, is under heavy pressure to close but has not been taken to court yet by news publishers. They expect this might happen anytime.

**Comment 1** Indeed this is a weakness of existing studies. However, there is no evidence that the production of news has decreased or increased. I am happy to emphasize this point more. To be balanced, I would also have to point out then that in the absence of evidence there is no justification for a policy initiative.

quality of newspapers and overall social welfare, though the effect on newspapers' profits is ambiguous".

The quantitative analysis presented in the paper considers the market mostly from the perspective of number of articles, which has not decreased, according to the paper. The paper fails to clarify subtler issues such as the importance of quality of news, whether new sources of news can replace current ones and what the "superstar effects" on the pluralism and quality of information may be.

Finally, some more light could be shed on the changing news consumption behaviour. Demand-side evidence from large-scale representative surveys shows that in 2016, social media, news aggregators and search engines are the main way to read news online for 57 % of users in the EU. 47 % of them browse and read news extracts on these websites without clicking on links to access the whole article in the newspaper page, which erodes advertising revenues from the newspaper webpages.

**Comment:** Indeed an important factor that I mention in the paper. But the broader question is how – if at all – quality is linked to revenue. There are many low quality high revenue newspapers! Think about the UK tabloid press.

**Comment:** I have underlined the importance of news article rankings and the superstar effect in the paper, although there is no quantitative evidence yet. I also said that these effects cannot be addressed through copyright reform.

**Comment:** The empirical evidence cited in the first part of the paper proves the contrary: there is no substitution effect, the quantity effect dominates. This results in an expansion of revenue.

## Online News Aggregation and Neighbouring Rights for News Publishers

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## Abstract

Spain and Germany have introduced a right to remuneration for news publishers for the re-use of their news content by online platforms. That creates a level playing field between news publishers and other media industries that already benefited from this right. Still, the evidence from these countries shows that news publishers have so far not been able to monetize this right. This paper takes an economic perspective on the neighbouring rights debate and tries to find an explanation for this market outcome.

First, it examines the economic impact of news aggregation platforms on news publishers. The available empirical evidence shows that news aggregators have a positive impact on news publishers' advertising revenue. That explains why publishers are eager to distribute their content through aggregators. Second, we zoom in on the alleged market failure and dominant position of news aggregators. Third, it explores alternative explanations in economic models of multi-sided markets. This offers a more credible economic explanation for the current situation. Fourth, it discusses a number of side effects of news aggregation platforms, including superstar effects in news feed, the declining role of newspaper editors and branding and the concomitant blurring in the quality of news articles. Article rankings in platforms are driven by ad revenues. This weakens the editorial choices and branding of newspaper publishers. Rankings might trigger superstar effects that reduce the variety of news consumption. Fifth, it suggests alternative ways forward that exploit the scope for using the data generated in digital news distribution channels.

Closer collaboration between news publishers and news aggregators who also aggregate data on all sides of news market could lead to new business models that generate more revenue for news publishers and responds better to consumer preferences for news qualities and subjects. This could turn out to be a winning strategy for all stakeholders in the debate.

## 1. Introduction

The shift from offline printed newspapers to online digital media has led to a decline in revenues for legacy newspapers. Several factors have contributed to that decline (Cornia et al, 2016). Readers moved their news consumption online and, in recent years, to mobile screens. This led to a steep decline in print edition revenues. Newspapers are struggling to compensate this through online subscriptions, trying to find a "freemium" balance between freely accessible and paywall protected content. Online ad revenue for newspapers only partly compensates the loss in offline ad revenue. Up to 90% of revenues in most newspapers still come from print, even after years of decline in print advertising and circulation and almost 20 years of investment in digital media (Cornia et al, 2016, p 7-8). Newspapers experiment with paywalls, native advertising and product branding, diversification into merchandising and e-commerce activities, video advertising, etc. Others are experimenting with distribution through social media and mobile platforms though some are reluctant and fear becoming too dependent. More sources of news have moved online, including TV and radio broadcasters, new ad-driven online newspapers, social media websites and blogs. They all compete for the attention of news consumers and drive down the market price of news. Unbundling adds to that competitive pressure. While offline readers bought a bundle of articles in a print edition, online readers can choose freely between articles from a variety of online news sources.

In this thriving online news market, news aggregation platforms have emerged that combine short snippets of news articles from many publishers, with links to the original full article. Readers are attracted to these because they reduce search costs for a wider variety of sources of news. Google News and Facebook Newsfeed have become major gateways to reach a wide online audience. While Facebook Newsfeed is ad-driven Google News is ad-free. The shift to mobile news reading adds further complications for publishers. About 40-50% of users consume news through their mobile phone (Reuters, 2016). In some countries, social media account for 75% of all news distribution activities, especially among the younger generations (Reuters, 2016). Small mobile screens, slow loading articles and the very short attention spans of mobile users are a challenge.

The origins of the debate on copyright-based solutions for newspaper publishers can be found in the contrast between struggling news content publishers and financially thriving online platforms that base their business models on the content provided by news publishers. Publishers want a share of news platform revenue as a remuneration for the news content that they produce. Facebook already shares 70% of its advertising revenue with news publishers. Google News does not display ads on its news aggregation

platform, only in its general search engine. It has rejected sharing any of its advertising revenue.

News publishers also face a legal obstacle because, contrary to other media, the right to remuneration for re-use of news content was not formally recognized in law. Some EU MS have taken action to remedy this situation. Germany introduced a neighbouring right to copyright in 2013 that allowed publisher to claim a right to remuneration from websites for using their news content, unless that text is reduced to very small snippets. The main benefit of the law is that it creates legal clarity and puts news publishers on an equal footing with other media publishers who already had this right. News content publishers now need to explicitly agree that an online aggregator or search engine can post snippets of their news content on a website. However, despite expressing concern about Google News and lobbying for the law, German news publishers eventually allowed Google to use their content without any remuneration and the market situation did not change. The law did not generate additional revenue for the publishers on top of a share in advertising revenue from news aggregators that display ads, like Facebook Newsfeed for example. In Spain, the government introduced legislation in 2014 that goes a step further and provides for mandatory payment of compensation by online news aggregators through a collection society. Publishers are not free to choose or allow aggregation of their content. As a result, Google withdrew its News service from Spain, though it keeps displaying news article snippets in its search pages. In other countries courts intervened. After a court decision in a dispute between Google Search and the Francophone Belgian newspapers, the case was settled in 2012 with an agreement for enhanced collaboration between Google and the newspapers to attract more traffic to newspaper sites and to increase advertising revenue. A similar settlement was reached in France between Google and newspaper publishers.

