

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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1. See, e.g., Hannibal Travis, *Estimating the Impact of Mass Digitization Projects on Copyright Holders: Evidence from the Google Book Search Litigation*, 57 J. COPYRIGHT SOC'Y U.S. 907 (2010).

2. See Andreas Theodoros Themelis, *Information and Intermediation, Abuse of Dominance and Internet 'Neutrality': 'Updating' Competition Policy under the Digital Single Market and the Google Investigations(?)*, 4 EUR. J. L. & TECH. (2013), <http://ejlt.org/article/view/285/414> (explaining how users are incentivized to use Google because Google pools all the necessary content).

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 España*⁶ (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.

I [BGBL I], as amended, at § 87f (Ger.).

6. Canon de la Asociación de Editores de Diarios de España (B.O.E. 2014, 11404). The AEDE is an organization that represents the rights of the Spanish press and works to protect their legitimate interests in intellectual property rights. More information about the organization is available at ASOCIACIÓN DE EDITORES DE DIARIOS ESPAÑOLES, <http://www.aede.es> (last visited Sept. 11, 2015).

7. See Alex Hern, *Spain moves to protect domestic media with new 'Google tax'*, THE GUARDIAN (Oct. 31, 2014, 11:21 AM), <http://www.theguardian.com/technology/2014/oct/31/spain-newspaper-google-tax> (describing the new Spanish legislation providing protections for authors).

8. Urheberrechtsgesetz [UrhG] [Copyright Act], Dec. 5, 2014, BUNDESGESETZBLATT, TEIL I [BGBL 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.⁹ 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.¹⁰

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.¹¹ 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.¹²

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.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶ Authorship, however, was not required for a privilege grant: printers and publishers could obtain protection via

9. See B. Zorina Khan, *An Economic History of Copyright in Europe and the United States*, EH.NET ENCYCLOPEDIA (Mar. 16, 2008), <https://eh.net/encyclopedia/an-economic-history-of-copyright-in-europe-and-the-united-states/> (discussing the history of intellectual property regulation in Europe).

10. See Alexander A. Caviedes, *International Copyright Law: Should the European Union Dictate its Development?*, 16 B.U. INT’L L. J. 165, 169 (1998) (explaining how early copyright statutes opened up a continuing debate about copyright protection).

11. See generally CONCISE EUROPEAN COPYRIGHT LAW (Thomas Dreier & P. Bernt Hugenholtz, eds., 2006).

12. See, e.g., *id.*

13. See generally SHEILAGH OGILVIE, INSTITUTIONS AND EUROPEAN TRADE: MERCHANT GUILDS, 1000–1800 (2011).

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 eighteenth century, 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.

25. Peter Burger, *The Berne Convention: Its History and Its Key Role in the Future*, 3 J. L. & TECH. 1, 8 (1988).

26. *Id.*

27. *Id.*

foreign countries.²⁸ 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.²⁹ 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.³⁰

In the wake of France's landmark legislation regarding authors' intellectual property rights, only one other nation—Belgium—followed suit in Europe.³¹ 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.³² These meetings culminated in the Berne Convention of 1886³³—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.³⁴

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.³⁵ Thereafter, European nations, continued to be at the forefront of development of protections for authors' works, including during the creation of the

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.

32. Burger, *supra* note 25, at 10.

33. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 25 U.S.T. 1341, 828 U.N.T.S. 221 (as last revised July 24, 1971), http://www.wipo.int/treaties/en/text.jsp?file_id=283698.

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 nineteenth 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.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.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 Maastricht³⁸ that the E.U. worked to strengthen copyright protections throughout its member states.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.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,⁴¹ implemented in 1991.⁴² The directive was the first time the E.U. attempted to harmonize laws of member states with respect to copyright protections.⁴³ The extension of copyright protection to computer programs highlighted the need for increased scope of existing legislation to include new technological advances.⁴⁴

Another directive, the Rental and Lending Rights Directive,⁴⁵ was passed the

36. See Monica E. Antezana, *The European Union Internet Copyright Directive As Even More Than It Envisions: Toward a Supra-EU Harmonization of Copyright Policy and Theory*, 26 B.C. INT'L & COMP. L. REV. 415, 425–26 (2003) (explaining how U.S. copyright law later reflected the Berne Convention's concept of authorial moral rights).

37. The Treaty of Rome established the European Economic Community, which was the precursor to the E.U. as it exists today. 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, *supra* note 36, at 424–25 (explaining how the Berne Convention persisted throughout the twentieth century and influenced U.S. copyright law).

38. Treaty on European Union (Maastricht text), July 29, 1992, 1992 O.J. (C 191) 1.

39. See Antezana, *supra* note 36, at 435–36 (showing the European Commission's push to harmonize copyright protection among its member states).

40. See *id.* at 436 (discussing the European Commission's announcement regarding the importance of copyright harmonization).

41. Council Directive 91/250, 1991 J.O. (L 111) 16 (EC).

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. CONCISE EUROPEAN COPYRIGHT LAW, *supra* note 11, at 211–38.

