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Private Property vs. Public Policy Vision in Ancillary Copyright Law Reform

*Christian Herzog, Christopher Buschow,
and Alessandro Immanuel Beil*

INTRODUCTION

As a digital intermediary, platform, and aggregator, Google News plays a pivotal role in the changing news media environment (González-Tosat and Sádaba-Chalezquer 2021; Nielsen and Ganter 2018). Its algorithms collect, unbundle, and reorder a large volume of news articles, allowing readers to gain a quick overview of a particular topic from the coverage of numerous publishers. In doing so, Google News helps readers decide which news to read in more detail, particularly by compiling snippets

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(small content pieces) of these texts and presenting them through a dedicated subdomain (google.com/news), in the Google News App, and sometimes at the top of search results (Calzada and Gil 2020). With this mode of distribution, Google News constitutes a new player in the news industry's value chain. It has changed the traditional market environment and is at the heart of controversial debates around algorithmic news distribution. Google News' gatekeeping practices have been subject to criticism for some time, as the service potentially reduces traffic to publishers' websites. According to survey data from 2019, 22% of those who read a snippet on Google News considered their question answered without continuing to the original content (Ray 2019, 129),¹ diminishing publishers' online advertising revenues (Johnson 2006).

It is therefore unsurprising that globally, legislators have started to focus on algorithmic news distribution and news aggregators. Across the world, reform agendas are emerging that seek to intervene in platform/publisher dynamics. In Belgium, publishers began arguing with Google about paying for snippets in 2006. This only ended when an out-of-court settlement was finally reached in 2012 (Musil 2012). A similar debate arose in France, which Google was able to settle by establishing a 60 million Euro fund for national news industry innovation in 2013 (Fanta and Dachwitz 2020). In Spain, after the introduction of a new law concerning intellectual property in 2014, Google News was discontinued entirely (Calzada and Gil 2020; Gray 2020, 108–109). In Australia, Facebook blocked all links to Australian news on their platform rather than pay for news content, and only returned to the negotiating table when the government promised adjustments to the regulation (Isaac and Cave 2021). Such examples illustrate the intense conflicts that come with proposed or implemented government regulation of algorithmic news distribution.

On the supranational European Union (EU) level, the EU Copyright Directive was adopted in April 2019, which includes an European ancillary copyright (or neighboring right) for press publishers concerning the online use of their publications. Article 15 of the EU Directive (2019), previously Article 11, states that news aggregators have to pay publishers to use snippets of news articles or, in order to avoid this, may have to shut

¹ Ray (2019) refers to a non-representative survey answered by 1,400 respondents, of which 72% were based in the US and 10% in Europe. 60% thereof considered themselves as "somewhat tech savvy".

down their services in Europe entirely (for a detailed discussion of Article 15, see the chapter by Lindsay in this volume). As Google News is clearly the largest of these aggregators in Europe in terms of users (compared to Microsoft News or Flipboard), the regulation, also known as “Lex Google”, is widely understood to be mainly focused upon regulating this one service (Gray 2020, 97). The introduction of a European ancillary copyright marks a major regulatory shift from the largely unregulated environment of the past 20 years. As the traditional path dependencies of EU media policy are no longer viable, we are currently experiencing a critical juncture in the regulation of the algorithmic distribution of news.

With a focus on the protection of press publishers’ content through ancillary copyright (one of the most controversial parts of the directive’s negotiation process), this chapter investigates the “complex” (Meese and Hurcombe 2021, 13) and “contradictory” (Chyi, Lewis, and Zheng 2016, 807) relationship between Google and news publishers, drawing on data from the policy formulation phase of Article 15. In this phase, stage two in the classic model of the policy-making process, policy actors discuss the options for tackling a problem which requires government action. In the case of the EU Copyright Directive, the phase lasted from the beginning of 2017 to spring 2019. Concentrating on this time frame, we investigate the arguments brought forward by two key actors who have been primarily affected by Article 15. Applying Braun and Clarke’s (2006, 2013) thematic analysis approach, the chapter maps the arguments for and against the ancillary copyright reform presented by Google and news publishers in Germany. In doing so, we analyze a broad spectrum of documents, including news articles, published interviews, and press releases (Favaro et al. 2017).

