Taking the Long View: The Business of News and the Limits of Copyright

Will Slauter

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Abstract

In response to the five commentaries in this symposium, this essay revisits and expands upon some of the central claims of *Who Owns the News? A History of Copyright* (2019). The essay discusses the chronological scope of the book in relation to contemporary debates about legal protection for news, and considers some of the questions that could be explored further, such as the rights and bargaining power of journalists and the tension between copyright law and freedom of expression. In light of the recent adoption by the European Union of a new IP right for press publishers, the essay recalls previous historical moments in which news publishers have claimed that existing copyright laws were insufficient to protect their investments, the special remedies that they proposed, and the political and cultural arguments used to oppose their efforts. Taking the long view shows that news has almost never paid for itself, meaning that some form of subsidy is needed. But history also reveals the distinctive features of news publications that distinguish them from other fact-based works, suggesting some of the limitations of copyright as an incentive for journalism.

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"When news is printed, it leaves, sir, to be news."[1] So proclaimed Cymbal, a character in Ben Jonson's 1625 play *The Staple of News*. As the manager of the "staple" or emporium of news, Cymbal dealt in handwritten news sheets, promising his clients more or less personalized updates on diplomatic and commercial "intelligence" from courts and trading centers across Europe. To Cymbal's boasts about the superior value of handwritten news, a customer responded that many readers only believed the reports they saw in print, so that "the very printing of them makes them news."[2] But given that most news at the time spread orally before being written down, let alone printed, the gossips in Jonson's satire also had a claim to priority and relevance. Why would people pay to read news that they could learn by other means? How could news be the basis for a viable business? Moreover, given the commercial and ideological stakes of this burgeoning news culture—the ongoing story was

* Associate Professor, Université de Paris, LARCA, CNRS; and junior fellow, Institut universitaire de France.

[1] Ben Jonson, The Staple of News 96 (Anthony Parr ed., 1988).

[2] Id. On Jonson's play in relation to the contemporary news business, see Anthony Parr, Introduction, in id. at 22-31; Roger Chartier, Inscription and Erasure: Literature and Written Culture from the Eleventh to the Eighteenth Century ch. 4 (Arthur Goldhammer trans., 2007); and News Networks in Early Modern Europe (Joad Raymond & Noah Moxham eds., 2016).

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the violent conflict between Catholics and Protestants now known as the Thirty Years' War (1618-1648)—how could readers know which reports to trust? Were people paying too much attention to frivolous or unreliable news at the expense of more noble forms of knowledge and culture?

Jonson was not alone in worrying about the commercialization of news and its effects on society. Samuel Butler, another English writer of the seventeenth century, offered this satirical definition of a "newsmonger": "a Retailer of Rumour, that takes upon Trust, and sells as cheap as he buys. He deals in a perishable Commodity, that will not keep: for if it be not fresh it lies upon his Hands and will yield nothing. True or false is all one to him; for Novelty being the Grace of both, a Truth goes stale as soon as a Lie."[3] Much more could be said about seventeenth-century concerns about authenticity, credibility, and the cultural consequences of treating news as a commercial product. My book *Who Owns the News?* focuses less on such important questions of reception than it does on the production side of things, exploring the evolution of business models and editorial norms in relation to changes in state regulation. The time-sensitive nature of news is a crucial part of that story. By Jonson's day, publishers were already grappling with how to make money selling news, and some of the business strategies they developed—such as packaging reports of several events together in periodicals sold by subscription—eventually became tremendously influential. But as a historian who likes to take the long view, especially when it comes to recurring debates that have echoes in the present, I often wondered if my own research would cease to be fresh to me—let alone interesting to others—once it was in print.