43. Caviedes, *supra* note 10, at 210–11.

44. See *id.* at 210–11 (describing how the Computer Programs Directive aimed to protect state of the art content).

45. Council Directive 92/100, 1992 O.J. (L 346) 61 (EC).

following year.⁴⁶ This directive's inception was also in response to growing technological advances.⁴⁷ 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.⁴⁸

2. Directive 2001/29/EC

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.⁴⁹ 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.⁵⁰ 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.⁵¹ The directive spawned from a conflict of individual legislation between Germany and Denmark, where copyright protections had expired earlier in Denmark than in Germany.⁵² This difference created a problem because one could put copyrighted material on the market simply by crossing the border.⁵³ 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.⁵⁴ 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 seventeenth century, 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 ECHOUD ET AL., INFORMATION LAW SERIES xv (P. Bernt Hugenholtz eds.,

directives came in 2001: the Information Society Directive.⁵⁵ 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.⁵⁶ 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.⁵⁷

The list of limitations given in Article 5 remains an item of debate among legal scholars throughout the E.U.⁵⁸ 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.⁵⁹ 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.⁶⁰

The Article 5 provision created yet another conflict—the optional nature of the limitations on copyrights.⁶¹ 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.⁶² While the directive indeed achieved an

2009).

55. Council Directive 2001/29, 2001 O.J. (L 167) 10 (EC). Directive 2001/29/EC was created to usher in the 'second generation' of copyright protections, which had the desired effect of furthering harmonization among member states more broadly. CONCISE EUROPEAN COPYRIGHT LAW, *supra* note 11, at 343.

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. Sheinblatt, *The WIPO Copyright Treaty*, 13 BERKELEY TECH. L. J. 535, 535 (1998) (discussing the purpose of the WIPO Treaty).

57. Lucie Guibault, *Why Cherry-Picking Never Leads to Harmonisation: The Case of Limitations on Copyright under Directive 2001/29/EC*, 1 J. INTELL. PROP. INFO. TECH. & ELEC. COMM. L. 55, 56–57 (2010).

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 Google*⁶⁹

Invalid, 22 EUR. INTELL. PROP. REV. 499, 501 (2000).

63. Guibault points out that the treatment of these optional exceptions has provided a wide array of treatment in various European nations—some of which impose a much narrower framework than the original Information Society Directive intended. Guibault, *supra* note 57, at 57. She also alludes to the use of these optional limitations as a way for member states to preserve their traditional treatment of copyright protections and simultaneously undermines any ability for advancement in protection for creators. *Id.*

64. *See generally id.*

65. Council Directive 2001/29, 2001 O.J. (L 167) 10 (EC).

66. *See Taxing times; Newspapers versus Google*, THE ECONOMIST (Nov. 10, 2012), <http://www.economist.com/news/international/21565928-newspapers-woes-grow-some-are-lobbying-politicians-make-google-pay-news-it> (discussing the high volume of snippets provided by Google as a news aggregator and the growing tension between news aggregators and European countries regarding snippets of published material).

67. *See Canon de la Asociación de Editores de Diarios de España* (B.O.E. 2014, 11404) (requiring that Internet news aggregators like Google must obtain publisher authorization for descriptive blurbs contained in their site); *see also* Urheberrechtsgesetz [UrhG] [Copyright Act], Dec. 5, 2014, BUNDESGESETZBLATT, TEIL I [BGBL I], as amended, (Ger.) (“In order to improve the protections accorded to news publications on the Internet, ancillary copyright protections will be introduced for news publishing houses producing this content in the first instance.”).

68. Throughout the 2010s, Google fought in numerous legal battles to preserve its ability to publish summaries and links to articles published by domestic publishers in France, Belgium, and Germany. *See* Loek Essers, *German Publishers say Google won't get the same deal it got in France*, COMPUTER WORLD (Feb. 4, 2013, 9:08AM), <http://www.computerworld.com/article/2495175/technology-law-regulation/german-publishers-say-google-won-t-get-the-same-deal-it-got-in-france.html> (discussing the outcomes of the various lawsuits between Google and France,

(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

Belgium, and Germany).

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

70. Maira Sutton, *European Newspapers Seek Royalties for Linking and Citing News Content*, ELECTRONIC FRONTIER FOUNDATION, (Jan. 11, 2013), <https://www EFF.ORG/deep links/2013/01/european-newspapers- seek- royalties- simply- linking- and- citing- news- content>.

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

72. Jeremy Malcolm, *Spanish Copyrights Will Shakedown News Sites and Censor the Web*, ELECTRONIC FRONTIER FOUNDATION, (Nov. 6, 2014), <https://www EFF.ORG/deep links/2014/11/spanish- copyright- amendments- will- shakedown- news- sites- and- censor- web>.

73. *Id.*

74. See generally Eleonora Rosati, *The German ‘Google Tax’: groovy or greedy?*, 8 J. INTELL. PROP. L. & PRAC. 497 (2013).

