



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

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

Docket No. 2021-5

COMMENTS OF THE COPYRIGHT ALLIANCE

The Copyright Alliance appreciates the opportunity to submit additional comments further responding to the topics raised in the [Notice of Inquiry](#) (NOI) published in the Federal Register on October 12, 2021 and in the public roundtable on December 9, 2021 hosted by the U.S. Copyright Office, regarding the Copyright Office's public study on current copyright protections for press publishers.

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.

I. The Copyright Office Should Recognize that Aggregation of Valuable News Content by Dominant Platforms is a Major Contributor to the Struggles of Press Publishers.

A healthy democracy requires an informed citizenry, and press publishers play that critical role by reporting on the events, opinions, facts, ideas, and circumstances that mold and shape the world we live in. Many commenters and panelists from the public roundtable including Meta¹ and Google² seem to agree that our nation’s news reporting sector is vital to American society. Press publishers are the stewards of this powerful form of storytelling, but the creation of news content comes with significant costs.

As noted in our initial comments, some reports can cost a press publisher anywhere from tens of thousands to millions of dollars.³ But there are also significant nonmonetary costs associated with creating quality news content. For one, journalists often take incredible risks to investigate and report on dangerous stories. In 2020, there were 438 physical attacks on reporters in America, which was three times greater than the number of attacks *combined* from the previous three years.⁴ Other factors that impact the creation of quality news reporting include that publishers, journalists, reporters, writers, experts, photographers, fact-checkers, and editors delicately balance and implement ethical codes of conduct, split-second creative decisions, interpersonal relationship building, years of training, and in-depth research and investigation skills and methods to create quality news content. Despite these efforts, press publishers are finding that the monetary returns for these risky, expensive, and highly developed creative endeavors are in a freefall. According to the Pew Research Center, from 2005 to 2020, press publishers’ advertising revenues fell from \$50 billion to \$8.8 billion—an astounding 80%.⁵ In the same vein, newsroom employment decreased by more than 50% from 2008 to 2020.⁶

¹ Meta, Comments of Meta Platforms, Inc. at 13 (Nov. 26, 2021).

² Google, Response to the Notice and Request for Public Comment: United States Copyright Office’s Publishers’ Protections Study, at 1 (Nov. 24, 2021).

³ See Copyright Alliance, Comments of the Copyright Alliance at 2 (Nov. 24, 2021); *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/>.

⁴ See REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, PRESS FREEDOMS IN THE UNITED STATES 8 (May 2021), https://www.rcfp.org/wp-content/uploads/2021/05/Press-Freedom-Tracker-2020_FINAL.pdf.

⁵ See PEW RESEARCH CENTER, NEWSPAPER FACT SHEET, <https://www.pewresearch.org/journalism/fact-sheet/newspapers/> (last visited Jan. 4, 2022).

⁶ Mason Walker, *U.S. Newsroom Employment Has Fallen 26% Since 2008*, PEW RESEARCH CENTER (July 13, 2021), <https://www.pewresearch.org/fact-tank/2021/07/13/u-s-newsroom-employment-has-fallen-26-since-2008/>.

Press publishers have made numerous varied attempts to survive this downturn by implementing a host of new and innovative business strategies. But despite their best efforts, aggregation by a handful of dominant platforms is a major contributor to the monetary descent effecting press publishers and to their inability to “right the ship.” As said in our initial comments and at the roundtable: one main reason for this is that copyright law, as it currently stands and being applied, is not adequately safeguarding the copyrighted works of press publishers against aggregators who pilfer such works for their own profit.

Despite recognizing the importance of press publishers and the valuable content they produce, aggregators do not believe that they should be responsible for fairly compensating press publishers for their valuable content. Google states in its comments that it does not seek licenses for news content because “there are *no* circumstances under which a license should be required for use of links and snippets in news aggregation services. . .” (emphasis added).⁷ Whether a particular work is protected by copyright law and whether use of a work may be fair use are fact-specific inquiries and therefore, to say that aggregators *never* need to seek a license for news aggregation is categorically incorrect.

