CANON AEDE: PUBLISHERS’ PROTECTIONS FROM DIGITAL REPRODUCTIONS OF WORKS BY SEARCH ENGINES UNDER EUROPEAN COPYRIGHT LAW

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I. INTRODUCTION

We live in a digital age. The prominence of the Internet as a resource for knowledge provides us with access to information of nearly every kind. Inquiries that once required reference to printed materials are no longer restricted to the confines of a library card catalog; these same inquiries can now be made within the comfort of our own homes. This convenience created the impetus to digitize all print materials, from novels to journals to magazines.¹

The digitization of these materials has created an interesting legal question as to exactly how freely these newly-digitized publications may be aggregated. Google has become a household name throughout the world, offering a virtual “one stop shop” for answers to questions on every topic imaginable. This convenience, however, comes at a cost: people often forgo the original published articles for the summary excerpt and original link that Google and its competitors provide.²

While the United States has, up to now, remained relatively free of debate between publishers and search engines, a heated battle has ensued across the European Union (E.U.).³ Some E.U. member states have responded to the discontent of their publishers⁴ by implementing legislation that requires search engines to pay a tax to publishers for displaying these excerpts on their search results page.⁵ One example of this is Spain’s recent passage of Canon de la

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³ See id. (highlighting the disputes E.U. member states have had with Google in the realm of intellectual property).

⁴ While the term ‘publisher’ can refer to a variety of different creators, for the purposes of this article it will be used synonymously with ‘creator’ or ‘author’ to refer to those person(s) who created articles implicated by the legislation discussed in this article.

⁵ See, e.g., Canon de la Asociación de Editores de Diarios de España (B.O.E. 2014, 11404) (Spain); Urheberrechtsgesetz [UrhG] [Copyright Act], Dec. 5, 2014, BUNDESGESETZBLATT, TEIL
Asociación de Editores de Diarios de España6 (Canon AEDE)—legislation that requires Google to pay a tax to publishers in order to be permitted to provide links to the publishers’ content.7 This legislation will likely promote “net neutrality” and, in the long run, will provide information to Spanish citizens while protecting publishers’ rights. While the law, on its face, seems to eliminate easy accessibility to articles for the everyday internet browser, the new legislation will in fact maintain access to articles, eliminate publishers’ need to “buy their spot” in the queue of Google’s search results, and promote fair competition among publishers.

This note will focus on publishers’ rights and protections for digital reproductions of their works by search engines. Using the Canon AEDE as a framework, this note will assess emerging responses to publishers’ rights and theorize as to whether these responses are adequate. The history of intellectual property law in the E.U. and Spain will be analyzed in order to show the context of the legislation’s creation. Other E.U. member responses to the same issue will also be analyzed, most notably the German Leistungsschutzrecht für Presseverleger,8 as a means of providing insight into the social and political climate of the E.U. with respect to its treatment of Google.

This note will then scrutinize the Canon AEDE itself in an effort to clarify its provisions and its true effect on aggregation of publications. Finally, the consequences of the legislation’s passage will be examined to determine the effect it will have on both Google’s presence in the E.U. and the availability of news publications through a search engine in the E.U.

In conclusion, I will argue that the type of legislation passed in Spain is an adequate and effective protection for local publishers that should be implemented throughout the E.U. Search engine exploitation of publishers’ works for their own commercial gain is contributing to the continued deterioration of the publishing industry by diverting web traffic from publishers’ websites, eliminating fair competition within the industry, and removing the incentive to innovate among publishers. By requiring Google and other search engines to pay a tax to publishers to display article content, legislation like the Canon AEDE will also eliminate search engines’ ability to leverage their dominant position within the digital market against publishers’ rights to compensation for reproduction of their original works.

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6. [BGBI. I], as amended, at § 87f (Ger.).
8. Urheberrechtsgesetz [UrhG] [Copyright Act], Dec. 5, 2014, BUNDESGESETZBLATT, TEIL I [BGBI. I], as amended, at § 87f (Ger.).
II. INTELLECTUAL PROPERTY IN THE E.U.: A BRIEF HISTORY

In order to accurately assess the environment in which the Canon AEDE is emerging, it is useful to first analyze the historical development of the treatment of intellectual property in Europe. Intellectual property regulation began during the Renaissance in Italy. Building upon these early foundations, developments through the twentieth and twenty-first centuries in many ways shaped the body of intellectual property laws that are in effect today.

These developments in many European countries prior to their incorporation into the E.U. brought forth the competing interests that had to be harmonized by E.U. legislation. Recent trends in intellectual property protections, and more specifically copyright protections in the E.U., have attempted to reach further than the traditional protections that already exist as the amount of intellectual property continues to soar in an increasingly digital age.

A. Early Beginnings

Long before the E.U., as early as the 14th century, Europe was a bed for intellectual activity—from innovators in Germany to creative minds in Italy, intellectual advances took root on the continent. Government-backed guilds dominated individual industries and had the power to regulate innovations made within their field with an essential “carte blanche” from their national government. The regulations imposed by these guilds did not rest upon the desire to invent or innovate; rather, they were fueled by both political and religious motivations.

As early as the fifteenth century, a form of copyright regulations, known as privileges, was implemented in Italy to protect the works of Renaissance authors so that these works could retain their originality. Authorship, however, was not required for a privilege grant: printers and publishers could obtain protection via

11. See generally CONCISE EUROPEAN COPYRIGHT LAW (Thomas Dreier & P. Bernt Hugenholtz, eds., 2006).
12. See, e.g., id.
14. See id. at 354 (providing that merchant guilds, in addition to controlling innovation within their industry, also had the legal ability and political clout to restrict access to commercial information).
15. See Khan, supra note 9 (stating that copyright law in England and France were used by the monarchy to censor public opinion).
16. Id.
privileges for both new and pre-existing publications.17 These privileges were granted for a definite period of time—usually not extending longer than ten years.18 While the privilege system had its roots in Italy, it quickly spread throughout the rest of Western Europe, and it found a place in both French and English legislation.19

The privilege system continued undisturbed for nearly two centuries, but was finally repealed when statutes were imposed to regulate copyright issues instead.20 These statutes recognized an author’s natural rights to his own work for the first time, and an author’s work was believed to be intrinsically attributed to an author regardless of any statutory measure.21 This idea was embraced on the European continent, but it found less favorable treatment elsewhere.22 For example, Great Britain rejected this notion, instead deeming statutes to replace any natural right an author possessed.23 This would be the first of many conflicts among future E.U. members on issues of copyright.24

B. Developments Through the Twentieth Century

By the latter part of the eighteen hundreds, the literacy rate within Europe had skyrocketed from previous figures, which resulted in the dispersion of literary works across national borders—especially within continental Europe.25 With this newfound global literature dispersal came the need for international protection for authors’ rights.26 Initially, this protection was achieved through reciprocity agreements between countries, allowing for the recognition of foreign authors’ rights to prohibit piracy of their work in exchange for the same courtesy given to a nation’s domestic authors in foreign jurisdictions.27

It became evident after some time, however, that these reciprocity agreements were far from powerful enough to effectively protect authors’ rights from piracy in

17. Id.
18. Id.
19. Khan makes the argument in her study that privileges in France were available almost exclusively to middle and upper-class citizens, effectively providing no protection to works created by citizens outside these social realms. Id. Only government officials could grant privileges, and the process to obtain them was rampant with nepotism and bribery. Id.
20. See Caviedes, supra note 10, at 168 (highlighting the British Statute of Anne of 1709 as an example of these new statutes that focused on protection of authors’ rights rather than the competition of bribes that existed under the privileges system).
21. Id. at 169.
22. Id.
23. Id. Under British law, a statute that provided for protection of an author’s right to prevent others from publishing his work replaced any natural right to the work he possessed, instead giving him a statutory (and time-sensitive) right to prohibit others from reproducing his work without his authorization. Id.
24. Such conflicts will be addressed in the parts below.
26. Id.
27. Id.
foreign countries. Many countries flat out refused to enter into reciprocity agreements with other countries, while a large majority of countries that did enter into the agreements failed to abide by the terms. In response, France implemented a decree that made producing counterfeit works of either foreign or domestic authors a crime in France, at that time an unprecedented legislative act.

In the wake of France’s landmark legislation regarding authors’ intellectual property rights, only one other nation—Belgium—followed suit in Europe. Although it appeared that the French decree had relatively little effect on other European nations, it sparked an interest in protecting authors’ rights throughout the continent that eventually led to a number of meetings involving a wide array of authors from various nations. These meetings culminated in the Berne Convention of 1886—where authors from fourteen nations for the first time drafted their own treaty with the measures they thought necessary for the protection of their works from piracy and counterfeiting.

The first half of the twentieth century saw a number of conventions that attempted to further clarify the protection of authors’ rights created at the Berne Convention. Thereafter, European nations, continued to be at the forefront of development of protections for authors’ works, including during the creation of the

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28. Id. at 9.

29. Piracy ran rampant among European nations during this period. In his article, Peter Burger refers to France specifically—whose authors’ works were frequently pirated in neighboring Belgium and Holland, regardless of the existence of reciprocity agreements with both nations. Id.

30. France’s Decree of 1852 is seen by many as landmark legislation in the development of an international copyright regulatory framework in continental Europe and beyond. The decree granted universal protection to all authors in France, regardless of the existence of a reciprocity agreement with the author’s home country. See id. at 9–10 (explaining France’s copyright protection for foreign authors).

31. Id. at 10.


34. The treaty provided protection for literary works, musical compositions, artistic renderings, and maps (among other personal creations). Burger, supra note 25, at 18–19. The provisions of the treaty touched upon issues of public representation of protected works, states’ powers to limit protected works, and translation of protected works. Id.

