DOWNLOAD PDF FORESHADOWS : INTERNATIONAL NEWS SERVICE VERSUS THE ASSOCIATED PRESS

Chapter 1 : International News Service v Associated Press | Case Brief Wiki | FANDOM powered by Wikia

International News Service v. Associated Press, U.S. (), also known as INS v. AP or simply the INS case, is a decision of the United States Supreme Court that enunciated the misappropriation doctrine of federal intellectual property common lawâ€"that a "quasi-property right" may be created against others by one's investment.

Such an agency may also be referred to as a wire service, Newswire, or news service. They are examples of a news wire, or news organization. The term news wire came into being in the days of the telegraph, when suddenly; newspapers across the country could communicate news to each other at heretofore unknown speeds! It refers to the telegraph wires, and is still a part of newspaper lingo today. A news wire is composed of editors and journalists who cover stories for that particular company. Unlike a newspaper, a news wire organization does not have its own product. There is not an Associated Press newspaper, for example. However, almost every newspaper all over the world is a member of the Associated Press. The AP, like Reuters and other wire services, supplies stories, photographs and graphics in newspapers. One great benefit of organizations like the AP is that they have reporters who cover events that local reporters cannot. Most newspapers could not afford to send a reporter overseas to cover a war or economic summit, but the AP has employees all over who do just that. In , in Turin, Guglielmo Stefani founded the Agenzia Stefani that became the most important agency in the Kingdom of Italy, and took international relevance with Manlio Morgagni. News agencies can be corporations that sell news e. Other agencies work cooperatively with large media companies, generating their news centrally and sharing local news stories the major news agencies may chose to pick up and redistribute i. Commercial Newswire services charge businesses to distribute their news e. Governments may also control news agencies: The major news agencies generally prepare hard news stories and feature articles that can be used by other news organizations with little or no modification, and then sell them to other news organizations. They provide these articles in bulk electronically through wire services originally they used telegraphy; today they frequently use the Internet. Corporations, individuals, analysts, and intelligence agencies may also subscribe. Internet-based alternative news agencies form one component of these sources. Articles and videos cover news. The Independent Living Fund News. Also provides newswire services, and online media monitoring. Based in Washington D.

Chapter 2 : Associated Press - Wikipedia

International News Service (INS) was unable to report on the war in Europe due to prohibitions enacted by foreign governments. Consequently INS pirated the Associated Press's (AP) newspaper by bribing the respondent's employees to furnish AP news before publication.

Johnson, of San Francisco, Cal. Argument of Counsel from pages intentionally omitted Mr. The parties are competitors in the gathering and distribution of news and its publication for profit in newspapers throughout the United States. The Associated Press, which was complainant in the District Court, is a co-operative organization, incorporated under the Membership Corporations Law of the state of New York, its members being individuals who are either proprietors or representatives of about daily newspapers published in all parts of the United States. That a corporation may be organized under that act for the purpose of gathering news for the use and benefit of its members and for publication in newspapers owned or represented by them, is recognized by an amendment enacted in Laws N. Complainant gathers in all parts of the world, by means of various instrumentalities of its own, by exchange with its members, and by other appropriate means, news and intelligence of current and recent events of interest to newspaper readers and distributes it daily to its members for publication in their newspapers. And each member is required to gather the local news of his district and supply it to the Associated Press and to no one else. The parties are in the keenest competition between themselves in the distribution of news throughout the United States; and so, as a rule, are the newspapers that they serve, in their several districts. Complainant in its bill, defendant in its answer, have set forth in almost identical terms the rather obvious circumstances and conditions under which their business is conducted. The value of the service, and of the news furnished, depends upon the promptness of transmission, as well as upon the accuracy and impartiality of the news; it being essential that the news be transmitted to members or subscribers as early or earlier than similar information can be furnished to competing newspapers by other news services, and that the news furnished by each agency shall not be furnished to newspapers which do not contribute to the expense of gathering it. And further, to quote from the answer: The court expressed itself as satisfied that this practice amounted to unfair trade, but as the legal question was one of first impression it considered that the allowance of an injunction should await the outcome of an appeal. The present writ of certiorari was then allowed. And notwithstanding the case has proceeded only to the stage of a preliminary injunction, we have deemed it proper to consider the underlying questions, since they go to the very merits of the action and are presented upon facts that are not in dispute. As presented in argument, these questions are: The federal jurisdiction was invoked because of diversity of citizenship, not upon the ground that the suit arose under the copyright or other laws of the United States. A preliminary objection to the form in which the suit is brought may be disposed of at the outset. It is said that the Circuit Court of Appeals granted relief upon considerations applicable to particular members of the Associated Press, and that this was erroneous because the suit was brought by complainant as a corporate entity, and not by its members; the argument being that their interests cannot be protected in this proceeding any more than the individual rights of a stockholder can be enforced in an action brought by the corporation. Complainant is a proper party to conduct the suit as representing their interest; and since no specific objection, based upon the want of parties, appears to have been made below, we will treat the objection as waived. See Equity Rules 38, 43, 44 33 Sup. In considering the general question of property in news matter, it is necessary to recognize its dual character, distinguishing between the substance of the information and the particular form or collocation of words in which the writer has communicated it. No doubt news articles often possess a literary quality, and are the subject of literary property at the common law; nor do we question that such an article, as a literary production, is the subject of copyright by the terms of the act as it now stands. In an early case at the circuit Mr. Justice Thompson held in effect that a newspaper was not within the protection of the copyright acts of 1 Stat. Stone, 2 Paine, , Fed. Evidently this admits to copyright a contribution to a newspaper, notwithstanding it also may convey news;