Our investigation focuses on the discourse in Germany for three reasons. First, the earliest such legislation on a national level, which served as a blueprint for the EU Copyright Directive, was passed in this country in 2013.² The German case thus arguably represents a critical juncture, as it has driven wider copyright reform across the EU and elsewhere. Second, the German context and German press publishers are of interest because they have played a major role in the adoption of national and European reforms through lobbying since around 2009 (Buschow 2012). Third, compared to other European countries, public discourse (including

² *Leistungsschutzrecht für Presseverleger* (Buschow 2012; Tworek and Buschow 2016).

public protests) has been more pronounced in Germany (Laaff 2019). While the main concern of the chapter is to give a detailed account of the views of the key stakeholders and their underlying rationales, we also place ancillary copyright in a wider context. In particular, we argue that Minjeong’s (2011) distinction between two competing visions (one centered around private property and the other around public policy) helps us understand how and why different actors privilege particular positions on copyright reform and algorithmic regulation, and thus has broader implications for the future of news and platforms.

This chapter proceeds as follows: In section “[Theoretical Background: Private Property vs. Public Policy Vision](#)”, we introduce Minjeong’s (2011) competing visions of private property and public policy in copyright. Next, the methodological approach of Braun and Clarke’s thematic analysis is presented (section “[Method](#)”). This is followed by the empirical reconstruction of the central arguments brought forward by Google (data set 1) and German news publishers (data set 2), which are summarized in six themes (section “[Analysis and Results](#)”). In section “[Discussion](#)”, the themes—results of our qualitative inquiry—are discussed and contextualized against the backdrop of prior research. In section “[Conclusion](#)”, we recap our findings and outline pathways for future research.

THEORETICAL BACKGROUND: PRIVATE PROPERTY VS. PUBLIC POLICY VISION

In her content analysis of news coverage, Minjeong (2011) identifies two competing visions of copyright: the private property vision and the public policy vision. The notion that Google should pay publishers for Google News’ use of news snippets is rooted in the private property vision, which considers copyright the natural property of authors. Advocates of private property argue that copyright law should protect the innate author’s right and emphasize the private interests of authors in controlling the use of their own works (Sang 2018). Proponents of the public policy vision instead argue that copyright should serve society as a whole. As outlined by McChesney (2013, 92–95), the development of new media in the twentieth century has extended the reach of copyright protection. One consequence is that various forms of cultural production can be legally restricted, like the use of samples in audio production. Copyright has also become detached from authorial wages and is instead a source of profit for media conglomerates (McChesney 2013; Patterson and Lindberg 1991,

172). Using these and related arguments, proponents of the public policy vision uphold the balance between the rights of authors and the freedom of citizens to use copyrighted work. They oppose legal sanctions on digital copying and the extension of copyright levies to digital devices, arguing that innovative business models can compensate authors' losses.

According to Minjeong (2011), the private property vision triumphs over public policy perspective in most conflicts. In this chapter, we investigate whether this claim holds true with regards to the case under study. Consequently, we apply Minjeong's framework (2011) to the debate around ancillary copyright reform in Germany and assess how these two competing visions were deployed throughout the policy debate.

METHOD

Empirically, we use Braun and Clarke's (2006, 2013) thematic analysis approach. The essence of this approach is a six-step-procedure, which guides the data gathering, analysis, and writing up. In a recursive process, data is coded and then collated into broader superordinate units (themes) which, once fully developed, exemplify the results of the analysis. In the presentation of findings from thematic analysis, themes are embedded in a broader narrative about the issue at stake, the data, and the specificities of the empirical approach. Thematic analysis thus offers a comprehensive picture to emerge, while capturing nuances across the data (Braun and Clarke 2006) and adhering to rigorous standards and a set of best-practice criteria (Nowell et al. 2017). Thematic analysis shares many similarities with qualitative content analysis (Vaismoradi et al. 2013), though the interpretive approach used in this study is arguably best suited to analyzing small and medium-sized data sets (Herzog et al. 2022, in press; Herzog et al. 2019; Herzog and Scerbinina 2021). Using thematic analysis, we investigated 55 documents from the policy formulation phase.³

