Protecting News before the Internet

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Newspapers in the nineteenth century commonly copied from each other without legal sanction. American newspapers, for instance, extracted around 30 percent of their stories from other papers, generally receiving them through the system of newspaper exchange organized by the post.¹ Horace Greeley, founder and editor of the hugely influential New York Tribune, told a British parliamentary commission in 1851 that "all the evening journals copy from us and we rather like it."² In 1873, Frederic Hudson, managing editor of the New York Herald, argued that the increased speed of newspaper production provided sufficient protection of news value from would-be copiers. According to Hudson, the ability of the New York Herald to print one hundred thousand copies in one hour meant "newspapers must continue to find their copyright in their superior enterprise, their superior machinery, their superior circulation, and in their superior means of delivering their papers to the public."³ For Hudson, exclusive access to news until the time of publication was all the legal protection that publishers required. Now that publishers could print with greater rapidity and in large quantities, it was simply a question of who had the news first and could scoop everyone else.

Although newspapers and news agencies partially heeded Hudson’s advice, they also began to seek other means of protecting their products. Such a narrow temporal window of exclusivity proved inadequate as new means of distribution enabled publishers to increase their circulation. Telegraphy also allowed enterprising newsgatherers to transmit news at a faster pace than newspapers could travel. To increase the shelf life of exclusives, publishers sought out public protection for news value through law. This chapter traces how, when, and why particular news providers sought protection, while exploring why these efforts so often failed to provide the relief that providers had anticipated.

In recent years, legal strategies to protect the value in news reports have become an integral element of attempts to “save” the news business. Publishers
and news organizations in countries ranging from Germany to the United States have become convinced that the law has a significant role to play in protecting news. Since at least the early nineteenth century, publishers have turned to the law for succor from the winds of competition, but courts and legislatures have been reluctant to grant them safe harbor. Simultaneously, news providers have devised private solutions to protect or prolong the exclusive value of news through contracts and business organization. These private mechanisms have proven far more effective.

The pursuit of public protection required the imprimatur of the state; private means to protect exclusivity relied on cooperation among news providers. The public and private pursuit of mechanisms to protect news value overlapped. The efficacy of private strategies like contracts and market mechanisms affected the degree to which publishers felt a need to turn to the state for protection. Conversely, de facto property rights generated through private ordering were subject to state regulation and sanction. More broadly, the domestic search for private and public means of protecting news value intertwined with the operation of national news agencies and associations abroad as well as attempts to devise international treaties for the protection of intellectual property. Making news was a transatlantic and, indeed, a global enterprise. So was protecting it.

The ability to use and reproduce news reports rested on the types of rights accorded to those reports and the parties involved. Attempts to protect news value mainly revolved around the legal concepts of property rights and licenses. Legally speaking, a property right is defined as a right over things; this right is enforceable against other persons. It is a right against the world. Licenses, on the other hand, are contracts. Licenses grant permission for use and are good only against the signatories to the license. Contracts between news providers often effectively allowed one provider a license to use news reports from another.

If news reports were accorded the status of property, however, news providers could exclude rivals or free-riders from using them. In Great Britain, the contention that news was property relied on extending John Locke’s labor theory to the collection of news. For Locke, “Man has a Property in his own Person”; therefore, the fruit of a man’s labor was “the unquestionable Property of the Laborer.”

Locke’s labor theory or interpretations of it became a foundational element of arguments about property rights from the mid-eighteenth century. From the 1880s onwards, British and imperial news procurers attempted to combine Locke’s labor theory with the cost of collecting news, hoping to create an indivisible association between protecting labor and protecting financial outlay.

American news providers also pursued the idea that news reports constituted a form of property. In the United States, however, contractual rights between competitors within the news business ultimately proved more important.
than property rights. Attempts by certain news providers to establish control over news reports through contracts that excluded other providers shaped the business of news and competition. For British and American news providers, protecting expenses incurred in gathering news provided the key rationale for legal action. Economic motivations justified legal methods.

Different strategies for protecting news value in Britain and the United States reflected the market structures prevalent in each country. In the United States in the 1840s, the New York Associated Press (NYAP) started as a partnership of New York papers that shared the costs of news transmission by telegraphy and post. In the 1850s, the NYAP expanded and granted franchises to newspaper publishers that joined the organization as members. Franchises entitled members to exclusive use of the association’s news reports within a specific geographic area. In return, members were obliged to pay assessments and to supply the association with the breaking news of their vicinity. This approach entailed a careful calibration of the size of the association. On the one hand, a larger membership reduced the costs of news-gathering incurred by each member and expanded the coverage of the association’s news reports. On the other hand, restricting the size of membership increased the value of member franchises. These restrictions encouraged the establishment of competing newsgatherers to serve the portion of the newspaper market excluded from membership. Successors to the NYAP, including the Associated Press (AP), incorporated in Illinois in 1892, were organized along similar lines. This method of organization relied fundamentally on members sharing their news with the association before publication. Sharing news before publication, as opposed to after, enabled the association to share it with members exclusively. More than a clearinghouse for news, the AP became a mechanism for propagating exclusive control over news reports. For this reason, the AP was particularly concerned to protect the news of its members prior to publication. Concerns about competition checked the AP’s pursuit of private and public protection for its news reports. If private, contractual mechanisms of generating exclusivity proved too effective, the AP might fall prey either to competition or regulation. If a public property right proved forthcoming, the AP might be reconceived of, and regulated as, a public utility.

Limited oligopolistic competition engendered by private contracting and public regulation of monopoly characterized the American newsgathering market. In Britain, by contrast, exclusive joint-operating agreements among firms perpetuated comparatively small enterprises and limited competition. Reuters, established in 1851, served as the principal supplier of overseas news to Great Britain. From 1851 to 1930, it functioned more like “a trading company operating in news.” The Press Association, a cooperative organization established in 1868 and comprising the principal provincial newspapers, was the primary provider of domestic news and the exclusive licensee for the distribution of
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Reuters’ news reports outside London. The London newspapers largely fend for themselves, but occasionally negotiated through trade associations to further their mutual interests. As a consequence, Reuters’ business lay principally overseas, chiefly in the British Empire, and particularly India.