Some aggregators argue that they drive value to press publishers by connecting readers with news content. While we recognize that there are times when these aggregators do drive readers to the publishers of the original content, more often than not that is simply not the case. The value of click conversions is overstated and the argument diverts the focus of the problem—that these aggregators utilize their market dominance to “scrape” news content containing highly original and creative expressions from press publishers without any compensation for the purpose of drawing in users to cash-in on advertising dollars and profits.⁸ Aggregators need to draw users to their platforms and then keep them engaged on these platforms—for as long and as much as possible—since they profit via advertising revenues generated by a user’s length and quality of engagement with the platform and the data they gather about the users as they read the publishers’ content.⁹ These services draw users to their platforms containing valuable content

⁷ Google, *supra* note 2, at 3.

⁸ See generally News Media Alliance, News Media Alliance Written Comments in Response to U.S. Copyright Office’s Publishers’ Protection Study: Notice and Request for Public Comment (Nov. 23, 2021).

⁹ In 2020, Google generated \$104 billion in advertising revenues from its search engines and other properties (Gmail, Maps, Google Play, etc.). See Megan Graham & Jennifer Elias, *How Google’s \$150 billion advertising business works*, CNBC (May 18, 2021, 8:30 AM), <https://www.cnbc.com/2021/05/18/how-does-google-make-money-advertising-business-breakdown-.html>. This figure accounted for 57% of Alphabet’s (Google’s parent

produced by press publishers and keep users on these platforms by giving crucial parts of the content (i.e., the photograph, headline and the lede), thereby diverting advertising dollars from press publishers to the platform.

Many commenters and roundtable participants attempt to distract the discussion away from their activities and to lessen the perceived impact aggregation activities have on press publishers by diminishing the value of news content. They argue that the true worth of such content stems from the unexpressive “facts” contained therein and that copyright protection of news content is “thin.”¹⁰ It is surprising that aggregators and their supporters take this position, since aggregators continuously update their scraping algorithms to use specific news content in order to maximize user engagement with the aggregation service’s platform—underscoring the inherent importance and expressive value of the original news content scraped from press publishers. The mere fact that press publishers create and distribute works which contains facts, should not result in lesser protection of news content when the work itself is expressive, and the expression is being taken.

Such expressive value is clearly embodied across a spectrum of journalistic reports. For example, the two October 2017 articles composed by reporters Jodi Kantor and Megan Twohey (published by The New York Times) and Ronan Farrow (published by The New Yorker), wove together a slew of accounts from sexual assault survivors of a Hollywood mogul into a cohesive narrative that captivated the nation’s attention. These rich narratives were the product of painstaking and demanding research, writing, editing, interviewing, and investigating in order to preserve the integrity of the stories of the interviewed survivors.¹¹ Expressive value is also found in the work of photojournalists who capture images that embody critical historical moments, such as the one captured by Jeff Widener in the image of a man standing in front of military tanks during the 1989 Tiananmen Square protest. Widener recounted that he made consecutive

company) total revenue in 2020. *See Id.* Facebook reported in July 2021 that its advertising revenues were up to \$29 billion, which was up 56% compared to advertising revenue figures from around the same time in 2020. Jonathan Ponciano, *Facebook Posts Record \$29 Billion In Second-Quarter Revenue—Blowing Past Wall Street Expectations*, FORBES (July 28, 2021, 4:22 PM), <https://www.nytimes.com/2021/07/28/business/facebook-q2-earnings.html>.

¹⁰ The Second Circuit court observed, “The mere fact that the original is a factual work therefore should not imply that others may freely copy it. Those who report the news undoubtedly create factual works. It cannot seriously be argued that, for that reason, others may freely copy and re-disseminate news reports.” *Authors Guild v. Google, Inc.*, 804 F.3d 202, 220 (2d Cir. 2015).

¹¹ *See* Terry Gross, *'She Said' Reveals The People And Practices That Protected Weinstein*, NATIONAL PUBLIC RADIO (Sept. 10, 2019, 1:53 PM), <https://www.npr.org/2019/09/10/759384251/she-said-reveals-the-people-and-practices-that-protected-weinstein>.

split-second decisions of choice of camera lenses, angling, and positioning in order to effectively portray the historical moment.¹² Aggregators use news content precisely because there exists an invaluable *expressive* value in these works; such value is what copyright law was designed to protect. But unfortunately, copyright law may fall short of protecting this value.

