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Before the United States Copyright Office
November 26, 2021

In re:	Docket No. COLC-2021-0006
	86 FR 56721
Study on Ancillary Copyright Protections for Publishers	

COMMENTS OF META PLATFORMS, INC.

Meta Platforms, Inc. ("Meta") is grateful for the opportunity to submit this comment in response to the Copyright Office's Notice of Inquiry regarding the appropriateness of additional copyright or quasi-copyright legal protections for publishers. As discussed in that Notice, Meta recognizes that the internet has empowered a diverse range of voices to grow media businesses offering more news, information and entertainment options for people, while at the same time, the shifting digital landscape has disrupted established business models that relied on news consumers having fewer competing options. The increased digitization of news has sparked policy debate about how to encourage sustainable business models for publishers and Meta is committed to being part of this important conversation.

This submission is intended to help ground the theoretical discussions about a publisher's right[1] with insight into how Meta interacts with news publishers in practice on the Facebook

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[1] The U.S. Copyright Office labels a number of different types of platforms and services where links to news articles may be found as "news aggregators." This concept is imprecise, which is understandable given the broad nature of the request for information, but the related policy discussion should take care not to presume all internet services operate in the same manner.

platform. It will explain how news publisher content gets on the platform, illustrate some of the many ways in which the platform drives value to publishers, describe aspects of our intellectual property rights enforcement program, and identify some initial practical obstacles to actually adopting a publisher's right in the United States. We welcome the Copyright Office's solicitation of views from a wide variety of stakeholders, including other platforms in this space as well as the broader array of policy stakeholders.

1. **How and What Publisher Content Appears in Facebook Feed**

Facebook is a social networking site designed to connect users to family and friends. Like other social media sites, the user receives a "feed" of content. Users build their own "News Feed" by connecting to the people, communities, and organizations – including news media that are present on Facebook, for some users – that they find to be most meaningful to them. Facebook's feed is principally composed of content to which a user chooses to connect – for example, content from her Friends, the Pages she follows, and the Groups she joins.[2] Facebook's feed is not thematically organized to highlight news, or to aggregate links on a particular topic. While the content of the feed varies by user, news media links comprise a small portion of the many sources of content on Facebook – fewer than one post in every 25 in a user's feed will contain a link to a news story, and many users say they would like to see even less news and political content.

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[2] *From F8: How News Feed Works*, Meta (Apr. 22, 2016), https://about.fb.com/news/2016/04/news-feed-fyi-from-f8-how-news-feed-works/.
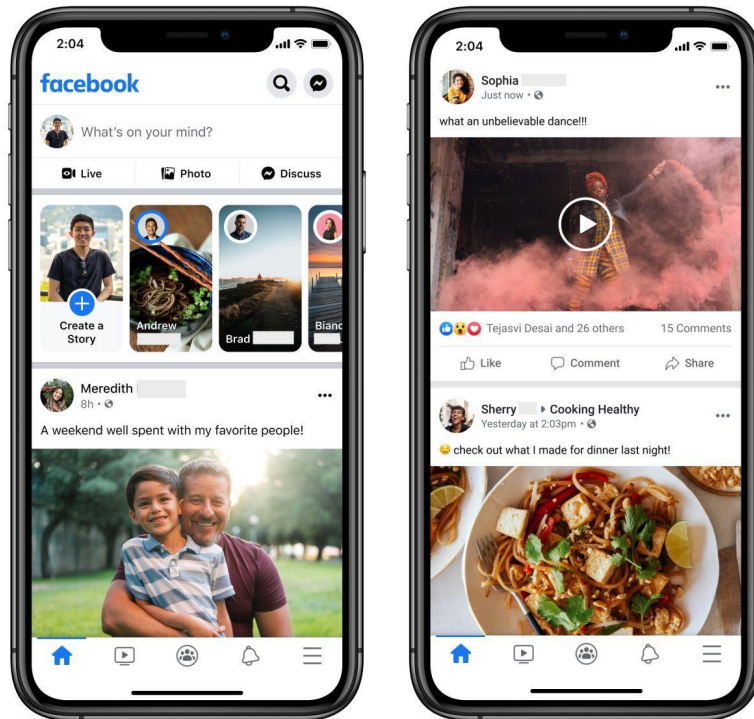
Fig. 1: Example view of "News Feed"

It is important that any discussion of Facebook and news be grounded in an accurate

understanding of <u>what</u> publisher content is appearing on Facebook. On Facebook, where a link

to a news article is uploaded, it appears by default not as the full text of an article but rather a

snippet, the contents of which is determined by the publisher and which may include a headline,

an image, a short extract, and a link back to the publisher website.[3]