Just as the AP and Reuters created contractual relationships with domestic news organizations to increase news value and to share the costs of gathering news, they signed exclusive contractual relationships with foreign news agencies for similar purposes. The “Big Three” news agencies (Reuters, Agence Havas, and Wolff’s Telegraphisches Bureau) participated in a cartel agreement by which they divided the world into exclusive markets for the collection and sale of their news. These agreements lasted from the mid-nineteenth century until the outbreak of the Second World War. From 1893 to 1934, the AP was a signatory to these cartel contracts. After the Second World War, Reuters and the AP became the two major western news agencies alongside Agence France Presse (AFP) and United Press International (UPI), while TASS (Telegraph Agency of the Soviet Union) and Xinhua were the two major Communist agencies. News agencies’ needs often differed fundamentally from newspapers. Newspapers had national or regional audiences. Correspondingly, they focused on domestic litigation to protect their interests. News agencies collected and disseminated news internationally. Reuters, in particular, supplied imperial as well as national customers. These agencies sought protection for their products outside the countries in which they were headquartered. News agencies pursued their agendas in international conferences and in national courts and legislatures. Ultimately, however, private strategies continued to order the collection and distribution of news more effectively than the public mechanisms that news providers constantly craved.

NEWS AND COPYRIGHT

Although the problem of copying news had irked newspaper publishers and editors long before news agencies emerged, the business structure and global nature of news agencies made these companies the primary drivers of efforts to protect news from the 1880s onwards. News piracy was a concern as early as the eighteenth century, but at that time verbatim copying was a rampant practice and newspapers often did not cite their sources. The standardization of copyright law and the abolition of stamp duties on paper and advertisements in Britain by the mid-nineteenth century reignited debates about property in news reports. Over a century after the Statute of Anne in 1710, the 1842 Copyright Act standardized and consolidated British copyright law. The Copyright Act even included a clause that protected “any Encyclopedia, Review, Magazine, Periodical Work, or Work published in a series of Books or
Parts.” Section 7 of Britain’s International Copyright Act of 1852 then added the idea of citing sources by allowing newspapers to reprint foreign articles on politics if the source was stated.

Just three years after the International Copyright Act, the abolition of the stamp tax unleashed a campaign for the protection of news by newspapers such as the Times, which had an extensive and expensive apparatus of news collection and dissemination. These newspapers feared that smaller and provincial papers would now telegraph news from London and reprint it. This would preempt the arrival of the Times in those provincial areas and reduce its sales. The Chancellor of the Exchequer proposed a clause to protect news for twenty-four hours from publication into the bill to repeal the stamp duty. The attempt failed probably because of resistance from provincial papers which argued that news was not property and that any copyright on news would hinder the free flow of information.7

In fact, even the definition of a newspaper or periodical work was unclear until the Newspaper Libel and Registration Act (1881). This Act classified newspapers as “any paper containing public news, intelligence or occurrences, or any remarks or observations thereon printed for sale” and published in England or Ireland every 26 days or less.8 That same year, a court case clarified that newspapers only needed to register once to qualify for protection under English copyright law.9 This relatively well-defined copyright regime contrasted markedly with other countries’ more permissive approaches, as international conferences in the 1880s made clear.

The Berne Convention on copyright was signed in 1886 after several negotiating conferences and is still in force today. The Convention built on various bilateral agreements and aimed to prevent international piracy of nationally copyrighted works. It explicitly covered creative works and forms of expression. Article 7 of the Convention was devoted specifically to periodical literature. Article 7 articulated a division between categories of newspaper articles that began to exclude certain types of news from copyright. On the one hand, Article 7 allowed reproduction of newspaper and magazine articles if the authors or publishers had not specifically prohibited it. This amounted in effect to a blanket license provision for newspapers to reprint articles. On the other hand, Article 7 stated that prohibition of reprinting articles “cannot in any case apply to articles of political discussion, to the news of the day, or to current topics.” As these types of news were considered information and not creative works, they remained unprotected.

These debates aroused opposition from the British Foreign Office delegation of Francis Ottiwell Adams, a lawyer and diplomat, and Sir John Henry Gibbs Bergne, a frequent British delegate to international conventions on copyright and industrial property in the 1880s and 1890s. The delegation requested the removal of Article 7, as British law already required newspapers to indicate their sources when reprinting foreign articles. Other delegations
explained that Article 7 was not intended to change British domestic law and the British motion was defeated by ten votes to two. However, the British delegation won the small victory that countries party to the Berne Convention could always require their newspapers to adhere to stricter domestic legislation on naming sources for articles.\(^{10}\) While British law remained stricter than the Berne Convention on copyright in the 1880s, later copyright legislation in Britain followed the Berne Convention’s provisions on news more closely.

After multiple failed attempts in the late 1890s to ratify copyright bills that included news, the British government seized the chance to promulgate a new Copyright Act in 1911 to conform to the Berlin revisions of the Berne Convention that had occurred in 1908.\(^{11}\) The 1911 Copyright Act classified articles in newspapers and magazines as akin to the contents of a book. The Act did not protect factual content, however, and it excluded news articles using the Berne Convention’s definition of news. British domestic legislation had become entangled with international conventions and had partially acquired their approaches to news too.

The international participants in the Berlin revision found protecting any potential creativity in news less important than the possible political, economic, and social benefits of informing the public about current events.\(^{12}\) News articles were viewed as cosmopolitan because the participants thought that the news belonged not to a particular producer, but to everyone in the world.\(^{13}\) The Convention’s creators and revisers privileged the global dissemination of news over journalists’ revenue. In 1908, Article 9 of the Berlin revision altered what had formerly been Article 7 to affirm that the Convention “does not apply to news of the day or to miscellaneous news having the character merely of press information.”\(^{14}\) Original articles discussing political topics could be protected, but daily news was not. To put it another way, the Berne Convention distinguished between facts and accounts. These developments sharpened the divide between accounts produced by newspaper journalists and factual items supplied by news agencies that often presented news of the day. After the First World War, Article 306 of the Versailles Treaty stated that pre-war trade, artistic, and literary property rights should be restored. A final change in 1967 to the Convention confirmed the exclusion of news reports.\(^{15}\) By 1908, news reports had no place in international copyright conventions that were designed explicitly to protect authorial creativity.

Matters were rather more complicated back in Britain. By the 1890s, British courts had actually strengthened common-law copyright in news reports. \textit{Walter v. Steinkopff} (1892) surpassed the Berne Convention’s division between fact and account to argue that the form of expression should be protected regardless of an article’s content. The London \textit{Times} had sought redress from newspapers copying literary articles by Rudyard Kipling and three “copyrighted” news articles on current events. For Justice North, there was “little doubt but that there is copyright in the literary form given to news – not in the substance of
the news itself, but in the form in which it is conveyed, and this even where it consists of a mere statement or summary, and the information with respect to the current events of the day.” This did not mean that all news was automatically protected. North distinguished between Kipling and news articles, drawing a line between literary expressions and reporting. Indeed, North’s judgment was one of the first to draw the distinction between fact and expression.