Given that this is my first book, I am especially grateful for the opportunity to have my work reviewed by a brilliant group of interdisciplinary scholars with a range of approaches and interests. They have responded to my material by reframing it in interesting ways, articulating ideas that remained poorly formed in my mind. They have also asked questions that never even occurred to me. I want to thank the editors, Markus Dubber and Simon Stern, for convincing these five scholars to contribute original essays and for creating this space for productive and sustained dialogue. One big question that I often think about—what role should historical research play in contemporary debates about copyright and other forms of regulation?—cannot be settled here, but I am convinced that it is only through such interdisciplinary exchanges that we can begin to appreciate the possibilities. I especially want to express my gratitude to Oren Bracha, Lisa Gitelman, Laura A. Heymann, Michael Madison, and Nora Slonimsky for offering a series of thought-provoking essays that I suspect readers of this journal will enjoy as much as I did.

I cannot do justice to all of the ideas advanced by these five scholars, so I will try to respond to some of the themes and questions that struck me as I read their essays. I will focus in particular on 1) the chronological scope of the book and the consequences of my choices for the book's treatment of certain issues, such as the rights of journalists vis-à-vis

[3] Samuel Butler, Characters and Passages from Notebooks 126-27 (A.R. Waller ed., 1908).

publishers and the tension between copyright law and freedom of expression; and 2) the various attributes of news that have historically made it difficult to "protect" or incentivize its production through copyright law, raising questions about what kinds of regulatory choices and business models might help foster quality journalism today.

First, chronology. It may strike some readers as odd that a book entitled *Who Owns the News?* would begin with a chapter on the sixteenth and seventeenth centuries, spend a significant amount of time on nineteenth-century developments, focus its final chapter on a case from the early twentieth century, and then jump ahead to an epilogue on the digital age. Has the author deliberately skipped all the important twentieth-century developments in print and broadcast journalism that one might expect to read about? None of the scholars in this forum criticized the chronological scope of the book directly, but since some of their comments refer to the twentieth century it may be worthwhile to think about the causes and consequences of my particular choice of periodization.

Besides the obvious fact that other scholars have greater expertise on the twentieth century (I began my career as a specialist of the eighteenth century and have gradually expanded my field of vision backwards and forwards in time), I had other reasons for not venturing much past the era of World War I. On a pragmatic level, there was the question of sources. In order to study editorial norms and publishing practices in relation to the law, I needed access to a range of newspaper sources, and this is in some ways easier to obtain for the earlier periods. Though countless newspapers from the seventeenth, eighteenth, and nineteenth centuries have not survived, and much of what has been preserved has not been digitized, I did have access to several convenient databases of historical newspapers, including open-access sources such as the Library of Congress's "Chronicling America" website and proprietary resources covering British and American newspapers of the eighteenth and nineteenth centuries. These digital collections enabled me to construct a richer account of newspaper history in relation to copyright law. In part because of copyright restrictions and the way individual publishers manage their own digital archives, accessing a broad range of twentieth-century material poses a number of challenges. But it would be well worth confronting these challenges in order to better understand the interactions between law, business practices, and journalistic norms.

Laura A. Heymann and Michael Madison discuss some of the court cases that would need to be part of a history that dealt with the twentieth century in more detail, and Lisa Gitelman evokes Lucas Hilderbrand's work on controversies over the right to videotape news broadcasts for archival purposes.[4] In addition to exploring these and other legal disputes, I hope that future studies will also examine any available business records as well as evidence from newspapers and recorded broadcasts in order to better understand what role, if any, copyright might have played in relation to the different strands of journalism that developed over the course of the twentieth century. I agree with Heymann that journalism and news should not be taken as synonyms. The fact that most of the disputes recounted

[4] Lucas Hilderbrand, Inherent Vice: Bootleg Histories of Videotape and Copyright ch. 3 (2009).

in my book related to breaking news (in the form of relatively short accounts of what happened) does not mean that other forms of journalism (including essays, investigative reports, interviews, feature articles, and photojournalism) haven't raised interesting questions for copyright law. Heymann and Madison note that my story focuses largely on publishers, agencies, and associations rather than individual journalists. Madison's insightful comments about the important role that groups and communities have played (and continue to play) in the production and circulation of news help to clarify what differentiates news from other forms of creativity and knowledge production. But I also agree that more needs to be done to understand the perspective of individual creators. Indeed, we need a labor history of journalism that explores questions of authors' rights and the bargaining power of journalists (both salaried and freelance) over a long time-span.