This paper takes an economic perspective on the copyright debate for news publishers. We examine what drives the economic value of the right to remuneration for news publishers and why, in the case of Germany and Spain, its market value so far remains zero. We discuss the available empirical evidence on the impact of online news aggregators on the revenue of news publishers. That points towards an overall positive impact on audience reach and ad revenue for newspaper publishers. We also look at copyright as an instrument to promote innovation in society and find no evidence that the incentives for news production have weakened or that the volume of news articles has decreased, despite all the negative effects of digitization on newspaper revenue. It proposes an explanation for the weak market position that publishers have in online platforms, based on the economics of multi-sided markets. This may explain why news publishers in Spain and Germany were so far unable to monetize their legal rights. There

is some empirical evidence that aggregators promote media plurality because they reduce transactions costs for consumers to access a wide variety of press sources and articles. On the other hand, search rankings in aggregation platforms may trigger superstar effects that reduce the consumed variety of news consumption. More importantly, news aggregators weaken editorial control and newspaper trademark branding. That poses a longer-term threat to newspapers and the quality of news. News markets and online distribution technology continue to evolve fast. Publishers and platforms are experimenting with new business models that explore the wide range of options between ads, subscriptions and access to platform user data. The regulatory push to monetize rights also continues, in the EU as well as in the US<sup>1</sup>.

This paper is structured as follows. Section 2 provides a brief introduction to the rapidly evolving online news markets and technologies. Section 3 addresses the question whether online news aggregators add or divert revenue from newspapers' own online outlets. Section 4 goes beyond the remuneration debate and takes a wider economic look at copyright protection and the impact on innovation and social welfare. Section 5 explores potential market failures in online news aggregation markets. Section 6 investigates the impact of aggregators on media plurality in news production and consumption. Section 7 concludes.

## **2. The evolution of online news distribution models**

Not all readers come directly to the website of a newspaper. Some get there by clicking on the search results of a general search engine, others come via news aggregators or via links embedded in social media or other webpages. Aggregators show only short snippets of news articles. To read the full article the reader has to click on the link to reach the webpage of the original news publishers, including the ads displayed on that page. Some aggregators display ads in articles or in snippets and share the revenue (Facebook, Yahoo, MSN); Google News does not display ads and has no direct ad revenue to share. Google Search and other general search engines like Bing do not share indirect ad revenues linked to search results that may include snippets of news articles. However, even direct ad revenue sharing agreements between publishers and platforms fall short of a copyright license.

Publishers pay attention to sources that direct traffic to their news sites and claim a share of the revenue of these referral sites. For example news publishers argue that

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<sup>1</sup> See Financial Times (July 10, 2017) "Newspaper groups join forces to deal with Facebook and Google" <https://www.ft.com/content/3a03d584-657e-11e7-8526-7b38dcaef614>



although Google puts no ads on the News aggregator pages, it draws indirect traffic and revenue to the Google Search pages by displaying links and snippets of news article text in the search ranking and by acquiring data on its users' preferences and behaviour. That generates ad revenue for Google through ads placed on the Search page. Referral traffic led to a first court case in Belgium<sup>2</sup> (2006), and later in France, where publishers claimed remuneration for the use of their content in Google News, despite the fact that Google News carries no ads. Google refused to pay and de-listed the newspapers from its Search and Google News results. That caused a drop in traffic to newspaper websites and in ad revenue. Google also lost ad revenue as a consequence. Google and the newspapers in Belgium and France finally came to an agreement whereby Google provided some financial means, short of a license agreement, and helped newspapers to get more traffic to their websites. Similar cases emerged in Spain and Germany. In these countries, law makers decided to intervene through copyright law to enable them to claim remuneration for the (partial) reproduction of their content. In Spain, the law made compensation unwaivable and subject to compulsory collective licensing; in Germany, publishers were left a choice to accept or reject reproduction without remuneration. To date German and Spanish news publishers have been unable to monetize these rights. After an initial rejection and chilling effect on traffic to their websites, German publishers agreed that news aggregators could take their content without remuneration. Spanish publishers did not have that option and suffered a decline in traffic.

Over the last years, rapidly increasing download speed on mobile phones has enabled consumers to shift news reading from fixed computers to mobile, especially mobile users who are active in social media. Facebook is the market leader for social media news consumption. Its newsfeed attracts a substantial volume of traffic. Facebook Instant Articles (FBIA) displays the full text of a news article, with ads in the article. The articles are loaded onto Facebook servers and into the Facebook app environment. That puts Facebook in a strong position to observe user behaviour and control ad revenue. Facebook claims that users read more Instant Articles than ordinary articles and are less likely to abandon the article. News publishers retain 100% of the ad revenue on their own ads and 70% of the revenue on Facebook-produced ads. In this way, newspaper publishers passing through Facebook receive the same ad revenue as they get on their own websites, with the added advantage of reaching a wider audience. Ad revenue from newsfeed now represents a large share of Facebook revenue growth (Nieborg, 2016). However, there is no guarantee that Facebook will continue to offer such generous financial terms to news publishers in the future.

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<sup>2</sup> See [https://en.wikinews.org/wiki/Google\\_convicted\\_in\\_case\\_brought\\_by\\_Belgian\\_press](https://en.wikinews.org/wiki/Google_convicted_in_case_brought_by_Belgian_press)

Google responded to the challenge of FBIA by introducing Accelerated Mobile Pages (AMP). This technology improves the mobile user experience with faster loading pages in their mobile browsers. Slow loading mobile pages were diverting mobile traffic from browsers to apps, including search-directed traffic in browsers, and the ad revenue that comes along with this traffic. Google has a strong position in advertising in browsers; Facebook has a strong position in mobile advertising. News pages loaded through FBIA don't allow Google ads to be displayed; they display Facebook ads – or ads produced by the news publisher. By improving mobile page load speed, consumers will be more inclined to search and load more pages in mobile browsers – and that brings more traffic and ad revenue back to Google. Consumers will click more on ads if they are confident that they will be loaded fast; that improves ad click-through rates. It boosts revenue for news publishers and many other content publishers on mobile pages. Google AMP caches the news articles on a Google server but does not control audiences and revenue. Ad revenue accrues to the ad publisher – where Google may also have a stake. Last but not least, AMP pages get a rank boost in mobile search (read: Google Search), bringing mobile searchers quicker to faster pages.

The ad revenue battle continues on other fronts too. Ad blockers become a major risk for many ad-driven online business models, including news publishers. Some news publishers have already introduced a "no ads, no views" policy: they block access to free online news articles for users who have installed ad blockers (Cornia et al, 2016).