35. Revision conferences took place across Europe during the first half of the nineteen hundreds, all of which further developed the initial precepts of authors’ rights protections laid at Berne. See id. at 23–30 (examining the various revision conferences that took place across Europe). The most notable of these conferences, the Rome Revision Conference of 1928, added nineteen new countries to the Union established at Berne and established two new exclusive rights of authors: a moral right (allowing authors to claim a type of parental right over their work so as to prohibit it from being disturbed from its original format) and a broadcasting right (due to the increasing radio communication spreading across the globe, giving authors the exclusive right to authorize their works to be communicated via broadcast). Id. at 27–28.
E.U.\textsuperscript{36}

C. Recent Trends

The creation of the E.U. did nothing to slow European nations’ progress towards more intellectual property rights. The E.U.’s roots lie in the 1957 creation of the European Economic Community, during which time its treatment of copyright saw a period of stagnancy that lasted for the majority of the nineteen hundreds.\textsuperscript{37} While individual countries continued to develop stronger copyright protections, it was not until the E.U. was formed in 1993 following the Treaty of Maastricht\textsuperscript{38} that the E.U. worked to strengthen copyright protections throughout its member states.\textsuperscript{39} The E.U.’s formation created the need to develop a more consistent governing stance on copyright protections that matched the protections afforded in less progressive member states with their more progressive counterparts.\textsuperscript{40}

1. Initial Directives

The E.U. began taking steps towards a collective treatment of copyright protections with its first directive on the issue, the Computer Programs Directive,\textsuperscript{41} implemented in 1991.\textsuperscript{42} The directive was the first time the E.U. attempted to harmonize laws of member states with respect to copyright protections.\textsuperscript{43} The extension of copyright protection to computer programs highlighted the need for increased scope of existing legislation to include new technological advances.\textsuperscript{44}

Another directive, the Rental and Lending Rights Directive,\textsuperscript{45} was passed the

\begin{thebibliography}{99}
\bibitem{37} The Treaty of Rome established the European Economic Community, which was the precursor to the E.U. as it exists today. \textit{Treaty Establishing the European Economic Community}, Mar. 25, 1957, 298 U.N.T.S. 11. The Berne Convention served as the legal authority on copyright within the E.U. for the majority of the twentieth century. See Antezana, \textit{supra} note 36, at 424–25 (explaining how the Berne Convention persisted throughout the twentieth century and influenced U.S. copyright law).
\bibitem{38} \textit{Treaty on European Union} (Maastricht text), July 29, 1992, 1992 O.J. (C 191) 1.
\bibitem{39} See Antezana, \textit{supra} note 36, at 435–36 (showing the European Commission’s push to harmonize copyright protection among its member states).
\bibitem{40} See id. at 436 (discussing the European Commission’s announcement regarding the importance of copyright harmonization).
\bibitem{42} Council Directive 91/250/EC was created for the goal of inclusion of computer programs for protection in all member states’ copyright protection laws. \textit{CONCISE EUROPEAN COPYRIGHT LAW}, \textit{supra} note 11, at 211–38.
\bibitem{43} Caviedes, \textit{supra} note 10, at 210–11.
\bibitem{44} See id. at 210–11 (describing how the Computer Programs Directive aimed to protect state of the art content).
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following year. This directive’s inception was also in response to growing technological advances. New technologies offered easier ways to share materials—via internet databases—and the E.U. again felt that it was necessary to harmonize the treatment of such processes among member states so as not to affect internal market and trade mechanisms.


Because of the mix of common law and civil law jurisdictions within the E.U., many differences existed in their treatment of copyright—differences that could trace their roots back to the eighteenth century. In an effort to truly maximize the harmonization process of copyright laws for member states, the E.U. instituted its first broadly scoped directive on the subject, the Term Directive. The Term Directive was aimed at harmonizing the duration of copyright protections among all member states who, up to that point, still retained their individual legislation. The directive spawned from a conflict of individual legislation between Germany and Denmark, where copyright protections had expired earlier in Denmark than in Germany. This difference created a problem because one could put copyrighted material on the market simply by crossing the border. Though it was a massive step towards harmonization of copyright protections in the E.U., the Term Directive was only a building block for later directives.

Following this first effective directive in the realm of copyright protections, the E.U. passed a series of directives on the subject. The most substantial of these

46. Council Directive 92/100/EEC was created as a means of harmonization among member states of the E.U. due to increased manners in which copyright material could be rented or lent. See CONCISE EUROPEAN COPYRIGHT LAW, supra note 11, at 239–62 (discussing the legislative history and scope of directive).

47. Id. at 239.

48. Id.

49. Since the seventeen hundreds, England had established that statutory regulation superseded any natural right an author had to their work, in stark contrast to the adherence to the existence of an author’s natural right to their work in continental Europe. Khan, supra note 9.

50. Council Directive 93/98, 1993 O.J. (L 290) 9 (EC); CONCISE EUROPEAN COPYRIGHT LAW, supra note 11, at 287–305. It is important to note that the Term Directive was actually the third directive passed in relation to copyright protections. It is my argument, however, that the Term Directive was the first directive instated in the E.U. that actually achieved the desired effect of harmonization of copyright protection laws because it touched on all types of copyright materials, as opposed to the narrower scope of the Computer Programs Directive and the Rental and Lending Right Directive. For a detailed explanation of those two directives, see id. at 211–62 (providing explanations of the Computer Programs Directive and the Rental and Lending Right Directive).

51. Council Directive 93/98/EEC was aimed at harmonizing copyright duration so that it would not affect the internal market of the E.U. and allow for copyrighted goods to be sold and purchased transnationally. Id. at 287–88.

52. Id. at 287.

53. Id.

54. To date, seven directives exist in the E.U. on copyright protections and related rights. 19 MIREILLE VAN EECHoud ET AL., INFORMATION LAW SERIES xv (P. Bernt Hugenholtz eds.,
directives came in 2001: the Information Society Directive. This directive aimed to implement the already-existing World Intellectual Property Organization Copyright Treaty (WIPO Treaty) in all member states, as well as provide blanket provisions to member states in an effort to harmonize copyright protection elements—specifically exceptions. Article 5 of the Information Society Directive is the most substantial and the most heavily debated provision in the directive—providing mandatory exceptions, a list of optional limitations to the rights of reproduction and communication to the public, and an allowance for member states to craft their own limitations for the right of distribution.

The list of limitations given in Article 5 remains an item of debate among legal scholars throughout the E.U. While there are express limitations in the provisions of Article 5, no clarification has ever been given as to whether or not this list of limitations is exhaustive and thus the only limitations permissible in member states. This lack of clarification, with little direction from E.U. courts or legislators, left the interpretation of Article 5’s provisions in a very grey area.

The Article 5 provision created yet another conflict—the optional nature of the limitations on copyrights. Because the original intent of the directive was to harmonize treatment of copyright protections in member states, it seems almost counter-intuitive to include optional limitations—prompting harsh criticism of the directive from European legal scholars. While the directive indeed achieved an


56. Id. The WIPO Treaty dealt with copyright issues arising from the increasing amount of technology being implemented into society, and extended copyright protections to these new technological pathways to information, such as computer programs and Internet databases. See Julie S. Shemblatt, The WIPO Copyright Treaty, 13 BERKELEY TECH. L. J. 535, 535 (1998) (discussing the purpose of the WIPO Treaty).


58. Id.

59. Guibault argues that the language of Article 5 does not intend to provide a closed list of limitations. She further argues technological advances would have no protections if the member states took as exhaustive all possible limitations of the Article’s language. Id. at 56–57. This construction is not feasible in practice in the E.U. because of its inflexibility. Id. This argument lends considerable support to the idea of flexible legislation that can be expanded upon as environmental circumstances, such as available technology, continue to develop—much like what happened at Berne and the need for subsequent revision conferences. Id.

60. See id. at 56. (“The regime established by the Information Society Directive leaves Member States ample discretion to decide if and how they implement the limitations contained in Article 5 of the Directive . . . . This latitude . . . follows . . . from the fact that the text of the Directive does not lay down strict rules that the Member states are expected to transpose into their legal order.”).

61. Id. at 56.

62. See, e.g., Bernt Hugenholtz, Why the Copyright Directive is Unimportant, and Possibly
initial amount of harmonization, the inclusion of the Article 5 provision lost any possibility of full harmonization in regards to limitations on copyright protections. Member states were given full authority to pick and choose which limitations they wished to include in their individual legislation—leaving little ability to predict how a specific work would be protected in different E.U. nations.63

The current dissatisfaction of publishers of newspapers and other periodicals stems from the relative uncertainty that the Information Society Directive gave on the scope of copyright protections and their limitations within the E.U.64 Relatively relaxed standards for protection of electronic aggregation of information existed under the Information Society Directive.65 As a result, tolerance for news aggregators—like Google—providing links and snippets of online newspaper articles from their original sources without authorization of the publisher became entrenched throughout the E.U.66 The fight of these publishers has increasingly intensified in the 2010s, with German and Spanish legislative bodies taking measures to require publisher authorization from a far more inclusive group—one that includes Internet news aggregators.67

III. THE GERMAN CASE: LEX GOOGLE

Google is no stranger to legislation that limits its capabilities with respect to what it may legally publish without infringing upon copyrights of publishers within the E.U.68 Prior to the proposal of the colloquially-named tasa Google69
(Spanish for “Google tax”) in Spain, the most notable of these disputes was the passage of legislation in Germany that limited Google’s ability to publish anything other than a link to publishers’ works.70 These German regulations, known as the Lex Google,71 allowed publishers the right to a royalty in the form of a tax paid by Google for its diffusion of anything other than a link to the article, such as a thumbnail picture or article summary.72 The German Lex Google was the most substantially limiting legislation passed in the E.U. until the tasa Google was proposed, and in many ways the Spanish legislature used the Lex Google as a loose framework for the development of its own variation on the same issue, the Canon AEDE.73