The twentieth and early twenty-first centuries saw important legislative and judicial developments in this area, but earlier periods also offer interesting material to explore. Although I paid close attention to the statements of newspaper editors for what they revealed about changing attitudes toward copying, I focused largely on rivalries between publishers rather than disputes between writers and publishers. Such disputes existed and merit further study. In the United Kingdom, for example, the Literary Copyright Act of 1842 represented an early legislative attempt to balance the rights of publishers with those of contributors to periodicals, but many issues remained unresolved well into the twentieth century—and continue to cause controversy today.[5] Giuseppina D'Agostino has looked back to the 1842 statute and suggested that in some respects, individual contributors to Victorian newspapers may have enjoyed greater protection (at least in theory) than their counterparts in later periods.[6] The actual experiences and expectations of journalists with respect to copyright deserve more study.

In the book I discuss a case from 1903 in which a freelance writer named George Springfield was denied copyright in a story he submitted to a London newspaper because the judge found that the editorial changes made by the newspaper's staff had effectively resulted in a different work that now belonged to the publisher, even though Springfield alone had observed the event and written up an account of it.[7] This decision may not seem so surprising from a doctrinal perspective insofar as it upholds a distinction between protected expressions and unprotected facts or ideas. But the dispute can tell us something about the relationship between copyright law, labor practices, and the bargaining power of individual writers in a particular publishing context. As I detail in the book, news publishers and agencies in the late nineteenth and early twentieth centuries pushed to expand the scope of copyright to include protection for the factual details of news. Although legislatures and

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[5] An Act to Amend the Law of Copyright, 5 & 6 Vict. c. 45, § 18 (1842); see Elena Cooper, Copyright in Periodicals during the Nineteenth Century: Balancing the Rights of Contributors and Publishers, 51 Victorian Periodicals Rev. 661 (2018).

[6] Giuseppina D'Agostino, Copyright, Contracts, Creators: New Media, New Rules 55-86 (2010).

[7] Springfield v. Thame, [1903] 89 LT 242; Will Slauter, Who Owns the News? A History of Copyright 185-86 (2019).

courts in Britain and the United States ultimately refused to allow this to happen, one of the downsides for someone like Springfield was that since he could not claim rights in the facts, once his story was heavily edited, he effectively did not have any rights at all. I suspect that once we dig deeper, we will find other interesting examples of litigation and threatened litigation (some of which may have been reported in newspapers or trade journals without resulting in reported court decisions). Such disputes could inform a history of copyright that is more sensitive to questions of labor practices, gender, and power relations.

The chosen periodization also had consequences for my treatment of the question of freedom of expression. In his essay, Oren Bracha highlights how disputes over news expose the tension between copyright law and freedom of expression with particular clarity. Although one can find evidence, as Bracha does, that this tension was noticed in earlier periods and informed arguments against copyright protection for news, it seems to me that a study that focused on the twentieth and twenty-first centuries would have much more to say on this topic. Critics of proposals to create a special copyright for news in nineteenth-century Britain and the United States touched on the question of freedom of expression when they defended the right to quote from news articles in order to comment on them, or when they suggested that editors could not adequately serve their local readers if they were not allowed to republish reports first printed in other cities. But a more common refrain highlighted the need to promote access to information of public concern and limit the "monopoly" power of a handful of publishers and press associations. Such arguments tended to hint at the question of freedom of expression rather than deal with it head on.

Ultimately, the chronological scope of the book and the decision to focus on certain questions rather than others can be traced back to the context in which I was working. I began the project in 2009. At that moment in the crisis of journalism (a crisis that is ongoing but has since taken on other dimensions), I noticed that news organizations in the United States were becoming much more vocal about their desire to protect their "intellectual property" and control the way their "content" was used by blogs, news aggregators, and media monitoring services.[8] Publishers were looking not only to copyright law but also to the common law doctrine of misappropriation, which can be traced back to the 1918 decision of *International News Service v. Associated Press*.[9] As a historian of the press, I found it fascinating that this case, which is of course well known to IP scholars, was being resurrected through litigation and even finding its way into policy discussions about the future of journalism.[10] The renewed interest in *INS* in connection with contemporary debates about how best to regulate the production and circulation of news made it seem like a fitting

[8] Slauter, supra note 7, at 1 nn.2-3.