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.⁷⁹ The initial case, between Copiepresse and Google,⁸⁰ centered around Google's "Google News" service that was launched in Belgium in early 2006.⁸¹ 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.⁸² 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.⁸³

The Belgian court in *Copiepresse*⁸⁴ 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.⁸⁵ The dispute between the publishers and Google ensued for nearly five years, with the court deciding against Google in its appeal in 2011.⁸⁶ 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.⁸⁷ By the end of 2011, Copiepresse backed down, and allowed Google to again index their publications.⁸⁸ Among the terms of the re-inclusion of Belgian

79. Urheberrechtsgesetz [UrhG] [Copyright Act], Dec. 5, 2014, BUNDESGESETZBLATT, TEIL I [BGBl I], as amended, at § 87f (Ger.); *see generally* Sarah Laitner & Richard Waters, *Belgian court brings Google bad news*, FIN. TIMES (Sept. 18, 2006), <http://www.ft.com/intl/cms/s/2/ae106718-474d-11db-83df-0000779e2340.html#axzz3n8ur8ijG>.

80. Tribunal de Premiere Instance [Civ.] [Tribunal of First Instance] Bruxelles, Feb. 13, 2007, No.06/10.928/C (Belg.). English versions of the preliminary and First Instance decisions are available at <http://www.copiepresse.be>.

81. *See* Graham Smith, *Copiepresse v Google - the Belgian judgment dissected*, BIRD & BIRD (Mar. 13, 2007), <http://www.twobirds.com/en/news/articles/2007/copiepresse-v-google> (describing in detail the factual background surrounding the case).

82. *Id.*

83. *Id.*

84. Tribunal de Premiere Instance, *supra* note 80.

85. Smith, *supra* note 81; *but cf.* *Field v. Google, Inc.*, 412 F. Supp. 2d 1106 (D. Nev. 2006) (holding that Plaintiff impliedly licensed inclusion in Google's cache by failing to set exclusion parameters).

86. Cours d'Appel [Civ.] [Court of Appeal] Bruxelles, 9e ch. May 26, 2011, No.2007/AR/1730 (Belg.). English version of the decision is available at http://www.copiepresse.be/pdf/Copiepresse%20-%20ruling%20appeal%20Google_5May2011.pdf.

87. *See* David Meyer, *Google reaches deal with Belgian publishers, avoids paying 'link tax'*, ZDNET (Dec. 13, 2012, 10:28 AM), <http://www.zdnet.com/google-reaches-deal-with-belgian-publishers-avoids-paying-link-tax-7000008737/> (describing the end of the litigation between Google and Belgium).

88. Google reported on its European blog that as of December 12, 2012, deal terms had

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.⁸⁹ 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.⁹⁰

2. France

Threats of action against Google in France came shortly after the Belgian litigation began.⁹¹ After years of discontent among French publishers, the French government revitalized the idea of *la Taxe Google* in early 2011.⁹² 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."⁹³ 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.⁹⁴

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

been finalized between itself and Belgian publishers involved in the original Copiepresse litigation. Thierry Geertrts, *Partnering with Belgian news publishers*, GOOGLE EUROPE BLOG (Dec. 12, 2012), <http://www.googlepolicyeurope.blogspot.com/2012/12/partnering-with-belgian-news-publishers.html>.

89. See Meyer, *supra* note 87 (outlining the deal struck between Google and the Belgian French 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 Geertrts, *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).

90. See Matthew Lasar, *Google v. Belgium "link war" ends after years of conflict*, ARSTECHNICA (Jul. 19, 2011), <http://arstechnica.com/tech-policy/2011/07/google-versus-belgium-who-is-winning-nobody/> (explaining that Copiepresse allowed Google to re-include the Google search index without court-ordered penalties).

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.*

93. French Competition Authority, *Avis no 10-A-29 sur le fonctionnement concurrentiel de la publicité en ligne*, AUTORITÉ DE LA CONCURRENCE (Dec. 14, 2010), http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=368&id_article=1514.

94. *Id.*

implementation which stood to bring a profit of more than €25 million to the French state.⁹⁵ In early 2013, Google and French officials signed an agreement that prevented the legislation's passage.⁹⁶ 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.⁹⁷

3. Italy

In early 2011, the Italian Competition Commission dismissed a case brought against Google by the Italian Federation of Newspaper Publishers (FIEG).⁹⁸ 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.⁹⁹ 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.¹⁰⁰ Google controlled about 90 percent of the national search market.¹⁰¹

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.¹⁰² 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.¹⁰³

95. See Eric Pfanner, *France Drops Plans for 'Google Tax'*, NEW YORK TIMES (June 23, 2011), <http://www.nytimes.com/2011/06/24/technology/24iht-google24.html> (describing disagreement among French political parties with regard to the effectiveness of the proposed 1% tax on online ad spending).

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.*

98. Italian Competition Authority, A420 – FIEG – *Federazione Italiana Editori Giornali/Google, Provvedimento no 21959* (2011).

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).

100. Sabrina Cohen et al., *Italy Opens Antitrust Probe of Local Google News Service*, WALL ST. J. (Aug. 28, 2009, 11:59 PM), <http://online.wsj.com/articles/SB125137301333663261>.

101. *2013 Search Engine Market Share by Country*, RETURN ON NOW, <http://returnonnow.com/internet-marketing-resources/2013-search-engine-market-share-by-country/> (last visited Nov. 6, 2015).