The debate is rapidly expanding beyond ad revenue however. It is gradually shifting away from rights to content to rights to access to data, which is key for news aggregators to get indirect revenue for the use of press publishers' content. Publishers begin to see that user data may be equally valuable as content, especially when they are seeking to protect their news brand names<sup>3</sup>. Google is discussing subscription tools with a few top news publishers<sup>4</sup>. This would enable publishers to monitor traffic to their articles and get a better insight in readers' behaviour. Google would reduce the 30% cut that it takes on subscriptions and provide artificial intelligence to present more flexible subscription offers to potential subscribers. Translated into economic jargon this means using data to price discriminate between different types of users. Third degree price discrimination transfers some of the consumer's surplus to the service news publishers who can monetize that surplus. Facebook is considering similar tools and offerings for publishers to enable them to enhance subscription revenue<sup>5</sup>. Independent online

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<sup>3</sup> <https://www.ft.com/content/8cf89782-9e4c-11e7-8cd4-932067fbf946>

<sup>4</sup> <http://fortune.com/2017/10/22/google-subscription-revenue-news-outlets/>

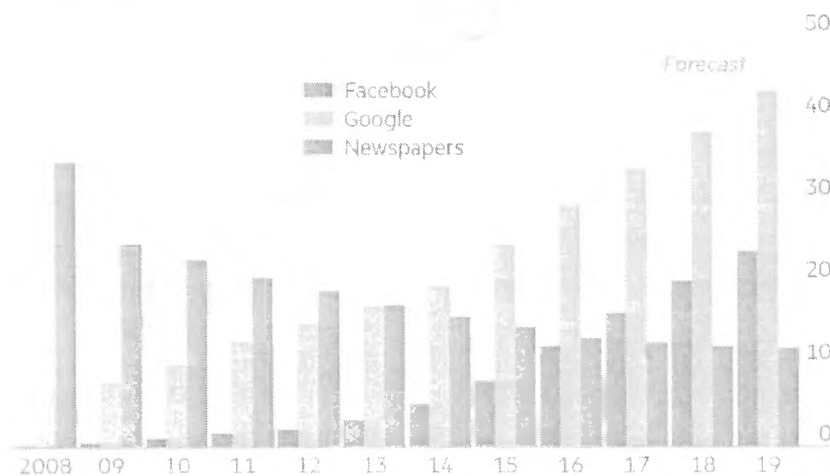
<sup>5</sup> <http://fortune.com/2017/10/19/facebook-news-subscription-tool-android-apple/>

tracking services are also moving into the news reader data market and offering their services to news publishers<sup>6</sup>.

### 3. Newspaper revenue and the substitution debate

The graph below shows how print news publishers has suffered from a steep fall in print advertising revenue, to the advantage on online platforms. Newspapers used to be the main advertising channel for businesses. Today, social media and other online platforms have taken over that role. They offer a much wider choice of flexible and targeted advertising channels. Total ad spending has increased but the share of newspapers in that spending has declined (see figure below). Newspapers want to boost their revenue by claiming a share of the advertising revenue that is directly (as in news aggregator platforms) or indirectly (as in general search engines) linked to their online news content (which is only a small part of total online ad revenue). An important question in this debate is whether re-routing content through online news aggregator platforms increases or diminishes ad revenue for news publishers on their own website. That is an empirical question that cannot be settled by economic theory or legal reasoning; only data can answer that question.

Digital v print ad spending  
US only (\$bn)



Source: eMarketer

<sup>6</sup> <http://www.niemanlab.org/2017/08/chartbeat-adds-subscriber-analytics-to-its-dashboard-the-single-most-requested-feature/>

The impact of online news aggregators on the revenue of original news publishers is the result of the net effect of two opposing forces: a quantity and a substitution effect. The substitution effect measures to what extent aggregators displace online traffic and reduce the revenue generated by the publishers' own website. The quantity effect measures to what extent aggregators increase revenue by re-directing traffic towards the publisher's own website. If the substitution effect dominates, the original news publishers lose revenue; if the quantity effect dominates they gain revenue. The net effect is an empirical question. In the remainder of this section we summarize the available empirical evidence to date. The main finding is that the quantity effect dominates the substitution effect. Aggregators are complementary rather than competing services to newspapers' original websites. On balance, they generate additional traffic to news publishers' websites and thereby may increase rather than reduce their online revenue.

News aggregators offer snippets or small extracts of the original news article only. This may stimulate the interest of readers to click through to the full article on the original publisher's website. That increases traffic and ad revenue on the original newspaper site (the quantity effect). Aggregators may also provide a re-worked and edited version of one or several original articles, for instance in user-aggregated and blog aggregator sites (Isbell, 2010). That shifts more consumer value to the aggregator site and may reduce users' interest to look for the original article (Delarocas et al, 2015). The substitution effect depends on the difference in quality between the aggregator service and the original service offered by the publisher. The wider the quality gap between the two services the more likely that the quantity effect prevails. Aggregators often deliberately provide incomplete services because they cater to the long tail of news readers with less interest in full articles and a low willingness to pay for the full content. Tapping into that long tail may give original news publishers new audiences that they would otherwise not reach. Aggregators and original content producers play in slightly different markets characterised by quantity and quality discrimination between different types of news readers.

Chiou & Tucker (2017) explore whether aggregation of content by a single platform encourages users to "skim" content or to investigate in depth. The study uses data related to a contract dispute in 2010 that led a major aggregator (Google News) to remove news articles from a major content provider (Associated Press). These articles were typically shortened versions of stories that appeared in a select number of AP-associated newspapers. They compare users' website visits before and after this contract dispute relative to traffic on Yahoo! News, which continued to provide Associated Press content during this period. In theory consumers may use platforms to

scan the extracts of content without clicking through to pursue more in-depth material ("scanning" or substitution effect). On the other hand, consumers may use platforms to explore new material more deeply ("traffic" or quantity effect). The authors find that after Associated Press content was removed from Google News, fewer users subsequently visited news sites after navigating to Google News relative to users who had used Yahoo! News. Over a seven-week period 80 million monthly visits were lost to newspaper websites that carried AP content. They find evidence that the traffic or quantity effect is large, as aggregators may guide users to new content. There is no evidence of a scanning or substitution effect, as overall traffic to Google News and Yahoo! News remained relatively comparable during that time period. Websites with stronger ties to AP suffered a drop in traffic after the dispute.

Chiou & Tucker (2017) conclude that the "fair use" exemption relied on by aggregator sites in the US is potentially less damaging to the original copyright holder than often thought. The decision to opt-into (or out of) an aggregation platform should depend on whether the content provider is considered high-quality or highly unusual. Both these characteristics appear to encourage users to use the aggregator to explore content more deeply instead of scanning content. Horizontally or vertically differentiated content from high-quality newspapers or from very local or specialized themes newspapers are likely to benefit from news aggregator sites while more bland middle-ground news producers may stand to lose. These findings are in line with earlier research by Bar-Isac et al (2012) on the impact of search cost reductions on the distribution of online consumption. Top performing products as well as long-tail rare products are likely to gain when search costs diminish while the middle ground may lose out. New aggregators reduce search costs for consumers and seem to have a similar impact of the distribution of news consumption.