Two data sets were prepared. The first was constructed to depict the position of Google, arguably the most pronounced and publicly visible opponent of ancillary copyright (Buschow 2012; Hirche 2017), the second data set illustrates the position of German news publishers. To build these data sets, we applied two sampling strategies. First, we

³ A full list of the news articles and press releases analyzed is available here: <https://doi.org/10.48691/c3hw-qa80>.

performed searches in the full-text news database LexisNexis. LexisNexis aggregates hundreds of German national newspapers and magazines, as well as numerous local titles. We included documents from the policy formulation phase, which we have defined as lasting from 1 January 2017 to the approval of the directive by the Council of the European Union on 15 April 2019.⁴ To obtain relevant documents, we applied the following search terms for the German language press to LexisNexis: *Leistungsschutzrecht* [ancillary copyright], *Kommentar* [commentary], *Meinung* [opinion], *Debatte* [debate], *Interview* [interview], and *Gastbeitrag* [guest article]. Our initial search resulted in 326 documents. After the removal of duplicates and documents unsuitable for analysis (Maul 2018), we identified 11 documents which oppose the regulation and express critical views toward ancillary copyright. We treated these documents as the perceived stakeholder position of Google (press articles in data set 1: $n = 11$). Additionally, we selected 17 documents for an in-depth investigation of the arguments brought forward in favor of ancillary copyright (press articles in data set 2: $n = 17$).

To expand our datasets with documents that were relevant beyond press coverage, our second sampling strategy focused on press releases and ancillary copyright-related statements from Google and the Initiative Against an Ancillary Copyright (IGEL)⁵ (data set 1), as well as press releases and statements from the Association of German Newspaper Publishers (BDZV) and the Association of German Magazine Publishers (VDZ) (data set 2). We included all the documents published during the time frame of the policy formulation phase that contained the keyword “*Leistungsschutzrecht*”.⁶ After applying the same exclusion criteria as that

⁴ In the early stages of the EU Copyright Directive, an open consultation (5 December 2013–5 March 2014) was followed by a consultation on the role of publishers in the copyright value chain (23 March 2016–15 June 2016). Subsequently, the European Commission prepared a proposal for the directive and forwarded it to the EU Parliament. On 10 March 2017, the parliament published a draft report on the proposal. The publication date of this draft report roughly coincides with the start date of our sampling frame, which lasted until 15 April 2019, when the directive was finally adopted.

⁵ *Initiative gegen ein Leistungsschutzrecht* (IGEL) is the key German-language campaign against the regulation, which counts Google as a supporter (IGEL, n.d.).

⁶ One of Google’s statements was published in November 2016. Although this publication date does not fall within the time frame investigated, we included the statement in data set 1 due to its relevance and temporal proximity.

of the first sampling strategy, we completed our two data sets, adding 17 press releases and public statements to data set 1 ($n = 28$) and 10 press releases and statements to data set 2 ($n = 27$).

In the following step, inductive coding was performed using the qualitative analysis software MAXQDA. Data extracts were coded and recursively regrouped and reworked, which allowed for the crafting of themes. After reviewing the assigned codes, the themes were labeled and structured into main themes (superordinated categories) and sub-themes (which represent a collation of various codes) (Damayanthi 2019). The themes crafted from both data sets are illustrated through two thematic maps (see Figs. 8.1 and 8.2), which offer an additional visual layer for grasping the relationships and connections between the various themes and sub-themes (Attride-Stirling 2001).

ANALYSIS AND RESULTS

As a result of the analysis, three themes and seven sub-themes were crafted from each data set (see Figs. 8.1 and 8.2).

