

**Associated Press v. Meltwater U.S. Holdings, Inc.,
931 F. Supp. 2d 537 (S.D.N.Y. 2013)**

Year	2013
Court	United States District Court for the Southern District of New York
Key Facts	Plaintiff Associated Press (AP), a news cooperative owned by over 1,400 newspapers across the United States, issued up to 2,000 news articles daily. Defendant Meltwater News U.S. Holdings, Inc. (Meltwater) offered a news monitoring service to subscribers, such as nonprofits, government agencies, and corporations. Meltwater used an automated system that would “crawl” the Internet daily for news on approximately 162,000 selected websites and created an index of the content (much like a search engine). Meltwater also allowed customers to do <i>ad hoc</i> searches, news feeds, and archiving. AP alleged that Meltwater’s service infringed its copyrights by delivering excerpts from thirty-three AP articles to Meltwater customers. AP showed that it owned a valid copyright in the articles and that Meltwater had copied protected elements of those works. Meltwater did not contest AP’s showing, and relied instead on five affirmative defenses, including fair use. The parties cross-moved for summary judgment.
Issue	Whether operating a service that allows users to search and archive copyrighted news articles, as well as providing excerpts of them, qualified as fair use.
Holding	The court rejected Meltwater’s fair use defense and granted AP’s motion for summary judgment, with one exception not relevant to the fair use analysis. Regarding the purpose prong of the fair use analysis, the court determined that Meltwater’s use was not transformative. Meltwater merely automatically captured and republished segments of text from the articles without adding commentary or insight. Furthermore, Meltwater copied the content to make money from the undiluted use of the material, and so commercial profit was “not an incidental consequence of the use to which it puts the copyrighted material.” That the works were factual in nature and were already published weighed slightly in favor of finding fair use. The amount and substantiality of the portion used weighed strongly against a finding of fair use. Meltwater took between 4.5% and 61% of the articles, including the introduction section (“lede”) of each story, which was “meant to convey the heart of the story.” The fourth factor, the effect on the market, also weighed strongly against Meltwater. AP had already established a market for licensing its work, and Meltwater refused to purchase licenses. Meltwater also directly competed with AP for customers, and so through its refusal to pay the fees, the court reasoned, Meltwater obtained an unfair commercial advantage and directly harmed AP as creator of the content.
Tags	Second Circuit; Format shifting/Space shifting; News reporting
Outcome	Fair use not found

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