

*Submitted by:* Michelle De Mooy, Senior Director of Policy

*Organization:* MPA The Association of Magazine Media



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Kimberley Isbell  
Deputy Director of Policy and International Affairs

Andrew Foglia  
Senior Counsel for Policy and International Affairs

U.S. Copyright Office  
Library of Congress

*Via Regulations.gov*

RE: Docket No. 2021–5: Publishers’ Protections Study

Dear Ms. Isbell and Mr. Foglia,

MPA – The Association of Magazine Media appreciates the opportunity to comment on the United States’ Copyright Office (USCO) Publishers’ Protections Study. As the national trade association for the consumer magazine industry, MPA represents more than 500 magazine media brands that span a vast range of genres across print, online, mobile, and video media. Our members deliver professionally written, photographed and filmed, edited, curated, copyright-protected news and other content to about 90 percent of all U.S. adults. MPA’s membership includes some of the nation’s largest, best known and trusted brands as well as publishers of many small, regional, and niche titles serving diverse communities and interests.

As the Copyright Office studies the adequacy of current copyright law for press publishers, we trust that the Office recognizes the need to include magazine media in that consideration.

**The magazine media industry**

Magazine media is a long-standing cornerstone of the publishing industry in the United States. While changes in recent years have led to a drop in employment, what has traditionally been considered the periodical publishing industry in America still directly employs close to 75,000 people in the U.S., according to the Bureau of Labor Statistics, and supports almost 150,000

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indirect and induced jobs. Wages for direct jobs in the industry total about \$7.5 billion.<sup>1</sup> This is in addition to the industry's use of freelance contractors.

The value of magazine media to the American public goes beyond jobs and wages, however. Our industry's trustworthy reporting and in-depth information on current events, culture and other matters of public interest have made it an integral part of press publishing, a designation recognized by the U.S. throughout history<sup>2</sup>, and positioned it as one of the most trusted industries in the consumer marketplace. While trust in information sources has declined recently, traditional media, including magazine media, continues to rank well above both owned and social media according to the 2021 Edelman Trust Barometer.<sup>3</sup> Magazine readers describe magazines as inspiring, fulfilling, and trustworthy, and have engaged with magazines even more during the pandemic.<sup>4</sup> This is largely because magazine companies have spent years, and in most cases decades, building relationships with consumers, fine-tuning content, and establishing editorial expertise. It's not surprising that today's consumers, who are bombarded with click bait of dubious value and fed bite-sized news information via algorithms, would prefer magazine content that allows them to dig deeper into news and other subjects that interest them. Indeed, despite distribution challenges during the COVID-19 pandemic, the overall audience for magazine media – across print, digital, and video – rose more than three percent in 2020, to 1.56 billion readers.<sup>5</sup>

### **Economic impact of news aggregation**

Changes in technology and media in the 22 years since the passage of the Digital Millennium Copyright Act (DMCA) have had profound effects on the magazine media industry. Following a long history in a print-only format, magazines embraced digital, mobile, and video media, finding new ways to educate, entertain, and inspire readers. They faced challenges, though, to generate subscription and advertising revenue in this new media landscape, especially as technology companies began to offer their users publisher content for free, supposedly relying on the fair use doctrine. Platforms obtained and leveraged fine-grained data about these users to deliver them targeted content (that was created by traditional publishers) and advertising, a strategy that led to most Americans using platforms as their gateway to and often sole or primary source of news and other information online. While many publishers were able to have

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<sup>1</sup> MPA The Association of Magazine Media, Magazine Media Factbook 2021, Page 6. Available here: [http://fipp.com/wp-content/uploads/2021/09/2021-MPA-Factbook\\_PDF.pdf](http://fipp.com/wp-content/uploads/2021/09/2021-MPA-Factbook_PDF.pdf)

<sup>2</sup> A 1938 Supreme Court decision in *Lovell v. Griffin* defined the press as “every sort of publication which affords a vehicle of information and opinion” while in 2020, in a digital advertising tax law, singling out news media entities for an exemption from the tax, Maryland lawmakers defined a “news media entity” as “an entity engaged primarily in the business of newsgathering, reporting, or publishing articles or commentary on news, current events, culture and other matters of public interest.”

<sup>3</sup> 2021 Edelman Trust Barometer. [MPA 2021 Magazine Media Factbook](#), Page 19.

<sup>4</sup> MRI-Simmons Multi-Media Engagement Study, Spring 2020. [MPA 2021 Magazine Media Factbook](#), Pages 16 – 18.

<sup>5</sup> MPA 2021 Magazine Media Factbook, Page 8.

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some of their materials read by larger audiences, they also lost engagement with their readers, critical audience data, opportunities for branding and marketing, the potential for subscription revenue online, and overall advertising revenue. The content created by magazines and other publishers, at great cost, expertise, and risk, became the lure that attracted users to the platforms and ultimately helped platforms grow exponentially in profit, audience, and influence, but publishers have not shared in these benefits. Instead, publishers' ability to monetize their original content has weakened along with their power to negotiate with the platforms for fair terms related to access to, and distribution of, their content.

Ensuring that press publishers are paid fairly for their content and are able to set the terms of their access and use is at the heart of our industry's long-term viability. To remain resilient in the face of these changes in media, it is crucial for press publishers, including magazine media, to have the most favorable copyright environment possible. Areas that merit Copyright Office consideration and evaluation include:

- the criteria and processes required to register dynamic digital content;
- the application of the fair use doctrine to the wholesale use by platforms of ledes and other excerpts, images, and other materials;
- the notice and takedown processes for copyright infringements and methods to make the process more efficient and effective;
- the applicability of provisions in the EU Copyright Directive to U.S. publishers, including compensation for EU consumption of U.S. publisher content and comparisons of what is covered by copyright protection under the Directive and in U.S. law.

MPA's membership includes companies of diverse sizes and business models. Copyright protections must be workable for all press publishers. Protections must also be adequate to sustain the continued production of the quality journalism our readers desire and expect.

We appreciate the efforts of the Copyright Office to examine the adequacy of current copyright protections. MPA intends to file more detailed comments to the agency on January 5 following this initial round of comments and the public roundtable on December 9. Thank you again for your attention to these issues and we look forward to participating in these important deliberations.

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Respectfully submitted,



Rita Cohen  
Senior Vice President, Legislative & Regulatory Policy



Michelle De Mooy  
Senior Policy Director