II. The Copyright Office Should Provide Guidance on How Copyright Principles Operate in the Aggregation Context.

The Copyright Office study should make clear that copyright law does not give news aggregators *carte blanche* to pilfer news content from publishers. In addition to limiting the definition of “news content,” various commenters make blanket statements that under copyright law (1) aggregation activities are permitted without a need to compensate (or obtain permission from) the publishers or (2) in any event, news content (as they define it) is not protected. In particular, Google problematically states in its comment that “such [aggregated] content is either not copyrightable, or its use in Google’s products is fair use or protected by another limitation or exception.”¹³ These types of broad statements ignore the nuanced nature of the very principles that these aggregators rely on as the foundation and justification for their “scraping” activities.

1. The Copyright Office Should Clarify that Copyrightability of News Content is a Fact-Specific Inquiry.

As discussed above, news content is clearly copyrightable subject matter, but aggregators and other commenters make broad conjectures that the idea-expression dichotomy and the merger doctrine make news content unprotectable in the aggregation context. But these blanket

¹² See generally Jeff Widener, *Tank Man*, <http://jeffwidener.com/stories/2016/09/tankman/>. Widener recalled being annoyed by his famous subject as he stated at the time that “This guy is going to screw up my composition.” *Id.* But he continued the shoot, stating: “I had to make a quick decision as to whether to risk getting a closer, clearer image or possibly miss a photo completely. I made one of the biggest gambles in my life and dived for the bed. I grabbed the teleconverter, attached it to the 400mm lens which now made it an 800mm focal length, eyeballed the light and opened the aperture ring for an estimated exposure of 1/250 of a second at F11. It was a rather slow shutter speed for such a powerful telephoto lens but, I felt I could manage it. Since the next hotel room wall jutted out, I was partially blocked so I had to risk exposing myself to gunfire by leaning over the balcony and shooting around the wall.” *Id.*

¹³ Google, *supra* note 2, at 4.

statements overlook nuanced analysis and application of these copyright law exceptions. News content can (and often does) contain sufficient expression to warrant copyright protections.

Two famous articles written about Harvey Weinstein’s sexual misconduct discuss the same topic, contain similar facts, and recount the stories of the same victims, but the journalists take different approaches in presentation. Kantor and Twohey’s article, titled “Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades,” focuses on establishing the disturbing, pattern of Weinstein’s misbehavior and coercive tactics in light of his popular status, ultimately underscoring the unsatisfactory outcomes and resolutions for his victims through legal tactics, negotiations, and settlements.¹⁴ The first sentence of the article reads: “Two decades ago, the Hollywood producer Harvey Weinstein invited Ashley Judd to the Peninsula Beverly Hills Hotel for what the young actress expected to be a business breakfast meeting.”¹⁵ Farrow’s article titled, “From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories,” paints a picture of a hyper-successful Hollywood mogul and focuses on the victims’ accounts to highlight the extreme power disparity between Weinstein, his victims, and his staffers.¹⁶ The first sentence states: “Since the establishment of the first studios, a century ago, there have been few movie executives as dominant, or as domineering, as Harvey Weinstein.”¹⁷ One can surmise from the headlines in combination with even just the first sentences that these journalists have slightly different tones and takes on the issue at hand. In this simple example of a headline and short extract, a form aggregated content frequently takes on, it is easy to see that aggregated news content can contain *expressions* of facts, which deserves and needs to be protected under copyright law.

Any discussion of whether a copyright limitation applies *must* be evaluated in its specific factual circumstances. For example, there could be room (or not) in a particular situation to consider whether ideas or facts can be expressed multiple ways so as to not make the merger doctrine applicable. As Professor Jane Ginsburg mentioned in the public roundtable, the inquiry does not hinge solely on the brevity of the work, but on the originality of the work. The universal

¹⁴ Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, THE NEW YORK TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/us/harvey-weinstein-harassment-allegations.html>.