102. Danilo Masoni, *Google proposes remedies in Italy antitrust case*, REUTERS (May 14, 2010) <http://www.reuters.com/article/2010/05/14/us-google-italy-idUSTRE64D4UW20100514>.

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).

105. See generally *Bundesrat Roles and Functions: A constitutional body within a federal system*, BUNDESRAT, <http://www.bundesrat.de/EN/funktionen-en/funktionen-en-node.html>.

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

107. See generally *Function and role*, GERMAN BUNDESTAG, http://www.bundestag.de/htdocs_e/bundestag/function (last visited Sept. 12, 2015).

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?sref=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.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.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.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.¹¹⁶

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.¹¹⁷ Maryanne Stanganelli, a British attorney, initiated a discussion of the treatment of original content uses by online news aggregators following the Copiepresse decision.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*¹¹⁹ in 1996.¹²⁰ 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

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.

114. *Id.*

115. *Id.*

116. *Id.*

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).

118. *Id.*

119. (1997) CSOH 316.

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.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.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.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.¹²⁴ The *Ley de Propiedad Intelectual*,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.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.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.¹²⁸ While debates surrounding the legislation continue, the Canon AEDE went into effect on January 1, 2015.¹²⁹

121. Stanganelli, *supra* note 117, at 747.

122. *Id.*

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).

124. Javier Diaz Noci, *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, <http://grp.upf.edu/sites/default/files/news-files/JDNvicongreso-ciberperiodismo.pdf> (last visited Nov. 4, 2015).

125. *Ley de Propiedad Intelectual* (B.O.E. 1996, 8930) (Spain).

126. *See Spain/5.1 General Legislation: 5.1.7 Copyright Provisions*, COMPENDIUM: CULTURAL POLICIES AND TRENDS IN EUROPE (June 24, 2015), <http://www.culturalpolicies.net/web/spain.php?aid=517> (explaining that the Spanish legislature reformed the 1996 Intellectual Property Act in 2014).

127. *See* Hern, *supra* note 7 (describing Spanish publishers' push for legislation providing protections for authors).

128. *Id.*

129. David Gilbert, *Google News shutting down in Spain over new Intellectual Property Laws*, International Business Times (Dec. 11, 2014, 7:53 AM), <http://www.ibtimes.co.uk/google-news-shutting-down-spain-over-new-intellectual-property-laws-1479051>.

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

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.

137. See Pascual Perea, *El buscador de dinero*, DIARIOVASCO.COM (Apr. 5, 2013, 11:47 AM), <http://www.diariovasco.com/rc/20130405/mas-actualidad/tecnologia/buscador-dinero-201304050949.html> (discussing the beginnings of the struggle between the AEDE and Google).

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.¹³⁸ Leaders of the organization, having seen the efforts of publishers in Belgium, France, Italy, and Germany,¹³⁹ began heavily lobbying the Spanish government for change in intellectual property protections for newspaper publishers in 2009.¹⁴⁰ Drawing on the successes in France, publishers of the AEDE began speaking publicly about the need for further protection of rights of publishers.¹⁴¹

In 2013, with the passage of the German LSR¹⁴²—the first legislation to impose a royalty fee on online news aggregators for their usage of snippet summaries from published content¹⁴³—the AEDE finally saw an opportunity to solidify an expanded definition of the rights they had advocated for over the past five years.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.¹⁴⁵

In February of 2014, the Spanish Congreso de los Diputados¹⁴⁶ issued the initial proposal that the AEDE had been fighting for the previous five years—the

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).

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

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).

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

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

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-1669699481> (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).

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 Xalabarder Plantada, *A bill to amend the Spanish IP Law*, KLUWER COPYRIGHT BLOG, (Jul. 10, 2014), <http://klwercopyrightblog.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.*

145. *Id.*

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).

project for reform of the *Ley de la Propiedad Intelectual*.¹⁴⁷ Interestingly, the proposal came a day after a Court of Justice of the European Union (CJEU) ruling on the same subject.¹⁴⁸ 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.¹⁴⁹ 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*.¹⁵⁰

After the initial bill proposal, opinions on its effectiveness in accomplishing the goals set forth were thrust into the public domain.¹⁵¹ 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.¹⁵² Commenting on the practical failure of the German LSR with regards to enforcing compensation rights of publishers,¹⁵³ critics of the proposed Canon AEDE in Spain opined that any Spanish attempt would fail in the same way that the German LSR had.¹⁵⁴

Finally, in October 2014, after months of heavy lobbying on the part of the AEDE, the Spanish Congress passed the Canon AEDE.¹⁵⁵ 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 revenue¹⁵⁶

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 Enjuiciamiento Civil [L.E. Civ], (B.O.C.G. 2014, 121).

148. C-466/12, Svensson and Others v. Retriever Sverige AB, 2014 E.C.R. [not yet published], <http://curia.europa.eu/juris/document/document.jsf?text=&docid=147847&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=58394>.

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.

151. See *La AEDE ve inaceptable que la CEOE suprime la 'tasa Google'*, EL MUNDO (Mar. 19, 2014, 4:36 PM), <http://www.elmundo.es/television/2014/03/19/5329b96022601d2d5f8b457c.html> (deeming the proposals to the reform of the Copyright Act unacceptable); see generally Den Howlett, *The Friday Roast – the nutty Spanish Google tax*, Diginomica, (Aug. 1, 2014), <http://diginomica.com/2014/08/01/friday-roast-the-nutty-spanish-legislators-google-tax/>.