A. Google Disputes in Other E.U. Countries

A substantial number of talks among E.U. member legislators preceded the passage of any real legislation against Google and other news aggregators.74 Both Belgium and France discussed bill proposals that would require a fee payment for link and snippet displays of news articles.75 However, these proposals quickly lost momentum after Google entered into agreements with local publishers to help fund their struggling industry.76 These negotiations failed in Germany,77 and gave way for German legislators to commence their endeavor to implement fee requirements for news aggregators.78 The following sections will discuss in detail each of the individual approaches undertaken in Belgium, France, and Germany, in their

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69. Canon de la Asociación de Editores de Diarios de España (B.O.E. 2014, 11404) (Spain).
71. Urheberrechtsgesetz [UrhG] [Copyright Act], Dec. 5, 2014, BUNDESGESETZBLATT, TEIL I [BGBl. I], as amended, at § 87f (Ger.).
73. Id.
75. See generally id.; see also Taxing times; Newspapers versus Google, supra note 66 (discussing the rise of paywalls in Internet news).
76. See Google sets up £52m fund to settle French publishing row, THE GUARDIAN (Feb. 1, 2013, 5:45 PM), http://www.theguardian.com/technology/2013/feb/01/google-52m-fund-help-french-publishers (explaining the agreement between Google and French news organizations that is aimed at helping fund a mass digitization initiative of French publishers).
77. See Essers, supra note 68 (citing a statement by the Federation of German Newspapers that the deal struck in France was not suitable for negotiations between Germany and Google).
78. Leistungsschutzrecht für Presseverleger (LSR) was not proposed without merit. See Rosati, supra note 74 (explaining the findings of the studies). Two studies, conducted by the University of Iowa/ETH and Boston University, had a substitution effect on publishers’ websites, resulting in reduced traffic on their own webpages and the bulk of consumer traffic found on the news aggregators’ sites. Id.
attempts to impose fees on Google.

1. Belgium

Belgian courts addressed the issue of copyright protections for Belgian publishers in relation to online search engines as early as 2006, a whopping seven years prior to the passage of Germany’s Leistungsschutzrecht für Presseverleger. The initial case, between Copiepresse and Google, centered around Google’s “Google News” service that was launched in Belgium in early 2006. Copiepresse, an organization made up of Belgian publishers, submitted complaints about the amount of information provided by Google News beyond the mere hyperlink to articles. Among the issues in Copiepresse’s complaint were the display of lines of text from the article and Google providing the cached link to the article, which Copiepresse used as evidence of copyright infringement by Google.

The Belgian court in Copiepresse rejected the idea that publishers had impliedly licensed Google’s inclusion of the link to its article by failing to set parameters of exclusion in its terms of use agreement. The dispute between the publishers and Google ensued for nearly five years, with the court deciding against Google in its appeal in 2011. Copiepresse’s win in the appeal case, while seemingly a victory for publishing rights in Belgium, backfired against the conglomeration of Belgian publishers after Google refused to provide click-through traffic to their respective articles, resulting in severely reduced online traffic. By the end of 2011, Copiepresse backed down, and allowed Google to again index their publications.
publishers’ links in Google’s search index was an agreement by Google to share profits generated from advertising on its search results page with the publishers. Copiepresse’s ultimate surrender and renewed inclusion in Google’s search index brought an end to the idea of imposing fees against Google in Belgium.

2. France

Threats of action against Google in France came shortly after the Belgian litigation began. After years of discontent among French publishers, the French government revitalized the idea of la Taxe Google in early 2011. In addition to providing support for the dying French Internet Service Provider industry, the push for the tax came following a report released by the French Competition Authority in 2010 that claimed Google held a dominant position in the search engine advertising market and identified “possible exclusionary conduct” and “possible operational abuses.” This report highlighted grievances about Google’s transparency efforts, citing publisher dissatisfaction with the lack of information about revenue Google received from traffic that resulted from inclusion of excerpts of publishers’ content.

Debates among French politicians caused delays in the proposed bill’s


89. See Meyer, supra note 87 (outlining the deal struck between Google and the Belgian media, which included a promise from Google to pay legal fees and work with the publishers to develop a course of action that would result in mutually beneficial profits); see also Geerrts, supra note 88 (reporting that in addition to paying legal fees, Google would allow publishers to take advantage of advertising space on its search results pages, work to develop subscription plans with publishers to generate more revenue for both entities, and further implement Google advertising on publishers’ source pages).


91. See Meyer, supra note 87 (describing the end of the litigation between Google and Belgium).

92. Originally proposed by the French Ministry of Culture and Communication in 2010, la Taxe Google required Google and other search engines to pay a fee for their use of advertising space, such as banners and sponsored links, on the Internet as a means of financing a universal music downloading site that would provide cheap downloads and simultaneously deter consumers from illegal downloads. See generally Matthew Lasar, La Taxe Google is back this time to help French ISPs, ARSTECHNICA (Feb. 16, 2011), http://arstechnica.com/tech-policy/2011/02/la-taxe-google-is-back-this-time-to-help-french-isps/. Its revival in 2010, however, was aimed at requiring Google and its competitors to pay a tax to contribute to the downtrodden French Internet service provider industry. See generally id.


94. Id.
implementation which stood to bring a profit of more than €25 million to the French state. In early 2013, Google and French officials signed an agreement that prevented the legislation’s passage. The agreement, similar to the resolution of Google’s dispute with Belgian publishers, outlined Google’s plans to put €60 million towards the digitization of French publications in exchange for no legislation requiring a tax for publisher content displayed on Google’s search results.

3. Italy

In early 2011, the Italian Competition Commission dismissed a case brought against Google by the Italian Federation of Newspaper Publishers (FIEG). The complaint alleged that Google forced Italian publishers to permit Google to access and display content from their publications on Google’s news aggregation site for free in order to be indexed on Google sites. The options given to Italian publishers, per their complaint to the Competition Commission, were limited: they either had to grant Google full access to their content for free, or were completely blocked from Google and the online traffic it stimulates. Google controlled about 90 percent of the national search market.

Google attempted to remedy its relationship with FIEG by allowing publishers in Italy to select and remove content displayed on Google News’s Italian site without the removal affecting the publishers’ search results on other Google sites. Google also promised Italian publishers that they would be informed of the percentage of revenue they were receiving from Google’s sale of advertising space on publisher’s sites.


96. See Google to pay 60 million euros into French media fund, REUTERS (Feb. 1, 2013, 2:10 PM), http://www.reuters.com/article/2013/02/01/us-france-google-idUSBRE91011Z20130201 (describing the details of the agreement, signed by French president Francois Hollande and Google’s executive chairman, Eric Schmidt).

97. Id.


99. See David Wood, EU Competition Law and the Internet: Present and Past Cases, 7 COMPETITION L. INT’L 44, 45 (2011) (comparing the allegations of Italian publishers to that of German publishers, citing the lack of revenue for publishers while Google made billions from public traffic on its site).


103. Id.
Even though the complaint was dismissed, the incident played an important role in bringing to light the exploitation of local publishers by Google and other search engines. Adding to the disputes from other member states of the E.U. mentioned above, the Italian case highlighted just how dominant a position Google held in national search engine markets in Europe.104

B. Leistungsschutzrecht für Presseverleger

The German Bundesrat, one of Germany’s legislative bodies composed of appointed members from each state of the German Federation,105 approved the Leistungsschutzrecht für Presseverleger (LSR) on March 22, 2013.106 This approval came after the Bundestag, a lower German legislative body comprised of members elected by the German public, passed the LSR statute.107 The legislation’s original text established an exclusive right for publishers to promulgate their publications for commercial purposes within a one-year period.108 This right translated to a requirement for Google and other search engines to pay a fee each time they use the information in an article produced by a publisher to provide excerpts along with the link to the article.109 Shortly before the legislation’s passage, however, the language of the legislation was amended to provide an exception for displays of short snippets and/or single words.110

The conflict between German publishers and Google has continued with intensity. In October 2014, Google announced that it would no longer provide summary snippets or thumbnails of links to articles published by those German publishers who refused to waive their right to payment.111 Smaller publishers who opted out of the fee guaranteed to them by LSR were untouched by the search engine’s new policy.112 This decision has left many questions about the effectiveness of LSR unanswered—namely, will the legislation actually bolster publishing industries within the E.U., or will it merely serve as a means of dramatically reducing Google’s presence there?

104. See 2013 Search Engine Market Share by Country, supra note 101 (showing that Google was the most popular search engine provider for every European country listed).


106. See Rosati, supra note 74 (giving legislative background on the passage of LSR by German legislative bodies).


108. Rosati, supra note 74.

109. Id.

110. Id.

111. In a blog post dated October 1, 2014, Google Germany announced that it would no longer provide snippets and thumbnail photos for links to articles published by publishers organized under VG Media, a conglomeration of German publishers who have maintained their right to payment by Google for including such information on their search page. News on News with Google, DER OFFIZIELLE GOOGLE PRODUKT-BLOG (Oct. 1, 2014), http://google-produkte.blogspot.de/2014/10/news-zu-news-bei-google.html?spref=tw.

112. Id.
The *lex Google* broke ground among E.U. member states as an example, albeit relatively weak, of legislative action in response to outcries of Google taking advantage of local publishing industries.\textsuperscript{113} While it is easy to point out the shortcomings of the legislation, such as the ability of publishers to “opt out”—effectively providing Google with leverage to combat publishers’ efforts to collect the fee guaranteed to them—and the possible effect it may have on Google’s presence in Germany, it requires a much more adept mind to grasp the positive goals the legislation aimed to achieve.\textsuperscript{114} Search engines like Google have used their dominant presence among web users as ammunition to coax favorable legislation in intellectual property law since the Internet industry’s explosion at the turn of the millennium.\textsuperscript{115} Legislation such as the *lex Google* is aimed at providing a fair playing field among search engines and the sources of their links—publishers.\textsuperscript{116}

\textbf{C. Effects on Google}

The imposition of these measures has had a minimal effect in restricting Google’s ability to provide excerpts with hyperlinks to publishers’ articles. However, the trend of E.U. member states taking action against Google and other search engines in the realm of intellectual property protection displays the changing attitudes towards the free and unfettered diffusion of publisher content, no matter how small, by digital sources. What was at its onset a great innovation, has since become an infringement upon the rights of original creators and their works.

