



**BEFORE THE
U.S. COPYRIGHT OFFICE**

**Publishers' Protections Study: Notice and
Request for Public Comments**

Docket No. 2021-5

COMMENTS OF THE COPYRIGHT ALLIANCE

The Copyright Alliance appreciates the opportunity to submit comments in response to the [Notice of Inquiry](#) (NOI) published in the Federal Register on October 12, 2021 by the U.S. Copyright Office, seeking information from stakeholders on the Copyright Office's public study on current copyright protections for publishers, the effectiveness of publishers' existing rights in news content, whether additional protections are desirable or appropriate, and the possible scope of any such new protections.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of copyrighted works for the public to enjoy. This includes creators and organizations such as reporters, journalists, writers, editors, photographers, newspaper publishers, magazine publishers and other members of the press community who rely on copyright to protect the product of their newsgathering and journalistic efforts.

There can be no disputing the vital role that the press and news media in general plays in public discourse and in the American creative economy. In 2020, press publishers generated an estimated \$19.9 billion in total revenue and employed approximately 31,000 people, and the

figures in previous years were higher.¹ Press publishers of a spectrum of disciplines, political backgrounds, and regional scales invest incredible amounts of time, labor, and money to create, facilitate, and deliver timely news content to hundreds of millions of Americans through specialized and developed information gathering, collaborating, reporting, writing, and editing decisions and techniques. For example, investigative or international reporting on major issues can cost a press publisher anywhere from tens of thousands per day to millions of dollars in the aggregate.²

Despite the enormous costs to create and disseminate news content, the current digital environment has made it exceedingly difficult for press publishers to generate meaningful returns to enable them to continue their important societal endeavors at the level they and the public demand. As noted in the NOI, the pervasiveness of digital distribution and online news aggregators has dramatically changed the way the public consumes news and the manner in which that news is delivered to the public.³ Despite the protections offered under U.S. copyright law, online platforms and news aggregators cull and clip news content (that has been generated at great cost by press publishers) without licensing the content from the publisher. These online pilferers often display the text, headlines, photographs, and other content in a way that results in the aggregated content acting as a substitute for the press publisher's original content. In short, press publishers and their employees put in all the long hours, take the risks, draw on their years of experience and expend millions of dollars to create, facilitate, and deliver timely news content, and these online platforms—who spend no time, have no experience and spend no money—swoop in to steal all the rewards. This is the exact type of behavior that intellectual property laws are intended to prevent.

Unfortunately, U.S. intellectual property law is not adequately protecting these press publishers from these modern illicit activities. While copyright law provides protections for news content in its many forms such as individual articles or websites incorporating text and imagery,

¹Michael Barthel & Kristen Worden, *Newspapers Fact Sheet: State of the News Media*, Pew Research Center (Jun. 29, 2021), <http://www.journalism.org/fact-sheet/newspapers/>; Elizabeth Grieco, *Fast Facts about the Newspaper Industry's Financial Struggles as McClatchy Files for Bankruptcy*, Pew Research Center (Feb. 14, 2020), [https://www.pewresearch.org/fact-tank/2020/02/14/fast-facts-about-the\(-newspaper-industrys-financial-struggles/](https://www.pewresearch.org/fact-tank/2020/02/14/fast-facts-about-the(-newspaper-industrys-financial-struggles/).

² *Crippling Costs of War Reporting and Investigative Journalism*, France24 (Aug. 28, 2018, 6:36 am), <https://www.france24.com/en/20180828-crippling-costs-war-reporting-investigative-journalism/>.

³ Publishers' Protections Study: Notice and Request for Public Comment, 86 Fed. Reg. 56721, 56722 (Oct. 12, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-10-12/pdf/2021-22077.pdf>.

the ability of publishers to enforce and benefit from those protections falls short of safeguarding press publishers against the aggregation, recycling, and reuse of such content by popular social media platforms and aggregators.

The Copyright Alliance thanks the Office for undertaking this important study to examine whether current protections are adequately protecting the rights of press publishers. We look forward to participating in the upcoming December public roundtable to further discuss with the Office and other stakeholders the impact of the digital environment and current practices on press publishers and issues regarding whether current legal regimes sufficiently protect press publishers' rights.

Respectfully submitted,

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