¹⁵ *Id.*

¹⁶ Ronan Farrow, *From Aggressive Overtures to Sexual Assault: Harvey Weinstein's Accusers Tell Their Stories*, THE NEW YORKER (Oct. 10, 2017), <https://www.newyorker.com/news/news-desk/from-aggressive-overtures-to-sexual-assault-harvey-weinsteins-accusers-tell-their-stories>.

¹⁷ *Id.*

rule is that copyright law protects creative expression and that the originality threshold is not very high. It is crucial that any *exception* to that rule must be evaluated in the particular set of circumstances at hand.

2. *The Copyright Office Should Clarify that Examination of Aggregation of News Content for Fair Use Analyses Requires Looking at Fair Use Jurisprudence as a Whole.*

The fair use doctrine is a fact-specific inquiry requiring courts to balance four factors: (1) the purpose and character of the subsequent use; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. Aggregators and other commenters rely on this doctrine to justify aggregation practices. But in doing so they conveniently ignore important tenets of the fair use doctrine and cherry pick recent cases that hinge almost entirely on the “transformative use” strand of the first factor of the fair use exception, the purpose and character of the subsequent use. As Professor Jane Ginsburg notes, it is questionable how transformative aggregation practices are under the first fair use factor, especially when aggregated content can simply encapsulate and reproduce the expressive storytelling contained in the original news content.¹⁸ When aggregated news content retains the same purpose and expressions of the original news content itself, the practice of aggregation is not likely to be transformative, turning the spotlight to how factors three and four can play an even more important part in the fair use analysis.

a. *The Copyright Office Needs to Provide Guidance to Courts to Consider Qualitative Takings Under the Third Factor.*

Under the third fair use factor a court evaluates the amount and substantiality of the underlying work used. Various commenters and panelists describe the use of news content in aggregation as *de minimis* or so minimal that the third factor weighs in favor of a fair use

¹⁸ Jane C. Ginsburg, Written Comments in Response to U. S. Copyright Office’s Publishers’ Protection Study: Notice and Request for Public Comment, 86 Fed. Reg. 56721 (Oct. 12, 2021), at 4 (Nov. 23, 2021).

finding.¹⁹ But this is a mischaracterization or, at the very least, a generalization of aggregation practices and also ignores a fundamental principle within the fair use analysis as established by the Supreme Court in *Harper & Row v. Nation Ents.*²⁰ In its study the Copyright Office should provide guidance to courts and other decisionmakers that the qualitative use of the underlying work must be considered in determining the outcome of the third factor.

As the Supreme Court established in *Harper & Row*, this factor not only focuses on quantitative taking but also on *qualitative* taking. In that case, The Nation Magazine produced an article containing quotes of “the most powerful passages” from former President Gerald Ford’s soon-to-be-published memoir – comprised of just 300 words.²¹ The Court found that the Nation’s verbatim replication of these passages revealed that the value of the portions used was not solely derived from the facts contained therein, but was rather found “. . . embodied [in] Ford’s distinctive expression”—the most powerful passages in the book.²² When aggregated content copies the “heart of the [underlying] work” this weighs against a finding of fair use.

Aggregators often use the most valuable and expressive parts of news content that goes beyond conveying mere facts or information contained therein and instead gives a reader the fundamental creative essence of the underlying work. For example, the combination of headlines and ledes can encapsulate the essence of the articles, so much so that users often do not feel compelled to click the link to read through the rest of the article. Using the above illustration of two Harvey Weinstein articles in a headline and lede format, an average reader could obtain the essence of the expressive value of the article through just those headlines and ledes copied by an aggregator. Though these components *quantitatively* comprise a small fraction of the entire article, they represent the heart of the article and therefore may qualify as a *qualitative* taking under the third fair use factor.

Just as The Nation took the most important parts of President Ford’s memoir, aggregation frequently reproduces the most important expressive parts of news content so that readers do not have to visit a publishers’ site. The Copyright Office should emphasize that the third factor fair use analysis requires an analysis on qualitative use, and not just on quantitative as many commenters suggest. The fact that such substantial uses of the “heart” of the news content may

¹⁹ See, e.g., Google, *supra* note 2, at 4.