Several other E.U. member states, most notably the United Kingdom, took notice of these actions against Google.\textsuperscript{117} Maryanne Stanganelli, a British attorney, initiated a discussion of the treatment of original content uses by online news aggregators following the Copiepresse decision.\textsuperscript{118} Within her argument, Ms. Stanganelli took note of cases discussing the issue of copyright protection extending to headlines, as long as they were “original,” beginning with the Scottish case, *Shetland Times v. Wills*\textsuperscript{119} in 1996.\textsuperscript{120} The judge, Lord Hamilton, made an interesting finding—he saw no merit in the argument by the defendant news aggregator that the plaintiff, who created the content in question, gained any

\begin{itemize}
\item[113.] Eleonora Rosati alludes to a similar theory in her article, alleging that the LSR may serve as a framework for further legislation in Germany and elsewhere in the E.U., which could have the beneficial effect of reducing future transactional costs. Rosati, * supra* note 74.
\item[114.] Id.
\item[115.] Id.
\item[116.] Id.
\item[117.] See generally Maryanne Stanganelli, *Spreading the news online: a fine balance of copyright and freedom of expression in news aggregation*, 34(11) EURO. INTELL. PROP. REV. 745 (2012).
\item[118.] Id.
\item[119.] (1997) CSOH 316.
\item[120.] Id. at 747 (citing to *Shetland Times v. Wills* (1997) CSOH 316). A broad definition of originality emerged from *Shetland Times* and other European cases. Id. at 747–48.
advantage by being available on their site.\textsuperscript{121} While that case later settled and no judgment on the merits was issued, it is important to note the court’s rejection of a news aggregator’s argument that because it provided additional accessibility to the original author’s site, it was immune from regulations that copyright protections of the author demanded.\textsuperscript{122} This sentiment served as the basis for litigation initiated on behalf of publishers within the E.U. against Google, and arguably is an idea upon which the Spanish Canon AEDE expands—transforming the idea from judicial dicta to legislation.\textsuperscript{123}

IV. CANON AEDE

The Canon AEDE is the product of years of both societal and technological developments. The root of the legislation is in the original European Union directives previously mentioned.\textsuperscript{124} The \textit{Ley de Propiedad Intelectual},\textsuperscript{125} the primary Spanish legislation that incorporated those previous European Union directives as a means of governing intellectual property rights of authors and artists, served for nearly two decades as the authority on intellectual property protection in Spain.\textsuperscript{126} Following the heightened scrutiny of Google by publishers around the E.U. and the outcry for stronger protections of published news content, Spanish publishers began to take action of their own in a push for change in protections for authors and artists alike.\textsuperscript{127}

The Canon AEDE was the legislative response to that push. Spanish legislators drafted a bill that created a new and inalienable right of publishers to receive compensation for reproduction of all parts of their works, including snippets provided in summary form on news aggregator sites like Google News.\textsuperscript{128} While debates surrounding the legislation continue, the Canon AEDE went into effect on January 1, 2015.\textsuperscript{129}

\begin{itemize}
\item \textsuperscript{121} Stanganelli, supra note 117, at 747.
\item \textsuperscript{122} Id.
\item \textsuperscript{123} See id. at 747–48 (examining a suit by Copiepresse, a copyright management company for Belgian publishers of French and German language daily newspapers, against Google News service).
\item \textsuperscript{124} Javier Diaz Noci, \textit{Let’s make them pay: A comparative legal study of the so-called ‘Google tax’ in Europe and Brazil}, VI CONGRESO INTERNACIONAL DE CIBERPERIODISMO Y WEB 2.0, \url{http://grp.upf.edu/sites/default/files/news-files/JDNvicongreso-ciberperiodismo.pdf} (last visited Nov. 4, 2015).
\item \textsuperscript{125} Ley de Propiedad Intelectual (B.O.E. 1996, 8930) (Spain).
\item \textsuperscript{127} See Hern, supra note 7 (describing Spanish publishers’ push for legislation providing protections for authors).
\item \textsuperscript{128} Id.
\end{itemize}
A. Prior Intellectual Property Legislation in Spain

Prior to the creation and passage of Ley 21/2014,\(^{130}\) the official name of the tasa Google, Spanish intellectual property was governed by the Ley de Propiedad Intelectual,\(^{131}\) which incorporated the European Union Directive 93/98/EEC, the Term Directive, into Spanish law.\(^{132}\) The original legislation was aimed towards the collective goal within the E.U. of harmonization of copyright protection, and the Ley de Propiedad Intelectual essentially served as a mirror for the terms in the Term Directive to be reflected without change in Spanish legislation.\(^{133}\)

The legislation was the last in a series of attempts by the Spanish legislature to keep up with new E.U. directives in response to the changing climate of intellectual property throughout the 1990s. RDL 1/1996, the official name of the Ley de Propiedad Intelectual, subsumed all the constituent pieces of legislation in Spain dealing with intellectual property treatment and created a comprehensive document of all regulations and protections extended to intellectual works.\(^{134}\)

Although intellectual property continued to grow throughout the next twenty years, no new Spanish legislation or amendment to the RDL 1/1996 was passed.\(^{135}\) By the end of the 2000s and the start of the 2010s, several countries around the E.U.—such as those mentioned earlier in this note—began to push for greater protections of intellectual property than those included in the original directive, RDL 1/1996.\(^{136}\) This collective push soon extended its influence to the Iberian Peninsula, and Spanish publishers took notice.\(^{137}\)

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\(^{130}\) Canon de la Asociación de Editores de Diarios de España (B.O.E. 2014, 11404) (Spain).

\(^{131}\) Ley de Propiedad Intelectual (B.O.E. 1996, 8930) (Spain).

\(^{132}\) Implementing the EU Copyright Directive, FOUND. FOR INFO. POL’Y RES. 114, http://www.fipr.org/copyright/guide/eucd-guide.pdf (last visited Nov. 4, 2015). For a description of this directive, see supra note 55. In the E.U., directives are a form of secondary law produced by the European Commission. These directives provide goals that each member state must meet, but the form in which a member state meets these goals is left to the discretion of its governing body. Spain implemented the goals of Directive 93/98/EEC via the Ley de Propiedad Intelectual. For a more detailed discussion of implementation of directives in member states, see Monitoring implementation of EU directives, EUR. COMM’N (Sept. 12, 2014), http://ec.europa.eu/atwork/applying-eu-law/implementation-monitoring/index_en.htm (last updated Aug. 6, 2015).

\(^{133}\) The Spanish legislation served as an incorporation of the directive and did not substantially depart from its original language. See Ley de Propiedad Intelectual (B.O.E. 1996, 8930) (Spain) (explaining that the legislation was to incorporate the E.U. directive).

\(^{134}\) Id.

\(^{135}\) See Spain/5.1 General Legislation: 5.1.7 Copyright Provisions, supra note 126 (stating that the next amendment to the RDL 1/1996 was passed in 2014).

\(^{136}\) See, e.g., supra note 62 and accompanying text for a discussion of other European countries’ efforts toward greater protection of intellectual property.

B. The Push for Change

The AEDE has long been on the front lines of the Spanish fight against Google’s unfettered reproduction of publishers’ content.\textsuperscript{138} Leaders of the organization, having seen the efforts of publishers in Belgium, France, Italy, and Germany,\textsuperscript{139} began heavily lobbying the Spanish government for change in intellectual property protections for newspaper publishers in 2009.\textsuperscript{140} Drawing on the successes in France, publishers of the AEDE began speaking publicly about the need for further protection of rights of publishers.\textsuperscript{141}

In 2013, with the passage of the German LSR\textsuperscript{142}—the first legislation to impose a royalty fee on online news aggregators for their usage of snippet summaries from published content\textsuperscript{143}—the AEDE finally saw an opportunity to solidify an expanded definition of the rights they had advocated for over the past five years.\textsuperscript{144} The AEDE and its constituent publishers ramped up their fight for increased protections of publishers’ rights, with a focus on Spanish legislation that was modeled after the German LSR.\textsuperscript{145}

In February of 2014, the Spanish Congreso de los Diputados\textsuperscript{146} issued the initial proposal that the AEDE had been fighting for the previous five years—the

\textsuperscript{138} See El ‘canon AEDE’: claves del presente y el futuro de la tasa de agregación de contenidos, 20 MINUTOS (Jan. 1, 2015), http://www.20minutos.es/noticia/2333392/0/claves-canon-aede/ley-lassalle/propiedad-intelectual/ (describing chronologically the fight from publishers against Google under the AEDE, which first began in the 2000s).

\textsuperscript{139} These efforts are explained in further detail in the section entitled “The German Case: lex Google.”

\textsuperscript{140} See El ‘canon AEDE’, supra note 138 (describing how Google’s advertising in Europe was curtailed by opposition from a branch of the AEDE).

\textsuperscript{141} French publishers settled with Google in 2010 and received hefty financial assistance to revive the French news publisher industry. Perea, supra note 137.

\textsuperscript{142} Urheberrechtsgesetz [UrhG] [Copyright Act], Dec. 5, 2014, Bundesgesetzblatt, Teil I [BGBl I], as amended, at § 87f (Ger.).

\textsuperscript{143} See Google News is Closing in Spain Because of Copyright Law, GIZMODO, (Dec. 11, 2014, 3:50 AM), http://gizmodo.com/google-news-is-closing-in-spain-because-of-copyright-la-1669694881 (noting that Germany’s attempt at requiring Google to pay royalties was a failure because publishers immediately decided to opt out once they saw how the new law negatively impacted traffic to their sites).

