



January 12, 2024

Via E-Mail

Suzanne Wilson
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6003

Re: Summary of *ex parte* meeting regarding Docket No. 2023-3, Access to Electronic Works

Dear Ms. Wilson,

On January 9, 2024, the News/Media Alliance (N/MA) met via Zoom with the Copyright Office to discuss the Office's notice of proposed rulemaking relating to Access to Electronic Works dated September 1, 2023. The participants in the meeting on behalf of News/Media Alliance were Regan Smith (News/Media Alliance), Jeffrey Parnass (News Corp), Steven Gaynor (Advance), Al-Amyn Sumar (The New York Times), and Johannes Munter (J. Munter Consulting Ltd, representing News/Media Alliance) (collectively, "N/MA"). Participants from the Copyright Office were Suzanne Wilson, Rob Kasunic, Erik Bertin, and David Welkowitz.

The meeting allowed N/MA and the Office to discuss the Office's proposal and for N/MA to elaborate on issues raised in its October 16, 2023 reply comments regarding the proposed rule. In its written comments, the Alliance noted that electronic newspaper deposits are already subject to the access conditions that the NPRM proposed to extend to other types of digitally deposited works.

During the January 9 meeting, N/MA communicated three main messages with regards to the rulemaking, namely:

- Considering the Office's resource constraints, the Office should prioritize registration updates first before progressing further on the Access to Electronic Works rulemaking.
- To N/MA and its members knowledge, the current process for providing limited access to newspapers submitted electronically to the Copyright Office for registration is working



reasonably well. N/MA supports the suggestions from other rightsholder commenters to codify additional details related to those access conditions.

- Expanding access to newspaper copyright deposits without further dialogue and permission from media publishers would alter this balance and would not be supported by the news publishing industry.

Regarding the first point, N/MA and its attending members stressed the importance of facilitating reasonable, efficient methods for copyright registrations for news publishers and the current challenges faced by the industry. The past two decades witnessed a drastic economic decline of news publications, with some studies suggesting that more than two newspapers are closing each week and one-third of newspapers in the United States could close before 2025. Meanwhile, current registration options disadvantage media publishing, such that many newspaper and online media providers may not even register all their copyrights, a landscape recently documented in the Copyright Office's recent proposal to establish an option for the group registration of updates to a news website.¹ Meanwhile, copyright-related risks to media publishing are amplified by emerging generative AI technologies.

An ill-functioning registration system disadvantages the public interest in multiple ways. First, an efficient registration system is necessary for rightsholders to enjoy the full, intended benefits of copyright that their creative production depends upon, including with respect to enforcement and remedies. Second, without first receiving news publisher works through the registration program, the Library of Congress will not receive registration deposits from the Copyright Office for its collections (whether because the registration system is not properly calibrated, or even because the lack of a marketable right pushes newspapers to shutter). This risk is underscored by the value that local and diverse news media provides to the historical archives of the national library. For these reasons, N/MA urged the Copyright Office to prioritize rulemakings on registration before rulemakings on access, including swiftly moving forward to implement a group option to register online news content. Indeed, this prioritization is inherent in the Constitutional purpose of copyright, to create incentives for creative effort that will ultimately benefit the general public through access to creative works.²

N/MA then noted that they were pleased that the proposed rule would retain the same access conditions applicable to current electronic newspaper deposits and emphasized the need to

¹ See Group Registration of Updates to a News Website, 89 F.R. 311 (Jan. 3, 2024) (Docket No. 2023-8).

² See, e.g., *Harper & Row, Publishers, inv. V. Nation Enter.*, 471 U.S. 539, 546-547 (1985) (observing that copyright protection for former President Ford's memoirs served its "intended purpose of inducing the creation of new material of potential historical value"); *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 527-527 (1994).





keep the *status quo* access conditions related to access to avoid direct competition with markets for news content and ensure continued digital security. N/MA attendees also reiterated that they are not aware of material security breaches stemming from the access to these deposits available on premises at the Library of Congress.

N/MA urged the Office to further document and, where appropriate, codify, the current electronic deposit access rules and practices in more detail to increase transparency and understanding among copyright owners on how such deposits are used, while calling for a commitment against any further expansion of access practices. For example, the Office could more clearly specify that researchers accessing electronic deposits must be on the premises of the Library of Congress, that the so-called “surplus books” program does not apply to electronic deposits, and confirm that the Library will maintain technical protection measures applied to electronic works.

N/MA concluded by reinforcing the importance of copyright to news publishers and our commitment to growing the registration of news content across the industry. N/MA and its members restated their willingness to further share news publisher experiences with regards to the current access conditions for electronically-deposited newspapers if necessary.

N/MA appreciates the Office’s consideration of the views discussed during our meeting and remains available to respond to any follow-up questions the Office may have.

Sincerely,

A handwritten signature in black ink that reads "Regan Smith". The signature is written in a cursive, flowing style.

SVP and General Counsel
News/Media Alliance