²⁰ See 471 U.S. 539, 564-569 (1985).

²¹ *Id.* at 565.

²² *Id.*

act as a substitute for the original, also plays hand-in-hand with the fourth fair use factor regarding market harm to the original work, which the Copyright Office can provide further guidance on.

b. *The Copyright Office Needs to Provide Guidance to Courts to Consider Market Harm as the Single Most Important Element of Fair Use in Light of Substitutional Effects and Minimal Transformiveness.*

Under the fourth fair use factor, a court evaluates the economic harm of the secondary use on the potential and actual markets for the underlying work. In the context of news aggregation, the Copyright Office should advise courts and other key decisionmakers that as stated by the Supreme Court, the fourth factor plays a critical role in determining whether an aggregation use qualifies as a fair use under the fair use exception, particularly when its transformative value is questionable and where there is evidence of substitution effects and a pre-existing licensing market.

As previously illustrated, aggregators often reproduce the expressive elements from news content to achieve the same purpose of informing the public of providing a perspective through news storytelling. Coupled with evidence of low click-through rates from search results or opportunities for referrals to press publishers' sites due to the increasingly "walled garden" nature of platforms²³ aggregated content often substitutes for the original news content, ultimately harming the market for the underlying work.

Market harm is even more apparent as various press publishers and photographers have established licensing markets through which they license works to third parties who catalogue or collect their content in the form of "news round-up" services. Aggregators who refuse to pay for such licenses are destroying the market for the license. If these dominant platforms can get away with rampant pilfering of news content at no cost, it significantly devalues the market value of the news content when press publishers try to engage with legitimate licensees who are otherwise

²³ See *Associated Press v. Meltwater U.S. Holdings Inc.*, 931 F. Supp. 2d 537, 547 (S.D.N.Y. 2013)(noting that evidence showed that the click-through rates for Meltwater subscribers was 0.08%); see also Rand Fiskin, *Less than Half of Google Searches Now Result in a Click*, SPARKTORO (Aug. 13, 2019), <https://sparktoro.com/blog/less-than-half-of-google-searches-now-result-in-a-click/>; see generally NEWS MEDIA ALLIANCE, *HOW GOOGLE ABUSES ITS POSITION AS A MARKET DOMINANT PLATFORM* (June 2020), <http://www.newsmediaalliance.org/wp-content/uploads/2020/06/NMA-Google-White-Paper-Design-Final.pdf>.

willing to properly compensate for use of such content. The discussion on market harm to press publishers' is not theoretical or imminent— it is *now*.

The Supreme Court noted in *Sony Corp. of Am. v. Universal City Studios*, that the fourth fair use factor also requires the court to consider “if [the copying] should become widespread, it would adversely affect the potential market for the copyrighted work.”²⁴ The fact that half of Americans use aggregation services or social media platforms to receive their news instead of through the press publishers themselves,²⁵ shows that this dominating form of copying has already become widespread, and is decimating the potential licensing markets for press publishers. The acts of these aggregation services also emboldens others to similarly engage in such scraping practices displacing the licensing markets of copyright owners—which is exactly the kind of circumstance the Supreme Court warned about in *Sony*.

These considerations need to be part of any analysis of the fourth fair use factor. Accordingly, the Copyright Office needs to recommend to courts and other key decisionmakers that the fourth factor be given considerable weight when making fair use evaluations in the aggregation context.

III. The Copyright Office Must Update Its Registration Practices to Include an Option for Bulk Registration of Dynamic Web Content.

The Office must update its registration practices to allow for bulk registration of dynamic web content. Registration of copyrighted works with the U.S. Copyright Office is the fundamental way for copyright owners to avail themselves of the protections offered under the Copyright Act. It is essential for the enforcement of press publishers' rights that the Copyright Office's registration practices keep pace with market realities and new industry business practices and improve the process for registering dynamic website content. Without an efficient system to register dynamic web content, press publishers are unable to register and therefore unable to enforce their copyrights against aggregators and others who take their content.

²⁴ 464 U.S. 417, 451 (1984); *Harper & Row*, *supra* note 20, at 568.