As the number of cases grew in the 1890s, courts did not just rely on definitions of creativity. They also took account of the expense incurred in creation. In *Pall Mall Gazette v. Evening News and others* (1895), the court granted an injunction to prevent the *Evening News* from reprinting the results of Australian cricket matches, which the *Pall Mall Gazette* had procured by telegraph. The cost of overseas telegrams thus helped to settle a national case and to make financial outlay a legitimate factor in court cases on news.

Given that most newspapers relied heavily on news agencies for news, these cases were particularly relevant for Reuters. Reuters had campaigned in vain since the 1870s for protection of its news reports to the colonies and dominions. The legal status of news reports varied greatly throughout the Empire, particularly after the spread of telegraphy. Several Australian states (starting with Victoria) created laws to protect foreign telegrams in the early 1870s after the arrival of submarine cable connections. These laws provided precedents for other colonies, such as Ceylon in 1898, rather than Britain. Other colonies rejected the insertion of protection for news reports into legislation. Most prominently, Indian vernacular newspapers strongly opposed the proposed introduction of a bill assigning thirty hours of exclusivity to news reports in 1899. Despite support from some Anglo-Indian papers, vernacular newspapers and the Indian National Congress believed that the law might restrict free speech in India. Vernacular newspapers were often too poor to afford a subscription to Reuters. They copied Reuters’ news from English-language newspapers and would have found themselves in an impossibly precarious situation without that free news. Lord Curzon, newly appointed Viceroy of India, dropped the bill in 1900, as he did not wish to inflame Indian nationalist passions. The politics of the British Empire had temporarily ended the possibility of streamlining legislation to protect news reports.

As late as 1936, however, Sir Roderick Jones, Reuters’ managing director from 1916 to 1941, deplored the difference between Britain and the myriad rules governing news in the colonies and dominions. In a rousing speech to the Empire Press Union, Jones claimed that British newspapers and news agencies had reached a “happy understanding which amounts, in practice, to recognition and acceptance of the news property principle, liberally interpreted.” He worried, by contrast, that news organizations in Australia might “flout contracts and convention” to garner news “in defiance of all accepted journalistic concern,” while India seemed filled with “parasitical prints” of news telegraphed by “pirates” in London. In the interwar period, the Associated Press
of India (owned by Reuters since 1919) complained that Indian newspapers copied Reuters’ telegrams and even claimed that not a single paper subscribed to Reuters. Yet, the grievances aired by Jones and the AP of India belied the fact that imperial business was booming for Reuters. In 1939, Reuters’ income from India outstripped its income from the United Kingdom. Similarly, Reuters’ revenue from South Africa almost equaled that from Britain.

Disputes over the provision of information to the Empire lay at the heart of Reuters’ concerns over public provisions to protect news. These issues accelerated after the creation of the BBC in 1922. Reuters negotiated on behalf of a consortium of news agencies from 1922 until the end of the Second World War to supply news to the BBC. From the mid-1930s, however, Reuters’ insistence on legal protection for its news increasingly convinced the BBC that Reuters’ financial concerns were diametrically opposed to the BBC’s mission to serve the public interest. Reuters wished to preface the BBC news bulletins with “copyright reserved” to prevent newspapers from copying news from the radio and printing it as their own. There was no legal basis for enforcing this reservation, but Reuters and the BBC negotiated continuously for the next few years over Reuters’ purported rights to the news that it supplied the BBC.

Arguments between the BBC and Reuters became particularly heated over the global and imperial distribution of news. As the 1930s progressed, the two organizations repeatedly came to blows over the global dissemination of news and its purpose in fighting fascism. Reuters feared that wireless enabled hostile countries like Italy to broadcast in multiple languages around the world and undermine the business of newspapers and news agencies. While Reuters wished to restrict access to the news through copyright, the BBC hoped to distribute its news as widely as possible to counteract fascist propaganda. Simultaneously, Reuters wanted to use copyright to secure its income from supplying news to the Empire after the BBC launched a news bulletin for the Empire in 1932. Until the Second World War, Reuters pushed heavily for a copyright notice for its news in the BBC’s Empire news bulletins to try to prevent Indian newspapers from copying the broadcast matter. The disagreement over copyright even spurred the BBC to start to develop its own news collection services in the 1930s. As so often, Reuters claimed that the lack of legal protection had harmed its revenue. But this rhetoric disguised the reality of Reuters’ financial and operational stability, even without more stringent legal protection of its news reports.

Over and above common law and statutory measures, Reuters tried to find everyday practices to protect its news. The company sought legal advice continuously from the mid-1880s onwards, but lawyers’ responses barely agreed on any aspect of protection. One lawyer claimed in 1895 that Reuters’ news from abroad was fully protected under the Copyright Act of 1842 if
Reuters put that news into printed form and registered its periodical under copyright. Reuters had published selected telegrams in its own version of a newspaper, *Reuter’s Journal*, from February 1890. It offered the *Journal* for sale from its headquarters in Old Jewry to secure statutory copyright for telegrams that Reuters had received from abroad. Still, Article 7 of the Berne Convention could not prevent a foreign paper’s correspondent from copying Reuters’ news in England and sending it to a newspaper abroad. Reuters also printed a *Reuter’s Indian Journal* from 1895 and simultaneously asked all its agents and correspondents throughout the world to sign over their rights to their telegrams and news to Reuters.

Given the cost of printing the *Journal*, Reuters continued to look for cheaper methods to protect its telegrams. In 1911, it hoped to remove the “considerable expense” of printing the journal by following the Exchange Telegraph Company’s approach. The Exchange Telegraph Company typed up its telegraphic news on a sheet, offering it for sale. It registered each day’s cables at Stationers Hall as a periodical entitled *The Exchange Telegraph Company’s Stock Exchange News*. This approach succeeded in 1895, when the Exchange Telegraph Company secured an injunction against another company’s use of its stock market ticker. The court held that the Exchange Telegraph Company had a common-law right of property in the information contained in its news reports before publication. The court granted the company injunctive relief from companies such as Gregory, which had surreptitiously acquired the Exchange Telegraph Company’s stock and price information before it was published. Lawyers advised Reuters that any common-law rights it possessed in unpublished news would disappear after publication. Reuters published its *Journal* until 1979. Legal protection influenced Reuters’ publication practices for nearly a century, but did not satisfy Reuters’ concerns about protecting its news abroad.