\textsuperscript{144} Spanish intellectual property law introduced in 2006 provided a mechanism for Spanish publishers to receive licensing fees for press clipping by online news aggregators, but due to vagueness in the process, it was rendered largely ineffective. Raquel Xia Labarder Plantada, A bill to amend the Spanish IP Law, KLUWER COPYRIGHT BLOG, (Jul. 10, 2014), http://kluwercopyrightblog.com/2014/07/10/a-bill-to-amend-the-spanish-ip-law/. Spanish press-publishers continued to push for a compensation mechanism despite recent events in Germany demonstrating that news aggregators actually benefited press-publishers, even without directly compensating publishers. Id.

\textsuperscript{145} Id.

\textsuperscript{146} The Congreso de los Diputados is the lower house within the two-chamber Spanish legislature. For more information, see Congress: Functions, CONGRESO DE LOS DIPUTADOS, http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Funciones1 (last visited Sept. 11, 2015).
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project for reform of the *Ley de la Propiedad Intelectual*.
Interestingly, the proposal came a day after a Court of Justice of the European Union (CJEU) ruling on the same subject. The ruling from CJEU, however, found that linking to free works that are already available online—a practice most news aggregator sites participate in—is not an infringement of copyright. This was the opposite conclusion from the one reached by the Congreso de los Diputados with their proposal for reform, which included the *tasa Google*.

After the initial bill proposal, opinions on its effectiveness in accomplishing the goals set forth were thrust into the public domain. Amidst a sea of negative conceptions of the bill’s possible effect on the Spanish newspaper industry and issues relating to accessibility of information within Spain, the AEDE continued to lobby for the bill’s passage and highlight the substantial positive effect the legislation, if passed, was intended to achieve.

Commenting on the practical failure of the German LSR with regards to enforcing compensation rights of publishers, critics of the proposed Canon AEDE in Spain opined that any Spanish attempt would fail in the same way that the German LSR had.

Finally, in October 2014, after months of heavy lobbying on the part of the AEDE, the Spanish Congress passed the Canon AEDE. Following a rocky December for the Spanish online news industry with the closure of Google News in Spain—which left after determining that the new tax created an unsustainable business outlook because of high potential fines and zero advertisement revenue

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147. Proyecto de Ley por la que se modifica el Texto Refundido de la Ley de Propiedad Intelectual, aprobado por Real Decreto Legislativo 1/1996, Ley 1/1200, Ley de Enjuzamiento Civil [L.E. Civ], (B.O.C.G. 2014, 121).


149. Id.

150. For a discussion on the bill proposal’s relation to the decision reached by the CJEU in *Svensson*, see Xalabarder Plantada, supra note 144.


152. Perea, supra note 137.


156. Laura Lorenzetti, *Google News shutters in Spain in response to ‘Google Tax’ law*,

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149. Id.

150. For a discussion on the bill proposal’s relation to the decision reached by the CJEU in *Svensson*, see Xalabarder Plantada, supra note 144.


152. Perea, supra note 137.


156. Laura Lorenzetti, *Google News shutters in Spain in response to ‘Google Tax’ law*,
C. **Goals and Terms of the Legislation**

The intellectual property industry accounts for approximately four percent of Spain’s gross domestic product (GDP).\(^{158}\) The Canon AEDE, in its introductory section, cites this economic weight as an impetus for change in the protections afforded to authors and artists.\(^{159}\) The authors of the legislation pay homage to the initial *Ley de la Propiedad Intelectual* as an effective measure in establishing the initial protections of intellectual property, but point to the law’s inability to adapt to current social, economic, and technological realities.\(^{160}\)

The bill is structured into two main articles, each of which reforms intellectual property regulations with respect to the previous two laws enacted in Spain on the subject—RDL 1/1996\(^{161}\) and Ley 1/2000.\(^{162}\) For the purposes of this note, it is only necessary to focus on the first article of the legislation, which deals exclusively with reforms to the *Ley de la Propiedad Intelectual*.\(^{163}\)

Perhaps the most distinguishing element of the legislation is its creation of compensation to publishers from news aggregators as an inalienable right.\(^{164}\) This clause distinguishes the Canon AEDE from the German LSR,\(^{165}\) which gave authors the right to waive their right to compensation.\(^{166}\) By providing inalienable rights to Spanish publishers, Spanish legislators have clearly communicated that compensation by news aggregators to publishers is not just an exclusive right to

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\(^{158}\) *Id.*

\(^{159}\) *Canon de la Asociación de Editores de Diarios de España* (B.O.E. 2014, 11404) (Spain).

\(^{160}\) *Id.*

\(^{161}\) *Ley de Propiedad Intelectual* (B.O.E. 1996, 8930) (Spain).


\(^{163}\) *Ley de Propiedad Intelectual* (B.O.E. 1996, 8930) (Spain).

\(^{164}\) *Canon de la Asociación de Editores de Diarios de España* art. 32 (B.O.E. 2014, 11404) (Spain).

\(^{165}\) Urheberrechtsgesetz [UrhG] [Copyright Act], Dec 5, 2014, *BUNDESGESETZBLATT, TEIL I [BGBl I]*, as amended, at § 87f (Ger.).

\(^{166}\) The German LSR provided for an “exclusive right” of publishers to collect compensation for the reproduction of their works by news aggregators, leaving the ability to enforce or waive this right in the hands of the publisher—many of which chose to waive their right to compensation when faced with Google’s total withdrawal from the German market. See Rosati, *supra* note 74 (explaining that requiring search engines to pay a fee to display text snippets hurts small news aggregators).
publishers as it was in Germany, but rather a requirement of all Spanish publishers.

Spanish legislators also laid out a method of receiving and administering compensation received in the Canon AEDE’s language. Similar to the existing method in which the Sociedad General de Autores y Editores collects and distributes remuneration for music rights, the legislation contemplates a method in which a collective organization will serve as the source for payment of royalties, which publishers join in order to collect the revenue earned from aggregation of their content. The bill also contains a provision governing how unclaimed funds should be utilized. Several possibilities of how unclaimed funds should be used are laid out in the provision, with the ultimate choice left to the discretion of the remuneration management entity.

Sanctions for the illegal usage of published content without payment to its publisher are also represented in the legislation. While no set amount is contemplated, legislators provided a range in the amount they deemed appropriate for fines for an aggregator’s first infraction. The fine may be no less than €150,001 and no more than €600,000. With even the minimum fine amount at a substantial sum, it is evident that the Canon AEDE has the goal of deterring violations of its provisions by news aggregators—another departure from the German LSR’s framework.

As further deterrence, the Canon AEDE provides for

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167. Urheberrechtsgesetz [UrhG] [Copyright Act], Dec 5, 2014, BUNDESGESETZBLATT, TEIL I [BGBl.], as amended, at § 87f (Ger.).

168. Many critics have argued that this clause is damaging to the Spanish publishing industry because small publishers, the majority of whose content appears online, will no longer have access to news aggregators that generated much-needed traffic to their content. See Julio Alonso, The Story of Spain’s Google Tax, MEDIUM (Jul. 27, 2014), https://medium.com/@JulioAlonso/the-story-of-spains-google-tax-5434d746df48 (arguing that the inalienable right provision is too restrictive on small news aggregators because there is no opt out available for published works).

169. Canon de la Asociación de Editores de Diarios de España art. 154 (B.O.E. 2014, 11404) (Spain).


172. Canon de la Asociación de Editores de Diarios de España art. 154 (B.O.E. 2014, 11404) (Spain).

173. Id. at art. 154(5).

174. Id. at art. 154(5)(a–d).

175. Id. at art. 154(5).

176. Id. at art. 158(1).

177. Id. at art. 158(6).


179. The German legislation did not contemplate a fine for violation of its provisions, as
a possible suspension of up to one year of services of the news aggregator following a second violation.\textsuperscript{180} Determination of whether a violator’s second offense warrants the maximum penalty is left in the hands of the Spanish judiciary,\textsuperscript{181} leaving violators at the mercy of the Spanish courts.

It is clear from the language of the legislation that the implementation of the tax is not aimed solely at Google, but rather all online news aggregators—including those based in Spain.\textsuperscript{182} The Canon AEDE’s German predecessor also included all news aggregators,\textsuperscript{183} and the Spanish legislation borrows this inclusionary idea from the LSR.\textsuperscript{184}

Article 1 of the Canon AEDE makes it clear that whatever remuneration management organizations emerge will be given tremendous discretion in deciding how funds received are to be distributed and the sanctions placed on violators of the legislation.\textsuperscript{185} Although no particular organizations are mentioned in the legislation,\textsuperscript{186} there have been several conclusions drawn as to what organizations will serve this function by third party commentators.\textsuperscript{187}

While the ultimate goal of the legislation and some of its terms can be gleaned solely from its body, how the Canon AEDE will truly function requires the legislation to be put into practice—a fact that has created a marked separation between its proponents and opponents.\textsuperscript{188}

\footnotesize
\textsuperscript{180} Canon de la Asociación de Editores de Diarios de España art. 158(6)(b) (B.O.E. 2014, 11404) (Spain).
\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Id.
\textsuperscript{184} Spanish news aggregator Menéame, a popular site similar to the United States’ Reddit, will also be affected by the legislation. Alonso, supra note 168. Many critics believe that the Spanish government actually had Menéame in focus when implementing the Canon AEDE. Id.
\textsuperscript{185} Langley, supra note 169.
\textsuperscript{186} Canon de la Asociación de Editores de Diarios de España art. 32 (B.O.E. 2014, 11404) (Spain).
\textsuperscript{187} As previously mentioned, these remuneration management organizations will have wide latitude on making decisions collectively for the publishers they represent. See id. at art. 154(5) (stating that the ultimate choice of how to used unnamed funds is up to the discretion of the managing organization).
\textsuperscript{188} The Cannon AEDE solely refers to any remuneration management organization in the abstract, which I take to be a method of not limiting the function of receiving and distributing funds to any one organization.
\textsuperscript{189} See Alonso, supra note 168 (suggesting that Centro Español de Derechos Reprográficos will serve as a management organization under the Canon AEDE).
\textsuperscript{186} See Spanish law raises concerns of EU-level ‘Google tax.’ EURACTIV.COM (Aug. 1, 2014, 8:52 AM), http://www.euractiv.com/sections/infosociety/spanish-law-raises-concerns-eu-level-google-tax-303829 (showing that the Spanish law has received criticism from a wide group of news advocates).
V. WHERE DO WE GO FROM HERE?

