



Legal aspects of newspaper digitization

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Abstract:

Digitizing newspapers is an important component of strategies to make documents of historical interest publicly available in the internet. There are – however – some specific legal aspects to consider: Different persons or institutions are copyright-owners concerning the contents, body and composition of the newspaper. How do we manage this?

Besides, newspaper articles frequently affect third persons, who are mentioned. Those people (e.g. former criminals) may not be delighted to find old articles – including their names and photos – about long forgotten doings. Is there something to do for newspaper digitizing libraries with respect to the personal rights of those persons? Do we have to make them anonymous, or are other measures sufficient?

I. Definitions

I am going to talk about legal problems of newspaper digitization. Before I can talk about the legal problems, I have to define what means “newspaper” and what means “digitization”:

1. Definition of “newspaper”: A newspaper is a publication containing news, information, and advertising. General-interest newspapers often feature articles on political events, crime, business, art/entertainment, society and sports. Most traditional papers also feature an editorial page containing columns that express the personal opinions of writers. Supplementary sections may contain advertising, comics, and coupons.

2. Definition of “digitization”:

Talking about digitization in libraries usually includes – besides the scan of the papers – talking about making them available to the public online.

Newspaper digitization might concern copyright issues and personality rights:

II. Copyright law:

We know some of the questions concerning mass digitization and copyright – especially the discussion about orphan works and different models or proposals of solving the respective problems. These considerations usually only are about digitization of monographs, but not about newspapers.

What is the difference between digitization of monographs and digitization of newspapers? Monographs normally have only one or maybe few authors, while newspapers have quite a lot of them. For every article of each newspaper issue, there are different creators. On the other hand, we have the right of the publisher. There is a difference between the legal situation of a monograph’s publisher and the legal situation of a newspaper’s publisher:

In most states, the publisher of a monograph has no own copyright in the book. He only holds those rights in the work that the creator has granted to him. That means normally, that he has the exclusive right to copy the book and distribute the copies. But he has no original copyright in the work. And – probably – there is no ancillary copyright protection of the layout that the publisher has given the work. This may be different in some states.

On the other hand, the *newspaper* publisher combines the articles of every issue. So he gets an own copyright: The right in the collection of the newspaper articles. This is his own original copyright – and not only a right which is derived from the author.

Newspaper digitization usually means mass digitization: We have loads of authors, but - if we speak of only one newspaper title – only one publisher.

What does that mean?

If we want to use copyright protected works (depending on national law, usually between 50 and 70 years after death of the creator), we have to ask the rightsholder for permission before scanning and making them available on the internet. In the case of still copyright-protected monographs, that means, that usually we have to ask the author for permission. In the case he had granted a temporarily unlimited exclusive licence to the publisher, we have to ask the publisher, too.

In the case of still copyright-protected newspapers, this means, that we usually have to ask the publisher (who is the holder of the collection’s copyright) and the authors of the individual newspaper articles, who are the rightsholders regarding their contributions.

That would be a lot of effort. Too much effort. Who would take the cost to ask every individual author of newspaper articles or their inheritors, if we talk about the 50-year-volumes of a newspaper that appeared every single weekday? Nobody would take this effort.

So what do we do? Shall we just break the law and ask only the publishers for permission? And just forget to ask the authors? That could cause problems: If we display articles without permission of the authors, they can sue us for indemnification – which would mean, that we at least have to pay the amount that the author usually could have claimed if we had asked him

before the use of his work. Apart of this, the online use of thousands of works is a copyright infringement – which may let us assume an abstract danger of being prosecuted for criminal offence.

So it's better to think twice before the start of newspaper digitization. We can do it, but we have to think about how to minimize the risk.

Minimizing the risk of indemnification: what do you normally do? You contract an insurance company. Maybe your collection society can give you this insurance. That means, that they might guarantee you indemnification for the civil damage. As equivalent, you pay a kind of "licence fee" to the collection society.

But this does not avoid that the internet use is still a copyright infringement and maybe a criminal offence. As long as there is criminal law for copyright infringement, we could minimize the – however, probably very small - risk of getting criminally sentenced or even just being prosecuted by being careful: For example, we could discuss the project altogether: The Publisher, the association of newspaper writers, and us. This might give the court a good impression of our caution in the case.

III. Personality rights of third persons:

Newspapers may contain articles about criminals or "bad guys". There might even be articles which depreciate or insult persons. These criminals, bad guys, depreciated or insulted persons might appear in the newspaper with reference to their names.

Long time the newspapers have been stocked in library shelves or the publisher's archive and only few persons looked for individual articles of older newspaper issues. Apart of this, the articles or persons appearing in these articles could not be searched for in registers or databases..

After having put the whole archive on the internet without restrictions, much more people from all over the world have access to the (maybe 20 or more years) old newspaper issues. This is good. This gives us best opportunities for historical research. But what would say the "bad guy" from 20 years ago? Would he find it okay that everybody from all over the world, every person that he just got to know, only has to fill in his name in the Google engine and find the article about the "bad guy". Would this be okay for him – even if has been to prison for his Crime and just re-socialized ?

Some "bad guys" in Germany did not accept their names being searchable in the online archive of a TV – Station and a newspaper where their names could be found more than 20 years after their murder and after having jailed these 20 years. What did the German supreme court say? It said: It's okay to have the articles with their names in it in the online archive. But the court made some considerations about the circumstances of the online archive: In this case, the judges classified the article in the online archive as all right, because it also has been legal by the time when it was first published – that means the deed which is described in the article really happened this way and the report was reasonable. Apart of this, the article was not indexed by search engines – so the former "bad guys" cannot be found easily by persons who don't know the crime that took place 20 years ago and who usually don't use the special newspaper online archive.

What does that mean for newspaper digitization projects? Not necessarily, that we should close down our newspaper digitization projects or make them less searchable. But it means, that we should keep the problem of named persons in the digitized newspapers in mind.