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[3] Additionally, we have developed a free, optional format called Instant Articles which helps publishers optimize their articles for people reading from mobile devices and has direct monetization options. In our experience, however, most US publishers have preferred to direct users back to their website, which is the Facebook default.
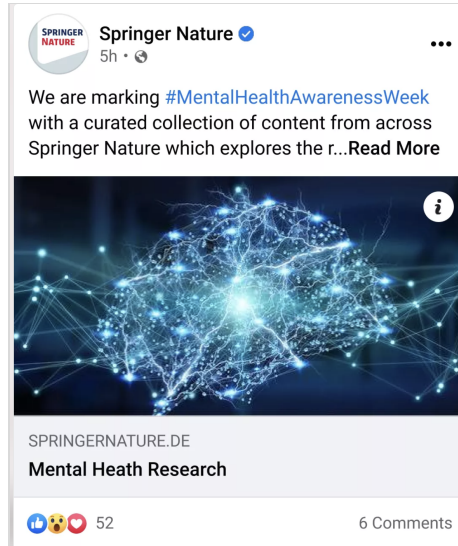
Fig. 2: How a link preview appears in "News Feed." When clicked, the preview directs users to the publisher's website where the content is consumed and monetized 100% by the publisher.

It is also important to clearly understand how publisher content gets on Facebook, and, in particular, that publishers are in control of how it appears. It appears on Facebook primarily from two sources:

- **Publishers:** Publishers may actively choose to upload and post links to their content to their Facebook Page in order to build an audience, engage a community, monetize the content directly on Facebook via customized monetization tools, or to drive traffic back to their owned and operated sites where they can monetize using their own ads and/or convert the reader to a paying subscriber. This opportunity exists for all businesses that wish to publish their content on Facebook, subject to complying with the Facebook Terms of Service.

- **Users:** Users may choose to upload and share a link to publisher content on Facebook, often using sharing functionality that a publisher adds to its own webpage. People share news content to discuss it with their friends and family,

and when they do choose to share links to news content, Meta respects the monetization and data flow decisions that publishers have applied to that content. Users must also comply with the Facebook Terms of Service.

Facebook places extraordinary control in the hands of publishers themselves over when and how publisher content appears on the platform. The way in which the link content itself is displayed to users is also controlled by the publishers through the metadata instructions they determine. For instance – as described below – publishers can select any image that will accompany an article's text, as well as how much text (if any) will appear to users. And, of course, some news publishers don't use Facebook at all. Publishers are never required to share their content on Facebook if they do not wish to do so. Furthermore, publishers can remove any posts that they previously uploaded on the Facebook platform at any time. And if publishers no longer wish to enable particular Facebook features for users – such as the "Like" or "Share" plugins – they are likewise free to remove those features from their websites.

Just as we provide publishers control over their content, we also believe it is important that people feel in control of how they use Facebook. We've built tools that help people customize their individual experiences. News Feed Preferences, for example, let individuals more directly manage what they see in Feed. We also offer tools like 'Most Recent' and 'Favorites', which let people set people and pages they want to prioritize in their customized Feed.[4]

Facebook does not dictate what happens when a user clicks on a link and is taken to the publisher's own website to read an article, nor does linking require publishers to change their

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[4] For more information on our user controls, please visit our Transparency Center, at https://transparency.fb.com/features/ranking-and-content/.

existing paywall policies. This is a significant driver of the value that Facebook generates for news publishers, discussed in the next section. This model allows publishers to broaden their audience but draw users to their own websites, where publishers can provide users with more of their content, serve their own ad experience, and directly monetize the additional traffic provided by Facebook. It also allows publishers to generate reader revenue through subscriptions and other methods, on their own terms.

2. **Meta drives value to publishers through our tools, services, and investments**

Meta is proud of the value we drive to the news publishing industry, including both large and small players. First and most fundamentally, we drive value through our product. As discussed above, Facebook allows any publisher to reach and engage with new audiences for free, driving new traffic to the publisher's own site. Facebook provides many different tools that can be used by news publishers to gather data and insight on the performance of their posts, and advertising campaigns, allowing publishers to better understand their audiences and engagement (in a manner that respects the privacy of individual Facebook users). In addition to free tools, some publishers may monetize more directly with subscriptions, in-stream ads, or branded content.

News publishers are in control over what to post on their Facebook Pages, and choose how to leverage Facebook services based on their specific business needs. Many established and small media operators use Facebook as a free means to reach an existing audience or an audience that they may previously not have had access to. The Facebook platform allows news publishers, including smaller and independent publishers, to publish, distribute, generate revenue, and interact with viewers of their content at no cost. To that end, Meta maintains

dedicated media partnership teams that work closely across the news, sports, and entertainment industries to ensure that the platform is offering the right tools and guidance.