DATA SET I

Theme 1: Committed to Future-Oriented Actions

The first theme, comprising two sub-themes, highlights Google's attempt to show itself as building a pathway to future successes while its opponents are portrayed as backward-thinking. The sub-theme "driving progress instead of building walls" alludes to the presentation of the copyright reform as relentlessly adhering to outmoded structures (Hirche 2018c). The planned measures are described as a setback for the free and open internet (Laaff 2019). The second sub-theme, "legacy media lobbying offers outdated recipes", embodies the notion that policymakers are influenced by false claims (Hirche 2019c) which make them ignore previous lessons, such as the ancillary copyright reforms in Germany and Spain (Hirche 2018b). Google's reaction to these local laws (in Germany, the temporary removal of snippets; in Spain, the closure of Google News) has led to considerable traffic loss for German and Spanish publishers (Calzada and Gil 2020). This problem is reinforced by the claim that policymakers do not understand what the reform is about and what is at

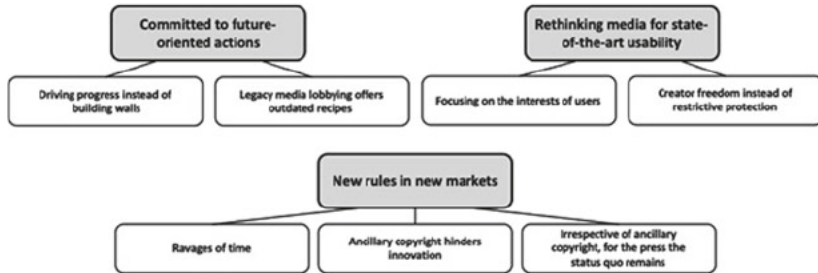


Fig. 8.1 Google’s portrayal of ancillary copyright reform

stake (Hirche 2019d). To avoid putting the future of younger generations at risk (Hirche 2019b), policymakers should base future policies on “evidence-based” assessments (Google 2019, 8).

Theme 2: Rethinking Media for State-Of-The-Art Usability

This theme illustrates Google’s viewpoint that legacy media policies cannot be transferred to digital environments one-to-one. Instead, digitization requires users to be placed at the center, which is shown in the first sub-theme “focusing on the interests of users”. As news users cannot be expected to make an effort to diverge from established practices in order to comply with new regulations (Kreutzer 2019), diverse and valuable news ecologies which have emerged in digital environments would be undermined by ancillary copyright reform (Google 2019, 13). Denying the usefulness of copyright law reform, sub-theme two shows Google’s call for “creator freedom instead of restrictive protection” to preserve creation over capital investments (Hirche 2017). In Google’s view, creatives prefer to have a range of options at their disposal and eschew “restrictive protection” (Google 2019, 9). Any approach which neglects this is misguided, since it would deprive people of the opportunity to make free decisions about how to provide and use content (Google 2019, 12).

Theme 3: New Rules in New Markets

The third and final theme crafted from data set 1 suggests that new markets require new rules. It can be divided into three sub-themes. The

first, “ravages of time”, embodies the notion that new market conditions inevitably emerge all the time and that this is a normal process. The digital market has been a “pillar of the global economy” for some time now (Google 2019, 1). While it is challenging for publishers to move from print to digital media (Google 2016, 3), tech giants have found themselves positioned in the right place at the right time (Gutjahr 2018). Still, digitization need not necessarily lead to market failure in the news industry (Google 2016, 2). As seen in the second sub-theme “ancillary copyright hinders innovation”, according to Google, ancillary copyright undermines capital investments and the innovation hub character of Germany and the EU in that it forces innovative start-ups to change their business models or even close operations (Hirche 2018a). It creates new market entry barriers that impede European start-ups from implementing innovative ideas (Hirche 2018d) in order to “stand up to American internet companies” (Hirche 2018a). What is more, as shown in the third sub-theme “irrespective of ancillary copyright, for the press the status quo remains”, the implementation of a European ancillary copyright law would not be beneficial for news publishers. Instead, it would lead to timely and costly litigation (Hirche 2019a), not only in Germany but also in other countries (Hirche 2018a). Once courts have clarified what is allowed in a new regulatory framework, the tech giants will adapt swiftly (Hirche 2019a) and “publishers won’t have a dime more” (Hirche 2018d). When doubting their liability for paying license fees, Google would rather show fewer or no news snippets, de-list certain publishers, or discontinue Google News entirely (Hirche 2018b).