and such is the practice of the copyright office, as the newspapers of the day bear witness. See Copyright Office Bulletin No. We need spend no time, however, upon the general question of property in news matter at common law, or the application of the copyright act, since it seems to us the case must turn upon the question of unfair competition in business. And, in our opinion, this does not depend upon any general right of property analogous to the common-law right of the proprietor of an unpublished work to prevent its publication without his consent; nor is it foreclosed by showing that the benefits of the copyright act have been waived. We are dealing here not with restrictions upon publication but with the very facilities and processes of publication. The peculiar value of news is in the spreading of it while it is fresh; and it is evident that a valuable property interest in the news, as news, cannot be maintained by keeping it secret. Besides, except for matters improperly disclosed, or published in breach of trust or confidence, or in violation of law, none of which is involved in this brance of the case, the news of current events may be regarded as common property. What we are concerned with is the business of making it known to the world, in which both parties to the present suit are engaged. That business consists in maintaining a prompt, sure, steady, and reliable service designed to place the daily events of the world at the breakfast table of the millions at a price that, while of trifling moment to each reader, is sufficient in the aggregate to afford compensation for the cost of gathering and distributing it, with the added profit so necessary as an incentive to effective action in the commercial world. The service thus performed for newspaper readers is not only innocent but extremely useful in itself, and indubitably constitutes a legitimate business. The parties are competitors in this field; and, on fundamental principles, applicable here as elsewhere, when the rights or privileges of the one are liable to conflict with those of the other, each party is under a duty so to conduct its own business as not unnecessarily or unfairly to injure that of the other. Obviously, the question of what is unfair competition in business must be determined with particular reference to the character and circumstances of the business. The question here is not so much the rights of either party as against the public but their rights as between themselves. Moat, 9 Hare, , And, although we may and do assume that neither party has any remaining property interest as against the public in uncopyrighted news matter after the moment of its first publication, it by no means follows that there is no remaining property interest in it as between themselves. For, to both of them alike, news matter, however little susceptible of ownership or dominion in the absolute sense, is stock in trade, to be gathered at the cost of enterprise, organization, skill, labor, and money, and to be distributed and sold to those who will pay money for it, as for any other merchandise. Regarding the news, therefore, as but the material out of which both parties are seeking to make profits at the same time and in the same field, we hardly can fail to recognize that for this purpose, and as between them, it must be regarded as quasi property, irrespective of the rights of either as against the public. In order to sustain the jurisdiction of equity over the controversy, we need not affirm any general and absolute property in the news as such. The rule that a court of equity concerns itself only in the protection of property rights treats any civil right of a pecuniary nature as a property right In re Sawyer, U. United Hatters, 73 N. Law, , , 65 Atl. Essex Trades Council, 53 N. It is this right that furnishes the basis of the jurisdiction in the ordinary case of unfair competition. The question, whether one who has gathered general information or news at pains and expense for the purpose of subsequent publication through the press has such an interest in its publication as may be protected from interference, has been raised many times, although never, perhaps, in the precise form in which it is now presented. Board of Trade v. Other cases are cited, but none that we deem it necessary to mention. Not only do the acquisition and transmission of news require elaborate organization and a large expenditure of money, skill, and effort; not only has it an exchange value to the gatherer, dependent chiefly upon its novelty and freshness, the regularity of the service, its reputed reliability and thoroughness, and its adaptability to the public needs; but also, as is evident, the news has an exchange value to one who can misappropriate it. The peculiar features of the case arise from the fact that, while novelty and freshness form so important an element in the success of the business, the very processes of distribution and publication necessarily occupy a good deal of time. The fault in the reasoning lies in applying as a test the right of the complainant as against the public, instead of considering the rights of complainant and