Since the Canon AEDE only went into effect on January 1, 2015, much still remains to be seen as to whether or not the legislation’s effects will be desirable and cause other nations to follow suit. As is generally true with every piece of landmark legislation, there are a multitude of opinions on both sides of the debate—these differing opinions are crucial in forming conclusions both on whether the legislation will be a success and whether or not the legal conclusion realized will be one that will translate across the rest of the E.U.

A. Proponents

The Canon AEDE has seen support from several organizations, most notably the AEDE, which represents the interests of Spanish publishers, and various members of the European Commission. For its supporters, the legislation marks a departure from the initial phase of the global digital economy and represents a new phase in protection of digitized intellectual works.

Not surprisingly, the largest facet of proponents for the Canon AEDE is comprised of major Spanish publishers who expect to benefit the most from the legislation’s terms. The AEDE, the organization that provided the namesake for the legislation, has been one of the largest supporting forces in enacting the reform. The AEDE has characterized the reform as a method of preserving publishers’ rights firmly in legislative form, giving the publishing industry in Spain the support it needs to avoid collapse. The publishers of the AEDE have


190. See About the European Commission, EUR. COMM’N, http://ec.europa.eu/about/index_en.htm (last updated June 1, 2015) (“The European Commission is the EU’s executive body. It represents the interests of the E.U. as a whole (not the interests of individual countries.”)).

191. See Méndez, supra note 135 (noting that the Canon AEDE is a result of lobbying by the AEDE, as a response to the challenges of an online world, and an attempt to reinvent the way publishers are paid).

192. See James Vincent, Spain’s ‘Google Tax’: Will charging companies to link to articles help or hurt newspapers?, THE INDEPENDENT (Aug. 19, 2014), http://www.independent.co.uk/life-style/gadgets-and-tech/news/spains-google-tax-will-charging-companies-to-link-to-articles-help-or-hurt-newspapers-9679248.html (noting that supporters say the Canon AEDE could raise as much as €80 million for the newspaper industry).

193. The AEDE President Luis Enriquez has continually voiced the organization’s support for the legislation and the goals it intends to achieve. See El ‘canon AEDE’: claves del presente y el futuro de la tasa de agregación de contenidos, 20 MINUTOS (Jan. 1, 2015), http://www.20minutos.es/noticia/2333392/0/claves-canon-aede/ley-lassalle/propiedad-intelectual/ (outlining the AEDE’s support for the recently enacted legislation).

194. In an interview, a spokesperson for the AEDE gave full support for the reform as a way to combat the danger the future of the Spanish press faces without further solidified protections for the rights of authors. “Nos avalan las leyes españolas y europeas, y vamos a perseverar para que nuestros derechos se apliquen con firmeza en todos los ámbitos y en todos los soportes.” (Rough translation: “We support Spanish and European laws, and we are going to
previously argued against the essentially unregulated ability of Google to reproduce sections of their works without consent from the publisher—a practice termed “press clipping.” In supporting the Canon AEDE, the AEDE and its constituent publishers believe protections of publishers’ rights will finally extend to every medium of reproduction and online news aggregators, like Google, will finally be accountable for their reproductions of published work.

Another important proponent of the *tasa Google* is Günther Oettinger, the newly-appointed Commissioner for Digital Economy and Society. As a member of the European Commission, the executive body of the E.U., Oettinger has the ability to influence the dispersion of protections for authors and artists throughout the rest of the Union’s member states. Like the Spanish legislation, Oettinger believes that authors’ rights should be further protected by some form of legislation—giving an inalienable nature to the rights of the authors. Oettinger, whose plan includes a unified digital marketplace in the E.U., plans to balance the interests of publishers and consumers in some form of directive or regulation that would achieve similar objectives to the *tasa Google*. While Oettinger has expressed interest in following Spain’s footsteps, he has maintained that balance between user interests and rights of creators of digitized content on the Internet.

Both the AEDE and the Commissioner recognize the unfair position that
Google holds in the digital economy—one of tremendous power.\(^{203}\) Google represents the majority share in the online search engine market,\(^{204}\) with users accessing its services from every corner of the globe far more frequently than any other available search engine.\(^{205}\)

While Google and other opponents of the legislation see the Canon AEDE as a direct attack on Google rather than the entire news aggregator industry,\(^{206}\) the entire industry is essentially comprised of Google.\(^{207}\) With Google’s immense market share also comes the ability of the company to determine what content can be discovered by potential readers, putting pressure on publishers around the globe.

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203. See, e.g., Perea, supra note 137 (characterizing Google as having a quasi monopoly).

204. See Sharon Gaudin, *On 15th anniversary, Google is a historical tech powerhouse*, COMPUTERWORLD (Sept. 27, 2013, 4:58 PM), http://www.computerworld.com/article/2485246/ internet/on-15th-anniversary—google-is-a-historical-tech-powerhouse.html ("[Google’s] information reach and control over advertising revenue likely make it more powerful than some governments and certainly stronger than either Microsoft or IBM were at their peak.").

205. In October 2014, Google made up a whopping 88.73% of the global market share of leading search engines, with its next-closest competitor, Bing, comprising a mere 4.43%. *Worldwide market share of leading search engines from January 2010 to July 2015*, STATISTA, http://www.statista.com/statistics/216573/worldwide-market-share-of-search-engines/ (last visited Sept. 11, 2015). Looking more broadly at the previous four years, Google has essentially solidified its position as the market leader among search engines, having never giving up more than 13% of the global market share of leading search engines. *Id.*

206. See Hern, supra note 7 ("The law is the latest volley in the war between European newspapers and Google.").

207. See *Worldwide market share of leading search engines from January 2010 to July 2015*, supra note 205 (highlighting the massive disparity in market share between Google and its competitors).
to remain in Google’s good graces in the hopes that their content will be prominently displayed in Google’s search results and generate substantial traffic to their online content.\textsuperscript{208}

Proponents of the Canon AEDE contend that the legislation will promote a more fair digital economy with respect to publishers’ rights by making Google more accountable for its news aggregation, thereby ushering in an era of healthy competition in which newspaper publishers may actually compete.\textsuperscript{209} The legislation, which differs from its German predecessor in that it does not contain an option for publishers to waive their right to compensation from a news aggregator,\textsuperscript{209} has the opportunity to serve as the model for all future legislation in the E.U. and even the rest of the world—an opportunity proponents believe the legislation will accomplish.\textsuperscript{210}

\textit{B. Opponents}

Google, backed by a large conglomerate of small publishers, other online news aggregators, and consumers fighting to preserve the status quo, has vehemently expressed its disapproval of the Spanish legislation.\textsuperscript{211} Google News, the branch of the corporation that the tax passage will predominantly affect, has already removed its links to published Web content.\textsuperscript{211} As the issue currently stands, it seems Google will take the same approach it did in Germany last year in the wake of the \textit{Lex Google}—remove its presence until the publishers concede their right.\textsuperscript{212} Because the legislation only recently came into effect, it remains

\begin{itemize}
  \item \textsuperscript{208} See Michael Liedtke, \textit{Google News going dark in Spain in dispute over ‘Google Tax’ for news publishers}, \textit{FOX BUSINESS} (Dec. 10, 2014), http://www.foxbusiness.com/technology/20141210/google-news-going-dark-in-spain-in-dispute-over-google-tax-for-news-publishers/ (citing Google’s assertion that it sends more people to websites that are highlighted in its news services).
  \item \textsuperscript{209} See Vincent, supra note 192 (discussing the hope that the Canon AEDE will revive the Spanish publishing industry).
  \item \textsuperscript{210} See id. (detailing how Spain’s law allows the country to go after infringing websites even if the websites don’t make money from the infringement).
  \item \textsuperscript{211} “The amendment to the Intellectual Property Law, which includes the right to compensation from the aggregators, is the most important step that a government in Spain has taken to protect the press. I am sure that this path that just opened will be followed by other European countries.”\textit{AEDE welcomes the amendment to the Law on Intellectual Property}, \textit{VOCENTO} (Feb. 14, 2014), http://www.vocento.com/en/notas-aede-satisfecha-modificacion-reconoce-obligacion-20140214.php (quoting Luis Enríquez the president of the AEDE regarding the Canon AEDE).
  \item \textsuperscript{212} See Lynette Mukami, \textit{Should Google pay publishers, media owners for news links?}, \textit{DAILY NATION} (Nov. 6, 2014), http://www.nation.co.ke/business/google-news-Spain-intellectual-property/-996/2513042/-sxxitus/-index.html (“Google is understandably disappointed by the decision of the Spanish parliament.”).
  \item \textsuperscript{213} See id. (“Google, in a bid to avoid the charges, responded by taking down the links to their sites completely.”).
unclear how Spanish courts will treat violations of the law or publishers’ concessions to Google by way of waiving their right to the tax.\textsuperscript{215} It seems probable, however, given the language of the legislation that deems the authors’ rights to compensation “inalienable” that publishers will be unable to concede this right and Google will not be able to share publishers’ linked content for free.\textsuperscript{216}

Many outside observers note that it seems “absurd” for news publishers to demand payment for news aggregators’ displays of their linked content when they already receive the benefit of increased Web traffic due to the content’s availability on the news aggregator’s site at no charge to them.\textsuperscript{217} In addition to providing increased traffic, Google has cited its continual cooperation in working with news publishers to ensure their online success—pointing to its creation of an Android store application, where publishers can offer their news services for a subscription fee, and its sharing of a portion of its revenue with online advertising partners.\textsuperscript{218}

