



Neighbouring rights of news agencies

- News agencies must be granted neighbouring rights in recognition of their role in the creation and treatment of information services that they produce (organisation, collection, editing, adapting, checking and validation, dissemination, etc.) and the corresponding investments that they make.
- The existing legal grounds do not make it possible to effectively address the issues inherent in the digital exploitation of their content. The creation of this neighbouring right will help to solve this difficulty of enforcement.

This neighbouring right must cover all intermediation services for communication to the public of the content of the agencies, including the activities of aggregators and search engines.

News agencies play a crucial role and are an integral part of the information chain upstream of media, including publishers.

They provide their customers, including publishers of online services, with news items in all forms, articles, photographs, videos, sounds, computer graphics, which are reproduced as is or edited by their customers' editorial departments, for publication on all media, in particular the Internet.

While the digital industry players (aggregators and search engines) reap significant benefits from exploiting the content produced by news agencies, the economic model of the news agencies is jeopardized due to the dissemination of their productions without financial compensation.

Therefore, news agencies strongly believe that it is necessary and legitimate to establish a neighbouring right to ensure:

- greater protection of their content, similar to that already in place for other players in the cultural sector (producers of phonograms and videograms; broadcasters).
- the development and innovation of their productions while protecting their financial and human investments.

News agencies

News agencies produce information documents in all forms, intended for all news media, under their own editorial responsibility and grant their customers temporary non-transferable, temporary user licences, exclusive or not, in relation to these productions.

News agencies initiate and take part in the intellectual work behind the creation of their productions. They play a major part in the value chain related to this intellectual creation, as the entities responsible for journalistic coverage and are officially recognised in this respect.

In France alone, the total revenue of news agencies in 2015 was € 720 M. In total, news agencies employ more than 10,000 employees.

Every year, they produce more than two million articles and dispatches, three million photographs, 36,000 computer graphics and videos.

The archival collections of news agencies total 55 million photographs, the oldest of which date back to 1855.

The specific case of Agence France-Presse (AFP)

AFP plays a leading role in the production of news in France. In a study conducted by Julia Cagé, Nicolas Hervé and Marie-Luce Viaud in relation to 2013 (*L'information à tout prix*, INA Editions – 2017) it appears that, in 50% of the cases, AFP was the first to publish news about an event, which was then taken up by other media. This same study also reveals that AFP covered 93% of the events in question when other media only covered 16% of the events on average. Even so, AFP does not grant its customers the right to consent to the indexing and reproduction of this content by aggregators and search engines (see below).

The creation of a neighbouring right for news agencies: positive impact for authors and for the entire copyright chain

News agencies would like to be granted a neighbouring right for the purposes of correcting the adverse consequences and the inadequate protection provided to them in relation to the referencing and indexing of their content by search engines and aggregators who do not pay them any financial compensation.

Under current French Law, copyrights and neighbouring rights co-exist under a regime which was created in 1985 for performers, producers of phonograms and videograms, as well as broadcasters. The cinema, audio-visual and music industries have better protection thanks to these neighbouring rights, which guarantees a fairer division of the wealth created, or which at least helps to limit the degree to which certain players misappropriate value that they did not take part in creating or to which they contributed very little.

This beneficial coexistence can be extended to news agencies without any adverse impact on copyrights.

Pursuant to Article L.211-1 of the French Intellectual Property Code “neighbouring *rights shall not infringe on copyrights. Consequently, no provision of this title shall be construed as limiting the exercise of copyright by its owners* [authors]”.

On the contrary, the creation of a neighbouring right for news agencies would result in better protection for authors as they are to a large extent paid by the agencies to which they have assigned their rights.

The content produced by news agencies is reproduced by search engines and aggregators as published by the customers of the agencies (news publishers). However, news agencies do not grant their customers the right to consent to the indexing and reproduction of this content by aggregators and search engines. From an economic perspective, news agencies cannot prohibit publishers from being referenced by search engines or aggregators, as this presence generates direct or indirect profit for them. By nature, this prohibition would be unfavourable for the news publishers’ traffic or unique views and therefore the revenue of the agencies (which is based on the publishers’ traffic or unique views). For many years now, the media sector has been experiencing difficulties, and all media players have been losing revenue due to the “free” dissemination by search engines and aggregators of the agencies’ content published by their customers for end users. A neighbouring right for news agencies (and publishers) would help to alleviate impairment losses caused by search engines and aggregators.

Furthermore, given their dominant position in the online information industry, the practices of aggregators and search engines do not allow news agencies to effectively defend their productions based on existing intellectual property rights.

On the one hand, the exercise of copyright entails the obligation to provide proof of the originality of indexed and reproduced content which is difficult to do given the massive plundering or reproduction of content. The exercise of the database right requires the identification of unauthorised database extractions and the related substantial investments. This is very cumbersome in procedural terms. Besides, search engines are financially able to develop legal countermeasures and drag out proceedings. In addition, European Case Law which authorises hypertext links weakens these various legal bases.

On the other hand, even if a news agency were to successfully exercise its copyright or its database producer right with a search engine, it would risk a de-referencing of published content. As this content

is reproduced by the customers of the news agencies, the enforcement by the agencies of this copyright would deprive their customers of referencing on the Internet.

Finally, in light of the power dynamics, a one-on-one confrontation between the news agencies and search engines would not enable the agencies to individually assert their rights. However, a neighbouring right exercised via collective management societies is likely to correct this imbalance.

The broad outline of this related right

The goal of this neighbouring right would be to create for news agencies:

- a right of reproduction, to guarantee fees to offset the shortfalls resulting from copyright exceptions, including private copying;
- a right of communication to the public, to ensure protection against any unlawful use of their produced content by a legal entity, content aggregators or search engines, for direct or indirect commercial purposes.

With regard to this second point, the news agencies' position differs from that of some news publishers which do not wish to assert this neighbouring right against search engines.

As a matter of fact, French news publishers have entered into agreements, similar to that entered into in February 2013 between Google and the Press Association IPG, which allows publishers to benefit from a € 60 M fund, supplemented by Google, for a period of three years. In general, publishers benefit from the indexing of their content by search engines as this guarantees traffic to their websites, which in turn generates additional income.

A large portion of this content does not belong to the publishers, but to the news agencies. News agencies have granted publishers a license to publish the content online, which does not include the right for a search engine to separately reproduce the content on its pages.

Press agencies are legally at a disadvantage with regard to the search engines which reproduce and disseminate on their pages millions of texts, photographs and videos royalty-free and without license, thereby causing considerable economic loss to the news agencies and their authors. These search engines do not have any journalists on staff and have become genuine information banks, by exploiting a content which they have not created. Accordingly, this neighbouring right must cover all intermediate activities in the communication to the public of the content created by news agencies, including the activities of aggregators and search engines insofar as they directly (marketing of links by aggregators) or indirectly (attraction of viewers, preservation of the Internet user in the search engine ecosystem, remuneration of the search engine by advertising conducted on the associated services for the search engines) benefit from these activities without bearing the corresponding cost of investments required for the journalistic work that they exploit.

The involvement of collective management companies would facilitate the collection of royalty and their distribution between the many stakeholders.