[9] 248 U.S. 215 (1918).

[10] Associated Press v. All Headline News Corp., 608 F. Supp. 2d 454 (S.D.N.Y. 2009); Federal Trade Commission Staff Discussion Draft: Potential Policy Recommendations to Support the Reinvention of Journalism 8-11 (2009) (https://www.ftc.gov/sites/default/files/documents/public_events/how-will-journalism-survive-internet-age/new-staff-discussion.pdf); Barclays Capital Inc. v. Theflyonthewall.com, Inc., 700 F. Supp. 2d 310 (S.D.N.Y. 2010), rev'd , 650 F.3d 876 (2d Cir. 2011).

subject for the book's final substantial chapter, though I certainly did not mean to imply that *INS* was the end of the story. The fact that I started in 2009, at a moment when the misappropriation doctrine was seen as a potential salve for an industry in crisis, no doubt led me to pay particular attention to the border between fact and expression and the extent to which disputes over news helped to shape legal doctrine in this area.

But I was also interested in the broader implications of news organizations suggesting that the ordinary rules of copyright were somehow insufficient to protect their investments in quality journalism. The more I looked into the past the more I saw similar arguments being made by publishers operating in technological and cultural contexts that were very different than our own. And as I continued writing, new legislative proposals, such as the push for a so-called neighboring right for press publishers in the European Union, also seemed steeped in a conviction that there was something special about news publications that necessitated an additional layer of protection beyond what was already available through copyright. In this case, it was not the exclusion of facts as such from copyright that bothered European publishers, but rather the risk that many headlines and short phrases displayed by search engines and news aggregation sites (often referred to as "snippets") would probably not meet the threshold for copyright protection in the EU. The publishers therefore pushed for a new IP right that would sit alongside the authors' rights in individual news articles and (they hoped) provide publishers with a stronger bargaining position in relation to internet platforms such as Google and Facebook.[11] In the spring of 2019, after many months of fierce lobbying and heated public debate (several Members of the European Parliament said that they had never experienced such intense reactions to proposed legislation), the EU adopted a new press publishers' right as part of its directive on copyright in the digital single market.[12] France has already transposed this measure into national law, quickly prompting Google to announce that they will not pay to show snippets in their search results; if publishers do not voluntarily authorize Google to show such snippets the firm will simply remove them, leaving a bare title with a hyperlink.[13] Such an outcome would be far from satisfying, since it could make it much harder for readers to find the sources they want while reducing traffic to publishers' websites.

The struggles between EU publishers and platforms are ongoing, but we should not forget that the suggestion that existing copyright laws might be somehow insufficient to

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[11] For more on this process, see Will Slauter, Copyright and the News: The EU's Attempt to Rein in the Internet Giants May Backfire, The Conversation (France), July 3, 2018 (http://theconversation.com/copyright-and-the-news-the-eus-attempt-to-rein-in-the-internet-giants-may-backfire-98952); and the numerous resources available at EU Copyright Reform: Evidence on the Copyright in the Digital Single Market Directive, UK Copyright and Creative Economy Centre, University of Glasgow (https://www.create.ac.uk/policy-responses/eu-copyright-reform/).

[12] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, at art. 15 ("Protection of press publications concerning online uses") (https://eur-lex.europa.eu/eli/dir/2019/790/oj?eliuri=eli:dir:2019:790:oj).

[13] Laura Kayali, Google Refuses to Pay Publishers in France, Politico (Europe), Sept. 25, 2019 (https://www.politico.eu/article/licensing-agreements-with-press-publishers-france-google/).

protect news publishers' investments has a long history. The turn toward the misappropriation doctrine in the late 2000s and early 2010s involved one variation of that claim, and this led me to pay particular attention to historical struggles to protect the factual details of news. If I had started researching sometime between 2016 (when the press publishers' right was included in a proposed EU directive) and 2019 (when the EU adopted this right in modified form), then I probably would have paid more attention to other questions, such as the history of copyright exceptions for quotations and press summaries or the lack of protection for titles and short phrases. These subjects are touched on in the book but not treated to the extent that they could be.