Meta also drives value to the publishing industry through investment. We have invested $800 million globally since 2018 to support the news industry, and plan at least $1 billion more over the next three years. In the United States, this includes investment in programs for publishers, as well as certain product-related partnerships.

(a) Program Investment: Meta's investment in the industry includes direct support for programs that are focused on building new revenue opportunities for news publishers both on and off of Facebook.

For example, the Meta Branded Content Project is a strategic partnership of the Meta Journalism Project, Local Media Association and Local Media Consortium that helps facilitate growth, engagement and success for local media publishers. Over the past three years, the initiative has helped publishers generate more than $50 million in revenue. Launched in March 2019 as the Branded Content Project and recently rebranded under the Meta name, the Meta Branded Content Project provides local media organizations the opportunity to define, develop and grow branded content revenue strategies. In 2021, the Project began supporting media outlets by establishing no cost and low cost custom content series and sales support, directly generating an additional $3.75 million in revenue and impacting more than 5,500 industry leaders, executives, sales reps, content creators and marketers. These resources were particularly impactful for publishers who are independently owned, publishers of color and those serving small markets. Meta recently announced $1 million in funding to help continue the project's

initiatives for an additional two years.[5] This round of funding will be the third from the Meta

Journalism Project, which contributed $1 million for 2019-2020 and $850,000 for 2021.

In another example, the Meta Journalism Project Accelerator program provides free

consulting and grant support for publishers focused on digital business transformation. The

program offers publishers multi-week coaching from industry leading professionals designed to

accelerate the growth of sustainable digital reader revenue streams (*e.g.,* growing digital

subscriptions). Globally, Accelerator publishers report generating more than $60 million in

customer value from 200,000+ new paying subscribers and more than 2 million new registered

readers. In the US, the Accelerator program has trained more than 100 participating publishers

and more than 500 participating individuals since its inception in 2018.

(b) Product-specific investment, e.g., Facebook News tab: Additionally, Meta has

engaged in some product-specific partnerships with news publishers. In 2019 Meta concluded

commercial partnerships with publishers for access to net new content (*i.e.* links and snippets

that publishers have not already voluntarily posted on their Facebook Page).

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[5] *The Meta Branded Content Project Announces New Funding to Expand Programs*, Meta Branded Content Project
(Nov. 11, 2021),
https://www.brandedcontentproject.com/post/the-meta-branded-content-project-announces-new-funding-to-expand-programs.
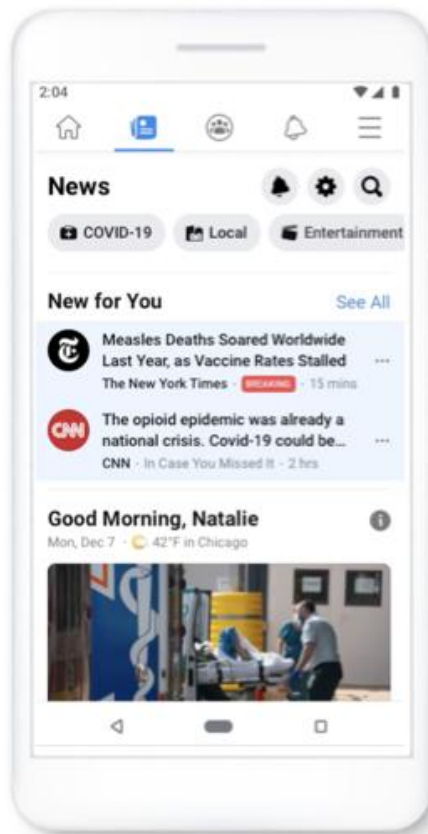
Fig. 3: Example view of Facebook News

This content does not appear in the user's Facebook feed, rather, it is a dedicated news

"tab" in the United States called "Facebook News".[6]

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[6] For additional explanation of Facebook News, see *How Facebook News Works*, Facebook News, https://www.facebook.com/news/howitworks (last visited Nov. 23, 2021). *See also* David Cohen, *Facebook News Continues to Evolve as Its Second Anniversary Approaches*, Ad Week (Oct. 20, 2021), https://www.adweek.com/media/facebook-news-continues-to-evolve-as-its-second-anniversary-approaches/. Facebook also offers news tabs currently in the UK, Germany, and Australia.
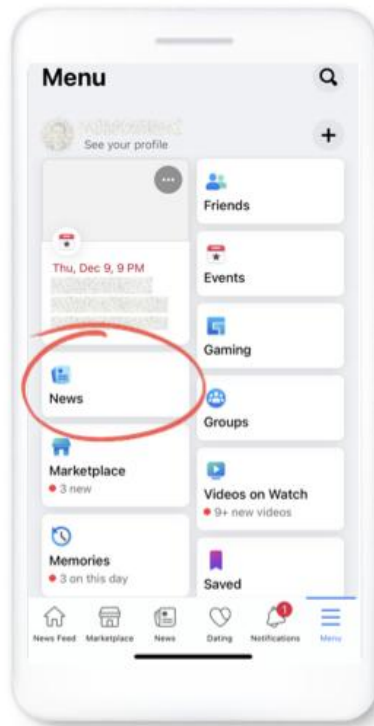
Fig. 4: Example view of Facebook News link in navigation

