Copyright, related rights and the news in the EU

The Spanish amendment of the Quotation exception

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Chronicle of a Death Foretold!

- Unexpected → clumsy drafting
  - not included in any of drafts to amend © Act circulated by government (2013) → introduced on day of approval
  - not assessed by any advisory boards (as required by law);
    Only the Authority on Markets and Competition issued a second report to address this provision (PRO/CNMC/0002/14)

- Bad timing → lack of legal grounds, contrary to EU law
  - Bill approved the day after CJEU ruling on Svensson!

- Yet, it went through Parliament untouched!
  - Some petitions to delete, to amend it → all rejected
  - It was passed by Parliament (nov.14), as introduced by Gov’t (feb.14)
A limitation …“disguised” as a quotation

Authorizing the making available to the public by providers of aggregation services of (news) contents available online subject to:

- an equitable compensation
- unwaiveable
- and mandatorily managed by CMOs

Another for search engines – but for free
Art.32.2 - The making available to the public by providers of digital services of contents aggregation of non-significant fragments of contents, available in periodical publications or in periodically updated websites and which have an informative purpose, of creation of public opinion or of entertainment, will not require any authorization, without prejudice of the right of the publisher or, as applicable, of other rights owners to receive an equitable compensation. This right will be unwaiveable and will be effective through the collective management organizations of intellectual property rights. In any case, the making available to the public of photographic works or ordinary photographs on periodical publications or on periodically updated websites will be subject to authorization.
Art.32.2 - Without prejudice to what has been established in the previous paragraph, the making available to the public by the providers of services which facilitate search instruments of isolated words included in the contents referred to in the previous paragraph will not be subject to neither authorization nor equitable compensation provided that such making available to the public is done without its own commercial purpose and is strictly circumscribed to what is indispensable to offer the search results in reply of the search queries previously formulated by a user to the search engine and provided that the making available to the public includes a link to the page of origin of the contents.
Dangers

... What is says?

... What it does not say, but implies?

... What it does not even imply?

A limitation ... “in disguise”

- ancillary right imposed on press publishers
- for the benefit of © owners (not users)
- a hidden subsidy between businesses
So... what happened?

Nothing! Life goes on as if ...

Google closed goolenews.es (Dec. 2014)

- News can be found elsewhere (search engine, news sites)
- Menéame still links to freely available contents (and news)

Minor effects on traffic to news websites (3%-9%)

No license is being managed (negotiated) by CEDRO (neither by other CMOs)

Press sites not using *robot exclusion protocols*?

→ could they do so under the statutory limitation?

Digital News Initiative (funded by Google) 2015
Happy Saint George Day!