In the United States too, news providers remained discontented with domestic arrangements. The legal protection of news became an important topic in the United States in the 1880s, just like in Britain. Although British law on the subject was still in a state of flux, by the 1880s, it was clear that American copyright law did not cover news reports. The AP would thereafter pursue a property right in its news reports through litigation rather than legislation.

Prior to the 1880s, American debates respecting property in news reports primarily addressed two issues: the creativity and the originality of news. Article 1, Section 8, Clause 8 of the United States Constitution stated that copyright was essential “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” The first attempt to protect news revolved around defining the word “science.” In 1829, the Court for the Southern District of New York held that “the term science cannot, with any
propriety, be applied to a work of so fluctuating and fugitive form as that of a newspaper or pricecurrent, the subject-matter of which is daily changing, and is of more temporary use.28 Although newspaper editors extensively discussed the issue of crediting sources and copying, the next major court case occurred over fifty years later. Building on the judgment of 1829, the United States Supreme Court ruled in 1880 that newspapers’ ever-changing subject matter excluded them from the category of “science” that deserved protection.29

Starting in the 1880s, American news agencies campaigned for the protection of news through statutory and common law. Whereas in Britain, Reuters pursued legislative protection of the news reports it sent to the colonies, the NYAP and Western AP pushed for domestic legislation. In 1884, they sent a representative, Henry Watterson, to Washington DC to campaign for an act of Congress that would grant copyright to news for eight hours after publication.30 Watterson argued before the House Committee on the Judiciary that English common law already recognized copyright in news reports and the United States should follow suit.31 Yet, Watterson later described the mission as “a fool’s errand.”32 The initiative aroused great opposition from smaller newspapers that relied on copying from other newspapers and a rival news agency, the United Press. Unlike the British inclusion of newspapers in statutory copyright in the 1880s, the American bill died in the Committee of the Library before it reached Congress. That exclusion also had broad consequences for the history of copyright. Up to that point, copyright had included items that were not original, but had involved significant intellectual labor, such as directories or maps. By rejecting the idea that labor was a sufficient justification for protection, the debate over copyright in news reports transformed copyright into a law designed to protect originality and creativity, rather than products of intellectual labor like daily news.33

Internationally, the Committee of the Library’s attitude to copyright in news mirrored the United States’ broader stance on participating in international copyright legislation. The United States remained outside the Berne Convention until 1988, despite observer Boyd Winchester’s support for American membership in the mid-1880s and W. E. Simonds’ pleas in his report on international copyright in 1890. Simonds employed Lockean labor theory to argue that an author owned the rights to a literary creation and called an author’s property right a “self-evident natural right,” like life, liberty, and the pursuit of happiness. Simonds compared authors’ intangible property rights to railroad, telephone, and telegraph franchises. As the state or a municipality explicitly granted franchises, Simonds implicitly argued that copyright should be considered as a bundle of contractual rights exercised against specific individuals, rather than property conferring rights against the world. Notwithstanding an appendix with a long list of newspapers and associations in favor of American adoption of international copyright, however, the report failed to convince Congress to accede to Berne.34
Contemporaries also emphasized the enormous benefits for publishers of reprinting foreign works without paying copyright dues. The exclusion of news items from copyright law meant that American news providers would have to pursue other routes, if they wished to protect their products through public mechanisms.

Despite its aloof stance to the Berne Convention, the United States was a signatory to the more regional Pan-American Copyright Convention. Like Berne, the Pan-American Convention excluded news from protection as a creative product. In 1909, the United States revised its copyright law to mirror these provisions. It provided legal protection for newspaper and magazine articles that were deemed original creations, but again not for news of the day. The United States Copyright Act of 1976 allowed newspapers to display a blanket copyright on their front pages, which covered copyright for all the sections in the newspaper. However, this blanket copyright provision remained valid only for those parts of a newspaper that could be copyrighted in the first place. News reports, then, remained excluded from that provision.

Although the avenue of statutory copyright law to protect news closed in the 1880s, the AP readily and swiftly adapted its rhetoric and strategy to changing legal circumstances. The AP turned to common law and the doctrine of unfair competition to protect news value. In 1918, these efforts culminated in the decision of the United States Supreme Court in *International News Service v. AP.* To rely on unfair competition to obtain the protection it sought, the AP had to argue that news was not original enough to be covered by copyright. It thus cemented a key difference from British law, where major court cases of the 1890s had refined the place of news reports in copyright, but not excluded them completely.

**NEWS AND PROPERTY**

Although the Berne Convention and subsequent revisions excluded news of the day, news agencies continued to seek alternative public means to protect their newsgathering enterprises internationally and to complement the private contractual arrangements of the news agency cartel. The AP and Reuters pursued two rather different paths to insert news into international conventions. While the AP tried to regulate news as intellectual property through the League of Nations, Reuters sought to categorize news as industrial property through the Convention on Industrial Property. These alternative approaches by AP and Reuters did not arise from fundamentally different conceptions of news, but from the two agencies’ pragmatic attempts to seize upon international mechanisms to protect their news reports.
By the early 1900s, the AP had developed an extensive private system of contractual obligations concerning news sharing and member duties. Still, these private mechanisms had limitations, particularly vis-à-vis competitors in the news agency business. To solve those issues, the AP turned to public property rights to attempt to secure greater protection for its news. In 1879, AP general agent, James W. Simonton, believed that the AP possessed “a property in news, and that property is created by the fact of our collecting it and concentrating it.” While Simonton did not specify when that property right expired, the AP remained committed to creating some form of property rights in news to protect its control over members’ news.

Melville Stone, general manager of the AP from 1893 to 1918, claimed to have campaigned tirelessly for protection from the later nineteenth century onwards. His passion purportedly began soon after he had founded the penny newspaper, Chicago Daily News, in 1876. Stone’s paper shared an office with the Post and Mail, owned by the McMullen brothers. Stone realized that the McMullens were waiting for other papers to appear at 3 a.m. and then reprinting that news in their paper, which was published a few hours later. Stone played a trick to catch the McMullens. On 2 December 1876, his Chicago Daily News published an article on the distress in Serbia that included the following quotation from a local mayor: “Er us siht la Etsll iews nel lum cmeht.” The afternoon edition of the Post and Mail contained the same item verbatim; it took a friend to point out to the McMullens that read backwards the quotation spelled out: “the McMullens will steal this sure.” After the McMullens were “literally laughed to death,” Stone bought the paper and its AP franchise at a greatly reduced price less than two years later.

