



March 14, 2025

Response to the National Science Foundation’s and Office of Science & Technology Policy’s Request for Information on the Development of an Artificial Intelligence (AI) Action Plan

The News/Media Alliance (“N/MA”) welcomes the opportunity to provide comments¹ to the Office of Science and Technology Policy (OSTP) and the National Science Foundation, in response to the Request for Information on the Development of an Artificial Intelligence (AI) Action Plan, 90 Fed. Reg. 9,088 (Feb. 6, 2025).

N/MA is a nonprofit organization representing over 2,200 publishers in the United States, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers who have printed news since the nation’s founding. Covering all subject matter and political viewpoints, the Alliance’s membership accounts for nearly 90 percent of the daily newspaper circulation in the United States, over 500 individual magazine brands, and dozens of digital-only properties.

We applaud the Administration for initiating the development of the AI Action Plan and for confirming that it “is the policy of the United States to sustain and enhance America's global AI dominance in order to promote human flourishing, economic competitiveness, and national security.”² This statement builds upon the principles established by the first Trump Administration, which rightly recognized the importance of protecting freedoms and respecting intellectual property rights.³ We strongly agree that “with the right government policies, the

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² Exec. Order No. 14,179, 90 Fed.Reg. 8,741 (Jan. 31, 2025) (Removing Barriers to American Leadership in Artificial Intelligence).

³ For example, in 2020 the Administration issued *Artificial Intelligence for the American People*, which reaffirmed the President’s commitment to protecting intellectual property in the AI environment, stating: “[t]he United States has long been a champion and defender of the core values of freedom, guarantees of human rights, the rule of law, stability in our institutions, rights to privacy, *respect for intellectual property*, and opportunities to all to pursue their dreams.” (emphasis added); *Artificial Intelligence for the American People*, THE WHITE HOUSE (2020), <https://trumpwhitehouse.archives.gov/ai/> (last visited Mar, 14, 2025).

United States can solidify its position as the leader in AI and secure a brighter future for all Americans.”⁴

The proliferation of AI technologies presents great opportunity, but also challenges, for America’s future economic competitiveness, national security, and cultural flourishing. The Administration’s AI Action Plan comes at the right time, with ongoing discussions around how to incentivize innovation in AI as well as production and investment in creative industries, and integrate AI within other sectors of the economy. These discussions come against the backdrop of an increasing number of deals between AI companies and publishers. The AI Action Plan has the potential to be a transformative measure that secures American AI leadership without risking the American creative industries whose works AI systems rely on to succeed. We want to work with the Administration to develop these principles.

To be clear, N/MA supports responsible AI development, with many of our members investing in their own uses of AI to facilitate research, efficiency, and insights, as well as working with AI developers on an array of arrangements that allow their reliable, high quality content to inform the developers’ work. But publishers should not be forced to subsidize the development of AI models and commercial products without a fair return for their own investments, no more than cloud providers would be expected to bear the costs of compute without payment for their input. The future of generative AI requires sustaining the incentives for the continued production of news and other quality content that, in turn, builds and powers generative AI models and products. Without high-quality, reliable materials, these tools will become less useful to consumers, and may jeopardize our country’s leadership in the sector. IP laws also protect AI companies, including when their original creations are misappropriated by foreign companies.⁵ We are committed to establishing a symbiotic, mutually beneficial framework between content production and AI development that respects intellectual property, facilitates technological development, and takes a balanced, market-based approach to AI innovation and regulation. Such a framework will accelerate and amplify the position of the United States as an AI leader, building on – and not sacrificing – its already globally leading media and entertainment industry.

⁴ Exec. Order No. 14,179, 90 Fed.Reg. 8,741 (Jan. 31, 2025) (Removing Barriers to American Leadership in Artificial Intelligence).

⁵ For example, OpenAI has suggested that DeepSeek, a Chinese AI company, may have built its models by distilling outputs from OpenAI’s products—an apparent violation of OpenAI’s terms of service. *See, e.g.*, Jess Weatherbed, *OpenAI Has Evidence That Its Models Helped Train China’s DeepSeek*, THE VERGE (Jan. 29, 2025), <https://www.theverge.com/news/601195/openai-evidence-deepseek-distillation-ai-data>; Cade Metz, *OpenAI Says DeepSeek May Have Improperly Harvested Its Data*, THE NEW YORK TIMES (Jan. 29, 2025), <https://www.nytimes.com/2025/01/29/technology/openai-deepseek-data-harvest.html>.

