

# A Modern Fairy Tale: Fair Use and News Aggregators

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# Empiric Evidence



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**ETH**



- Less than half of GoogleNews homepage views → visits to *any* newspaper site
- Change in traffic
- Loss of curation role
- Substitution ✓
- Increased by: length of snippet/ image/ several results on same topic
- Competition among related articles

# Economic Realities

- Google profit from Google operations: \$ 13,835bn, i.e. 30% of revenue (2012)
- US newspaper industry: advertising revenue fell from \$47.4bn to \$24.8bn (2005-2009)
- New York Times Staff 2001: 12,050; 2007: 7800
- 200+ US newspapers closed/ limited publication frequency (2007-2010)
- 50+ US newspapers stopped covering local state legislature

# What is being done?

- *Brazil*: 150 papers (90% of the market) opted out of GoogleNews altogether losing only 5% traffic.
- *France*: Government initiated negotiations between parties → Google to provide one time (!) amount of 60,000,000 EUR
- *US & UK*: Meltwater lawsuits

# Meltwater Lawsuits



## Fair Use 17 U.S.C. § 107

- Criticism, comment, news reporting, teaching, scholarship, research
- + e.g.
  - Purpose & character of use
  - Nature of copyrighted work
  - Extent of use relative to work as a whole
  - Effect on copyright value

## Fair Dealing § 30(1) CDPA

- Criticism
- Review
- Reporting Current Events

Parties **accept** that license is required.

“Meltwater has chosen **not to offer evidence** that [...] customers actually use its service to **improve** their **access to the underlying news stories...**”

“Even if these conditions had been complied with, Meltwater’s dealings were not ‘fair’.

Meltwater US click through rate?  
0.05%

Fair dealing defense “**was not considered by counsel for PRCA as sufficiently substantial** to be advanced orally either in opening or reply.”