defendant, competitors in business, as between themselves. The transaction speaks for itself and a court of equity ought not to hesitate long in characterizing it as unfair competition in business. It is no answer to say that complainant spends its money for that which is too fugitive or evanescent to be the subject of property. That might, and for the purposes of the discussion we are assuming that it would furnish an answer in a common-law controversy. But in a court of equity, where the question is one of unfair competition, if that which complainant has acquired fairly at substantial cost may be sold fairly at substantial profit, a competitor who is misappropriating it for the purpose of disposing of it to his own profit and to the disadvantage of complainant cannot be heard to say that it is too fugitive or evanescent to be regarded as property. It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience. The contention that the news is abandoned to the public for all purposes when published in the first newspaper is untenable. Abandonment is a question of intent, and the entire organization of the Associated Press negatives such a purpose. The cost of the service would be prohibited if the reward were to be so limited. No single newspaper, no small group of newspapers, could sustain the expenditure. It is said that the elements of unfair competition are lacking because there is no attempt by defendant to palm off its goods as those of the complainant, characteristic of the most familiar, if not the most typical, cases of unfair competition. But we cannot concede that the right to equitable relief is confined to that class of cases. The habitual failure to give credit to complainant for that which is taken is significant. But these elements, although accentuating the wrong, are not the essence of it. It is something more than the advantage of celebrity of which complainant is being deprived. At this point it becomes necessary to consider a distinction that is drawn by complainant, and, as we understand it, was recognized by defendant also in the submission of proofs in the District Court, between two kinds of use that may be made by one news agency of news taken from the bulletins and newspapers of the other. The first is the bodily appropriation of a statement of fact or a news article, with or without rewriting, but without independent investigation or other expense. This practice complainant denies having pursued and the denial was sustained by the finding of the District Court. It is not contended by defendant that the finding can be set aside, upon the proofs as they now stand. This practice complainant admits that it has pursued and still is willing that defendant shall employ. The Circuit Court of Appeals Fed. In a line of English cases a somewhat analogous practice has been held not to amount to an infringement of the copyright of a directory or other book containing compiled information. American Law Book Co. There is some criticism of the injunction that was directed by the District Court upon the going down of the mandate from the Circuit Court of Appeals. But the case presents practical difficulities; and we have not the materials, either in the way of a definite suggestion of amendment, or in the way of proofs, upon which to frame a specific injunction; hence, while not expressing approval of the form adopted by the District Court, we decline to modify it at this preliminary stage of the case, and will leave that court to deal with the matter upon appropriate application made to it for the purpose. The decree of the Circuit court of Appeals will be Affirmed. Many exchangeable values may be destroyed intentionally without compensation. Property depends upon exclusion by law from interference, and a person is not excluded from using any combination of words merely because some one has used it before, even if it took labor and genius to make it. If a given person is to be prohibited from making the use of words that his neighbors are free to make some other ground must be found. One such ground is vaguely expressed in the phrase unfair trade. This means that the words are repeated by a competitor in business in such a way as to convey a misrepresentation that materially injures the person who first used them, by appropriating credit of some kind which the first user has earned. But the only reason why it is actionable to make such a representation is that it tends to give the defendant an advantage in his competition with the plaintiff and that it is thought undesirable that an advantage should be gained in that way. Apart from that the defendant may use such unpatented devices and uncopyrighted combinations of words as he likes. Fresh news is got only by enterprise and expense. When it comes from one of the great news collecting agencies like the Associated Press, the source generally is indicated, plainly importing that credit; and that such a representation is implied

may be inferred with some confidence from the unwillingness of the defendant to give the credit and tell the truth. If the plaintiff is later in Western cities it naturally will be supposed to have obtained its information from the defendant. The falsehood is a little more subtle, the injury, a little more indirect, than in ordinary cases of unfair trade, but I think that the principle that condemns the one condemns the other. It is a question of how strong an infusion of fraud is necessary to turn a flavor into a poison. The does seems to me strong enough here to need a remedy from the law. But as, in my view, the only ground of complaint that can be recognized without legislation is the implied misstatement, it can be corrected by stating the truth; and a suitable acknowledgment of the source is all that the plaintiff can require. I think that within the limits recognized by the decision of the Court the defendant should be enjoined from publishing news obtained from the Associated Press for hours after publication by the plaintiff unless it gives express credit to the Associated Press; the number of hours and the form of acknowledgment to be settled by the District Court. There are published in the United States about 2, daily papers. Papers not members of the Associated Press depend for their news of general interest largely upon agencies organized for profit. Ever since its organization in , it has included among the sources from which it gathers news, copies purchased in the open market of early editions of some papers published by members of the Associated Press and the bulletins publicly posted by them. These items, which constitute but a small part of the news transmitted to its subscribers, are generally verified by the International News Service before transmission; but frequently items are transmitted without verification; and occasionally even without being re-written. In no case is the fact disclosed that such item was suggested by or taken from a paper or bulletin published by an Associated Press member.

Chapter 3 : International News, World News, Top News Stories, Global News & More | blog.quintoapp.com

It is unfair business competition for a news collection agency to distribute the news collected by another news collection agency. Facts. The Complainant, the Associated Press (Complainant) and the Defendants, International News Services (Defendants) are both involved in the news collection business.