152. Perea, *supra* note 137.

153. See, e.g., D.B. Hebbard, *German publishers 'bow to pressure', will allow Google to display search result snippets*, TALKING NEW MEDIA (Oct. 23, 2014), <http://www.talkingnewmedia.com/2014/10/23/german-publishers-bow-to-pressure-will-allow-google-to-display-search-result-snippets/>.

154. See, e.g., *La implantación de la 'tasa Google' tendría un impacto negativo de 1.133 millones de euros al año*, HUFFINGTON POST (July 3, 2014), http://www.huffingtonpost.es/2014/07/03/consecuencias-tasa-google_n_5554624.html.

155. Tommaso Koch, *La Ley de Propiedad Intelectual, aprobada solo con los votos del PP*, EL PAIS (Oct. 30, 2014), http://cultura.elpais.com/cultura/2014/10/30/actualidad/1414657007_768641.html.

156. Laura Lorenzetti, *Google News shuts in Spain in response to 'Google Tax' law*,

—the Canon AEDE finally went into effect on January 1, 2015.¹⁵⁷

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 1/1996¹⁶¹ 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

FORTUNE (Dec. 11, 2014), <http://fortune.com/2014/12/11/google-news-shutters-in-spain-in-response-to-google-tax-law/>.

157. *Id.*

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

159. The introductory section of the document, entitled “Exposición de Motivos”—in English, “Exposition of Motives”—lays the foundation for the necessity of the legislation by providing background information on the issue. *Id.* “Cultural and creative industries constitute a sector of great importance in our country . . . ,” and have necessitated the development of “effective tools” to provide “the best protection of these legitimate rights, without prejudice to the development of Internet.” *Id.*

160. *Id.*

161. Ley de Propiedad Intelectual (B.O.E. 1996, 8930) (Spain).

162. Law on Civil Procedure (B.O.E. 2000) (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,¹⁶⁷ but rather a *requirement* of all Spanish publishers.¹⁶⁸

Spanish legislators also laid out a method of receiving and administering compensation received in the Canon AEDE's language.¹⁶⁹ Similar to the existing method in which the Sociedad General de Autores y Editores¹⁷⁰ collects and distributes remuneration for music rights,¹⁷¹ 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.¹⁷² The bill also contains a provision governing how funds unclaimed by publishers will be utilized.¹⁷³ Several possibilities of how unclaimed funds should be used are laid out in the provision,¹⁷⁴ with the ultimate choice left to the discretion of the remuneration management entity.¹⁷⁵

Sanctions for the illegal usage of published content without payment to its publisher are also represented in the legislation.¹⁷⁶ While no set amount is contemplated, legislators provided a range in the amount they deemed appropriate for fines for an aggregator's first infraction.¹⁷⁷ The fine may be no less than €150,001 and no more than €600,000.¹⁷⁸ 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.¹⁷⁹ As further deterrence, the Canon AEDE provides for

167. Urheberrechtsgesetz [UrhG] [Copyright Act], Dec 5, 2014, BUNDESGESETZBLATT, TEIL I [BGBL I], 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).

170. The Sociedad General de Autores y Editores (SGAE) is dedicated to the defense and protection of intellectual property rights of their partners. See generally *Nuestra misión*, SGAE, <http://www.sgae.es/es-Es/SitePages/corp-modelo.aspx> (last visited Sept. 11, 2015).

171. Creators can register their works with SGAE for protection and payment of royalties collected for uses of their works by third parties. *Nuestro modelo*, SGAE, <http://www.sgae.es/es-Es/SitePages/corp-modelo.aspx> (last visited Sept. 11, 2015).

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).

178. Canon de la Asociación de Editores de Diarios de España art. 158(6) (B.O.E. 2014, 11404) (Spain).

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.¹⁸⁰ Determination of whether a violator's second offense warrants the maximum penalty is left in the hands of the Spanish judiciary,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.¹⁸² The Canon AEDE's German predecessor also included all news aggregators,¹⁸³ and the Spanish legislation borrows this inclusionary idea from the LSR.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.¹⁸⁵ Although no particular organizations are mentioned in the legislation,¹⁸⁶ there have been several conclusions drawn as to what organizations will serve this function by third party commentators.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.¹⁸⁸

news aggregators were already granted a semi-“safe harbor” provision through the LSR's opt-out provision. *See* Alonso, *supra* note 168 (noting Spain learned from Germany's mistake of allowing newspapers to reapply without Google being taxed, while the Canon AEDE declares compensation an inalienable right, which cannot be renounced by the newspaper).

180. Canon de la Asociación de Editores de Diarios de España art. 158(6)(b) (B.O.E. 2014, 11404) (Spain).

181. *Id.*

182. 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.*

183. Langley, *supra* note 169.

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

185. 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 use unnamed funds is up to the discretion of the managing organization).

186. The Canon 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.

187. *See* Alonso, *supra* note 168 (suggesting that Centro Español de Derechos Reprográficos will serve as a management organization under the Canon AEDE).