Athey & Mobius (2012) study the introduction of a "local news" feature in Google News France in late 2009. Users could enter their zip code and on all subsequent visits they see news from local outlets prominently featured. The authors compare the news consumption of users who enable this feature to the usage of a set of "control" users, over a 2-week and an 8-week period. Adoption of this Google news feature leads to 26% increase in consumption of local news sites over a 2-week period and Google News explains a substantial portion of that increase. There is a 5% increase in direct navigation to local outlets (bypassing Google News altogether) and a 13% increase in clicks on local outlets from the Google news home page. Over an 8 week period the local news treatment effect is attenuated somewhat but remains high (over 14%). Over time the incremental local news consumption derives primarily from increased utilization of Google News. There is a 12% increase in the number of local outlets used. However,

the Google local news feature cuts into the curation role of newspapers. Users are sent directly to the article, bypassing the profitable home page of the news outlet. They may subsequently read other articles in the outlet through following links they see on the same page as the original article, and thus their browsing may never take them to the outlet's home page. Even though these results broadly support the hypothesis that news aggregators are complements for local news outlets, it is important to emphasize that the impact on local news outlets is mixed overall. Some outlets gain more than others and users spread their consumption over a larger number of outlets. George & Hogendorn (2013) come to similar conclusions for the re-design of Google local News in the US.

Delarocas et al (2015) conduct a series of field experiments about readers' allocation of attention between news aggregator and the original articles they links to. They examine how the length of the text snippet, the presence of images and the number of related articles on the same story, affect a reader's propensity to visit the content producer's site and read the full article. Their findings suggest that longer aggregator snippets reduce the probability that readers will read the full articles. However when several related snippets compete for user attention, a longer snippet and the inclusion of an image increase the probability that an article will be chosen over its competitors.

Huanga et al. (2013) assess the relationship between aggregators and news websites in Taiwan. Newspapers worldwide often serve as content providers for news portals, but portals outperform most newspaper sites in audience share. Based on empirical data collected through a large-scale survey they find that aggregators do not compete with news websites, with the exception of Yahoo! News. Lee & Chyi (2015) use a national survey of 1,143 U.S. Internet users to study the demand for aggregators and other media outlets in the USA. They find a non-competitive complementary relationship between three major news aggregators and 13 major TV, print and social media news outlets. Google News, Yahoo! News, and Huffington Post do not compete with other media outlets.

Several studies have looked specifically at online newspaper traffic data that reflect the Spanish and German experience with the introduction of a neighbouring right for news publishers. At the request of the Spanish Association of Publishers of Periodical Publications, NERA Consultants (2015) assessed the impact of the introduction of an exception to copyright, for the benefit of news aggregators and subject to the payment of compensation, in the Spanish Copyright Act that became effective on 15 December 2014. It was promoted by a small group of publishers despite opposition from many industry players. The revision of the Spanish law was motivated both by the observation that aggregators benefit from the publishers' efforts without remunerating them, and the

assumption that the substitution effect dominates the quantity effect. The revised Article 32.2 of the Act established unwaivable compensation to be paid by online news aggregators to publishers for making available their content within their aggregation services. Unlike the German case or the Commission's proposal of related rights, Spanish publishers cannot opt out of receiving this compensation and payments are to be made through a copyright collecting society. This was justified to prevent a repetition of the German case where the opt-in option led to a status quo. Using ComScore web traffic data, the NERA study found a decrease in traffic to Spanish newspapers' websites by 6% on average during the first few months of 2015, going up to 14% for small newspaper publications. Independently, Chartbeat, that tracks 50 Spanish newspaper sites ranging from small media outlets to the largest newspaper publishers, confirmed that these sites saw their external traffic fall by 10-15 percent<sup>7</sup>. Overall traffic did not fall immediately as the amount of internal traffic coming from other Spanish newspapers rose. This suggests that readers are moving more between Spanish news sites than previously, rather than coming directly from links at Google News. This could be interpreted as an indication that user search costs increased as the Google aggregator site stopped providing links. Users had to generate their own news aggregation instead of Google News doing it for them.

Calzada & Gil (2016) use a more sophisticated dataset to study both the Spanish and German cases. Their data do not only track the volume of web traffic but also the sources that generate the traffic (direct access to the news pages, aggregators, search engines, social media sites, links from other web pages, etc.). They find an 11% drop in Spanish newspaper traffic (quantity effect) and an 8% drop in the number of newspaper pages visited (a reduction in the variety of news) following the change in the copyright law. The latter could be interpreted as evidence that news aggregators increase access to a plurality of media resources rather than reduce it. They also find a drop in search and direct traffic to newspaper sites by 12% and 14% respectively. It may indicate that users quickly grew tired of the additional transaction costs to do their own news aggregation via search and direct access to newspaper sites and simply reduced the number of news sources that they consulted. That would once more confirm the variety or media plurality effect of news aggregators. Aggregators may actually increase the number of direct visits to news outlets by allowing consumers to rediscover new sources of information. For the German case they find a 7% reduction in daily visits to news outlets controlled by the Axel Springer group that initially opted out of Google News

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<sup>7</sup> <http://beta.latimes.com/business/technology/la-fi-tn-google-news-spain-20151217-story.html>

during a 2-week period. There was also a 10% reduction in visits via search engines and 7% direct visits.

Athey, Mobius and Pal (2017) use Spanish data to estimate the impact of the removal of Google News on traffic. They find that the removal of Google News reduces overall news consumption (including consumption of the Google News homepage) by about 20% while visits to news publishers decline by about 10%. This decrease is concentrated around small publishers. Large publishers do not see significant changes in their overall traffic but see an increase in their own home page views, though offset by a decrease in views of articles.

These empirical studies cover only the impact of news aggregators on traffic and revenue for the original content publishers. They do not examine the impact on the production of original news content – the long-term dynamic effect of (weakened) copyright protection on the supply of innovative products – or the impact on consumer welfare through reduced search costs, availability of a wider variety of news sources and lower prices. Jeon & Nasr (2015) are the first to explore these wider welfare implications in a theoretical model. They examine how the presence of news aggregators affects the quality choices of newspapers, using an economic model to capture the "business-stealing effect" and the "readership expansion effect" of the aggregator. They find that the presence of the aggregator leads newspapers to specialize in news coverage and changes quality choices from strategic substitutes to complements. This shift is likely to increase the quality of newspapers and overall social welfare, though the effect on newspapers' profits is ambiguous. Unfortunately there is no empirical evidence yet in support of this model.

We can conclude from this overview that the studies published so far contain no empirical evidence in support of the substitution hypothesis and thus no evidence that online aggregators have a negative impact on original newspaper publishers' revenue. On the contrary, the evidence shows that aggregators may actually be complements to newspaper websites and may help consumer discover more news and boost the number of visits. This structured empirical evidence is corroborated by more qualitative and anecdotal evidence collected through interviews with newspaper managers (Cornia et al, 2016). They confirm that newspapers collaborate with large social media platforms like Facebook, Snapchat, Google, Yahoo and Apple because they bring them in touch with large online audiences that channel a substantial volume of traffic and ad revenue to their articles. News publishers may of course want to reach further and claim a share of indirect ad revenue related to snippets of news text that appear in general search engines – as Belgian and French newspaper publishers tried to do. The German competition authority (BKArA, 2015) pointed out that indirect ad revenue via search is



hard to verify. The evidence (Delarocas et al, 2015) suggests that reducing the length of snippets will boost the expansion effect by directing more search traffic to newspapers' own websites and ads.