Stone’s vocabulary indicated that he saw the matter rather differently than courts at the time. Stone conceived of news as a form of property: he called the Post and Mail “a news thief.” Stone believed fervently that news items were property that deserved some sort of protection. He suspected that the new technology of telegraphy had helped to generate the problem of theft: while books and paintings could be registered before publication to ensure copyright, there was no time for this with news reports. Stone was nothing if not persistent in his quest, campaigning for over thirty years to create legal protections for news that would account for the increased speed of news dissemination.

Stone doggedly pursued and followed court cases on protecting news reports after the failed attempt to procure copyright for news through an act of Congress in 1884. This defeat led Stone to believe by the early 1900s that the only solution was to look for protection from common law on property, rather than copyright. This involved redefining the meanings of both “property” and “publication.” First, property had to be redefined to cover more than “movables” and “immovables.” It had to include everything with an “exchangeable value.” Second, Stone intended to reconceive the concept of publication. He aimed to limit other publishers’ ability to reproduce telegraphed news after its initial
publication and to establish norms to protect news prior to its publication. This would increase the exclusive shelf life of news reports and enhance the AP’s position over its competitors. Stone’s search for property rights drove him to seek public mechanisms that would bolster the AP’s position vis-à-vis competitors and complement its private law system amongst AP members.

The AP pursued many lawsuits in various states, but none gave rise to a common-law property right in news reports. For instance, a case in 1900 concluded that publishers could not copyright entire editions of a newspaper, because newspapers contained public facts that could not be protected under copyright law. The case confirmed the custom that there was no private property right in published news items. Another case provided the AP with a different avenue for protection through the contractual mechanisms of unfair competition and by extending the definition of property. In National Telegraph News Co. v. Western Union Telegraph Co. (1902), the Illinois Supreme Court held that courts of equity should extend protection to intangible elements related to property like news items. The court restrained the defendants from copying Western Union’s ticker tape service for sixty minutes after it had been printed.

The judgment involved two departures from established precedent. First, the court held that copying a company’s information on prices violated a form of intangible property. In a somewhat convoluted statement, the court explained its logic as follows: “though the immediate thing [ticker news reports] to be acted upon by the injunction is not itself, alone considered, property, it is enough that the act complained of will result, even though somewhat remotely, in injury to property.” The printed ticker tape temporarily acquired limited attributes of property, but only for a short time period before competitors could use the news printed on the tape.

Second, the court based its understanding of the legal limits of property on recent developments in the law of unfair competition with respect to unregistered trademarks. The court reasoned that gathering and transmitting news constituted a form of business and that Western Union’s ticker tape stock quotations, sporting results, and other reports were inherently commercial products. The court confirmed the exclusion of such news reports from copyright law. However, the court found that Western Union’s news reports deserved legal protection under common law because Western Union had expended labor and money to gather the news. Furthermore, Western Union had generated value through the “precommunicatedness of the information,” i.e. by distributing its news earlier than anyone else. This quality of speed created the commercial value of the printed ticker tape and made the tape a commercial product that could receive protection through the laws of unfair competition.

The court held further that Western Union needed protection not just for its own sake, but also for the sake of the public. If a competitor continued to reproduce Western Union’s financial news, the business would cease to be
profitable and Western Union might stop providing news entirely. As the court evocatively concluded, “the parasite that killed, would itself be killed, and the public would be left without a service at any price.”45 According to the court, protecting the public interest required applying the law of unfair competition to prevent freeriding by competitors. To achieve this result, the court was obliged to consider news reports as a form of intangible property for a limited time.

In 1905, the United States Supreme Court confirmed that companies could rely on the law of unfair competition to bar unlicensed use of price quotations.46 The “precommunicatedness” of news formed an important argument in understanding competition among news providers. Thus, the Supreme Court’s ruling recognized that news providers garnered value from news by sending it to their customers first and before their competitors. This opened the door for the AP to seek similar protection from its rivals.

Rivalry with fellow news agencies over reporting during the First World War finally provided the AP with the opportunity to pursue the matter further. Once the United States declared war on Germany in 1917, the demand for swift and accurate reports on news from Europe increased. William Randolph Hearst (1863–1951) had founded a news agency, International News Service (INS), in 1909. After INS reported rather hostilely on British losses during the first years of the First World War, Allied authorities in Europe banned INS from using telegraph lines to collect news. Rather than admit defeat to the AP, INS purportedly gained access to AP stories by bribing AP employees as well as copying from early editions of newspapers and news bulletin boards. Hearst’s newspapers on the West Coast were published three hours after those on the East Coast. INS agents on the East Coast telegraphed published AP news reports to the West Coast in time for publication there. Stone had found the opportunity he had anticipated for decades.47 In 1917, the AP brought a suit against INS for illegally obtaining AP news prior to publication through bribery and for copying AP news from bulletin boards and early editions of AP member newspapers to resell to INS customers. Judge Augustus Hand, sitting in the Second District Court of New York, had little trouble characterizing the acts of bribery as a tortious interference with contracts. When he turned his attention to the copying of information from publicly available bulletin boards and early editions of AP member newspapers, however, Hand had greater difficulty. Hand sought to reconcile the established view that news became public property upon publication with a contrary desire to protect the value the AP had created in its news through its investments of labor and expense. Hand concluded there was an implied contract between the parties that precluded competitors from copying news while it remained valuable. Hand did not assign a property right to news reports.48 The Circuit Court of Appeals granted the AP a preliminary injunction “against any bodily taking of the words or substance of [AP] news.”49
In 1918, the case came before the United States Supreme Court. The Supreme Court’s contested majority decision focused on the question of rights between competitors. In the Supreme Court’s opinion of December 23, 1918, Justice Pitney, speaking for the majority, held that news could not in law be copyrighted, as news items were not creative, but rather constituted “a report of matters that ordinarily are publici juris; it is the history of the day.” Pitney built on previous cases to argue news reports deserved protection for commercial reasons. The collection of global news cost a great deal and the AP needed some profit “as an incentive to effective action in the commercial world,” wrote Pitney. This made news collection “a legitimate business.” Like the Illinois Supreme Court’s decision in Inter-Ocean Publishing Co v. AP (1900), Pitney’s opinion seemed to have a strange duality. It argued that news agencies were private businesses whose products could be subject to regulation through laws of unfair competition. Simultaneously, however, Pitney asserted that news reports were publici juris, implying that news agencies were businesses trading in reports that belonged to the public.

