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& TIRESOME.

I'VE MISSED YOU.
A LOT :)

BUT I'M BACK.
BACK WITH A BANG.

THANK YOU.
FOR YOUR PATIENCE.

FLIP THROUGH.
YOUR VERY OWN.

WISH YOU A VERY
HAPPY 2021!

SEE YOU AGAIN.
NEXT MONTH!

STAY SAFE.
STAY HEALTHY.



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THE GREAT INDIAN CONSUMER - MORE POWERFUL THAN EVER?

Our Guest Author:



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RENDEZVOUS P18



Alok Dhir
Founder and Managing
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EPITOME P22



Dr. Lalit Bhasin
President,
SILF and BAI

expert
speak

P26



Abhishek Malhotra
Founding Partner,
TMT Law Practice



Bagmisikha Puhan
Sr. Associate,
TMT Law Practice

P30



Sachin Gupta
Sr. Partner,
Dhir & Dhir
Associates



Swati Sharma
Senior Associate,
Dhir & Dhir
Associates

P36



Aishwarya Chaturvedi
Associate,
Singh & Singh
Law Firm LLP

P40



Niraj Singh
Partner,
RNS Associates

P50



Manish Tyagi
Partner – Legal &
Regulatory,
MHA Legal

P55



Neha Mathew
Associate Partner,
King Stubb & Kasiva
Advocates &
Attorneys

P70



Ashu Kansal
Partner,
Adhita Advisors



Milan Negi
Principal Associate,
Adhita Advisors

P80



Soumen Ghosh
Partner,
S. Jalan & Co.



Snehashis Sen
Principal Associate,
S. Jalan & Co.

FAREWELL P74



O.P. Gupta
Former Controller General of
Patents, Designs & Trade Marks

LET'S ARBITRATE P66

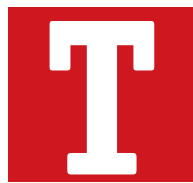


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WELCOME TO THE COMEBACK SPECIAL ISSUE.

News Aggregation - Abridgement, Abstract or Infringement?

■ Aishwarya Chaturvedi



The coronavirus pandemic and the consequential lockdown, has made the internet an important source of news for most Indians. Resultantly, news

aggregation services have become an even more popular startup business model. But what is a news aggregator? Simply put, a news aggregator is a mobile application or a website that gathers news and information from different sources and presents it in one place. News aggregators can be explained as “digital newspaper kiosks”.¹ However, content on such platforms is not as detailed as newspapers. News aggregators restrict themselves to gather headlines, summaries or short excerpts of published articles.² The question is whether it is legal to do so or is it a violation of copyright?

ABRIDGEMENT AND ABSTRACT

Copyright subsists in original works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced or otherwise communicated to the public. Copyright confers exclusive right on the copyright owner to reproduce the work (both primary and secondary work) in a tangible form. If a person other than the owner uses the copyrighted work without license/permission from the owner, it constitutes infringement of copyright. Therefore, a news aggregator cannot copy an entire news article/story and reproduce it on his/her platform without seeking license/permission from the owner of such article.

It is settled law that no copyright subsists in facts, titles and short phrases. As mentioned above, a news aggregator essentially collates news



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from other sources and presents it in a succinct manner. Does condensing a work mean making the original work shorter by retaining portions selectively and omitting the rest? It is relevant to discuss here the decision of the Privy Council in *Macmillan v. Copper* on abridgement.³ The Privy Council observed as follows “An abridgement of an author’s work means a statement designed to be complete and accurate of the thoughts, opinions and ideas by him expressed therein but set forth much more concisely in the compressed language of the abridger.” Therefore, copying of certain passages and omitting others would not constitute abridgement. An equitable abridgment of a literary work is entitled to copyright protection if it is new and original and the author has bestowed sufficient skill and labor in creating it. However, an abridgement falls under the definition of an adaptation as provided in Section 2(a) (iii) of the Copyright Act, 1957. It derives content from an existing work and retains the essence of such work. Thus, making an abridgement of a literary work by a news aggregator would require permission/license from the owner of the original work.