International News Service v. Associated Press, U. The right to object to the nonjoinder of parties may be treated as Page U. Equity Rules 43, A news article in a newspaper may be copyrighted under the Act of March 4, , but news, as such, is not copyrightable. But one who gathers news at pains and expense, for the purpose of lucrative publication, may be said to have a quasi-property in the results of his enterprise as against a rival in the same business, and the appropriation of those results at the expense and to the damage of the one and for the profit of the other is unfair competition against which equity will afford relief. Held that the first company and its members, as against the second company, had an equitable quasi-property in the news, even after the early publications; that the use made of it by the second company not as a mere basis for independent investigation, but by substantial appropriation for its own gain and at the expense and to the damage of their enterprise, amounted to unfair competition which should be enjoined irrespective of the false pretense involved in rewriting articles and in distributing the news without mentioning the source, for this, while accentuating the wrong, was not of its essence. The parties are competitors in the gathering and distribution of news and its publication for profit in newspapers throughout the United States. The Associated Press, which was complainant in the district court, is a cooperative organization, incorporated under the Membership Corporations Law of the State of New York, its members being individuals who are either proprietors or representatives of about daily newspapers published in all parts of the United States. That a corporation may be organized under that act for the purpose of gathering news for the use and benefit of its members and for publication in newspapers owned or represented by them is recognized by an amendment enacted in Laws N. Complainant gathers in all parts of the world, by means of various instrumentalities of its own, by exchange with its members, and by other appropriate means, news and intelligence of current and recent events of interest to newspaper readers and distributes it daily to its members for publication in their newspapers. And each member is required to gather the local news of his district and supply it to the Associated Press, and to no one else. The parties are in the keenest competition between themselves in the distribution of news throughout the United States, and so, as a rule, are the newspapers that they serve, in their several districts. Complainant in its bill, defendant in its answer, have set forth in almost identical terms the rather obvious circumstances and conditions under which their business is conducted. The value of the service, and of the news furnished, depends upon the promptness of transmission, as well as upon the accuracy and impartiality of the news, it being essential that the news be transmitted to members or subscribers as early or earlier than similar information can be furnished to competing newspapers Page U. And further, to quote from the answer: The court expressed itself as satisfied that this practice amounted to unfair trade, but, as the legal question was Page U. The present writ of certiorari was then allowed. And notwithstanding the case has proceeded only to the stage of a preliminary injunction, we have deemed it proper to consider the underlying questions, since they go to the very merits of the action and are presented upon facts that are not in dispute. As presented in argument, these questions are: The federal jurisdiction was invoked because of diversity of citizenship, not upon the ground that the suit arose under the copyright or other laws of the United Page U. A preliminary objection to the form in which the suit is brought may be disposed of at the outset. It is said that the circuit court of appeals granted relief upon considerations applicable to particular members of the Associated Press, and that this was erroneous because the suit was brought by complainant as a corporate entity, and not by its members, the argument being that their interests cannot be protected in this proceeding any more than the individual rights of a stockholder can be enforced in an action brought by the corporation. Complainant is a proper party to conduct the suit as representing their interest, and since no specific objection, based upon the

want of parties, appears to have been made below, we will treat the objection as waived. See Equity Rules 38, 43, No doubt news articles often possess a literary quality, and are the subject of literary property at the common law; nor do we question that such an article, as a literary production, is the subject of copyright by the terms of the act as it now stands. In an early case, at the circuit, Mr. Justice Thompson held in effect that a newspaper was not within the protection of the copyright acts of and Stone, 2 Paine , 5 Fed. But the present act is broader; it provides that the works for which copyright may be secured shall include "all the writings of an author," and specifically mentions "periodicals, including newspapers. Evidently this admits to copyright a contribution to a newspaper, notwithstanding it also may convey news, and such is the practice of the copyright office, as the newspapers of the day bear witness. See Copyright Office Bulletin No. But the news element -- the information respecting current events contained in the literary production -- is not the creation of the writer, but is a report of matters that ordinarily are publici juris; it is the history of the day. It is not to be supposed that the framers of the Constitution, when they empowered Congress "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" Const. We need spend no time, however, upon the general Page U. And, in our opinion, this does not depend upon any general right of property analogous to the common law right of the proprietor of an unpublished work to prevent its publication without his consent; nor is it foreclosed by showing that the benefits of the copyright act have been waived. We are dealing here not with restrictions upon publication, but with the very facilities and processes of publication. The peculiar value of news is in the spreading of it while it is fresh, and it is evident that a valuable property interest in the news, as news, cannot be maintained by keeping it secret. Besides, except for matters improperly disclosed, or published in breach of trust or confidence, or in violation of law, none of which is involved in this branch of the case, the news of current events may be regarded as common property. What we are concerned with is the business of making it known to the world, in which both parties to the present suit are engaged. That business consists in maintaining a prompt, sure, steady, and reliable service designed to place the daily events of the world at the breakfast table of the millions at a price that, while of trifling moment to each reader, is sufficient in the aggregate to afford compensation for the cost of gathering and distributing it, with the added profit so necessary as an incentive to effective action in the commercial world. The service thus performed for newspaper readers is not only innocent but extremely useful in itself, and indubitably constitutes a legitimate business. The parties are competitors in this field, and, on fundamental principles, applicable here as elsewhere, when the rights or privileges of the one are liable to conflict with those of the other, each party is under a duty so to conduct its own business as not unnecessarily or unfairly to injure that of the other. Obviously the question of what is unfair competition in business must be determined with particular reference to the character and circumstances of the business. The question here is not so much the rights of either party as against the public, but their rights as between themselves. Moat, 9 Hare , And, although we may and do assume that neither party has any remaining property interest as against the public in uncopyrighted news matter after the moment of its first publication, it by no means follows that there is no remaining property interest in it as between themselves. For, to both of them alike, news matter, however little susceptible of ownership or dominion in the absolute sense, is stock in trade, to be gathered at the cost of enterprise, organization, skill, labor, and money, and to be distributed and sold to those who will pay money for it, as for any other merchandise. Regarding the news therefore as but the material out of which both parties are seeking to make profits at the same time and in the same field, we hardly can fail to recognize that for this purpose, and as between them, it must be regarded as quasi-property, irrespective of the rights of either as against the public. In order to sustain the jurisdiction of equity over the controversy, we need not affirm any general and absolute property in the news as such. The rule that a court of equity concerns itself only in the protection of property rights treats any civil right of a pecuniary nature as a property right In re Sawyer, U. United Hatters, 73 N. Essex Trades Council, 53 N. It is this right that furnishes the basis of the jurisdiction in the ordinary case of unfair competition. The question whether one who has gathered general information or news at pains and