DATA SET 2

Theme 4: Modernizing Copyright

We now turn to the concerns of German news publishers and explore the themes from data set 2. The first theme that emerges (and the fourth overall) is concerned with the modernization of legal frameworks. It contains two sub-themes. First, the publishers make a strong case to “eliminate grey areas and provide legal certainty”, as US tech giants have taken advantage of the current “legal vacuum” surrounding the treatment of algorithmically distributed news (Meier 2018a, c). Following on from this, there is an urgent need to put European regulation in place (Meier 2018c). Only appropriate legal rules can provide the security that

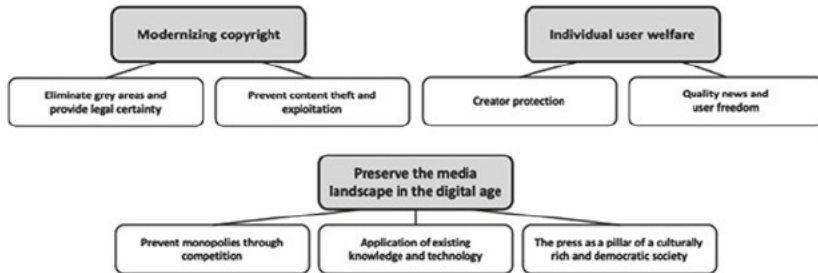


Fig. 8.2 German news publishers' portrayal of ancillary copyright reform

publishers need to sustain their business in Europe (VDZ 2017). The second sub-theme, “prevent content theft and exploitation”, goes into more detail about the accusation that digital intermediaries and US-based platforms exploit “the entire intellectual property of mankind” and monetize it without paying for content (Gersemann 2019). Since their core business model is built on the exploitation of legal loopholes, digital intermediaries are little more than “data pirates” (Drewes 2018). They develop efficient technologies but do not create valuable content for democracy, exploiting the creativity of others (Meier 2018c).

Theme 5: Individual User Welfare

The second theme of data set 2 (and fifth overall), “individual user welfare”, contains two sub-themes. The first, “creator protection”, stresses the importance of paying authors and content creators their “fair share” (Welt Online 2019) in order to allow them to focus on their strengths (Meier 2018a). Calls for collective ownership of intellectual property embody the “digital rebirth of a radical communist idea” (BDZV 2017) and threaten the sustainability of quality journalism. The second sub-theme, “quality news and user freedom”, places individual users, who expect high quality content and journalistic diversity (Agence France Presse 2018) while being used to the “liberty of the internet” (von Schmettow and Klotzki 2018), at the center. Therefore, in addition to the protection of authors and their remuneration, private distribution—including the use of hyperlinks without commercial intent—should not be restricted by the planned measures (von Schmettow and Klotzki 2018).

Theme 6: Preserve the Media Landscape in the Digital Age

The third theme of data set 2 (and sixth overall), depicts the transformation of the media landscape. It contains three sub-themes. The first, “prevent monopolies through competition”, refers to the press publishers’ aim to negotiate with the tech giants on par (Meier 2018b), ending the current asymmetry (Riedel 2018). Media plurality and diversity in Europe are at risk (Meier 2018b) if a “healthy ecosystem between platforms and creative companies” cannot be established (Gersemann 2019). Europe is in need of a framework which allows innovations in digital journalism to thrive (von Schmettow and Klotzki 2018), and this is especially important for small and medium-sized enterprises (Gersemann 2019). According to the second sub-theme, “application of existing knowledge and technology”, exemplary regulations have already been put into place in other industries (such as music and film production), sectors with a long history of protective rights (Meier 2018a). Before digitization, news publishers largely regarded such measures as irrelevant (Meier 2018b). However, users need to understand that quality journalism has a price (Drewes 2018). The third sub-theme deals with “the press as a pillar of a culturally rich and democratic society”. It describes the regulation as the “recapture of the knowledge and will of the citizens” (Gersemann 2019), with “systemic importance” for democracy (Welt Online 2019). Following on from this, the change in law to protect publishers’ rights is presented as essential, not only for cultural and media diversity (Fischer and Cvrilje 2019) but also for society as a whole (VDZ 2017).