188. *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.¹⁸⁹ 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.¹⁹⁰ 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.¹⁹¹

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.¹⁹² The AEDE, the organization that provided the namesake for the legislation, has been one of the largest supporting forces in enacting the reform.¹⁹³ 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.¹⁹⁴ The publishers of the AEDE have

189. See *Spanish parliament OKs law allowing news publishers to charge Google for linked content*, U.S. NEWS & WORLD REP., (Oct. 30, 2014, 12:26 PM), <http://www.usnews.com/news/business/articles/2014/10/30/spain-oks-google-tax-demanded-by-news-publishers> (explaining that Spain's law does not specify how much news aggregators will be charged).

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.”¹⁹⁵ 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.¹⁹⁶

Another important proponent of the *tasa Google* is Günther Oettinger, the newly-appointed Commissioner for Digital Economy and Society.¹⁹⁷ As a member of the European Commission, the executive body of the E.U.,¹⁹⁸ Oettinger has the ability to influence the dispersion of protections for authors and artists throughout the rest of the Union’s member states.¹⁹⁹ 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.²⁰⁰ 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*.²⁰¹ 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.²⁰²

Both the AEDE and the Commissioner recognize the unfair position that

persevere so that our rights might be applied firmly in all environments and mediums.”) *La ‘tasa Google’: el gran favor de Rajoy a los periódicos*, EL CONFIDENCIAL DIGITAL (Feb. 19, 2014), http://www.elconfidencialdigital.com/medios/Google-gran-favor-Rajoy-periodicos_0_2220377962.html.

195. *Id.*

196. *See* Perea, *supra* note 137 (detailing the global quasi-monopoly Google holds on Internet searches and the power it holds in determining whose content will be found in a search and what content will be displayed, without any regard for the publisher of that content).

197. After taking his seat as the Commissioner of Digital Economy and Society for the E.U. on November 1, 2014, Oettinger expressed his support for authors’ rights protection via legislation, praising the proposed the Canon AEDE in Spain. Jose Fernández, *Tasa Google: ¿Cómo va a afectar a los internautas?*, QUÉ! (Nov. 3, 2014), <http://www.que.es/ultimas-noticias/sociedad/201411030800-tasa-google-como-afectar-internautas.html>.

198. EUR. COMM’N, *supra* note 180.

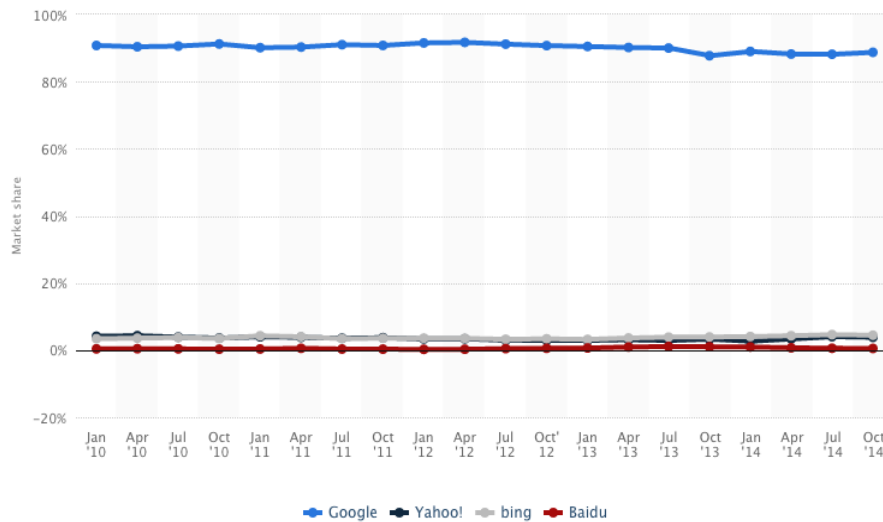
199. *See Working as a College: Collective decision-making*, EUR. COMM’N, http://ec.europa.eu/about/working-as-college/index_en.htm (last updated Aug. 6, 2015) (explaining the collective decision-making process and accountability of the Commissioners). Although no commissioners on the European Commission have independent decision-making powers, each commissioner has the ability to place an issue before the Commission to encourage legislation on the issue. *Id.* Oettinger, as the Commissioner for Digital Economy and Safety, has the ability to place the issue of authors’ rights with respect to online news aggregators before the Commission, who could in turn issue a directive on the subject and effect change amongst all member states. *Id.*

200. *Oettinger floats proposal for EU-wide ‘Google Tax’*, EURACTIV.COM (Oct. 29, 2014, 7:55 AM), <http://www.euractiv.com/sections/innovation-enterprise/oettinger-floats-proposal-eu-wide-google-tax-309568>.

201. *Id.*

202. *Id.*

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

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.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.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,²¹⁰ 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.²¹¹

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.²¹² Google News, the branch of the corporation that the tax passage will predominantly affect, has already removed its links to published Web content.²¹³ As the issue currently stands, it seems Google will take the same approach it did in Germany last year in the wake of the *Lex Google*—remove its presence until the publishers concede their right.²¹⁴ Because the legislation only recently came into effect, it remains

208. See Michael Liedtke, *Google News going dark in Spain in dispute over 'Google Tax' for news publishers*, FOX BUSINESS (Dec. 10, 2014), <http://www.foxbusiness.com/technology/2014/12/10/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).