expense for the purpose of subsequent publication through the press has such an interest in its publication as may be protected from interference has been raised many times, although never, perhaps, in the precise form in which it is now presented. Board of Trade v. Other cases are cited, but none that we deem it necessary to mention. Not only do the acquisition and transmission of news require elaborate organization and a large expenditure of money, skill, and effort; not only has it an exchange value to the gatherer, dependent chiefly upon its novelty and freshness, the regularity of the service, its reputed reliability and thoroughness, and its adaptability to the public needs; but also, as is evident, the news has an exchange value to one who can misappropriate it. The peculiar features of the case arise from the fact that, while novelty and freshness form so important an element in the success of the business, the very processes of distribution and publication necessarily occupy a good deal of time. The fault in the reasoning lies in applying as a test the right of the complainant as against the public, instead of considering the rights of complainant and defendant, competitors in business, as between themselves. The transaction speaks for itself, and a court of equity ought not to hesitate long in characterizing it as unfair competition in business. The underlying principle is much the same as that which lies at the base of the equitable theory of consideration in the law of trusts -- that he who has fairly paid the price should have the beneficial use of the property. It is no answer to say that complainant spends its money for that which is too fugitive or evanescent to be the subject of property. That might, and for the purposes of the discussion we are assuming that it would, furnish an answer in a common law controversy. But, in a court of equity, where the question is one of unfair competition, if that which complainant has acquired fairly at substantial cost may be sold fairly at substantial profit, a competitor who is misappropriating it for the purpose of disposing of it to his own profit and to the disadvantage of complainant cannot be heard to say that it is too fugitive or evanescent to be regarded as property. It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience. The contention that the news is abandoned to the public for all purposes when published in the first newspaper is untenable. Abandonment is a question of intent, and the entire organization of the Associated Press negatives such a purpose. The cost of the service would be prohibitive if the reward were to be so limited. No single Page U. It is said that the elements of unfair competition are lacking because there is no attempt by defendant to palm off its goods as those of the complainant, characteristic of the most familiar, if not the most typical, cases of unfair competition. But we cannot concede that Page U. The habitual failure to give credit to complainant for that which is taken is significant. But these elements, although accentuating the wrong, are not the essence of it. It is something more than the advantage of celebrity of which complainant is being deprived. At this point, it becomes necessary to consider a distinction that is drawn by complainant, and, as we understand it, was recognized by defendant also in the submission of proofs in the district court, between two kinds of use that may be made by one news agency of news taken from the Page U. The first is the bodily appropriation of a statement of fact or a news article, with or without rewriting, but without independent investigation or other expense. This practice complainant denies having pursued, and the denial was sustained by the finding of the district court. It is not contended by defendant that the finding can be set aside upon the proofs as they now stand. The other use is to take the news of a rival agency as a "tip" to be investigated, and, if verified by independent investigation, the news thus gathered is sold. This practice complainant admits that it has pursued, and still is willing that defendant shall employ. As to securing "tips" from a competing news agency, the district court F. The circuit court of appeals F. In a line of English cases, a somewhat analogous practice has been held not to amount to an infringement of the copyright of a directory or other book containing compiled information. American Law Book Co. There is some criticism of the injunction that was directed by the district court upon the going down of the mandate from the circuit court of appeals. But the case presents practical difficulties, and we have not the materials, either in the way of a definite suggestion of amendment or in the way of proofs, upon which to frame a specific injunction; hence, while not expressing approval of the form adopted by the district court, we decline to modify it at this preliminary stage of the case, and will leave that court to deal with the matter upon appropriate application

made to it for the purpose. The decree of the Circuit court of Appeals will be Affirmed. When an uncopyrighted combination of words is published, there is no general right to forbid other people repeating them -- in other words, there is no property in the combination or in the thoughts or facts that the words express. Property, a creation of law, does not arise from value, although exchangeable -- a matter of fact. Many exchangeable values may be destroyed intentionally without compensation. Property depends upon exclusion by law from interference, and a person is not excluded from using any combination of words merely because some one has used it before, even if it took labor and genius to make it. If a given person is to be prohibited from making the use of words that his neighbors are free to make, some other ground must be found. One such ground is vaguely expressed in the phrase unfair trade. This means that the words are repeated by a competitor in business in such a way as to convey a misrepresentation that materially injures the person who first used them, by appropriating credit of some kind Page U. But the only reason why it is actionable to make such a representation is that it tends to give the defendant an advantage in his competition with the plaintiff, and that it is thought undesirable that an advantage should be gained in that way. Apart from that, the defendant may use such unpatented devices and uncopyrighted combinations of words as he likes. Fresh news is got only by enterprise and expense. When it comes from one of the great news collecting agencies like the Associated Press, the source generally is indicated, plainly importing that credit, and that such a representation is implied may be inferred with some confidence from the unwillingness of the defendant to give the credit and tell the truth.

Chapter 4 : The Associated Press vs. International News service. - CORE

International News Service (INS) and the Associated Press (AP) were news organizations that wrote stories and sold them to newspapers. AP sued INS for getting pre-publication copies of AP's stories, and then repackaging and selling the stories to INS's client newspapers.