In any case, I thought it was important to demonstrate the extent to which copyright law has long been considered a poor fit for news, both by those who argued that news articles should not be eligible for copyright at all and by those who thought that news publishers deserved more help than copyright could offer, either because the scope of protection was too limited or the existing administrative and judicial procedures were ill-suited to the speed of the news business. Oren Bracha's essay usefully distills the book's evidence into three major features of news that have made it stand out as an object of intellectual property: the fact that in many news publications the informational character is particularly pronounced; the links forged over time between journalism and ideals of political participation and freedom of expression; and news reporting's ambiguous relationship to prevailing notions of authorship. I agree with much of Bracha's account, though in explaining what's special about news I would also emphasize the particular business models built around news. These business models have tended to reinforce the notion that the commercial value of news is extremely time-sensitive.

As Lisa Gitelman suggests in her essay, the emphasis on timeliness has helped to distinguish news publications from other fact-based works, and the speed of the news business created both practical and conceptual problems for publishers who sought to use copyright to maintain exclusivity. Most obviously, the formalities of registration and deposit had been designed for books rather than daily newspapers (let alone multiple daily editions, as became common in major cities during the nineteenth century). There was also a conceptual question for judges about whether or not copyright statutes that explicitly aimed to promote the production of useful books and the spread of learning (as the first laws in Britain and the United States announced) should apply to "ephemeral" newspapers.[14] And if one day's news was bound to be superseded by that of the next day, then how exactly would copyright work as an incentive for publishers? Other fact-based works, such as dictionaries and encyclopedias, might be in demand for years to come, but very few people would be willing to pay to read yesterday's news. Publishers and agencies did worry about rivals copying news and selling it in direct competition, and that's why they pushed for a

[14] The case of Clayton v. Stone, 5 F. Cas. 999 (S.D.N.Y 1829), is particularly interesting in this respect. Slauter, supra note 7, ch. 4.

copyright of very short duration, eight or twelve hours rather than twenty-eight years or the lifetime of the author.[15]

The speed of the news business by the mid-nineteenth century also meant that the most common remedy in copyright cases—the injunction—was too slow for news publishers. By the time a request for an injunction could be considered by a judge, the news would be too old to protect: it was extremely unlikely that either the defendant or the plaintiff would want to print the same news again. To counteract this problem, as early as the 1830s some London publishers began to lobby for a copyright that could be enforced through summary proceedings before a police magistrate. In short, they sought the existence of a penalty that would dissuade rivals from copying in the first place.[16] The notion that the commercial value of news was extremely time-sensitive also explains why publishers and agencies looked beyond copyright in an effort to establish a property right in information. The timeliness of news became the cornerstone of the Associated Press's legal strategy in the *INS* case.[17]

With respect to what Bracha refers to as the dominant informational character of news, Heymann raises the important point that what people consider news, and the kinds of news that publishers have sought to protect, may have evolved in important ways since the early twentieth century. More writerly forms of journalism, in which reporters or columnists develop a distinctive voice, would arguably be easier to protect using copyright law than the shorter accounts of recent events at the heart of most of the disputes in the book. But as far as I know the extent to which copyright law did or did not matter to the sustainability of various forms of twentieth-century journalism has not been studied. The rise of "infotainment" and the development of highly polarized forms of news commentary, whether on cable news channels or the internet, has also led some to wonder whether copyright law's emphasis on creative expression (and the exclusion of protection for facts as such) may actually play a perverse role in the kinds of news that are published or broadcast. Might copyright be more conducive to "infotainment" than to "hard news" and investigative reporting? In a provocative piece published in 2004 (hence before the major economic crisis that hit newspapers later in the decade), the law professor and former journalist Eric B. Easton suggested that, if we want to support the production of "hard news" rather than highly personalized forms of political commentary, perhaps we should exclude most news stories from copyright and institute a very limited form of the misappropriation tort.[18] I don't share this view, and I certainly won't hold Easton to something that he proposed years ago in a different context, but it is interesting to think about what effects copyright's emphasis on creative expression may have in the field of journalism.

