

# PUBLIC SUBMISSION

<b>As of:</b> 11/29/21 3:00 PM
<b>Received:</b> November 26, 2021
<b>Status:</b> Pending Post
<b>Tracking No.</b> kwh-1sew-fdhe
<b>Comments Due:</b> January 05, 2022
<b>Submission Type:</b> Web

**Docket:** COLC-2021-0006  
Publishers' Protections Study

**Comment On:** COLC-2021-0006-0002  
Publishers' Protections Study: Request for Additional Comments

**Document:** COLC-2021-0006-DRAFT-0032  
ARTWORKS LEGAL INCUBATOR & RESIDENCY PROGRAM - Initial Comment

---

## Submitter Information

**Email:** ADMIN@ARTWORKSINCUBATOR.COM  
**Organization:** ARTWORKS LEGAL INCUBATOR & RESIDENCY PROGRAM

---

## General Comment

NZENGA WASEME ESQ.  
TEAM@ARTWORKSLEGAL.ORG  
ARTWORKS LEGAL INCUBATOR & RESIDENCY PROGRAM  
Prepared by Nzengha Waseme, Esq. on behalf of ArtWorks Legal Incubator and Residency Program  
Research and writing support by Baraka Campbell

To discuss current copyright protections as they relate to publishers, particularly in light of the recent European Union (EU) copyright directives, we must first consider the current state of U.S. copyright protection for new publishers. At this time, publishers do have some protections. It would be an exaggeration to state that news publishers are totally unprotected. In fact, they own their collective works and in some instances, they own or have the ability to assert rights to individual articles through work-for-hire arrangements, licenses, etc. Therefore, in general, publishers have the right to these works and can, at will, reproduce such works, publish derivative works, etc. as well as authorize others to do so. However, as technology has expanded, the question arises as to whether these rights are sufficient for publishers, should they be expanded, and if so, how. Whether one believes these protections should be expanded or not, in the event that said rights are expanded, there is a precedent that the United States has always followed when exploring copyright protections.

The most recent changes to the Copyright Act were made law on December 27, 2020, as part of the Consolidated Appropriations Act. The goal was to close the “streaming loophole” of copyright infringement by deterring illegal streaming with harsher penalties. The increased penalties for infringement went from misdemeanors to felonies with the threat of up to five years of imprisonment, and in some cases, up to ten years.

Another example of changes to the implementation of the Copyright Act is The CASE Act, which established the Copyright Claims Board as a tribunal to resolve small-claims infringement disputes. Guidelines were put in place and the Copyright Claims Board is to be composed of a three-person panel of Copyright Claims offers within the Copyright Office. One possible outcome of the CASE Act is that copyright holders may be more likely to pursue their claims in this forum, particularly claimants fiscally

unable or unlikely to pursue their claim in federal court.

With the copyright/streaming issue being addressed, as described above, the question of publishers' rights is further magnified. Additionally, the path to any enhancement has been laid. Congress, having enacted copyright laws to protect creatives, now has an opportunity to broach the subject of expanding publishers' rights. Given the foregoing, the following strategies may be applied to improve current copyright protections to publishers.

1. Leave the application of copyright law as status quo;
2. A complete overhaul of the Copyright Act, which would include new guidelines, USCO involvement (borderline policing), and possibly an amendment to the Copyright Act; and
3. Establish an administrative body, similar to the Copyright Claims Board (or an expansion of the current Copyright Claims Board).