In line with Pitney’s separation between the private business of news providers and the public-interest value of news, the United States Supreme Court focused on the private aspects of news agencies’ business dealings. Pitney concluded that the case revolved around whether INS’s behavior constituted unfair competition in the news business because INS had resold the AP’s news before its commercial value had disappeared. Each business possessed its own character, argued Pitney. While news items could not be owned “in the absolute sense,” they were “stock in trade,” because the AP and INS expended “enterprise, organization, skill, labor, and money” to gather and distribute news. This made news similar to other merchandise. In the news business, however, Pitney distinguished between the rights of competitors vis-à-vis each other as opposed to their rights vis-à-vis the public. Pitney also distinguished between the rights news providers held over news reports before and after publication. Pitney concluded that the AP and INS had no property interest in news reports after publication vis-à-vis the public, but they retained property interests against each other, as they were competitors within the same business.

Pitney thus regarded news in this context as simply “the material out of which both parties are seeking to make profits at the same time and in the same field.” With these caveats and noting that these rights only existed between competitors, Pitney concluded that news was “quasi property, irrespective of the rights of either [party] as against the public.” A quasi-property right meant that the AP had a property right against INS, its competitor within the news business, to prevent the misappropriation of the AP’s news. The case went some way to achieving Stone’s goals of establishing a property right in news, but it did so only against competitors, not against the world.
In one of two written dissents from the majority opinion, Justice Louis Brandeis expressed concerns about both the legal implications of the case and the majority opinion’s interpretation of the concept of publication. Brandeis wrote that the Supreme Court had used nonproprietary terms to justify a doctrine of quasi-property. Furthermore, wrote Brandeis, quasi-property was a new concept and such innovation was a matter for the legislature. Brandeis opined that common-law protection already existed for unpublished works, even if they were just facts reported through telegraphy. In this case, however, Brandeis saw the bulletin boards as a form of publication and reasoned that INS therefore had a right to use those news reports, because the AP had made them public.\(^55\) Brandeis disagreed with both the legal grounds for the judgment and the majority’s definition of publication.

Despite Brandeis’ dissent, the Supreme Court upheld the Circuit Court of Appeals’ injunction against appropriating the plaintiff’s news “until its commercial value as news to the complainant and all its members has passed away.”\(^56\) Pitney had focused on the abstract principles of competition and creating the new concept of a quasi-property right that was only good against competitors. Ironically, even the notion of competitors was highly ambiguous below the surface of the case. Several Hearst newspapers actually held AP franchises. The outcome sharpened the exclusivity of their franchise, even as it seemed to restrict INS’s freedom of maneuver to gather news. The news agency and newspaper markets overlapped substantially, further complicating the creation of a quasi-property right.

Subsequent interpretations have often claimed that Pitney introduced a new common-law rule whereby those who freeload on the labor and financial investment of a competing firm can be prosecuted for misappropriation. This has since become known as the doctrine of “hot news.” Scholars have since critiqued Pitney’s majority opinion as illogical, while others have argued that Pitney recognized neither the AP’s anti-competitive tendencies nor its use of the case to protect its newspaper franchise members from competitors such as the United Press.\(^57\) The AP sought to employ public mechanisms to protect its private business model of supplying its franchise members with each other’s news.

After the case was decided, the AP changed its requirements for how newspapers should designate AP reports. Now, newspapers had to label these items with either “Associated Press” or “AP,” along with printing a note in every issue stating that the AP was “entitled exclusively to the use for republication of all news dispatches credited to it or not otherwise credited in this newspaper and all the local news published herein.”\(^58\) While these changes theoretically allowed the AP to claim ownership over news, they also changed the AP’s place in the market of international news. The AP felt bound to follow the decision in \textit{INS v. AP} internationally and it refrained from copying from foreign newspapers, which it had frequently done in the past.\(^59\) Yet, the AP found itself embattled
at home because its rival, the United Press, continued to copy from foreign papers. To rectify the situation, Kent Cooper, AP general manager from 1925 to 1943, turned to the League of Nations to advocate for international quasi-property rights in news that would buttress the AP’s position at home.

The United States was not a member of the League of Nations. Ironically, however, the AP saw the Conference of Press Experts at the League of Nations in 1927 as the ideal opportunity to internationalize the idea of quasi-property. The conference’s preparatory committee drafted a resolution that divided news into three categories: unpublished, published, and official. The League proposed that official news could be freely reproduced. The League aimed to protect published and unpublished news through property rights for a limited period of time. Within a number of hours after receipt, a news item would then become public property. Cooper introduced the resolution at the conference, seeing this as a key means to internationalize *INS v. AP*.

The British government and Reuters rejected the idea of international legislation. They believed that domestic cases such as *INS v. AP* or ordinances on protecting news telegrams in various British colonies and dominions had shown that protection was a widely accepted principle. Most English lawyers, Reuters believed, thought that if a test case were brought to the House of Lords, the House’s judgment would mirror that of the United States Supreme Court in *INS v. AP*. At the conference, Reuters mainly intervened to protest that British newspapers “by their very practice recognize the principle of property rights in news.” Reuters saw no reason to rock the legislative boat.

Due to opposition from various quarters, particularly the German delegation, Cooper’s resolution was defeated at the conference. Delegates agreed to divide news into official, pre-, and post-publication, to forbid any protection of official news, and to agree on the importance of protecting news prior to publication. They rejected, however, any attempt to create international regulation on news reports after publication, arguing that each nation’s different legal traditions made agreement impossible. Although further conferences of press experts convened in Copenhagen in 1932 and Madrid in 1933, the participants never discussed the issue of news protection further.

Still, the League’s resolution mattered because it upheld a commercial justification for the protection of news reports. The conference’s final resolution declared that: “newspapers, news agencies, and other news organisations are entitled to the fruits of their labour, enterprise and financial expenditure upon the production of news reports.” The resolution and conference participants also adopted the American rhetoric of unfair competition and recognized the principle of assessing the labor and time involved in the collection and dissemination of news. In his closing speech, Lord Burnham, the conference president, declared that “the Conference does not wish to establish any monopoly in news or prejudicial control of the sources of public information, but it does wish to protect against unfair competition those great journalistic enterprises which, by
their initiative and their organization, bring the world’s news at great cost of time and skilled labour to the use of the reading public.”66 An important AP member, the New York Times, declared triumphantly that the conference’s resolution had established “a universal concept” that news was property and deserved protection.67 Creativity was no longer the central notion underlying attempts to protect news internationally. Rather, labor, enterprise, and financial expenditure had become the three interrelated concepts that buttressed legal arguments for granting protection to news reports.

