Lawsuit over website links in spotlight

Copyright violation or fair use to be decided

By Robert Weisman
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A copyright and trademark infringement lawsuit filed last month against The New York Times Co., owner of The Boston Globe and its Boston.com website, is being watched closely by news organizations, Internet researchers, independent bloggers, and companies that aggregate news online by linking to a variety of news sites.

At the heart of the complaint, lodged by GateHouse Media Inc., which publishes 125 community newspapers in Massachusetts, is the question of whether Internet news providers will be able to continue the practice of posting headlines and lead sentences from stories they link to on other sites. The case has been scheduled for trial in US District Court in Boston as early as Monday.

"This is the first case where these intellectual property issues have come to a head," said David Ardia, director of the Citizen Media Law Project at Harvard University's Berkman Center for Internet and Society in Cambridge. "If the judge was to rule for GateHouse on every point, it would have far-reaching implications for the news and information ecosystem that underlies the Web as we know it."

Kelly McBride, ethics group leader at the Poynter Institute in St. Petersburg, Fla., a school for professional journalists, said the case could result in new guidelines for how much, if any, content from one website can be used by another. "This is standard procedure across the Internet now," she said. "Newsrooms adopted the procedure from other practitioners."

GateHouse, a national chain of local daily and weekly newspapers based in Fairport, N.Y., filed its suit Dec. 22, alleging that Times Co. violated copyright law by using "verbatim" headlines and snippets from GateHouse stories on Boston.com. The Globe's website in November launched a local news site covering Newton, the first of a series of "hyper-local" Your Town sites planned for the Boston area. The sites, which now include Needham and Waltham, compete with GateHouse's own stable of "Wicked Local" community sites.

In addition to copyright violation, the complaint charged that Boston.com was infringing on GateHouse's trademark rights by posting online attributions to GateHouse brands such as Newton Tab, Daily News Tribune, and Wicked Local, "thereby causing confusion and mistake among users of the infringing website as to the source and endorsement of the content posted there." A response filed Jan. 14 by Times Co. listed a string of counterclaims and noted that GateHouse's websites similarly have used and linked to content from the Globe, The New York Times, and other news sites. "If GateHouse's claims against New York Times have any merit, then its own conduct constitutes..."
copyright and trademark infringement and unfair competition," the filing said. Neither Times Co. nor GateHouse executives would discuss the case.

Times Co.'s counterfiling argued GateHouse is seeking to thwart Boston.com's local sites. It cited an e-mail from Rick Daniels, a former Globe executive who is now chief operating officer of GateHouse Media New England. Daniels told his staff, "We have to . . . work like hell to kill the Globe's Newton baby in the cradle." The filing quoted other documents, obtained in discovery, in which GateHouse executives suggested they recognized posting headlines, a few paragraphs, and a link to stories on other sites was "fair use" of copyrighted material.

Previous cases have touched on fair-use issues on the Internet, most involving Mountain View, Calif., search provider Google Inc. In 2006, a district court in California ruled Google was allowed to post thumbnail images culled from the websites of adult entertainment publisher Perfect 10. And in a 2005 case settled out of court, Google agreed to pay a fee to host news articles from Agence France Press.

Google and its Google News site, which aggregates and links to news stories from around the world, send other publishers about 1 billion hits of traffic a month. Hundreds of other websites, from Yahoo News to technology sites like Techmeme.com, have similar models.

"We believe that both Google Web search and Google News are fully consistent with copyright law," said Google spokeswoman Jennie Johnson. "For each story, we only show just enough information to make the user want to read the full story - the headlines, a line or two of text, and links to the news publisher's website."

The GateHouse-Times Co. case is being tracked by many Internet bloggers, who often link to news stories as a jumping-off point for their postings. In some cases, they have mixed feelings.

"I personally have a problem with newspapers using links to become go-to sites for an area," said Tish Grier, a blogger and chief community officer at Placeblogger.com, a Watertown company that aggregates local blogs. "But if independent sites aren't able to link to GateHouse content or other content, it would be a big issue."

Hal Abelson, professor of computer science and engineering at the Massachusetts Institute of Technology, said "techies' ground rules" are that Internet linking should be as open and widespread as possible. He acknowledged, however, "lawyers' ground rules" might be more likely to impose restrictions.

"My view is the reason you put stuff on the Web is so people can link to it," Abelson said. "If you look at the technical architecture of the Web, it's designed so that any part can link to any other part."

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This case appears to be on shaky ground. GateHouse Media would have a case if their story was copied to another website without attrition, but it appears that the story headline and first sentence or so is part of a hot-link which requires the reader to go to the complete story at the story's hosting website - in effect providing attrition and transparency as to the source of the story.
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