October 16, 2023

Ms. Suzanne V. Wilson
General Counsel and Associate Register of Copyrights
United States Copyright Office
101 Independence Avenue SE
Washington, DC 20559

Re: News/Media Alliance Reply Comments Regarding Notice of Proposed Rulemaking on Access to Electronic Works, Docket Number 2023-3.

Dear Ms. Wilson,

The News/Media Alliance (“N/MA” or the “Alliance”) is a nonprofit organization headquartered in Washington, D.C., representing the newspaper, magazine, and digital-only media industries, empowering our members to succeed in today’s fast-moving media environment. The Alliance’s members represent nearly 2,000 diverse newspaper, magazine, and digital-only publishers in the United States and internationally, ranging from the largest news and magazine publishers to small, hyperlocal newspapers, and from digital-only and digital-first outlets to print papers and magazines. The Alliance diligently advocates for news and magazine publishers on a broad range of current issues affecting them, including intellectual property protections.

The Alliance welcomes the opportunity to provide these reply comments to the U.S. Copyright Office in response to the Notice of Proposed Rulemaking on Access to Electronic Works, Docket Number 2023-3, 88 Fed. Reg. 60,413 (September 1, 2023).

Newspaper publishers have special experience relevant to the current public access to works deposited electronically for copyright registration and subsequently selected into the Library’s collections. As the NPRM notes, existing regulations prescribe conditions for the Library to provide access to electronic deposits received through group newspaper registrations, conditions that emerged in connection with a limited pilot project by the Library in consultation with N/MA beginning in 2016.1 N/MA’s participation in that pilot was driven by its members’ need for a more modern deposit option to register copyright interests in newspapers than by sending the Office microfilm (e.g., by PDF).2

N/MA reiterates its thanks for the Office’s assistance at that time, as well as the pressing need for further updates to facilitate the registration of online websites, such as a group registration for news websites. Because regulatory updates are needed to ensure practical access to the registration system and related statutory remedies, and in acknowledgement of the Office’s limited resources, N/MA respectfully requests that the Office prioritize this needed update above other registration regulatory matters, such as the current proposed rule on access to electronic works.

Regarding the proposed rule, N/MA writes in support of maintaining the current conditions of access to electronically deposited newspapers, and to take note of certain issues articulated in comments submitted by the Copyright Alliance and a group of copyright industry associations (Association of American Publishers, the Authors Guild, and the Recording Industry Association of America). Consequently, we also caution against a suggestion made by the Library Copyright Alliance in footnote 2 of their initial comments.

With respect to newspapers, we are encouraged that the proposed rule confirms there are no plans to change the status quo. The proposed rule’s preamble explains that “access will be restricted to authorized users as defined in the regulation and only permitted on the Library’s physical premises, with a narrow exception for Library staff working offsite over a secure connection. This limited onsite access for authorized users occurs through computer terminals located in the Library’s reading rooms. The reading room terminals are not connected to the internet, have USB and other ports disabled, and are under the supervision of Library staff.”3 We urge you to retain these current practices, and not expand them further without further study and robust consultation with affected stakeholders, including newspaper publishers.

We have reviewed concerns raised by other commenters about the permanence of these limits and how they relate to the Library’s Digital Collections Strategy as well various programs that promote access to works, such as interlibrary loans. With regards to the Digital Collections Strategy, the document indicates that the Library will pursue a program of policy and IT development that enables “the broadest possible access to rights restricted content.”4 This policy objective may be in tension with the current limited access conditions, and it is not fully clear how the broader objectives are to be applied to the special category of materials acquired through the copyright registration program. Copyright owners must be notified and their rights and interests adequately taken into account before further expansion of public access to

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electronic copyright registration deposits. Similarly, we encourage the Office to clarify that electronic deposits will not be copied or transferred without the permission and consent of the copyright owner.

For the aforementioned reasons, we also call on the Office to reject a proposal by the Library Copyright Alliance for the Library and the Copyright Office to “explore expanding access to eDeposits by permitting secure access on the premises of designated regional federal facilities.” Any such expansion would implicate copyright owners’ rights, in addition to raising substantial security concerns.

The Alliance is grateful for the opportunity to provide these comments, and stands ready to engage in further discussions with the Library and the Copyright Office as needed.

Sincerely,

/s/Regan A. Smith

SVP and General Counsel

News/Media Alliance

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