Although Reuters’ managing director, Roderick Jones, had dismissed the AP’s attempts to internationalize INS v. AP, Reuters remained highly interested in international legislation on news reports. In the mid-1920s, the AP sought to solve domestic problems through an international conference at the League of Nations. In the mid-1930s, Jones tried to use international legislation to streamline imperial legislation. He argued for the inclusion of news in the International Convention for the Protection of Industrial Property, which dealt principally with patents and trademarks. When ratified, the Convention applied throughout the Empire. Jones perceived that if news reports were included in the Convention, it would act, like the Berne Convention, to harmonize legislation on protection for news reports throughout the British Empire.

Jones intended to use the international consensus reached at the League of Nations as a springboard to simplify the protection of news within the British Empire through international legislation. He drew on American developments to justify his approach, even using religious language to glorify INS v. AP. Jones proclaimed that the judgment had “ultimately imposed upon U.S. journalists, for their eternal salvation, the doctrine that news after publication as well as before is as much an article of property as coal, or cabbages, or diamonds.”68 Jones repeatedly adopted the vocabulary of INS v. AP, declaring in 1923 that he too preferred the term “property rights in news” over the “rather misleading term” of copyright. Jones believed that the language of property rights was better suited to underscore news agencies’ investment in procuring news items.69

Despite this affinity with American approaches, Jones argued that news did not constitute quasi-property, but was in fact industrial property deserving of protection under the International Convention for the Protection of Industrial Property. As early as 1924, Reuters had enlisted its partners in the Agences Alliées, the interwar European trade association of national news agencies, to explore the alternative of classifying news as industrial property as early as 1924. Trademarks protect forms of expression such as logos, titles, and service marks; they often protect titles of serial publications, such as the Encyclopedia Britannica. The news agencies hoped that their news reports might qualify as serial publications. At the first general conference of the Agences Alliées in 1924, the agencies decided unanimously to address the Bureau of Industrial
Property in Berne as well as the relevant national authorities. The agencies hoped to revise Article 10bis on unfair competition to punish unauthorized reproduction of articles. In 1934, after discussions on news at several international conferences on industrial property, Reuters acted as the official representative of the European news agencies at the conference convened in London to revise the Industrial Property Convention. Reuters proposed that “all news obtained by a newspaper or news agency, whatever its form or content and whatever the method by which it has been transmitted, shall be regarded as the property of such newspaper or agency for as long as it retains its commercial value.”71 In a vote on a proposition to protect news for twenty-four hours after publication, thirteen countries voted in favor, five against (including the United States), and twelve, including Britain, abstained. Despite further reports and discussions, by the 1938 conference it had become clear that delegates could agree neither on what constituted illicit means of news procurement nor on the wording of the potential addition to Article 10bis. The outbreak of the Second World War ended any concerted joint action by the European news agencies.

THE POSTWAR BUSINESS OF NEWS

After heightened international efforts to protect news reports in the interwar period, postwar disputes mainly occurred within national borders. Reuters became a nonprofit trust in 1941. Although the BBC continued to worry about Reuters’ commercial ambitions, a 1944 agreement allowed the BBC further control over its news from Reuters. The board of Reuters appointed a journalist knowledgeable about the BBC to supervise the composition of the news reports Reuters sent to the BBC.72 After the war, the BBC continued to expand its own newsgathering services, but it remained Reuters’ largest single customer in 1960.73 The BBC External Services’ subscription also effectively provided hidden subsidies to Reuters’ overseas services throughout the 1960s and 1970s before the BBC ended its External Services contract in 1980. After Reuters was floated on the London Stock Exchange and the NASDAQ in 1984, Reuters’ close government connections and indirect government subsidies finally ended in 1986, when the relationship became openly commercial.74

The AP discovered that public mechanisms could cut both ways. The United States government brought an anti-trust case against the AP that challenged its exclusionary bylaws.75 During the case, the AP tried to head off accusations that it had restrained trade by arguing that the company was not subject to the rules of commerce and that it was under no obligation to share its news with everyone who could pay. The AP presented news prior to
publication as a noncommercial good. The Supreme Court and Judge Learned Hand of the Second Circuit, on the other hand, found it more important to allow competition amongst newspapers within franchise districts than to maintain competition between the AP and its newsgathering rivals. In INS v. AP, the courts had focused on competition between news providers, specifically between news agencies. In the anti-trust case, the courts shifted to focusing on the consumers of news and their rights to choose between competing newspapers. The courts found that the AP had violated the Sherman Act and the AP was forced to open its membership. This allowed more newspapers to join the AP, reconfiguring the private law and franchise systems of the association. Concerns about restraint of trade had plagued the AP since at least 1900, when the AP moved its corporate offices from Chicago to New York following an injunction to prevent the AP from expelling a member for violating its bylaws.

After the mid-1950s, the AP rarely relied on the logic of INS v. AP to protect its news reports. Prior to 1945, AP members had disagreed in their attitudes toward radio. While Reuters sought to control what news the BBC could broadcast and when it could broadcast it, the AP pursued legal sanctions against radio stations that broadcast the association’s news in competition with AP members. Television news followed similar patterns to print. Network television news relied heavily on print media for stories, particularly news agency wires from the AP and United Press International (UPI) as well as the New York Times. In December 1968, NBC sourced 70 percent of its domestic stories from AP and UPI wire services. As late as 1979, television news editors still used AP and UPI wires constantly to check reporters’ work for errors. Twenty-five years later, little had changed in television news despite broader shifts in the overall news environment and significant declines in viewer figures. Although networks selected which stories to cover, they followed a news agenda set by news agencies and print newspapers of record. The protection of news too has continued to revolve around news agencies, particularly the AP. Similarly, other groundbreaking cases on fair use, such as Harper & Row v. Nation Enterprises (1985), have relied on the ruling in INS v. AP.

In the postwar international world, Reuters and the AP retained their positions as the major western news agencies (with AFP close behind). After the Second World War, the AP embarked on an extensive program of overseas expansion and Reuters strengthened its position in post-colonial Africa. Meanwhile, UNESCO and the United Nations focused on reorganizing the global flows of news. Reports by UN bodies on communications, such as the MacBride Report (1980), did not mention legal protection. The MacBride Report focused on how to reconfigure the status quo in favor of a “new information order” that might remove the privileged position of western news agencies in global reporting. These aspirational discussions dismissed
property and legislative protection for news. Participants sought to establish a nonprofit model for news provision to counter western political influence. The authors of the MacBride Report viewed ideas about free trade in news as synonymous with western domination of news provision. The interests of Reuters and the AP in the business of news contrasted sharply with UNESCO’s political project for news. Agencies like Reuters or the AP did not participate in UNESCO’s commissions, and felt unfairly attacked by them.84 These competing conceptions about news provision have kept the protection of news out of the international legislative agenda until debates since 2012 over a “Google tax.”