DISCUSSION

The six themes identified highlight the two key actors’ rhetorical approaches to the policy formulation phase of the EU Copyright Directive’s Article 15. The portrayals of the European ancillary copyright offered by German publishers and Google differ in their proposed outcome, causal relationships, and vocabulary, but are very much alike in the aspects they cover and discursive strategies they adopt. In this section, we explain the results by contrasting the underlying rationales, which are based in part on the institutional frameworks both actors are bound to. We also explore the usefulness of Minjeong’s distinction between private property and public policy vision in the case of European ancillary copyright reform.

Both publishers and Google consider themselves key enablers in the digital journalism ecosystem. Their perceived role serves as a central legitimation resource for their respective rationales. Google portrays its services (and Google News in particular) as engines of innovation (theme 1), which provide publishers and content creators with user attention and new opportunities for monetization (theme 2) (cf. Anderson 2013, 1013; Gray 2020, 111). To emphasize this position, Google has tried to expand its role in the digital journalism ecosystem through closer cooperation with news publishers in recent years through the Digital News Initiative (DNI). With DNI, Google invested more than 150 million Euros in innovation projects in European journalism (Löblich and Nietzsche 2020, 43–44). Google, following the common strategy of presenting itself as a future-oriented technology company rather than a (news) media business (Napoli 2019),⁷ pleads for an open, free internet for independent content creators, made possible by avoiding over-regulation such as copyright reform. The publishers' lobbying measures are thus "outdated" and a preservation of the legacy business model (theme 1). Somewhat ironically, Google, a company that stands for change and disruption, pleads for maintaining the fuzzy status quo in regulation and proposes continuity in the existing frameworks. Though this is not openly articulated, Google seems to be in favor of further deregulation of copyright law and reduced (or ideally no) government interference (Gray 2020, 44; Popiel and Sang 2021). Following Google's narrative, the development of digital markets is understood to be quasi-natural and inevitable (theme 3). Market changes cannot be stopped by policymaking, and if they are, then only for a short time and with great collateral damage for the economy, innovation, journalism, and publishers in the long run (Gray 2020, 45).

From the publishers' point of view, Google's position in the digital market stems from a legal vacuum which the US company has ruthlessly exploited (cf. Anderson 2013, 1013; Buschow 2012, 76–78). Following their argument, Google's disregard of copyright protection resembles a type of digital communism, an argument brought to the fore by BDZV president Mathias Döpfner. According to him, the notion that intellectual property should be collectively owned is rooted in a radical communist idea which, as history has shown, is inapt (theme 5). The publishers

⁷ The benefits of being received as a technology company are that one is subject to more light-touch regulation than media businesses. Furthermore, technology companies find it much easier to attract venture capital (Gillespie 2010).

portray themselves as protectors of creative professionals in Europe who make solid contributions to a culturally rich society and are vital for a healthy democracy (theme 6), a line of argumentation also found by Buschow (2012, 99). Looking to the future, they propose a regulation that is committed to European values and, in line with the region's legal traditions, sees copyright as a form of natural right that protects creators' intellectual property (Sang 2018). The publishers thus claim a European perspective to persuade EU legislators, a strategic resource that Google cannot exploit.

Interestingly, both actors presume to speak for content creators to support their arguments, although neither actually produces content. Google is mainly engaged in the distribution of content (even though its news aggregation practices have more similarities to than differences from reporting practices; Coddington 2020, 378), and argues that distribution via Google News is benevolent as it enables publishers and content creators to monetize on increased website traffic (theme 1). The publishers provide an organizational setting for the creative work of the journalists they capitalize on. Compared with Google, the publishers relate more strongly to the narrative of an author's natural intellectual property (theme 4). This is particularly interesting, since the directive introduces a new neighboring right on the organizational level that is quite different from a copyright held by individual creators (Buschow 2012; Scalzini 2021).