It is difficult for news publishers to find a good balance between free and paid online content. Many are experimenting with the positioning of paywalls on their online news sites. Chiou and Tucker (2017) find that the introduction of a pay wall leads to a 51% decrease in online visits and thus advertising revenue. It is not clear how much of that loss would be compensated by an increase in subscription revenue. Only news producers with a strong reputation and/or specialisation and a high price elasticity of demand for their news items are in a position to put up a pay wall to increase revenue. Moreover, moving online has resulted in unbundling of newspapers: while articles were sold as a package in print editions, consumers have more choice in making their own selection of articles online as they can freely move between different newspapers. Subscription fees limit that unbundling and reduce competition between newspaper sites. Still, the volume of freely available content is huge. Inevitably, the price of online content goes down as the volume of free supply increases.

#### **4. The economic view on copyright**

The strong focus on the revenue side and the substitution effect is a consequence of the Continental European civil law approach to copyright that emphasizes the rights of authors and publishers ("*droit d'auteur*") to decide on reproduction of their works and communication to the public, as well as the remuneration they want to receive for that use (Hugenholtz & Quintais, 2016). These rights have been put under stress in the digital age with the invention of many new forms of reproduction and communication to the public, including through hyperlinking and other forms of re-transmission and re-mixing, accidental and transient copying, text and data mining (Poort, 2016) and the same is happening with online news aggregation. The civil law tradition seeks to obtain remuneration for all digital reproductions that are publicly available, subject to some exceptions that are justified by transaction costs. Lawyers and courts are struggling to bring these new technologies in line with that right or design extensions and modifications of copyright law to bring them into the fold of that remuneration right.

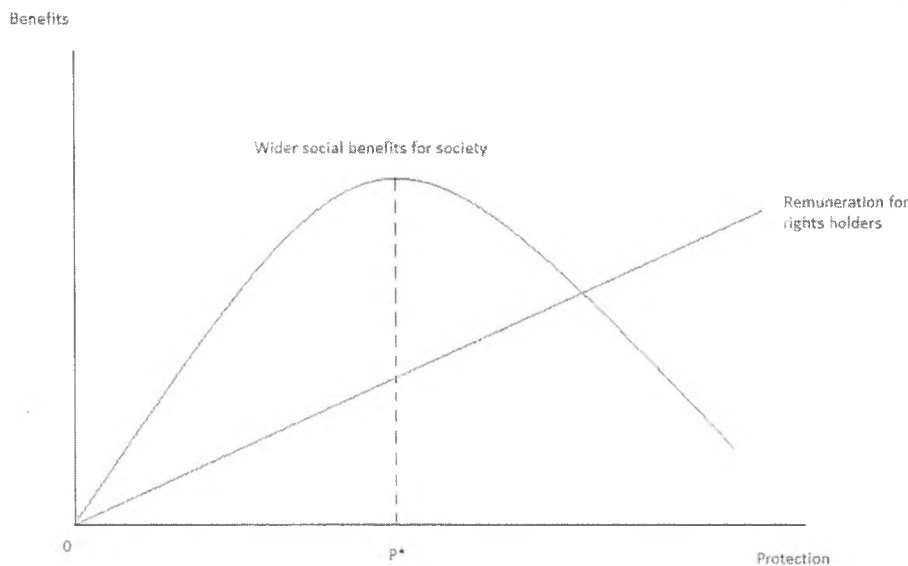
The civil law approach can be contrasted with the common law view on copyright that is more aligned with the economic view (for instance in Landes & Posner, 1989). The economic view sees copyright as an economic policy instrument to stimulate innovation for the benefit of society as a whole, not only for authors or private rights holders. The civil law and common law view coincide in the argument that, without copyright

protection, authors would have no incentive to invest in the production of artwork because everybody else could benefit from that investment by paying only the cost of a copy. That externality creates a market failure because it would stop production. The common and civil law views split ways when it comes to the economic interpretation of copyright as an exclusive monopoly right granted to the authors to decide who can use a copyright protected work, under which conditions and at what price. For economists, monopoly rights are by definition inefficient because they cause deadweight losses: potential benefits that cannot be realized in society. However, these short-term or static losses in copyright protection are compensated by longer-term dynamic gains because it produces a steady stream of innovative artwork. Contrary to the Continental European civil law view that emphasizes the rights of authors, at the expense of rights of consumers or society, the common law and the economic view seek a balance between the rights of authors and the overall welfare of society. For that reason, copyright is limited in time and scope. Exceptions to copyright protection determine circumstances where no payment to the author is due. In the Continental view, these exceptions should be limited to circumstances where transaction costs exceed the benefits of licensing for the rights holders (Charles River Associates, 2014). In the economic view, exceptions can go further in order to ensure an appropriate balance between the static losses and dynamic gains of copyright protection and promote wider dissemination of the benefits of innovation in society.

Digital technologies create new means to reproduce and communicate copyright protected works to the public. The civil law approach would seek to extend authors' rights to claim remuneration for all these new uses. The common law or economic view on copyright would not automatically grant an extension of authors' rights to remuneration for uses under these new technologies. Extending copyright protection to all forms of digital reproduction may defy the purpose of copyright as an instrument to promote innovation, not necessarily to maximize revenue of the rights holders. Economists would carefully examine the balance between static deadweight losses and dynamic welfare gains in the copyright equation. They would go back to the purpose of copyright and ask whether these new technologies affect that balance and reduce the incentive to produce innovation (Bechtold, 2016). A reduction in innovation has a negative impact on societal welfare. In the case of newspapers for example, a reduction in the number of new articles and in the variety of views expressed in news publications would constitute a welfare loss that requires intervention through further copyright protection. However, if no such negative effect on the supply of innovative artwork can be observed there is no a priori reason to extend claims.

The policy gap between the civil law legal doctrine and the common law and economic view is illustrated in Figure 1. Too little protection stops innovation; that is bad both for authors and society. More protection boosts benefits for authors and society. The civil and common law view go hand in hand up to the optimal degree of protection  $P^*$ . Beyond  $P^*$  they split ways: more protection still benefits authors but reduces the wider benefits to society because it slows down further innovation. Consequently, in the economic view, the crucial test for an appropriate level of copyright protection is not the impact on revenue for authors but the longer-term dynamic impact on the supply of innovation for society.

**Figure 1: Social versus private benefits of copyright protection**



Finding the optimal degree of protection  $P^*$ , or the point where more protection becomes inconsistent with wider societal benefits from innovation, is an empirical question that cannot be settled through economic theory or legal reasoning. The impact of protection on the production of innovation or the supply of news articles is a crucial - but difficult - test for the justification of a possible ancillary copyright for newspaper publishers. There are no indications that German and Spanish news publishers reduced the production of news articles when Google News refused to pay a fee.

Proponents of the civil law legal doctrine often argue that revenue for rights holders and the supply of innovation are positively correlated. In the digital age that is not necessarily true. The cost of production and distribution of media products has fallen substantially (Waldfoegel, 2013). In that case, a fall in revenue does not necessarily depress production. Music is a good example: revenue from recorded music sales

declined significantly with digitization in the in early 2000s but music production increased (Aguiar & Waldfogel, 2014). A similar phenomenon may have occurred in news. The vast increase in online news sources may be an indication.