CONCLUSION

The availability of news on the Internet has accelerated the decline in newspaper subscriptions that dated back to the 1980s. In response, newspapers and news agencies have turned once again to the law to protect their organizations from new competitors. In so doing, they have revived a raft of older arguments about the legal status of news. In these earlier debates, as well as in their more recent variants, news providers floated a variety of arguments, depending on their audience and objectives. In a statement before a 1923 government commission in which he argued for exclusivity, for example, Reuters managing director Roderick Jones defined news somewhat vaguely as “an impalpable thing” and “whatever is interesting to the man in the street.”85 When Jones tried to persuade his journalistic colleagues to lobby for the creation of a property right in news, in contrast, he focused more narrowly on the “labour, cost and enterprise” that was necessary to creating a news report.86 Jones was but one of the many news agency publicists who tried to transform news into property. Here, as in so many other realms, rhetoric did not translate into law. When confronted with specifics, both jurists and lawmakers challenged self-serving definitions of news in order to strike a balance between the competing claims of public access and private control.

Nationally-based legal conventions have unquestionably shaped how news providers have behaved. Yet the political economy rather than law has done the most to sustain the business strategies of producing and distributing news. In Britain, Reuters’ agreement with the Press Association led the British press to lobby lawmakers to protect the Press Association’s revenue base. In the United States, the AP’s national franchise system led AP lobbyists to try to convince jurists to invest news with property rights. While these approaches were nation-specific, appeals to the law played a key role on both sides of the Atlantic. Here, as in many similar instances, news providers used the law not to change the status quo, but to perpetuate it.
Protecting News before the Internet

Technological change and market competition have often spurred news providers to seek legal protection for news. In the past, as today, these factors frequently crossed national boundaries. It is for this reason that, despite major differences in legal norms and business models, news agencies in Britain and America have tried to obtain similar kinds of legal protection. Newspapers in both countries have also tried at various times to protect the news, yet they have rarely equaled the dedication of news agencies. In the late nineteenth century, British and American news agencies first invested their hopes in national legislation before shifting to common law. In each country, news agencies devised a business strategy that effectively managed the tricky balance between the exclusion of rivals and the creation of access to news. In the interwar period, news agencies in both countries tried, mostly unsuccessfully, to insert news into international conventions. In this debate, news agencies tried to protect the rights, prerogatives, and customary arrangements of news providers; the consumers of news or the public were of far less concern. Following the Second World War, these issues largely lay dormant in each country until the Internet threatened well-established business models. The global transformation of the news business since the 1990s helps to explain why so many news providers in so many different countries are simultaneously trying once again to protect the news. Yet if history is any guide, public rights-based jurisprudence will prove to be less effective in protecting the interests of news providers than the negotiation of private contract-based agreements. While lawsuits will doubtless retain their allure, strategic investments in shaping the political economy of news will probably pay off better in the long run.

NOTES

Press, 2014), 165. For more on Reuters and AP, see James Brennan’s chapter in this volume.


8. Newspaper Libel and Registration Act (1881), s. 1.


16. Walter v. Steinkopff, 3 Ch. 489 (1892), 495. A similar case in the United States, Chicago Record-Herald Co. v. Tribune Ass’n., 275 F. 797 (7th Circ. 1921), decided that newspapers could copyright stories that were literary productions. Baker v. Selden, 101 U.S. 99 (1880) also distinguished between fact and expression.


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23. RA 1/867515, LN30, opinion by T. E. Scrutton, December 27, 1895.
25. RA 1/867515, LN30, opinion by F. D. McKinnon, April 10, 1911.

31. He referenced *Cox v. Land and Water Journal Company* LR 9 Eq 324 (1869), which had found grounds for copyright infringement against a periodical copying another periodical’s directory of hunts.
35. Section 5b of the Copyright Act of 1909 allowed registration of “periodicals, including newspapers.”
38. Melville Elijah Stone, *Fifty Years a Journalist* (Garden City, NY: Doubleday, Page and Co., 1921), 63–4. It was common practice to disseminate incorrect news to catch copying.
41. *Tribune Co. of Chicago v. Associated Press* 116 F. 126 (D.C. Ill. 1900). For the simultaneous debate in the courts about whether the AP should be regulated as a public utility, see Silberstein-Loeb, *International Distribution of News*, 54–6. Note that the Supreme Court of Missouri ruled in 1901 that the AP was not a monopoly in part because it did not believe there could exist a property right in news any more than in “information” or “knowledge.” *Star Publishing Co. v. Associated Press* 159 Mo. 410, 60 S. W. 91 (1901).
42. The presiding judge, Peter Grosscup, was Melville Stone’s neighbor; the two had frequently discussed the merits of investing news reports with property rights in the years preceding this case.
43. National Telegraph News Co. v. Western Union Telegraph Co. 119 F. 300 (7th Circuit 1902). For a similar judgment, see Dodge Co. v. Construction Information Co. 183, Mass. 62 (1903).

44. National Telegraph News Co. v. Western Union Telegraph Co. 119 F. 298 (7th Circuit 1902).

45. National Telegraph News Co. v. Western Union Telegraph Co. 119 F. 296 (7th Circuit 1902).


49. INS v. AP 245 F. 253 (2nd Circuit 1917).

50. INS v. AP 248 U.S. 234 (1918).


53. INS v. AP 248 U.S. 236 (1918).


56. INS v. AP 248 U.S. 222 (1918). Emphasis in original. The Court did not specify how long news retained commercial value.


59. The Chicago Tribune even took the AP to court during the Boer War for buying the London Times, copying its war news, and cabling it to the United States, even though the Tribune had paid the Times for the exclusive right to carry its news in the
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United States. Stone and the AP won the case with the argument that this form of copying did not constitute theft. *Tribune Co. v. AP* 116 F. 126 (C.C.N.D. Ill. 1900).

60. On Cooper’s plans, which included creating an “international league of news associations” akin to the League of Nations, see Silberstein-Loeb, *International Distribution of News*, ch. 7.


71. Sent to Agences Alliées on May 4, 1932, AN 5AR/484.


77. *Inter-Ocean Publishing Co. v. AP* 184 Ill. 438 (1900).


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