Both actors also claim to represent users and thus consider themselves mediators in this context. While the publishers argue in terms of user welfare (theme 5), Google explicitly calls upon legislators to focus on the interests of users (theme 2). Through this, both actors try to further strengthen and legitimize their lines of argumentation. Google suggests that ancillary copyright will lead to a future where the variety and diversity of news content that users can discover in digital media is dramatically reduced and restricted. A similarly bleak vision is drawn up by the publishers, who argue that it is the lack of ancillary copyright which will lead to underfunding and thus to a loss of quality journalism in Europe (themes 4, 5, and 6) (cf. Brinkmann 2018, 874). Google and the publishers thus sketch out completely different cause-effect relationships. Neither of the two actors, however, qualifies as a true representative of users, whose views are hardly ever heard in policy-making processes on the future of copyright (Edwards et al. 2012).

If we return to Minjeong's (2011) framework, we see that the publishers are closer to the private property vision with their line of argumentation, while Google's perspective in part overlaps with the public policy vision. However, neither actor fits neatly into any of Minjeong's (2011) two ideal types. Publishing companies are part of the media and content industries, which are capable of shaping discourse in directions that are favorable for them, advancing private property rights in digital environments (Loughlan 2007). At the same time, the role of journalism in democratic societies is largely undisputed and most European countries, driven by public policy objectives, have ensured the provision of and public access to news, through public service media or state aid for private media companies (Murschetz 2013). Google, whose business model builds on the free flow of digital information, does not fully sit within the public policy perspective, because the company does not advocate for users' rights in a way that one would expect from a stakeholder who truly advocates this vision. Market objectives underpin Google's ideological assumptions, and these, in many instances, are at odds with notions of the public interest (Edwards 2019).

CONCLUSION

Globally, we can see intense struggles over government reform agendas that seek to regulate algorithmic news distribution and intervene in platform/publisher dynamics. In Europe, where the historical path dependencies of media regulation are dissolving in the face of digital transformation, the introduction of a European ancillary copyright can be considered a critical juncture in policymaking for algorithmic news dissemination and news aggregators. This chapter has focused on the struggles over the EU Copyright Directive's Article 15. Based on a thematic analysis of key documents from the policy formulation phase, we mapped the arguments for and against ancillary copyright reform presented by Google and German news publishers, two of the key actors affected by the reform.

Our results show that neither actor is wholly committed to one of the two positions proposed by Minjeong (2011). However, our investigation largely confirms Minjeong's (2011) finding that private property vision usually triumphs over public policy perspective. Key to the public policy vision is the interests of users. Although both actors claim to speak for and in the interest of users, they do not truly represent this perspective but employ it as a strategic resource for achieving corporate goals.

Our analysis is limited in that we have only analyzed press articles, public documents, and statements. Behind-the-scenes lobbying strategies were not taken into account (Yackee 2015). To fully understand the policy-making process, follow-up research could investigate key actors' (non-public) strategies and resources (e.g., Brinkmann 2018; Buschow 2012; Tworek and Buschow 2016). Additionally, the analysis of primary and secondary data (as found, for example, in online discussion forums) from content creators and users could lead to interesting results. As we have sought to showcase in this chapter, thematic analysis offers an accessible and flexible methodological repertoire which can either supplement or be embedded into law and policy scholarship.

Although the EU adopted the ancillary copyright reform in 2019, ongoing discussion is to be expected. Court proceedings slowing down implementation in EU nation states (such as France) are likely to continue for some time. Ongoing legislative processes in other countries (such as Australia) may also have an impact on future policies in Europe. Since legal pressure on Google has increased significantly on several fronts (Gray 2020, 97–115), recently the company has been more open to negotiating individual contracts with publishers in order to de-escalate the situation, and perhaps also to mitigate legal regulation. With its new product “Google News Showcase” in Australia, France, Germany, and Brazil, Google—for the first time—has acquired licenses and began paying publishers for news distribution (Meier 2020). While this is obviously a fundamental shift in Google's strategy the notion that news aggregation falls within the scope of intellectual property rights still contradicts Google's underlying copyright rationale. Arguably, if only to a limited extent, it undermines the foundations on which Google's business model is built.

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