
Use of Articles in Web Sites and On-Line Databases May Require Special Consents

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A recent ruling by a federal appeals court may have far-reaching effects on the republication of newspaper and magazine articles in web sites and on-line databases.

The case, [Tasini v. NY Times](#), was brought by a group of non-employee writers against several large publishers, including the New York Times Co., Time Warner's Sports Illustrated and Reed-Elsevier PLC, which owns the Lexis/Nexis database. At issue was whether permission to publish an article in a newspaper or magazine included permission to republish the same article in an on-line or other electronic database. In 1997, a federal district court in New York held that it was within publishers' rights to sell individual articles to an electronic database without further permission of the original writers. Those writers were not employees, and the articles were not "works-for-hire" owned by the publishers. In a decision handed down September 24, 1999, however, the 2nd Circuit Court of Appeals reversed the decision, and held that publishers must obtain specific permission from such authors before republishing their articles in searchable web sites and in on-line or other electronic databases.

The decision may have broad impact on past works already posted on searchable web sites and research databases within the past three years (the statute of limitations for copyright infringement). Going forward, an initial grant by a non-employee author to publish a work will not automatically extend to that work's inclusion in a searchable web site or in an on-line or other electronic database. Publishers and database companies may have to pay retroactive royalties for photographs, graphics and written work, from op-ed pieces to full-length magazine articles. Further, some publishers may have to pull works covered by the ruling from their web

sites and on-line databases. Alternatively, if a web site's or database's search engine merely links to a full copy of the periodical in which a work first appeared, and takes the user to the location in that periodical where the work began, additional permission from the author probably will not be required.

So-called "all rights" contracts may not give publishers sufficient rights to post articles on searchable web sites and research databases, for those contracts often restrict the preparation of derivative works and/or give authors a right of first refusal to prepare such derivative works. For now, the solution for on-line publishers and database companies may lie in specifically licensing the right to use those works both in their original form and as they may be included in on-line and other electronic databases. In theory, this may empower non-employee authors to negotiate richer contracts for their work. But in practice, the economics of the publishing industry may dictate that publishers will still set the terms.

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