209. See Vincent, *supra* note 192 (discussing the hope that the Canon AEDE will revive the Spanish publishing industry).

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).

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." *AEDE welcomes the amendment to the Law on Intellectual Property*, 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).

212. See Lynette Mukami, *Should Google pay publishers, media owners for news links?*, DAILY NATION (Nov. 6, 2014), <http://www.nation.co.ke/business/google-news-Spain-intellectual-property/-/996/2513042/-/xxituz/-/index.html> ("Google is understandably disappointed by the decision of the Spanish parliament.").

213. See *id.* ("Google, in a bid to avoid the charges, responded by taking down the links to their sites completely.").

214. Sejuti Banerjea, *Google Won't Pay Google Tax: Will Spanish Publishers Bleed?*, ZACKS (Dec. 12, 2014), <http://www.zacks.com/stock/news/157275/google-wont-pay-google-tax-will-spanish-publishers-bleed>.

unclear how Spanish courts will treat violations of the law or publishers' concessions to Google by way of waiving their right to the tax.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.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.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.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.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.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.²²¹

Anti-competition concerns have also been raised by opponents in favoring publishers over news aggregators in the digital marketplace.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.²²³

215. *Id.*

216. Canon de la Asociación de Editores de Diarios de España art. 32(4) (B.O.E. 2014, 11404) (Spain).

217. Mukami, *supra* note 212.

218. *Id.*

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).

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).

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).

222. *See* Mukami, *supra* note 212 (indicating that some think that Europe is resorting to anti-competitive protectionism).

223. Canon de la Asociación de Editores de Diarios de España art. 32(4) (B.O.E. 2014, 11404) (Spain); *see* Banerjee, *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

224. As of December 16, 2014, the homepage for Google News Spain redirects to a letter from Google about its closure of the site in Spain. *Google News in Spain*, GOOGLE, <https://support.google.com/news/answer/6140047?hl=es> (last visited Sept. 11, 2015). The letter cites the reform of the *Ley de Propiedad Intelectual* as the main reason for the shutdown. *Id.* The letter goes on to emphasize that because Google itself makes no money from running the news aggregation site, the new legislation made the continued maintenance of the site "not sustainable." *Id.*; James Temperton, *Spanish publishers move to halt Google News closure*, WIRED (Dec. 15, 2014), <http://www.wired.co.uk/news/archive/2014-12/15/google-news-spain>.

225. Carlos Sánchez Almeida, *El cierre de Google News y la libertad de información en España*, EL MUNDO (Dec. 11, 2014, 10:31 AM), <http://www.elmundo.es/blogs/elmundo/jaqueperpetuo/2014/12/11/el-cierre-de-google-news-y-la-libertad.html>.

226. Newspapers like *El País* and *El Mundo* have extremely visible and vigorous web presences in Spain, even prior to the closure of Google Noticias. *See generally* EL MUNDO, <http://www.elmundo.es>; *see also* EL PAÍS, <http://www.elpais.es>.

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.²³¹ Coupled with the crushing economic blow Spain experienced from the global recession of 2008–09,²³² 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.²³³

Opponents of the legislation organized themselves as a more effective means of combating the legislation that the AEDE and other proponents have advocated.²³⁴ 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.²³⁵ 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).²³⁶ In the days following the shut down of Google News Spain,²³⁷ 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.”²³⁸

231. See Omar G. Encarnación, *Spain after Franco: Lessons in Democratization*, 18 *WORLD POL’Y J.* 35, 35–44 (2002) (highlighting the economic boom Spain experienced after the fall of Franco and the Spanish inclination towards an open and global economic attitude in response to years of economic isolation under Franco).

232. Spain suffered extreme economic harm in the wake of the global recession of 2008–09, with national unemployment rates at a staggering 26% and one of the largest debt burdens in Europe. Steven Hill, *To Hell and Back: Spain’s Grotesque Recession and Its Surprising New Economy*, *THE ATLANTIC* (Oct. 18, 2013), <http://www.theatlantic.com/business/archive/2013/10/to-hell-and-back-spains-grotesque-recession-and-its-surprising-new-economy/280678/>. The nation is still struggling to recover from the damage inflicted by the recession. *Id.*

233. See Banerjee, *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.aepp.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.

238. Enrique Dans, *Spain vs. Google News: greed, incompetence, and an all round lack of principles*, *MEDIUM* (Dec. 16, 2014), <https://medium.com/enrique-dans/spain-vs-google-news-greed-incompetence-and-an-all-round-lack-of-principles-7bf369fb25c0>.

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.²³⁹ 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.²⁴⁰ 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.²⁴¹

The German LSR was a groundbreaking piece of legislation that challenged Google's powerhouse status within the news industry.²⁴² 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).

241. Amit Agarwal, *How to Find Old Newspaper Articles Online*, DIGITAL INSPIRATION (July 17, 2012), <http://www.labnol.org/internet/old-newspaper-articles/18689/> (“Google News indexes thousands of newspaper websites from around the world.”).

