

MISAPPROPRIATION OF “HOT NEWS” MAY  
RESULT IN CIVIL AND COPYRIGHT LIABILITY



In the rush to get breaking or “hot” news on the air or posted on a website, stations are reminded that it may be unlawful to use news reports or headlines prepared by other organizations, *even if rewritten by your station’s news staff*, unless the station is specifically authorized to do so through subscription or other license arrangements with the content owner. Unauthorized use of such material not only may constitute copyright infringement, but also can expose your station to additional civil liability under state law relating to misappropriation of “hot news.”

Under the “hot news” doctrine, breaking news is the “quasi property” of the news-gathering organization that collected it, and is protected from subsequent use by competitors. This doctrine was applied in a recent preliminary ruling by the U.S. District Court in the Southern District of New York in *The Associated Press v. All Headline News Corp.*. In that case, it was alleged that All Headline News Corp. (“AHN”), an internet-based news aggregator, copied or rewrote stories initially prepared by the Associated Press (“AP”), and then provided them to AHN’s subscribers as stories originated by AHN. In particular, AP alleged that AHN staff merely scoured the Internet for breaking news, and then copied or rewrote those stories under the AHN banner. By refusing to dismiss the “hot news” misappropriation claim, the Court applied the “hot news” doctrine to Internet content for the first time.

Under New York law (which was applied in the AHN case), misappropriation of breaking news arises when:

- a plaintiff generates or gathers information at a cost;
- the information is time-sensitive;
- a defendant’s use of the information constitutes free-riding on the plaintiff’s efforts;
- the defendant is in direct competition with a product or service offered by the plaintiff; and
- the ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to produce the product or service that its existence or quality would be substantially threatened.

The AHN decision serves as a reminder that a station’s news staff should not copy or simply rewrite headlines or breaking news stories found on the Internet or elsewhere without a

subscription or license to do so. This type of news aggregation may expose your station to substantial liability for “hot news” misappropriation under the laws of those states that recognize such claims, as well as for copyright infringement.

Should you have any questions concerning this issue, please contact an attorney in our office.

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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