Their businesses hinged on getting fast and accurate reports published. INS members would rewrite the news and publish it as their own, without attribution to AP. Ruling[edit] Power to rule on issues[edit] In , the federal courts and in particular the Supreme Court had the power to declare and create binding law in commercial matters, such as bills and notes and torts such as negligence and business interference. This was under the doctrine of Swift v. Tyson , 41 U. In , in Erie Railroad Co. Tompkins , U. As Justice Brandeis wrote: Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or "general," be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts. Justices Holmes and Brandeis wrote dissents. Justice Pitney The majority opinion by Justice Pitney recognized that the information found in the AP news was not copyrightable as "the information respecting current events contained in the literary production is not the creation of a writer but is a report of matters that ordinarily are publici juris ; it is the history of the day. He found that there was a quasi-property right in the news as it is "stock in trade to be gathered at the cost of enterprise, organization, skill, labor and money, and to be distributed and sold to those who will pay money for it. Due to the tenuous value of "hot" news, Pitney narrowed the period for which the proprietary right would apply: The transaction speaks for itself and a court of equity ought not to hesitate long in characterizing it as unfair competition in business. The underlying principle is much the same as that which lies at the base of the equitable theory of consideration in the law of trustsâ€”that he who has fairly paid the price should have the beneficial use of the property. It is no answer to say that AP spends its money for that which is too fugitive or evanescent to be the subject of property. That might, and for the purposes of the discussion we are assuming that it would furnish an answer in a common-law controversy. But in a court of equity, where the question is one of unfair competition, if that which AP has acquired fairly at substantial cost may be sold fairly at substantial profit, a competitor who is misappropriating it for the purpose of disposing of it to his own profit and to the disadvantage of AP cannot be heard to say that it is too fugitive or evanescent to be regarded as property. It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience. Property, a creation of law, does not arise from value, although exchangeableâ€”a matter of fact. Many exchangeable values may be destroyed intentionally without compensation. Property depends upon exclusion by law from interference, and a person is not excluded from using any combination of words merely because some one has used it before, even if it took labor and genius to make it. If a given person is to be prohibited from making the use of words that his neighbors are free to make some other ground must be found. He said the law of unfair competition requires a misrepresentation. If the misrepresentation here is that some people may think AP copied the news from INS, the proper remedy would be only to prohibit INS for a limited time from copying from AP unless it provides a notice that it copied from AP. To appropriate and use for profit, knowledge and ideas produced by other men, without making compensation or even acknowledgment, may be inconsistent with a finer sense of propriety; but, with the exceptions indicated above [i. Thus it was held that one may ordinarily make and sell anything in any form, may copy with exactness that which another has produced, or may otherwise use his ideas without his consent and without the payment of compensation, and yet not inflict a legal injury; and that ordinarily one is at perfect liberty to find out, if he can by lawful means, trade secrets of another, however valuable, and then use the knowledge so acquired gainfully, although it cost the original owner much in effort and in money to collect or produce. The case presents no elements of equitable title or of breach of trust. The only possible reason for resort to a court of equity in a case like this is that the remedy which the law gives is

inadequate. If the plaintiff has no legal cause of action, the suit necessarily fails. There is nothing in the situation of the parties which can estop [INS] from saying so. The creation or recognition by courts of a new private right may work serious injury to the general public, unless the boundaries of the right are definitely established and wisely guarded. In order to reconcile the new private right with the public interest, it may be necessary to prescribe limitations and rules for its enjoyment; and also to provide administrative machinery for enforcing the rules. A Legislature, urged to enact a law by which one news agency or newspaper may prevent appropriation of the fruits of its labors by another, would consider such facts and possibilities and others which appropriate inquiry might disclose [regarding possible adverse effects on the public and other businesses]. Legislators might conclude that it was impossible to put an end to the obvious injustice involved in such appropriation of news, without opening the door to other evils, greater than that sought to be remedied. Courts are ill-equipped to make the investigations which should precede a determination of the limitations which should be set upon any property right in news or of the circumstances under which news gathered by a private agency should be deemed affected with a public interest. Courts would be powerless to prescribe the detailed regulations essential to full enjoyment of the rights conferred or to introduce the machinery required for enforcement of such regulations. Considerations such as these should lead us to decline to establish a new rule of law in the effort to redress a newly disclosed wrong, although the propriety of some remedy appears to be clear. A leading copyright law scholar has commented: It has been suggested that the credence due the International News Service case today is minimal: California, [26] the Supreme Court held that the California penal statute against the unlicensed copying of records was not preempted by federal copyright law since Congress had not regulated the subject matter. University of Notre Dame du Lac, an unlicensed manufacturer distributed class rings in competition with the "official" product sponsored by the university. The court found misappropriation under the INS doctrine, holding that secondary meaning was no longer an essential element of unfair competition law in New York. At the time, the Copyright Act did not yet extend to sound recordings. This was not a "hot news" case but rather an improper copying case. It shows the expansion of the INS doctrine beyond "hot news" to a more general misappropriation doctrine. After quoting the foregoing language from Metropolitan Opera, the Second Circuit said: Such concepts are virtually synonymous for wrongful copying and are in no meaningful fashion distinguishable from infringement of a copyright. The broad misappropriation doctrine relied upon by the district court is, therefore, the equivalent of exclusive rights in copyright law. An illustrative case is the decision in Cheney Bros. The designs were not practicably copyrighted or patented, so that "the plaintiff, which is put to much ingenuity and expense in fabricating them, finds itself without protection of any sort for its pains. Others may imitate these at their pleasure. Although that [case] concerned another subject-matterâ€”printed news dispatchesâ€”we agree that, if it meant to lay down a general doctrine, it would cover this case; at least, the language of the majority opinion goes so far. We do not believe that it did. While it is of course true that law ordinarily speaks in general terms, there are cases where the occasion is at once the justification for, and the limit of, what is decided. This appears to us such an instance; we think that no more was covered than situations substantially similar to those then at bar. The difficulties of understanding it otherwise are insuperable. We are to suppose that the court meant to create a sort of common-law patent or copyright for reasons of justice. Either would flagrantly conflict with the scheme which Congress has for more than a century devised to cover the subject-matter. Krigsman, [39] involving a sponge-mop replacement for installation after the original sponge becomes worn out. The plaintiff did not attempt to protect functional features of the product, but only sought to prevent the copying of the nonfunctional arrangement of slots in the metal "presser plate" hinged to the bottom of the mop which is pressed against the sponge to squeeze water out. The rule against nonfunctional copying, the Second Circuit held in an opinion by Judge Learned Hand , is restricted to cases where the nonfunctional element has acquired a secondary meaning: It is indeed quite likely that buyers have assumed an identity of origin to the two mops from their general similarity; it is even possible-though we should suppose it very unlikely-that the identical form of the "slots" may have contributed to that assumption, but one who seeks to enjoin the