242. See generally Christian Kersting & Sebastian Dworschak, *Ancillary Copyright for News Publishers: Would Google Really Have to Pay? – A Competition Law Analysis*, 46 NEUE ZEITSCHRIFT FÜR KARTELLRECHT (NEW J. OF COMPETITION L.) 1 (2013), translated by Dr.

nation within the E.U. provided a voice for its domestic publishers by way of tangible regulations.²⁴³ Google, however, fought off the efforts of the German Bundestag by putting tremendous pressure on German publishers to waive their right to compensation.²⁴⁴ Google issued an ultimatum—waive your right to compensation or no longer be included in any Google search results.²⁴⁵ Because of Google’s domination of online news resources, German publishers effectively had the decision made for them.²⁴⁶ Had German publishers decided not to waive their right to compensation,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.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.²⁴⁹ Spanish legislators remained steadfast in their commitment to protecting the domestic newspaper publishing industry.²⁵⁰ Compensation was deemed by the

Christian Kersting & Sebastian Dworschak, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2468121&download=yes (citing the first introduction of an ancillary copyright for news publishers in 2013 via the German legislation).

243. *See id.* at 13 n.49 (indicating that for the first time, German ancillary copyright established need to license content for indexing or displaying works).

244. *See* 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).

245. *See 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.”).

246. *See 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.” *Id.*

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* Gabriela Vatu, *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).

248. *See* Alonso, *supra* note 168 (“Once you read the actual proposal, it becomes quite clear that Spanish newspaper editors have learned from the German experience.”).

249. *See* Banerjea, *supra* note 214 (indicating that German legislation gave publishers the right to choose whether they wanted to charge aggregator or not); Gerrit Wiesmann, *Google wins German copyright battle*, FIN. TIMES (Mar. 1, 2013, 1:00 PM), <http://www.ft.com/intl/cms/s/0/69d6ac12-8263-11e2-843e-00144feabdc0.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).

250. *See* Alonso, *supra* note 168 (“The introduction of the inalienable right was done to

Canon AEDE to be an inalienable right, functioning as a requirement for publishers rather than a privilege, as was the case in Germany.²⁵¹ The legislation also included in its scope *any* reproduction of publishers' content, including snippets and press clippings.²⁵² The Spanish legislation intended to succeed where German legislation failed²⁵³—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,²⁵⁴ 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.²⁵⁵ As a formerly isolated dictatorship,²⁵⁶ 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.²⁵⁷ 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.²⁵⁸

Looking past possible cultural implications of the reform, little support

avoid what happened in Germany.”).

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).

253. Alonso, *supra* note 168.

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).

258. *See* Alan Clendenning, *Spain: Google News vanishes amid 'Google Tax' spat*, PHYS (Dec. 16, 2014), <http://phys.org/news/2014-12-spain-google-news-tax-spat.html> (indicating that the shutdown of Google News will make it more difficult for readers to find news).

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.²⁵⁹ 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.²⁶⁰ 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 2014,²⁶¹ 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.²⁶² 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,²⁶³

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."

Id.

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

261. *Google News in Spain*, *supra* note 224; Dominic Rushe, *Google News Spain to close in response to story links 'tax'*, GUARDIAN (Dec. 11, 2014, 3:25 AM), <http://www.theguardian.com/technology/2014/dec/11/google-news-spain-to-close-in-response-to-tax-on-story-links>.

262. 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).

263. 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 Spain²⁶⁴—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.²⁶⁵ 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.²⁶⁶ Rumors have now begun to circulate that the Canon AEDE's next victim will be another large news aggregator, such as Yahoo!.²⁶⁷ These rumors are, so far, unfounded as aggregators continue to run in Spain following the closing of Google News Spain.²⁶⁸ For now, Google remains the only news aggregator who has felt any sort of repercussion from the passage and implementation of the Canon AEDE²⁶⁹—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,²⁷⁰ 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 harmonization²⁷¹ on the issue of copyright and news

supra note 262.

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

265. See Jeremy Phillips, *A battle without winners, as Spain examines early results of its “Google Tax,”* IP FIN. (May 25, 2015), <http://ipfinance.blogspot.com/2015/05/a-battle-without-winners-as-spain.html> (indicating an overall growth in Internet traffic and although some slowdown in growth, it has not dramatically affected outcomes of major Spanish media companies); Danny Sullivan, *How Google News Lives On In Spain Despite Being Closed*, SEARCH ENGINE LAND (Dec. 17, 2014, 10:07 AM), <http://searchengineland.com/google-noticias-lives-google-spains-homepage-211146> (indicating that although German news publishers saw traffic loss upon removal of snippets from Google News, early data suggests there is no comparable impact as result of shuttering Google News Spain).

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).

267. See Santiago Campillo, *Yahoo! España, ¿próxima víctima del canon AEDE?*, HIPERTEXTUAL (Dec. 16, 2014, 12:37 PM), <http://hipertextual.com/2014/12/yahoo-espana> (discussing probability of Yahoo! España being next news aggregator to close its doors after passage of the Canon AEDE).

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).

aggregators.

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.