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[15] Id. chs. 5-6.

[16] Id. at 148-49, 159, 178, 181.

[17] Id. ch. 7.

[18] Eric B. Easton, Who Owns "The First Rough Draft of History"? Reconsidering Copyright in News, 27 Colum. J.L. & Arts 521 (2004).

This brings me to the relationship between news, facts, and copyright law as it is raised in different ways by Lisa Gitelman, Michael Madison, and Nora Slonimsky. The book details how disputes over news led to the articulation of certain key principles of copyright. Although various kinds of fact-based works—from dictionaries and encyclopedias to maps and charts—received copyright protection from an early date, the case of news troubled judges and policy makers more. Claims about the political importance of journalism and the need for information on current affairs to circulate widely meant that defining the scope of copyright protection was seen as particularly urgent in the case of news. This perceived need to identify something called "news," and to separate out the factual details of that news from the manner in which they were expressed, was arguably reinforced by the practical needs of newspapers and press associations to draw on each other, to reproduce and comment on news already in circulation. As Gitelman points out, the "presumptive purity" of the categories fact and expression could be seen to have served a number of functions, but there will always be cases in which it is very difficult to separate fact from expression. Photographs of events—or photographs that are newsworthy for some other reason—provide a good example. How can one separate out the ideas or facts being conveyed by the photograph? Although it might be possible to describe the image in writing, in certain cases there will be no adequate substitute for reproducing the original.[19] This point connects to Bracha's warning that we should not become too complacent in thinking that in the realm of news the law has developed sufficient safeguards to ensure that copyright does not impede freedom of expression.

Over time, many of the arguments developed against copyright protection for news drew attention to the special attributes of news in relation to other forms of knowledge and creativity. Critics warned against the danger of a monopoly on information of public concern, defended the democratic virtues of allowing news to circulate, and denigrated news as being collected rather than created by an author. Alongside such political, cultural, and aesthetic arguments against property rights in news, business strategies and institutional arrangements explain why, during much of the history of the printed newspaper, copyright was of relatively little importance to publishers. Although there were a number of variations, the dominant type of newspaper that developed over the eighteenth and nineteenth centuries in Britain and America bundled together a mix of breaking news, commercial information, editorials, and other features (sometimes including literary works and illustrations) to attract subscribers and advertisers. One of the main strategies was to obtain a reputation for the freshest news and use that reputation to capture the attention of readers, which could then be sold to advertisers. The time-sensitive nature of news and the reliance on advertising revenue made copyright of much less importance than it was for the publishers of novels or reference works for example. The revenue stream for newspapers did not depend on the exclusive right to print or sell the same work for years to come but on the ability to attract subscribers willing to commit to paying for the next installment,

[19] Melville B. Nimmer used the example of photos of the My Lai massacre in his article Does Copyright Abridge the First Amendment Guarantees of Free Speech and Press?, 17 UCLA L. Rev. 1197 (1970).

whatever it might contain. Copyright was not central to this process, though arguably it may have been important for the development of syndicated features. It should also be remembered that during the period covered by my book the market for newspapers tended to be local and regional rather than national, so that a publisher in one city usually had little reason to worry about copying by counterparts in other cities, since they were not competing for the same subscribers or advertisers.

The changing geography of news distribution helps to explain why complaints about copying arose when they did. In mid-nineteenth-century Britain, when provincial newspapers came into more direct competition with London papers sent by railway, a core group of London publishers lobbied for a special copyright in news. In the United States, as it became possible to use the telegraph to transmit reports across multiple time zones, threatening the cooperative arrangements of press associations, the latter sought a legal mechanism to stop outsiders from publishing news collected by their members. Radio constituted another threat to this business model, since broadcasters could "invade" the circulation areas of multiple newspapers. The internet was of course even more disruptive of the geography of news: it became increasingly easy for anyone connected to the network to access news from other regions and countries, making certain kinds of copying more noticeable than they had been before.