reproduction of what is in the public domain must affirmatively show that the copied features were the reason for the confusion; it is not enough that perhaps it may have contributed [to it]. Decisions from other circuits are consistent with those from the Second Circuit. But that is not unfair. Sharing in the goodwill of an article unprotected by patent or trade-mark is the exercise of a right possessed by allâ€”and in the free exercise of which the consuming public is deeply interested. Instead, Brandeis inquired [only] whether Kellogg had engaged in any acts of misrepresentation. Stiffel and Compco v. Day-Brite undermined the application of the INS doctrine to prohibit or penalize the copying of product designs, to the point where the First Circuit said in that INS "has clearly been overruled. The implement selected by the Court to vindicate the competitionâ€”monopoly balance may be characterized as a per se rule. Any state law which operates to jar the balance, however incidentally, is, per se, an illegitimate impediment and to be condemned. In the view of Mr. Justice Black, writing for the majority, just "as a State cannot encroach upon the federal patent laws directly, it cannot, under some other law. Though International News Service has never been expressly overruled, the Court was, in Sears and Compco, apparently rejecting its approach. Gilner Potteries, in which the court held that copying an ash-tray design "in precise detail as to design, shape and color, and in every other respect than quality, is nothing less than piracy," [47] and Dior v. Milton, in which the court held that there was no good reason "why the rights of the plaintiff [in a dress design] should receive less protection than those of the sponsor of sporting events and the disseminator of news," [48] can no longer survive: By applying the doctrine of preemption of the field by congressional enactment of federal patent and copyright laws, the Supreme Court has.

Chapter 5 : International News Service v. Associated Press

The Associated Press delivers in-depth coverage on today's Big Story including top stories, international, politics, lifestyle, business, entertainment, and more.

The New York Times became a member shortly after its founding in September Initially known as the New York Associated Press NYAP , the organization faced competition from the Western Associated Press , which criticized its monopolistic news gathering and price setting practices. An investigation completed in by Victor Lawson , editor and publisher of the Chicago Daily News, revealed that several principals of the NYAP had entered into a secret agreement with United Press, a rival organization, to share NYAP news and the profits of reselling it. The invention of the rotary press allowed the New York Tribune in the s to print 18, papers per hour. During the Civil War and Spanishâ€”American War , there was a new incentive to print vivid, on-the-spot reporting. He embraced the standards of accuracy, impartiality, and integrity. He introduced the "telegraph typewriter" or teletypewriter into newsrooms in In , AP launched the Wirephoto network, which allowed transmission of news photographs over leased private telephone lines on the day they were taken. This gave AP a major advantage over other news media outlets. United States that the AP had been violating the Sherman Antitrust Act by prohibiting member newspapers from selling or providing news to nonmember organizations as well as making it very difficult for nonmember newspapers to join the AP. The decision facilitated the growth of its main rival United Press International , headed by Hugh Baillie from to Logo on the former AP Building in New York City AP entered the broadcast field in when it began distributing news to radio stations; it created its own radio network in In , it established APTV, a global video newsgathering agency. In , AP had more than bureaus globally. Its missionâ€”"to gather with economy and efficiency an accurate and impartial report of the news"â€”has not changed since its founding, but digital technology has made the distribution of the AP news report an interactive endeavor between AP and its 1, U. Mark Kellogg , a stringer , was the first AP news correspondent to be killed while reporting the news, at the Battle of the Little Bighorn. Stone became the general manager of the reorganized AP, a post he held until AP introduced the teleprinter , which transmitted directly to printers over telegraph wires. Eventually a worldwide network of word-per-minute teleprinter machines is built. AP expanded new offices at 50 Rockefeller Plaza known as "50 Rock" in the newly built Rockefeller Center in New York City, which would remain its headquarters for 66 years. AP expanded from print to radio broadcast news. Kennedy maintains that he reported only what German radio already had broadcast. AP war correspondent Prague bureau chief William N. Oatis was arrested for espionage by the Communist government of Czechoslovakia. He was not released until The AP moved its headquarters from 50 Rock to W. The AP launched AP Mobile initially known as the AP Mobile News Network , a multimedia news portal that gives users news they can choose and provides anytime access to international, national and local news. AP rolled out price cuts designed to help newspapers and broadcasters cope with declining revenue. Pruitt is the 13th leader of AP in its year history. The AP college football rankings were created in , and began including the top 25 teams in Since , the final poll of each season has been released after all bowl games have been played. The poll first began its poll of college basketball teams in , and has since conducted over 1, polls. The college basketball poll started with 20 teams and was reduced to 10 during the college basketball season. It returned to 20 teams in and expanded to 25 beginning in The final poll for each season is released prior to the conclusion of the NCAA tournament, so all data includes regular season games only. The poll counted poll appearances one point and No. The award was discontinued in