There are no statistics on the production of newspaper articles. There are statistics on the evolution of the number of newspapers and their circulation that show that both have declined (Cornia et al, 2016). That does not necessarily mean that the supply of news has declined as many more new sources of news have become available online: TV broadcasters have moved online, new fully digital newspapers have emerged and a myriad of blogs comment on current events. Moreover, news articles are a heterogeneous product market with some degree of substitution between articles. Articles are not entirely unique products. They can cover the same event in different ways. The absence of statistics on news production creates a gap in our understanding of the dynamics of the newspaper industry in the digital age. It makes it difficult to judge whether there is a need to boost news production through additional copyright protection or other means.

Before concluding this section it is worth pointing out that copying news items is widely practiced in the digital age by all news media, including legacy newspapers publishers, radio and TV news channels. This is well-documented in a study of French news media by Cage et al (2015) who investigate the speed and modalities of online news dissemination. On average, it takes two hours for information published by an online media outlet to be published on another news site, but less than 45 minutes in half of the cases and less than 5 minutes in 25% of the cases. At least half of online dissemination is copy-and-paste and does not follow rules for citing and crediting. Information is costly to produce but cheap to reproduce. Copyright law does not protect facts, only the particular expression of facts by an author in a news article. Some re-writing, reduction to short excerpts or an appropriate reference to the original publisher might go a long way to satisfy the law though it may not change the information content of the article. Automated online aggregators do not re-write articles; that creates conflict with copyright law.

## **5. Market failures in online news publishing**

We examine why the legislative initiatives in Spain and Germany have so far failed to increase news publishers' revenue beyond their share in direct advertising revenue on platforms that display ads (and not indirect ad revenue on general search engines). It is often argued that the inequality in bargaining power between online news aggregator platforms and newspaper publishers is a market failure or an abuse of dominant position

by the news aggregators. The Spanish and German competition authorities addressed the issue of possible abuse of a dominant market position by Google Search and Google News and the need for intervention by the competition authorities or the regulator.

The Spanish competition authority (CNMC, 2014) issued an opinion that questions the economic foundations for the introduction of unwaivable compensation for news publishers in the Spanish intellectual property law. First, the CNMC observes that there are technical solutions (the introduction of a robot.txt file<sup>8</sup> in a web page, or paywalls) that newspapers can apply to avoid that their articles are aggregated by online news platforms. This boils down to an opt-in/opt-out procedure, similar to the German newspapers case. The fact that newspapers do not use this means is an indication that the perceived benefits of aggregation exceed the costs – in line with the evidence presented in the previous section. The introduction of "unwaivable" legal means to achieve the same purpose would then be not only superfluous but could be harmful. Second, the CNMC notes that it is inefficient to let collecting societies fix an a-priori price for the remuneration of newspapers and not let the market work out a price. News aggregators generate traffic and revenue for news publishers' websites but it is very difficult to determine the revenue that news aggregators gain from specific news articles. Hence it would be difficult to work out the basis for the calculation of compensation. The CNMC concludes that there is no indication of a market failure in news aggregation because news publishers do not seem to actively oppose news aggregators. Consequently, there is no reason for regulatory intervention in that market. Moreover, the intervention through the modification of the Spanish intellectual property law creates new market access barriers, both for existing news aggregators and for new service providers. The CNMC recommends dropping at least the unwaivable character of the provisions and the intermediation of copyright management societies. The CNMC report predicted the failure of the Spanish unwaivable compensation to generate any additional revenue for Spanish newspaper.

In contrast to Spain, Germany introduced a revocable neighbouring right. The German case is more complex because it involves the Google Search engine too. Part of the debate is about the length of the news snippets that Google can extract from a news article and put in the search results. After the law came into force, VG Media, the collecting society for German news publishers associated to the Springer group, introduced a tariff of 11% on all ad revenue derived from news search and news aggregation activities in June 2014. The tariff was subsequently reduced to around 6% in October 2014. Google eventually asked all publishers to sign a written contract with a

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<sup>8</sup> See [https://en.wikipedia.org/wiki/Robots\\_exclusion\\_standard](https://en.wikipedia.org/wiki/Robots_exclusion_standard)

zero price license under the "opt-in" clause. All newspaper signed in order to allow Google News and Google Search to continue linking to their news articles. The news publishers then filed a complaint at the German competition authority about the alleged abuse by Google of its dominant position in the German market. The competition authority (Bundes Kartell Amt, 2015) ruled that there was no need for action. The complaint went beyond Google News that is not ad-driven, although it directs its readers to Google Search engine, where they do searches that produce ads. It also covered news articles snippets ranked in Google Search. The BKartA examined the question from a multi-sided online platforms perspective. The different sides of the market (newspaper publishers as content suppliers, consumers, advertisers) cannot be considered as separate markets; they are linked by indirect network effects. One side (advertisers) may subsidize the other side (consumers), thereby increasing the welfare of all sides. Although the news publishers are not remunerated for their contribution to the platform, the BKartA still considers this to be a market, though with a zero price. It also considered that the "opt-in" procedure is a proportional measure that leaves newspapers free to decide whether they want to participate in the market. It concluded that Google does not abuse its market position and that there is no reason for intervention in this market. After the competition authority rejected their claim, VG Media filed a new complaint against Google in a civil court in January 2016, claiming that Google owes them remuneration. This local court in Berlin has meanwhile rejected this claim<sup>9</sup>.

While news aggregators have been under scrutiny for alleged dominant market positions, the attempts made in Germany and Spain to strengthen the bargaining position of news publishers have not produced a solution. Attempts in the US to allow news publishers to form a cartel to negotiate with news aggregators are still under discussion. Publishers have asked Congress for an exception to competition policy rules and allow them to create a cartel of publishers that can negotiate more effectively with online platforms<sup>10</sup>. In the EU news media markets are geographically segmented however along national and linguistic borders and there is little cross-border traffic in online media. That makes collective action more difficult.

By bringing the collecting societies as intermediaries into the market process, the legislators in Spain and Germany have tried to increase this price to a positive non-zero figure. Collecting societies will not work for zero remuneration, partly because they are private companies that have to cover at least their operational costs. As the Spanish competition authority pointed out, the collecting societies create additional costs in the

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<https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=LG%20Berlin&Datum=19.02.2016&Aktenzeichen=92%20O%205%2F14>

<sup>10</sup> <https://www.ft.com/content/3a03d584-657e-11e7-8526-7b38dcaef614>

functioning of the market. That in itself is an inefficient solution because the market can clear at a lower cost, as it currently does with the robot.txt protocols. Regulatory intervention in the market, implemented via a collecting society, would make the market less efficient. So far newspapers in Germany opt-in and there is no loss of social welfare. In the Spanish case however, newspapers are legally not allowed to consent to a zero price and the entire market disappeared as a result.