Small publishers have attacked the AEDE for backing the legislation as a means of eliminating small online publishers and attempting to preserve the print sales of big Spanish news outlets.\textsuperscript{219} The AEDE, which is comprised primarily of large Spanish newspapers, has given substantial support to the reform, and would likely see a majority of the profits from royalty taxes paid by online news aggregators.\textsuperscript{220} The small publishers point to the legislation’s German precursor and its clause to opt out of the royalty fee in support of their position that the legislation has crippling implications for both the online news aggregators and small Spanish publishers, whom the legislation is supposedly intended to protect.\textsuperscript{221}

Anti-competition concerns have also been raised by opponents in favoring publishers over news aggregators in the digital marketplace.\textsuperscript{222} Members on both sides of the debate can see that the Canon AEDE clearly creates a right for the publishers and content creators without creating an opportunity for online news aggregators to negotiate alternatives with publishers.\textsuperscript{223}

\textsuperscript{215.} Id.
\textsuperscript{216.} Canon de la Asociación de Editores de Diarios de España art. 32(4) (B.O.E. 2014, 11404) (Spain).
\textsuperscript{217.} Mukami, supra note 212.
\textsuperscript{218.} Id.
\textsuperscript{219.} See Alonso, supra note 168 (indicating that the Canon AEDE legislation may lead to reduced new media discoverability, perhaps what large print publishers wanted).
\textsuperscript{220.} See id. (noting that the Canon AEDE pushed for the Google Tax and how payments have not yet been disclosed, but there is reason to believe only the AEDE members will receive distributions).
\textsuperscript{221.} See id. (noting German legislation provided the ability for publishers to refuse payments and small publishers are worried that legislation will cause the shutdown of Google News Spain and harm smaller digital publishers).
\textsuperscript{222.} See Mukami, supra note 212 (indicating that some think that Europe is resorting to anti-competitive protectionism).
\textsuperscript{223.} Canon de la Asociación de Editores de Diarios de España art. 32(4) (B.O.E. 2014, 11404) (Spain); see Banerjea, supra note 214 (“Germany for example also passed a similar law, but gave publishers the right to choose whether they wanted to charge the aggregator or not.”).
With the recent shutdown of Google News Spain, known locally as Google Noticias,224 opponents of the Canon AEDE have pointed to tangible negative consequences of the legislation’s passage in the face of proponents’ argument for abstract positive outcomes in the long run.225 The shutdown of Google News Spain eliminated a substantial source of news aggregation in Spain, forcing the public to search online through the few well-known Spanish newspapers, such as El País or El Mundo.226 One commentator from El Mundo analogized the closing of Google News Spain to the “dark times” of his parents’ generation under Franco,227 where the only place for Spaniards to find news was Radio España Independiente.228 While the comparison is dramatic, it does hold merit in the fact that Spaniards are now far more limited in their ability to quickly search through dozens of different news sources at the click of a button.

In addition to the negative effects opponents claim the legislation will have in Spain, they have also argued that Spanish news sources will now have a greatly diminished presence worldwide, effectively isolating Spanish publishers from the global news arena and confining them to the physical boundaries of the nation.229 Spanish citizens, many of who still have lingering memories of the isolation imposed under Franco’s regime,230 have fought to maintain Spain’s fertile and sustainable.


227. Almeida, supra note 216.

228. Under the Franco regime in Spain, heavy censorship was placed on radio stations throughout the nation. Marcel Plans, Radio España Independiente, La <<Pirenaica>> Entre el Mito y la Propaganda, http://lapirenaicadigital.es/SITIO/RADIOESPANAINDEPENDIENTE.pdf (last visited Sept. 11, 2015). Radio España Independiente was the only news service that did not reproduce government-mandated news and instead broadcasted independently by Spanish communist party exiles in Moscow. Id.

229. See Banerjea, supra note 214 (“Spanish publishers’ content will not be available on any Google News service not only in Spain but worldwide.”).

230. Generalissimo Francisco Franco was a Spanish military leader who led a successful coup against the monarchy during the Spanish Civil War and led Spain as a dictator from 1939 until his death in 1975. See generally STANLEY G. PAYNE & JESÚS PALACIOS, FRANCO: A PERSONAL AND POLITICAL BIOGRAPHY (2014). Under Franco, the various ethnic groups in Spain were forced to adopt Franco’s romanticized version of Spanish culture and were isolated socially and economically from the rest of the world during his regime. See generally id.
global post-dictatorship economy. Coupled with the crushing economic blow Spain experienced from the global recession of 2008–09, opponents of the legislation fear that a lack of participation in the global news industry by Spanish publishers will actually regress a modern Spanish economy back to an isolationist and underdeveloped form.

Opponents of the legislation organized themselves as a more effective means of combating the legislation that the AEDE and other proponents have advocated. These opponent groups have attracted a number of followers, mostly comprised of small and mid-sized publishers whose publications are Internet-based and fear that legislation like the Canon AEDE will eliminate their ability to compete. Surprisingly, even some large newspaper publication groups have joined the opposition movement to the bill, including the Asociación Española de Editoriales de Publicaciones Periódicas, an association of Spanish periodicals (AEEPP). In the days following the shut down of Google News Spain, negative responses from members of the Coalición Pro-Internet flooded the Internet—condemning Spanish legislators as incompetent and for perpetuating an image of Spain as a country that is “against progress.”


233. See Banerjea, supra note 214 (“It seems like a regressive move on the part of Spanish regulators.”).

234. Organizations like Coalición Pro Internet, comprised mostly of small, Internet-based publishers who believe that the Canon AEDE will eliminate their opportunity to compete with larger publishers, formed in response to the Canon AEDE proposal. See Alonso, supra note 168 (arguing that the inalienable right provision is too restrictive on small publishers).

235. See id. (indicating the legislation may be particularly harmful to digital-only publishers).

236. The AEEPP, Asociación Española de Editoriales de Publicaciones Periódicas, is one of the largest organizations of Spanish periodicals, reaching an estimated 2 million readers daily through online platforms and 125 million readers monthly through print media. Qué es AEEPP, AEEPP, http://www.aeepp.com/seccion/135/Que-es/ (last visited Sept. 25, 2015). The Coalición Pro Internet includes the AEEPP, which voiced its opposition to the Canon AEDE. Alonso, supra note 168.

237. Lorenzetti, supra note 156.

VI. CONCLUSION

As an intangible bundle of rights, intellectual property has always been a difficult legal concept for many to grasp. With the increased pressure from publishers throughout the E.U. to add further protection for their rights as authors, that invisible bundle of rights has become even more difficult to pin down, for both the general public and legislators alike. Legislation like the Canon AEDE attempts to reconcile publishers’ desire for added protection with already-established intellectual property norms.

While arguments continue to run rampant for and against the new legislation and the limits it imposes on the diffusion of published content on the Internet, one thing is certain: the norms that once governed copyright protections of publishers are changing at a rapid pace. The spike in demands for further regulations on global news aggregators like Google only began in the last ten years, creating relative certainty that the laws governing copyright face an immanent need for change. What remains, is the uncertainty of the effect that these new laws will have on the economy and the accessibility of information to the global public.

Many critics of imposing taxes on online news aggregators find it difficult to support a movement that has such tangible damaging effects on both accessibility of information and the economy. Yet, these tangible effects are a mere percentage of the total overall effects legislation of this type will have on the global news industry. Google, a multibillion-dollar corporation, has established itself as the premier online search engine throughout the world, as evidenced by its enormous market share in the global search engine market. In the pre-Canon AEDE Spain, Google was given free range on what content it displayed in its search results—without any input or permission from the content’s original publisher. In addition to giving enormous power to Google and other online news aggregators by allowing them to display content published by others without any need for a license or permission from the author, these news aggregators were also able to supersede any individual publishers within the online news resource realm with their ability to pool literally thousands of articles from dozens of different sources in one place.

The German LSR was a groundbreaking piece of legislation that challenged Google’s powerhouse status within the news industry. This was the first time a

239. Worldwide market share of leading search engines from January 2010 to July 2015, supra note 205.

240. See Emily Greenhouse, The Spanish War Against Google, BLOOMBERG POLITICS (Dec. 12, 2014, 5:33 PM), http://www.bloomberg.com/politics/features/2014-12-12/the-spanish-war-against-google (discussing Google as a de facto gateway to the Internet and noting its ability to compile headlines and short summaries of news stories from many sources).


nated within the E.U. provided a voice for its domestic publishers by way of tangible regulations.\textsuperscript{243} Google, however, fought off the efforts of the German Bundestag by putting tremendous pressure on German publishers to waive their right to compensation.\textsuperscript{244} Google issued an ultimatum—waive your right to compensation or no longer be included in any Google search results.\textsuperscript{245} Because of Google’s domination of online news resources, German publishers effectively had the decision made for them.\textsuperscript{246} Had German publishers decided not to waive their right to compensation,\textsuperscript{247} perhaps the story of Google in Germany would have had a different ending.