On the whole, however, taking the long view suggests that news publications have often relied on each other, and that copying and reformulating news has long been central to journalism. This point is related to Michael Madison's remarks about the collective nature of much news production and circulation. Various forms of formal cooperation, including press associations and cartels, have often been crucial to lowering the costs of gathering and distributing news in the past.[20] But there are also more diffuse forms of collaboration that depend on shared norms about when it is acceptable to reuse material published by other news organizations, when it is necessary to credit the work of others, and so on. Taking the long view suggests that copying has always been part of journalism, though it may be that drastic reductions in newsroom budgets since the late 2000s have led to more reliance on "copying and pasting." An over-reliance on copying could be blamed for less original reporting in a world where it is now possible to quickly compare the reports published online by different news outlets. Plagiarism detection software has certainly made it easier for researchers to measure the extent of textual reuse.[21] As Nora Slonimsky highlights

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[20] See Jonathan Silberstein-Loeb, The International Distribution of News: The Associated Press, Press Association, and Reuters, 1848-1947 (2014).

[21] In a study published in 2015, the French economist Julia Cagé worked with computer scientists to build a digital corpus of all the news articles published on French news websites in the year 2013. Their corpus excluded aggregators because the goal was to assess the amount of original reporting being put out by news organizations. The corpus included websites affiliated with newspapers, radio stations, television channels, and digital news organizations. They found that 64% of the total text in this corpus was copied and pasted. Julia Cagé et al., L'information à tout prix (2015). In recent years, historians and literary scholars have also taken an interest in patterns of text reuse in newspapers from earlier periods. See, e.g., Ryan Cordell & David Smith, The Viral Texts Project: Mapping Networks of Reprinting in 19th-Century Newspapers and Magazines (2017) (www.viraltexts.org).

in her review, a system that involves a lot of copying entails risks as well as benefits: the newspaper exchanges in nineteenth-century America enabled useful information to spread, but they also facilitated the propagation of error and prejudice.

It would be very interesting to know more about what journalists past and present have thought about the way their work has been variously appropriated by their peers. In the case of the publishers and press associations that I studied, one historical lesson was that copying became especially problematic when it was done by outsiders, such as communication technology companies. In the mid-nineteenth century, publishers on both sides of the Atlantic were worried about the activities of private telegraph companies, which briefly entered the news business, and in some cases lifted reports directly from printed newspapers and transmitted these reports to their own clients in subscription news rooms. In the early twentieth century, publishers and press associations fought back against radio stations, seeking to limit their involvement in news or at the very least stop them from reading newspaper stories on the air. And in our own day the main threat is seen to be internet technology companies. Their primary business is not news, but they use published news, along with other forms of written, visual, and audio-visual content, to capture the attention of "users," which they then sell to advertisers. The problem for news publishers today is not that copying is easier online but that using breaking news (and other forms of journalism) to generate advertising revenue is so much more difficult than it used to be. Not only are digital ads worth much less than printed ads were, but the overwhelming majority of advertising revenue is now being absorbed by Google and Facebook. And in cases where a publisher's texts or images are displayed outside their own website, such as in a social media post, publishers have little or no control over the advertising revenue that might be associated with it. Although some European publishers hope that the new IP right for press publications will enable them to negotiate licensing deals with internet platforms, I have a hard time seeing how intellectual property rights can solve the problem of the massive decline in advertising revenue.

History shows that news has almost never paid for itself; at many periods in the past publishers have benefited from direct and indirect subsidies, from tax incentives and extremely favorable postal rates to shared services such as the post-office run telegraph in Britain. They have also developed various forms of cooperation to lower the cost of gathering and distributing news. And up until the end of the twentieth century, much news was heavily subsidized by advertising revenue.[22] Copyright is one form of subsidy, but not the most effective one if our goal is to promote a thriving and pluralistic news culture. Other forms of public and private subsidies have been necessary in the past and will be necessary in the future.

[22] See Making News: The Political Economy of Journalism from the Glorious Revolution to the Internet (Richard R. John & Jonathan Silberstein-Loeb eds., 2015).