Rather than looking for competition-related explanations, an alternative and possible better explanation may be found in the theory of multi-sided markets or platforms. News aggregators are platforms or multi-sided markets that bring different types of users together in a single market place: news producers, consumers and advertisers (Caillaud & Jullien, 2003; Rochet & Tirole, 2006). Typically, platforms benefit from direct (and indirect) network effects: the more users join the platform (on one side of the market), the more want to join (on other sides). Platforms also benefit from economies of scope in data aggregation (Martens, 2016). They can aggregate information across a wide variety of products and preferences across many users. That information can be plugged into algorithms in order to reduce the cost of matching different types of users: matching consumers with news articles, matching advertisers with consumers, etc. Bigger datasets often increase the efficiency of matching in very heterogeneous markets. The advantage for consumers is a reduction in search costs and lower switching costs between different suppliers of news. The advantage for news producers is access to a much larger potential audience than offline newspapers and individual online websites can reach (Cornia et al, 2016). News aggregation platforms enable more efficient matching between suppliers, consumers and advertisers, more efficient than individual newspaper websites and print editions. As such, they provide a compelling value proposition to all user groups. The flip side of the coin is that platforms seek to internalize and monetize the benefits that they provide to market users by driving a wedge between the interests of different user groups (Parker & Van Alstyne, 2006)<sup>11</sup>. They maximise their own profits by eroding some of the potential benefits that users could achieve. This can be done for example through pricing strategies and the manipulation of search rankings (Ursu, 2015). For example, news aggregation platforms offer news publishers and advertisers a much wider consumer reach than they can achieve on their own websites. In return they charge advertisers a price for the ad and appropriate (part of) the advertising revenue, leaving the rest to the newspaper

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<sup>11</sup> Several studies (Ursu, 2015 for Expedia; Chen et al, 2015 for Uber; Fradkin, 2014 for AirBnB) have found empirical confirmation for the view that search rankings in commercial platforms drive a wedge between the interests of suppliers and consumers, to the benefit of the platform operator. There are no empirical studies yet on news article rankings in aggregator platforms and how they affect the interests of the publishers and news readers. Such studies would be very useful to assess the impact of news aggregators on media plurality.

publishers. Publishers pay for their share in ad revenue with their news content. Consumers pay for free access by allocating part of their attention time to advertising and by sharing some personal news preference data with the platform.

Parker & Van Alstyne (2005) demonstrated in their seminal paper on network effects in multi-sided platforms that the pricing structure in platforms depends on the price elasticities of the different sides and user groups in the market. The side with the lowest price elasticity – i.e. their participation is less sensitive to entry pricing – will usually end up paying the highest price for market access. In Google Search, advertisers pay a price for the ads they place. Information suppliers and consumers pay a relatively low price by contributing their private information. In Google News there are no ads and only publishers and consumers. Neither of them pays. However, publishers receive benefits from additional traffic and ad revenue on their own websites. That makes them price inelastic too: a lower price, even a zero price, does not affect their participation because they still get benefits – as the empirical evidence suggests. That lowers their market power and reduces their remuneration, in this case to zero. Market participants with high price elasticities – i.e. their participation will be very sensitive to price increases – end up paying the lowest price. Consumers pay nothing. If aggregators would charge them they would probably unsubscribe in large numbers from the service. The zero price for news publishers could thus be considered as an economically efficient market outcome from the perspective of the Parker & Van Alstyne (2005) model.

A more efficient solution may be for the publishers to collaborate with the platforms in order to monetize some of the externalities that are currently not captured by the aggregation platforms, for example in the use of data. This explains steps taken by Google and Facebook to collaborate with news publishers to monetize the data that are collected on user behaviour on the platforms (as reported above in Section 2). News aggregators have a privileged overview and collect data on all actors on all sides of the market. There is a lot of potential economic value to be extracted from these big data collections. This will help publishers to better target ads and news articles to specific consumer audiences, and possibly to raise more subscription revenue from these audiences by means of subscription offers adapted to users' behaviour. Such measures will benefit the platforms and the publishers. Consumers may find that part of their consumer surplus (consumption of free content) is monetized by news publishers. Still, it could give them a better quality and selection of news articles and lower their search costs.



## 6. News media plurality and editorial quality

A free and pluralist press is a vital ingredient for well-functioning modern democracies. In pre-digital times, democracies had a lively and free printed press with a wide variety of opinions being voiced in often very animated social, political and economic debates. Consumers bought a printed newspaper that contained a bundle of articles edited and ranked by a human editor and whose selection matched their social, cultural and political preferences. Digitisation and online availability of news has changed the dynamics of news markets, both on the production and consumption side. Consumers now have access to a wide variety of online newspapers and a large part of that is available at virtually zero cost. This has led to "unbundling" of the printed newspaper. Consumers can read individual articles across many newspapers (Calzada & Gil, 2016). Most articles across newspapers, especially mainstream non-specialized newspapers, are partial substitutes: they cover the same content though possible from different perspectives. As a result, competition is so strong that the price of most news has dropped to zero. This competition is compounded by the widespread practice among online news publishers to closely watch and copy immediately from each other (Cagé et al, 2016).

When Google launched Google News as a news aggregation platform - a special version of its search engine that returned only news articles - unbundling was given a further push. Aggregators do not only reduce the access price; they also reduce search costs for consumers who get a range of articles from a variety of sources on a single page rather than having to jump to different websites. The consequence of aggregation however is that curation of articles is no longer done by a human editor. A search algorithm replaces the human editor. Lowering search costs enables news publishers to reach a much larger audience, mainly low opportunity cost consumers deep down the long tail who would not have bought a printed newspaper or taken the time to read full-length articles. Never before was such a diversity of news available to so many consumers at such low cost (Cornia, 2016). This expanded reach explains why, despite their misgivings, most newspapers actively collaborate with online news aggregators. The long-running judicial tussle between Google News and publishers in Germany is a good example. Facebook gave unbundling and reach another push when it brought online news to mobile phones via its app. Consumers can now read short news articles or even snippets of articles on their tiny smartphone screens at moments of low opportunity cost of time, sitting on the train or waiting at the cashier in the supermarket. However, news snippets on small screens make it even more difficult for publishers to maintain visibility for their brands. Some newspapers are experimenting

with building their own news aggregation platform, with a subscription fee attached to it<sup>12</sup>. That combines the advantages of lower search costs and more variety for consumers, with more revenue for news publishers. It is difficult to see however how such limited variety high quality news platforms can compete with Google and Facebook on consumer reach. Whether these experiments will succeed in generating sufficient revenue remains an open question. Unfortunately online ad revenue is not sufficient for many publishers to build a sustainable newspaper publishing business model on. Publishers can complement this with online subscription revenue. Subscription pricing is tricky because news has become so ubiquitous on the internet that few consumers are willing to pay for it. Only high quality and/or specialized newspapers can still muster a reasonable willingness-to-pay for online content, or generate a sufficiently large online audience<sup>13</sup>.