²⁵ See generally *The Media Insight Project, The Personal News Cycle*, AMERICAN PRESS INSTITUTE (Mar. 2014) at 8, https://www.americanpressinstitute.org/wp-content/uploads/2014/03/The_Media_Insight_Project_The_Personal_News_Cycle_Final.pdf.

Like all copyright owners, press publishers cannot commence an infringement suit in federal court unless the Copyright Office registers their copyright claims and issues a certificate to them or refuses registration.²⁶ Remedies for copyright infringement are limited unless the copyright owner has timely registered the content with the Copyright Office. So, an inability to timely register one's works can have a tremendously damaging effect on its ability to enforce its copyrights against infringers.

As press publishers have pivoted to digital publication models, registration practices have not kept pace, making it very difficult (and often impossible) for them to register their news content so they can enforce their rights in federal court. The tens to hundreds of pages of news content containing multiple articles that Americans used to flip and read through are now encapsulated in the form of hundreds to thousands of webpages incorporating a variety of works, including, in addition to text, photographs, audiovisual works, interactive displays, and audio recordings. These websites are often updated with new or edited content on a constant basis throughout the day. But just as news content is released or published on press publishers' websites, infringement of such new content can swiftly follow as others, such as aggregators, cull the content within seconds or minutes of the upload to directly compete with press publishers to provide the same to aggregation service users. Timely registration for such plethora of content becomes vital in determining whether press publishers are able to properly enforce their copyrights and recover statutory and attorneys' fees.

It is clear that current registration methods and options are insufficient to meet this critical need for a bulk registration of dynamic web content based on which press publishers sell advertising, market and sell digital subscriptions, and engage in other activities. As part of the Copyright Office's ongoing modernization efforts and to further assist press publishers in their ongoing struggle to protect their valuable content, it is essential that the Office immediately adopt and implement a registration system that permits the registration of dynamic website content. This is something that the Office can do to help address the problems discussed without any need for Congressional authorization, and the Copyright Alliance and its press publisher members are eager and ready to cooperate with and assist the Office on how to best create this type of registration process.

²⁶ See 17 U.S.C. § 412; *Fourth Estate Public Benefit Corp. v. Wall-Street.com*, 139 S. Ct. 881, 892 (2019).

The registration of dynamic website content is not a new issue. It is an issue that has been discussed by stakeholders and the Office for many years, with limited to no progress. It is time for the Copyright Office to take immediate action to resolve this problem once and for all.

IV. The Copyright Office Should Recommend Further Study of the Competition and Antitrust Issues at Stake Here.

A conclusion that many commenters and panelists seem to agree on was that a key component to the news aggregation issue may also involve a detailed analysis of competition and antitrust law. To that effect, some commenters suggest a government subsidy as a solution. There is no reason for American taxpayers and for the federal government to take on the burden of and finance the aggregation activities of multi-billion dollar corporations who are far better equipped to simply reach into their own pockets to fairly compensate content creators. Moreover, we find this solution extremely problematic as it would undermine the separation of government from the press. Since competition and antitrust laws work in tandem with the copyright law issues at hand, these subjects are something the Copyright Office should take note of in its study as areas in need of further discussion and exploration with relevant stakeholders to consider new or currently pending solutions such as the Journalism Competition and Preservation Act.²⁷

V. Conclusion

The Copyright Alliance is grateful for the opportunity to submit these additional comments in response to the Copyright Office's ongoing study to evaluate current copyright protections for press publishers who are experiencing blatant misuse of their content without adequate compensation from dominant platforms. The vitality of the Fourth Estate depends largely on protections offered by copyright law, and press publishers and other creators are relying on the Copyright Office to diagnose the problem and to clarify how copyright laws actually operate in the context of news aggregation. We believe that the comments and discussion at the public roundtable clearly showed that aggregation is an existential problem for the news industry. Guidance from the Copyright Office would inform Congress, policymakers,

²⁷ Journalism Competition and Preservation Act of 2019, H.R. 2054 and S.1700, 116th Cong. (2019).

and especially the courts on making sound decisions which, in turn, impacts the survival of this creative sector – chiefly, whether it can continue serving the public and furthering the Constitutional goal of promoting the progress of the sciences and arts.

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