Chapter 6 : Top News, U.S. News, International News, and Analysis - blog.quintoapp.com

News information obtained by a media source gives rise to a property right, and using that information in a different source violates the right. During the First World War, International News Service (INS) freely admitted that it used news stories from the Associated Press (AP) in its own.

Third, INS employees copied news from bulletin boards and from early edition boards and then published it as their own. Procedural History District court granted preliminary injunction on first two issues, but left third to COA. COA sustained the injunction. Court also decided to address: Is there any property in news? If there is property in news collected for the purpose of being published, does this property right survive once it is published and communicated? Reasoning There is a literary element to the news, and there is a property right in this element, but there is also a historical, substantial element to the news, which is common property. While the substance of news is common property, the business of making it known to the world is subject to rules on unfair competition. A property interest in news cannot be maintained by keeping it secret. The value is in distributing it while it is fresh. Since labor and money are required to distribute the news in a way that makes it valuable and makes it so that people will pay for it, in this way the news should be considered quasi property. It is quasi property because there is a property right not between the public and the AP or between the public and the INS but rather between the AP and the INS as distributors and business competitors. INS says that when the news gets posted on bulletin boards, it becomes public property and therefore INS can do whatever it wants with it. Court says that this is flawed reasoning because it is considering the property rights between the public and the AP, not between the AP and the INS. There is a big difference between these, because AP and INS are competitors in the business of news distribution. INS is essentially diverting profits from the AP, which earned the profits, to itself, which did not. Dissent The knowledge for which protection is sought in the case at bar is not of a kind upon which the law has heretofore conferred the attributes of property; nor is the manner of its acquisition or use nor the purpose to which it is applied, such as has heretofore been recognized as entitling a plaintiff to relief. To give relief against this right as a property right would require the making of a new rule in analogy to existing ones, and creation or recognition by courts of a new private right may work serious injury to the general public, unless the boundaries of the right are definitely established and wisely guarded. Courts are ill-equipped to make the investigations which should precede a determination of the limitations which should be set upon any property right in news or of the circumstances under which news gathered by a private agency should be deemed affected with a public interest. Therefore, even though it seems like a remedy is necessary here, the Court should not create new laws to enforce it.

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Chapter 7 : International News Service v. Associated Press - Wikipedia

Parties: The Associated Press (AP) - Plaintiff at the District Court, appellee and appellant at the Circuit Court (both parties appealed); and International News Service (INS) - Defendant at the District Court, appellee and appellant at the Circuit court.

International News Service v. Associated Press U. AP claimed that INS: The Trial Court found for AP and issued and injunction to INS telling them to stop the first two practices, but that they could still copy AP stories out of published newspapers. The Trial Court felt that the conduct was unfair but they were not sure if it were actually illegal. The Appellate Court affirmed. The US Supreme Court affirmed. AP argued that news stories are similar to literary properties and should be protected as such. INS argued that news does not fall with in the operation of the Copyright Act. INS argued that the news is essentially abandoned property, once the paper is published. The US Supreme Court recognized the dual character of news articles. They distinguished between the substance of the information and its form. The US Supreme Court found that there was a quasi-property right in the news as it is "stock in trade to be gathered at the cost of enterprise, organization, skill, labor and money, and to be distributed and sold to those who will pay money for it". The US Supreme Court upheld the common law rule that there is no copyright in facts and developed the common law doctrine of misappropriation through the tort of unfair competition. If this case had gone the other way, AP would still not have lost all value of their product. People would still pay AP for their newsfeeds. If someone takes your tomatoes, you have no value left. Btw, all those Civil Procedure fans out there might be interested to notice that this case was decided under Federal common law. This was pre Erie Doctrine. One interesting historical fact was that most of the big stories of the day related to developments in WWI. INS was anti-war and wanted the US to stay out. The British government knew this, and froze INS reporters out of their briefings. That could have had a propaganda effect on the American public.

Chapter 8 : CNN International - Breaking News, US News, World News and Video

Papers not members of the Associated Press depend for their news of general interest largely upon agencies organized for profit. 2 Among these agen cies is the International News Service which supplies news to about subscribing papers. It has, like the Associated Press, bureaus and correspondents in this and foreign countries; and its.

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