Meta was initially interested in developing a news tab for the subset of Facebook users interested in news. As mentioned previously, the regular Facebook feed does not aggregate news links. It also does not show the most recent news links first. Facebook News was created for a more personalized news experience so people can explore a wider range of their favorite sources and news interests. It is comprised of publisher-posted links (not user-posted links) and links provided through the aforementioned commercial partnership agreements. In some cases, as part of agreements related to "Facebook News", publishers may agree to provide paywall access to some Facebook users. In these cases Facebook agrees to bespoke licensing agreements in order to ensure a better user experience in the Facebook News product.

3. Facebook has robust IP enforcement tools

Respect for intellectual property rights is fundamental to Meta's operation. Respect for intellectual property is an important component of both our Terms of Service and Community Standards.[7] Meta has invested in industry-leading IP protection tools for copyright holders and brands, which are available to publishers and journalists like any other rights holder. We have a broad global notice-and-takedown program and a comprehensive repeat infringer policy. Our tools were developed in close collaboration with rights holders.

If a press publisher identifies unauthorized content that they believe violates their rights, keeping in mind legal principles such as fair use, among others, they can complete our easy-to-use form to report that content for removal. Publishers who also own video or image content can further protect their rights by using Rights Manager, Meta's content management tool. Using Rights Manager, many news publishers manage and protect their exclusively owned video, audio, and/or image content at scale across Facebook and Instagram.

Meta is constantly investing in expansions and enhancements to its IP protection and content management systems, in consultation with a diverse array of rights holders. As technology evolves, so do the needs of rights holders, and Meta is committed to working collaboratively with them to enhance their control over their works.

4. Practical obstacles to adoption of a press publisher's right

As discussed above, Meta believes that under current U.S. copyright law, its platform drives substantial value to publishers and Meta is already voluntarily investing to support a

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[7] *See Terms of Service*, Facebook, https://www.facebook.com/legal/terms (last visited Nov. 23, 2021); *Respecting Intellectual Property*, Facebook Community Standards, https://www.facebook.com/communitystandards/respecting_intellectual_property (last visited Nov. 23, 2021).

diverse news industry. Furthermore, there are several practical obstacles to the adoption of a

press publisher's right in the United States, including, but not limited to, the following:

- **Defining what is "news" and who are "news publishers."** There are a number

  of practical challenges that make the adoption and administration of a press

  publisher's right infeasible and undesirable. While each framework would pose

  unique problems, one of the most significant is the definition of "news" and

  "news publisher." This kind of assessment is not something most platforms

  would be well-positioned to assess. Further, given the scale of many platforms,

  the definition would have to be capable of being identified at scale, and cannot be

  context-specific. The government would have to provide clear guidance, and do

  so in a manner that avoids infringing upon freedom of the press.

- **Preserve Freedom of Contract.** Additionally, any press publisher's right would

  have to respect freedom of contract. Platforms should not be forced to carry or

  pay for content they do not want, and similarly, right holders should not be forced

  to license such content. For example, a compulsory statutory license could

  undercut publisher's control over their work and disincentivize platforms from

  hosting anything potentially subject to a publisher's right.

- **Protect Ability to Share Links and Facts.** Finally, any press publisher's right

  must not impede sharing of links or facts. Discussion of the "news of the day" is

  an important social function, and protected by the First Amendment. Online, this

  discussion can naturally include links to news accounts or other resources. These

  links need enough context to afford users the confidence to click on a particular

link. It would be extremely challenging for platforms to be able to distinguish between fact and content covered by a press publisher's right at scale.

<p style="text-align:center">***</p>

Recognizing the importance of news organizations to the communities we serve, Meta is proud to drive value to the news publishers who choose to use our platform. We provide the publishers that choose to use Facebook with crucial tools and services to broaden their audiences and drive traffic to their own sites, affording them extraordinary control over how (if at all) links to their articles will be shared on the platform.

We hope that this additional context will be helpful to the Office in understanding the interaction between our platform and the publishing industry, and in grounding the policy discussion of a press publisher's right with specific examples of how one platform works. We look forward to continuing to contribute to this important conversation.