Superhighway robbery: Why Moneyweb is right

By Branko Brkic

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Moneyweb vs. Media24 will be a precedent-setting case in the context of South African media law. One outcome will protect media houses and publications intent on fulfilling their journalistic duties from aggregating predators. The other outcome would cement the right for SA's biggest, richest and most powerful media entity to harvest the fruits of other publishers' intensive labour.

Whichever case transpires, one thing is certain: morally, Moneyweb has every right to feel wronged by Fin24.

A few weeks ago, SA's media world was stunned by the news of Moneyweb taking Fin24 to court for doing what aggregators around the world have been doing since the dawn of Internet publishing: re-purposing of their original stories. The very same stories Moneyweb writer and editors spent considerable time and effort producing.

My personal reaction, when I heard about it? "About time."

To explain my own feelings about the content aggregators, I need to take you back a few years. It started with Drudge Report, the US right wing's premier gathering post that managed to badly hurt John Kerry in 2004 elections.

A change in stories

Never to be outdone, the response by the then re-born liberal Arianna Huffington arrived in May 2005 in shape of a frontal attack on one GW Bush and his by then rapidly deteriorating fortunes in Iraq War: Huffington Post.

Being very much anti-Bush and fascinated by the meteoric rise of the young Senator from Illinois, I followed HuffPo for a few years, together with Wonkette, under Ana Marie Cox, probably the best blog of all times. But around 2007-8 elections, I became disillusioned with HuffPo's lack of intrinsic depth, the cheap approach to content gathering that was by then turning into an avalanche. Not to mention the insulting, screaming ads that were claiming I was really the 1,000,000th 'user' and should collect my award right away.

As the young senator from Illinois became the president, and with an obvious Republican party enemy temporarily out of the picture, HuffPo started looking a bit lost: I watched with disappointment as the stories' headlines often became misleading, in obvious search for traffic.

And only then, did my infatuation with HuffPo end. My blindness finally stopped to the fact that the entire concept behind it is merely theft on a grand scale.

Ariana Huffington has successfully managed to appropriate the work of The New York Times, The Washington Post, Time, Newsweek, The Economist, WSJ, FT, to name just a few. And along the way lean on the work of thousands of honest, hard-working journalists, the billions of dollars invested in each brand over several centuries, in order to drive the traffic to her re-compiled stories spruced up by her team of re-writers.

Never to be slowed down in her shamelessness, Huffington would lash back at her accusers through a series of new-media zingers while deftly side-stepping the real issues, like the fact that she almost never employs real journalists and editors, and that her by now massive family of websites would not have existed without the primary sources of information that she, err, borrowed from.

The Huffington Post model

Around the time I got fed up with HuffPo, Daily Maverick was born. I decided that it would do everything in its power to translate the ethos of real journalism to the online world.

Roughly around the same time, a change happened at the South African financial news website that then had every chance of dominating the scene, a change that has sown the seeds of today's conflict. The website was Fin24 and the decision was taken that the future lay in quantity over quality, and overall cost cutting.

In other words, the HuffPo model to content curation and four years later, Moneyweb have had enough.

But the Huffington Post model is wrong on many levels - here's few of them:

It is not journalism

It seeks to appropriate content created by another media entity, and present it as its own. While there usually is some kind of acknowledgement present, the content is being published within a clearly designed environment, with aggregator's logo dominating the page.

With only a small link displayed at the end of the story in, at best, the bold letters, which signage is more likely to be remembered by the reader?

Even adding a bigger button "Click here to read original story" before the story, as suggested by MoneyWeb, won't benefit them that much. With their own article being essentially repackaged, there's almost no incentive for reader to turn to the original piece.

It chokes the real journalism

Original articles usually take a quite a bit of time to research, write, check and publish. In the cases of investigations, this can take months and in some cases even longer.

Aggregators will spend a fraction of that time and, depending on its marketing power, may well take a lion's share of readers' attention and the advertising dollars that go with it.

News brands rely on exclusive stories as their main differentiator. It's what pushes newsrooms to greater heights and ultimately benefits the reading public. Allowing aggregators to deprive them of the benefits of their exclusivity, also takes away the incentive from journalists to continue their work.

It kills the golden goose

Without the original, primary journalism, the likes of The New York Times practise every day, there will be no food for the aggregators' feast. If the aggregators are allowed to continue as is, soon there will be no primary information for the

HuffPos of the world to misappropriate.

If left unabated, it's not crazy to think that, even the aggregation part of this pilfering could be done by algorithm-driven software. If left unabated, we would have taken one step closer to losing the battle of quantity versus quality.

It is unsustainable for the aggregators, too

The aggregators' own business models are based on the avalanche of cheaply acquired content accompanied by the blizzard of near-zero priced and sometimes dizzyingly infuriating advertising. But it also takes a massive economy of scale for the model to work - and the readership is not an infinite number.

In that Darwinian aggregation world there could usually only be One - and the race to the bottom will still render the winner whose structure cannot pay for real journalists or any substantial editorial effort.

So, how should the MoneyWeb vs. Fin24 be considered? Advice for the judge

Cases like this one are usually fought tooth and nail. It is not necessarily a battle of David vs. Goliath: MoneyWeb is majority-owned by Caxton/CTP and, should they decide to get involved, have pockets deep enough to contest this media scrum.

The judge's job will not be easy and the stakes are high - the future of our online publishing may hang in balance over his/her decision. So below are the few points to consider.

Was the article's subject an intuitive one and could the aggregator have come up with the same story on its own?

If it is not, the aggregator not only appropriates the copy, but also the very decision to put a spotlight on the story's subject - which sometimes requires an effort equal to writing a story.

Did the aggregator add any value to the article used? Any more revealing points, clarifications, new points of view, that in any way enrich the subject of the article used?

The copyright act holds that you can reproduce bits of a "literary work" (which is what a news article counts as) "for the purpose of reporting current events".

If the aggregator's 'post' is literally reporting on someone else's story, the ONLY reporting of current events is the story itself. Calling it a "fair use" and 'reporting' is laughable.

In reality, the existence of the aggregated story has a single purpose: Taking away the readership from the original publisher, as cheaply as possible. That is not cricket. Or journalism.

How prominent was the link and how likely was the busy reader, starved for time, to understand the real source and follow through?

Again, if the link is at the end of a story that excerpts or closely re-phrases the original story in a sufficient length, the likelihood of following through to the original story is greatly diminished.

So-called Huffington Post best practice

Huffington Post's rules of reposting others' content are NOT internationally accepted. They are only accepted by the aggregators themselves, not the publishers.

Ask anyone who spends massive chunks of their budget on journalists and content about it, and you will find no-one who agrees with their hard-earned content being stolen.

So-called 'Old Media' claim

News24's response to Moneyweb was dripping with disdain: "Moneyweb's response to the workings of digital media is clearly an old media approach from a company struggling to retain market share."

Which, of course, is nonsense. Old or new, ownership is, well, ownership. With 'HuffPo' and the 'old media' claims, Fin24 decided that, somehow, they themselves could define what is lawful and what is acceptable. I doubt any judge will find that argument acceptable.

So what is the solution that could work in future?

The only way news media can have a future is to recognise the rights of the publishers of original content and establish the rules of the game in the land that was pretty much free-for-all until now.

That should include a tighter definition of what is acceptable use and mandatory seeking of permission to re-purpose single-sourced stories by any aggregator.

That may be the best outcome for Moneyweb, but also for all publishers of original content, Daily Maverick included. By levelling the playing field, the judge may just give them and real journalism, a fighting chance.

So, good for Moneyweb. They are in for a big fight, but they are right this time.

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