The content of the news aggregator must rather be in the form of an abstract. An abstract is a shortened depiction of a work, usually much shorter than an abridgement. An abstract conveys the fundamental idea of a work instead of its form or expression.⁴ It develops content based on raw data such as facts. It is relevant to note that an abstract generally promotes the original source of work and does not supersede it.⁵ Thus, an abstract usually does not infringe copyright vested in the original work. However, an abstract that substantially reproduces the original



work without seeking permission/license from the owner of such work would amount to infringement of copyright.

An example of permissible abstract is the opera publisher Ricordi’s attempt to enforce copyright in the United States. In 1911 Ricordi filed a suit against the US publisher of a book called *Opera Stories*, claiming that a half-page 300-word synopsis of a three-act 46-page opera infringed the opera’s copyright. The US courts did not grant an injunction and observed as follows: “colorable shortening of the original text, where immaterial incidents are omitted and voluminous dissertations are cut down, but where the characters, the plot, the language and the ideas of the author are pirated. Instead, the book: does not use the author’s language, it does not appropriate his ideas and it does not reproduce his characters ... It gives just enough information to put

the reader upon inquiry, precisely as the syllabus of a law report, the review of a book or the description of a painting induces the reader to examine further.”⁶ Thus, the content of a news aggregator must ideally act as a referral to the original work and divert traffic to the source.

Further, the content of the news aggregator must be original and not merely a summarized copy of the original work. The Hon’ble Supreme Court in *Eastern Book Company v. D.B. Modak* held that creative works by definition are original and are protected by copyright, however, only minimal level of creativity is required to render a work original viz. the original work should be the product of an exercise of skill and judgment.⁷

LAW SURROUNDING NEWS AGGREGATORS


Under the Copyright Act of the United

States, a news aggregator's reproduction of headlines and lede of another entity is not actionable if such reproduction constitutes fair use. Courts of the United States consider the following four factors to determine whether an act qualifies as fair use or not:

- 1) Purpose and character of the use- including whether the use is of a commercial nature or is for nonprofit educational purposes.
- 2) Nature of the copyrighted work- The Supreme Court of the United States has recognized that the law generally recognizes a greater need to disseminate factual works than works of fiction or fantasy.
- 3) Amount and substantiality of the portion used in relation to the copyrighted work as a whole- Courts consider the amount of the copyrighted work reproduced both quantitatively and qualitatively. The Supreme Court of the United States, as well as a number of lower courts, has found that the reproduction of even a short excerpt may not necessarily constitute fair use if the excerpt reproduces the "heart" of the work.
- 4) Effect of the use upon the potential market for or value of the copyrighted work- United States District Court, S.D. New York observed in *Associated Press v. Meltwater* that purpose of search

engines is to allow users to go through the data available on the internet and to accordingly direct them to the original source and such act would appear to be a transformative purpose.⁸ Here the defendant's act was not held to be fair use as it threatened to divert significant revenue from the original news of the plaintiff. It would have to be analyzed and ensured that the content of the news aggregator does not supersede the original copyrighted work or replace it but instead should add something new to it.⁹

The law is not settled on the operations of news aggregators and the outcome of each case would depend on the distinct facts. While it is always advisable to seek appropriate license/ permission from the copyright owner of the source work, the following measures can be adopted to lessen the legal risk involved with the model of news aggregation:

1. Make an abstract or use only the headline(s) and do not copy the original work selectively or entirely;
2. The content should act as a referral to the original work and not as its replacement;
3. Mention the source of the original work;
4. Provide a link to the original source. 



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¹<https://cmds.ceu.edu/article/2018-07-03/news-aggregation-and-reform-eu-copyright-law>

²A concise explanation of the modus operandi of news aggregators is provided by Kimberly Isbell, "The Rise of News Aggregators: Legal Implications and Best Practices", Berkman Center for Internet and Society Research Publication No. 2010-10, 30 August 2010, available at <http://cyber.law.harvard.edu/publications>

³AIR 1924, PC 75

⁴https://works.bepress.com/david_vaver/19/

⁵Ibid

⁶G. Ricardi & Co. *fl Mason* (1911) 201 F. 182, 183

⁷(2008) 1 Supreme Court Cases 1

⁸931 F.Supp.2d 537 (S.D.N.Y. 2013)

⁹*Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994)