The Spanish Canon AEDE built upon the German LSR as a more effective means of protecting domestic publishers against the huge shadow cast by Google and other large online news aggregators.\textsuperscript{248} German legislators gave into Google by providing an opt-out provision for publishers with regards to their compensation and by the exclusion of snippets and press clippings from the bill’s scope.\textsuperscript{249} Spanish legislators remained steadfast in their commitment to protecting the domestic newspaper publishing industry.\textsuperscript{250} Compensation was deemed by the

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\bibitem{243} See \textit{id.} at 13 n.49 (indicating that for the first time, German ancillary copyright established need to license content for indexing or displaying works).
\bibitem{244} See \textit{Hebbard, supra} note 153 (detailing the tremendous economic pressure German publishers felt from threats by Google to remove their content from searches and the possible loss in traffic that would accompany it).
\bibitem{245} See \textit{id.} (“Google is likely to again simply say that they will comply with the ruling by again withholding the snippets so that they do not have to pay.”).
\bibitem{246} See \textit{id.} (indicating that after Google pulled publishers’ search results, these publishers had little choice but to waive their right to compensation). News outlets who covered the story were very aware of the practical impossibility German publishers faced in their fight against Google: “Google’s response forced the publishers to face the fact that they were holding a gun to their own heads and either surrender to the reality of the situation, or else continue to duke it out in court, with no guarantee that even a win would result in a change in Google’s position.” \textit{Id.}
\bibitem{247} The pressure from Google forced all the German publishers, including Germany’s largest publisher, Axel Springer, to give up on their fight to get compensation for snippets. See \textit{Gabriela Vata, German Publisher Axel Springer Finally Agrees to Let Google Use Snippets in Search Results, SOFTPEDIA} (Nov. 6, 2014, 1:53 PM), http://news.softpedia.com/news/German-Publisher-Axel-Springer-Finally-Agrees-to-Let-Google-Use-Snippets-in-Search-Results-464289.shtml (likening the forced concession of the publisher to giving Google a free license to reproduce its content in search results).
\bibitem{248} See \textit{Alonso, supra} note 168 (“Once you read the actual proposal, it becomes quite clear that Spanish newspaper editors have learned from the German experience.”).
\bibitem{249} See \textit{Banerjea, supra} note 214 (indicating that German legislation gave publishers the right to choose whether they wanted to charge aggregator or not); \textit{Gerrit Wiesmann, Google wins German copyright battle, FIN. TIMES} (Mar. 1, 2013, 1:00 PM), http://www.ft.com/intl/cms/s/0/69d6ae12-8263-11e2-843e-001446ebd0c0.html (indicating that German lawmakers stipulated news aggregators would still be able to show “single words or small text excerpts” without gaining permission from publishers).
\bibitem{250} See \textit{Alonso, supra} note 168 (“The introduction of the inalienable right was done to

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Canon AEDE to be an inalienable right, functioning as a requirement for publishers rather than a privilege, as was the case in Germany. The legislation also included in its scope any reproduction of publishers’ content, including snippets and press clippings. The Spanish legislation intended to succeed where German legislation failed—finally creating a fair arena of competition between online news aggregators and domestic publishers.

Even with the overwhelmingly positive outcomes that the Spanish legislation is positioned to accomplish, criticisms of the reform continue to run rampant across the globe. The existence of such a plethora of negative conceptions begs the question: why? From an economic standpoint, it is difficult to ascertain why a nation like Spain, whose economic status has been so extremely fragile in recent years, would rather promote Google as the primary source of online news than domestic publishers—publishers who provide jobs and contribute to the GDP.

It is important to note, however, that there are quite possibly cultural implications in Spain’s desire to maintain the status quo of having Google display snippets from multiple news sources without paying compensation to publishers. As a formerly isolated dictatorship, Spain has focused efforts on maintaining an open and global culture. Under Franco, freedom of information was made impossible by the heavy censorship and government-mandated news that dominated Spanish press. Google, in many ways, embodies complete freedom of information—at the click of a button, unregulated searches can produce news and other publications from every corner of the globe that everyone with a computer and an Internet connection has access to. It is possible that the negative pushback in Spain to the Canon AEDE stems from the fear that forcing Google to pay a royalty fee to domestic publishers will lead to the ultimate destruction of the freedom of information and unrestricted accessibility to information that post-Franco Spain has come to cherish.

Looking past possible cultural implications of the reform, little support

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251. *Id.*; Canon de la Asociación de Editores de Diarios de España art. 32 (B.O.E. 2014, 11404) (Spain).

252. Canon de la Asociación de Editores de Diarios de España (B.O.E. 2014, 11404) (Spain).


254. See Hill, *supra* note 232 (indicating that Spain’s economic recovery since 2008 recession has been slow).

255. Canon de la Asociación de Editores de Diarios de España art. 32 (B.O.E. 2014, 11404) (Spain).

256. See Encarnación, *supra* note 231, at 35–42 (detailing the isolationism of Spain under the regime of Franco).

257. See Plans, *supra* note 228 (recounting the history of heavy government interference in radio news communications under the Franco regime, and the story of Radio España Independiente, the only independent radio news broadcast during the dictatorship).

remains for the anti-AEDE sentiment. The most glaring and easily appreciated benefit of the Canon AEDE is the return to a fair playing field for competition within the online news industry. News aggregation sites like Google, with resources and clout that extend further than any domestic publisher’s reach, will no longer be able to dominate the industry. Now, Spanish publishers will have the ability—though no guarantee—to generate greater online traffic to their published content, eliminating the ability of Google and other large news aggregator sites to commandeer the search for news and other information on the Internet.

In addition to the competition benefits the reform offers, innovation within the industry is yet another highly likely benefit from the Canon AEDE. In an online news industry dominated by Google and other large news aggregator sites, domestic newspaper publishers have little incentive to innovate—the average consumer will likely choose Google to execute their search for news rather than an individual publisher’s website due to its highly visible and overwhelming presence on the Internet. Forcing news aggregators to pay for links to published content will undoubtedly push publishers to innovate, making their websites more appealing to a consumer than competitor’s websites. Even if the news aggregators follow suit and close their Spanish sites like Google did in December of 2014, innovation will still be palpable among domestic publishers in an effort to produce more traffic than the others.

Google’s decision to cease operations of Google News Spain leaves the future of Google’s presence in Spanish news uncertain. Although undeniably inconvenient, the closing of Google News Spain may not affect Spain’s access of information. In addition to other news aggregation sites, like Yahoo! and Bing, World market share of leading search engines from January 2010 to July 2015, supra note 205.

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259. See European Commission Press Release SPEECH/14/93, Statement on the Google Investigation (Feb. 5, 2014) (investigating concerns of unfair competition involving Google). In a speech addressing a Google competition investigation in 2014, Joaquín Almunia, the then-Vice President of the European Commission responsible for Competition Policy, offered the following: “Our concern was that, given the favourable treatment of Google’s own services on its page, competitors’ results which are potentially as relevant to the user as Google’s own services – or even more relevant – could be significantly less visible or not directly visible, leading to an undue diversion of internet traffic.”

260. Worldwide market share of leading search engines from January 2010 to July 2015, supra note 205.

261. See David Roman, Spain’s Publishers Brace for Google News Shutdown, WALL ST. JOURNAL (Dec. 15, 2014, 9:24 AM), http://blogs.wsj.com/digits/2014/12/15/spains-publishers-brace-for-pain-over-google-news-shutdown/ (asserting that the actual value of the compensation for snippets has yet to be determined and that Google is arguing this new law would make its Spanish news service unsustainable).

262. Both Yahoo! and Bing, which are also dominant search engines, are still available for news searches in Spain. See, e.g., YAHOO! NOTICIAS, https://es.noticias.yahoo.com/ (last visited Nov. 6, 2015) (the active site for Yahoo! News searches in Spain). How compensation for snippets will be handled as a practical matter, however, still has yet to be determined. Roman,
Spanish news publishers have direct online presences in Spain—leaving the availability of online news sources in Spain robust and diverse.

Since the closing of Google News Spain, no substantial change has been appreciated in Spain. In fact, some critics of the Canon AEDE have even found that Google searches for Spanish news links are still possible through Google, despite Google News Spain’s closing. Rumors have now begun to circulate that the Canon AEDE’s next victim will be another large news aggregator, such as Yahoo! These rumors are, so far, unfounded as aggregators continue to run in Spain following the closing of Google News Spain. For now, Google remains the only news aggregator who has felt any sort of repercussion from the passage and implementation of the Canon AEDE—a repercussion that was self-created by Google.

Now, after the reform has officially taken effect in Spain, the looming question of “what happens next?” remains. The entire world, and more specifically the E.U., has eyes on the Spanish legislation and will undoubtedly watch it closely as its practical implication becomes clear. Should the Canon AEDE actually accomplish the goals that the Congreso de los Diputados set forth as precipitating its installment, which it is poised to do, the legislation will surely serve as the model for the rest of the E.U.—giving Commissioner Oettinger the foundation he needs to implement his plan of harmonization on the issue of copyright and news

supra note 262.

264. See supra note 217 and accompanying text for a discussion of these newspapers.


266. See Sullivan, supra note 265 (displaying how Spaniards still have the ability to search for news stories through the normal Google interface, despite the Google News-specific domain being closed).


268. See, e.g., YAHOO! NOTICIAS, supra note 263.

269. See Campillo, supra note 267 (discussing that although Google News Spain shut down, Yahoo has announced it does not plan to do so).

270. Exposición de Motivos, supra note 159.

271. See Fernández, supra note 197 (noting that Oettinger has applauded measures taken by Spain to force Google to pay for its exploitation of content); Glyn Moody, EU Commissioner says he’s still open to a “Google tax” on snippets, ARS TECHNICA UK (July 15, 2015, 7:45 AM), http://arstechnica.co.uk/tech-policy/2015/07/eu-commissioner-says-hes-still-open-to-a-google-tax-on-snippets/ (indicating that by the end of 2016, Oettinger hopes to create an ancillary copyright law for press publishers across Europe).
While many things are uncertain about the future of copyright protections for publishers and their content, one thing is certain: the attitudes surrounding the aggregation of this published content by powerhouse companies like Google are changing. What was commonly accepted, and even praised by some, ten years ago in the world of news aggregation, is now under fire. Google, a company that helped pioneer the availability and accessibility of news and other resources to the masses, can no longer put its technological achievements at the forefront—now it must face new implications based on changing attitudes. The legal battle in the E.U. with Google is far from over, with both sides vehemently arguing their position. The Canon AEDE is but a piece in this larger battle—a piece that has and will continue to change ideas about Google, the newspaper publishing industry, and copyright.