New aggregation and further unbundling has eroded the brand value of newspapers. Apart from legacy print newspapers a vast number of online-only news sources have emerged, including blogs and social media pages that wriggle into the news space, TV stations are putting their news online. It is often difficult to distinguish between genuine news items and paid-for advertising space that may carry full-length articles too, let alone trying to avoid the pop-up ads that jump all over your tiny mobile screen. That makes it difficult, even for discerning readers, to appreciate and distinguish the quality and credibility of all these sources of news. We also observe a declining role for the traditional newspaper editor who was in charge of defining the brand. News aggregators combine articles from many news publishers in a single search ranking. That ranking is a form of news curation, similar to the role played by editors in legacy newspapers. Editors format and position articles and ads to reflect editorial preferences, newspaper branding and commercial interests. They decide to put some articles on the front pages or with bold headings that attract more attention while others are moved to less eye-catching formats and places. News aggregator platforms have no editorial line to defend; they are revenue private firms. Their commercial interests are linked to the volume of traffic and ad revenue. Aggregation platforms use search rankings to drive a wedge between consumer preferences and news publishers in order to pursue the commercial interests of the aggregation platform. Trending news articles will be pushed up the search rankings because they may attract more expensive advertising and are more likely to be read. Search rankings also undermine news publisher attempts at building editorial profiles and branding.

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<sup>12</sup> See for example Blendle <https://launch.blendle.com/>

<sup>13</sup> <http://www.niemanlab.org/2017/09/newsonomics-our-peggy-lee-moment-is-that-all-there-is-to-reader-revenue/>

The demise of the editor explains the rise of "fake news", divisive, misleading and sometime illegal content. With fake news, consumers start asking again for editors: "somebody should stop this". But the editor has disappeared as a result of digital market forces, forces in which consumers are an active driving force<sup>14</sup>. Social media and news aggregation platforms are very reluctant editors. Like all online platforms, they claim to be intermediaries only, not producers of content. They facilitate exchange of media between producers and consumers but are not involved in content production or editing. Recently, political, legal and consumer pressure has forced major online media platforms to bring back human editors on a global scale<sup>15</sup>. Consumers save transaction costs by going to aggregator platforms but may lose consumer welfare because they get less reliable news, less of what they prefer and more of what generates ad revenue for the platform. Moreover, search rankings inherently suffer from "superstar economics" (Rosen, 1981). Empirical evidence shows that consumers have a tendency to simply consume top-ranked products as a way of reducing search costs<sup>16</sup>. That explains why aggregators focus on "trending" news articles: the faster an article rises in popularity (clicks), the faster it will indeed rise.

As such news aggregation platforms are a Faustian deal between platforms, publishers and consumers. The platform offers an increase in audience reach for news publishers; it offers consumers a reduction in transaction costs and access to a wide variety of articles. In return, it increases its ad revenues. The flip side of the deal is the loss of editorial control and brand recognition for publishers and more dependence on search rankings for consumers. Publisher may perceive the deal as unfair because news aggregators run profitable business models built on their content while publishers' revenue is under pressure. However, they would not gain from refusing the deal because there are no better alternatives for the time being.

## 7. Conclusions

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<sup>14</sup> <https://www.theguardian.com/technology/2016/aug/29/facebook-trending-news-editors-fake-news-stories>

<sup>15</sup> <https://www.ft.com/content/ba7d4020-1ad7-11e7-a266-12672483791a>

<sup>16</sup> Search rankings are endogenous and the direction of causality is not clear (Moraga-Gonzales et al, 2013): Does higher ranking increase consumption or do more frequently consumed items rank higher? Rankings may create a lock-in effect: popular products become more popular because they are already popular.

The demise of the news industry is rightly perceived as a danger for democracy. The debate on neighbouring rights is primarily driven by concerns about the decline in revenue and the longer-term financial sustainability of the newspaper industry as consumers and advertisers move from print editions of press publications to online news consumption in online platforms.

Legislators have introduced a right to remuneration for news publishers for the re-use of their news content by online platforms. That main benefit of these legal initiatives is to create a level playing field between news publishers and other media industries that already benefited from this right. Re-routing some of the money earned by news aggregation platforms to news publishers by means of an extension of the scope of copyright may seem like a good way of achieving that goal.

The available empirical evidence shows that newspapers actually benefit from news aggregation platforms in terms of increased traffic to newspaper websites and more advertising revenue. News platforms that display ads share between 70 and 100% of ad revenue with newspaper publishers. That explains why publishers are eager to distribute their content through aggregators. Research also shows that the question of indirect ad revenue from news content generated in general search can be addressed by modifying the length of text snippets in search. There is no evidence that the production of news articles has decreased, despite the fall in the number of newspapers and in revenue.

The German and Spanish cases show that the law can create a right but market forces have valued this right at a zero price. Explanations may be found in the economics of platforms or multi-sided markets. Platforms benefit from network effects and data aggregation across many users. This results in wider reach and lower transactions costs that individual newspaper websites cannot match. Platforms will price discriminate between different types of users in function of their market situation. Advertisers pay for the platform. Publishers receive a share in ad revenue in return for contributing their content. Consumers receive free content in return for sharing some personal data on their news reading preferences. This puts many newspapers in a weak position to leverage the value of their content. Only top-end papers may be able to charge a price for premium content.

The paper discussed some of the hidden dangers and negative side effects of news aggregation platforms. These include superstar effects in news feed that promote "trending" articles at the expense of more insightful articles. The flip side of the improved audience reach and ad revenue prospects offered by news aggregation platforms is that news publishers become more dependent on platforms as online distribution outlets. It weakens their brand and control over marketing. Aggregation results in a declining role for newspaper editors and newspaper quality trademarks or

"branding". The demise of the editor has given rise to blurring in the quality of news articles and the phenomenon of "fake news".

An important dimension of the debate on online news aggregators is their impact on media plurality and the diversity of news production and consumption. The evidence suggests that news aggregators promote diversity because they facilitate access to news across different sources. At the same time, the rising role of search algorithms at the expense of human editors may lower the quality of news and may even contribute to fake news distribution.

Alternative ways forward to increase newspaper revenue could start from exploiting the scope for using the data generated in digital news distribution channels. Platforms collect a wealth of data on news readers. That enables them to do more targeted advertising. Lately, news publishers are trying to get more access to these data. Google and Facebook for example have proposed new services to publishers that would enable them to do so<sup>17</sup>. Independent private data providers may also help publishers to strengthen their marketing strategy and branding. Closer collaboration between news publishers and news aggregators who also aggregate data on all sides of news market could lead to new business models that generate more revenue for news publishers and responds better to consumer preferences for news qualities and subjects. This could turn out to be a winning strategy for all stakeholders in the debate.

Recent advances in technology and business models show that the online news industry is far from stabilized yet and that there is wide scope for further innovation in exploring new revenue sources that go beyond that traditional choice between ads and subscriptions. Typically, the value of user data grows in importance and remains to be exploited.

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<sup>17</sup> See for example <https://www.ft.com/content/8cf89782-9e4c-11e7-8cd4-932067fbf946>

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