We focus our comments on a few areas of importance for journalism and the wider creative industries, together a backbone of our domestic economy and culture, and driver of influence around the world. Specifically, the nation’s AI policy and AI Action Plan should respect intellectual property, support the development of voluntary licensing in free markets, and promote appropriate transparency and fair competition in the AI and technology sector. By working within this framework, AI developers and publishers can help America retain its leadership in and continue to win the AI race.

1. Current Law and the Role of Free Market Licensing

Most American intellectual property rightsholders are individual or small and medium-sized businesses that form the backbone of American cultural leadership in the world and of the creative economy. In total, core copyright industries contributed \$2.09 trillion to the U.S. GDP, amounting to almost eight percent of the American economy, while also employing 11.6 million workers, not to mention the significant contributions of the creative industries to America’s export trade.⁶ To sustain these investments and produce new, original works that power this industry as well as AI development, these businesses rely on intellectual property protections to protect their investments and monetize their content and brands.

The role of marketplace licensing. The AI Action Plan should encourage the continued development of free market licensing to support a symbiotic relationship between content creators, publishers, and AI developers, ensuring that “American AI technology continues to be the gold standard worldwide.”⁷ This means ensuring our markets work consistently with U.S. law, with fair competition and adequate transparency around how content is being used by AI developers to encourage fair market negotiations.

Voluntary licensing is the foundation of our intellectual property marketplace, benefiting the American economy as a whole. Just like other businesses and property owners, content creators make decisions on how to monetize their owned and controlled property in a way that maximizes their benefits, supporting further investments and employment opportunities. And in the AI space, free market licensing promotes both a healthy content-sharing economy and continued U.S. leadership in AI by delivering additional revenue streams for creators while providing AI companies with rights to access and use high-quality datasets for training and grounding. Indeed, marketplace licenses between rightsholders and AI developers are emerging

⁶ Jéssica Dutra and Robert Stoner, *Copyright Industries in the U.S. Economy: The 2024 Report 1* (Feb. 2025), available at https://www.iipa.org/files/uploads/2025/02/IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024_ONLINE_FINAL.pdf.

⁷ J.D. Vance, Speech at Paris AI Summit 2025 (Feb. 11, 2025), available at <https://www.youtube.com/watch?v=64E9O1Gv99o>.

in the United States and elsewhere with over 100 major licensing deals publicly reported (and many more that are not).⁸ These licenses cover a range of copyright industries and AI use cases, including Big and Little Tech (e.g., Google, Amazon, Microsoft, OpenAI, Perplexity, ProRata, Bria AI) and rightsholders from the publishing (e.g., John Wiley & Sons, News Corp, Conde Nast, Los Angeles Times, Dotdash Meredith, The Texas Tribune), film (Lionsgate), photo (Getty Images, Shutterstock), and music (Universal Music Group, Symphonic Distribution) industries, to name a few.

AI content licenses are continuously evolving in response to changing market conditions and technological developments, and to support innovation and new uses of content, all while minimizing the need for government intervention or regulation. In contrast to more regulated countries, American technology and creative industry partnerships, including through content licensing, have made some of the most novel apps and distribution outlets for creative content possible, and AI services will similarly benefit from agreements permitting access and use of content. The development of licensing markets is also important for intellectual property rights enforcement, with the effect on the potential markets being the most important element in fair use analyses. In fact, courts have already recognized the existence of licensing markets for AI use cases, acknowledging the importance of such markets to ensure sufficient incentives for creation.⁹ The Administration should therefore support conditions to sustain voluntary licensing solutions, allowing market participants to find the best and economically most competitive way forward. As OpenAI's CEO Sam Altman recently stated, "creators deserve control over how their creations are used and what happens beyond the point of them releasing it into the world ... the right thing is to make sure [they] get significant upside benefit [from AI technologies]."¹⁰

AI policy should promote intellectual property rights. Of course, agreements are forged in reference to underlying legal frameworks. The key legal framework here – U.S. intellectual

⁸ For a selection of AI licensing deals, see, e.g., Trishla Ostwal, *Dow Jones Wins AI Licensing Deals with More Than 4,000 News Outlets Like the AP*, ADWEEK (Nov. 12, 2024), <https://www.adweek.com/media/dow-jones-lands-more-than-4000-ai-licensing-deals-with-news-outlets-like-the-ap/> (reporting on Dow Jones' recent deals with other publishers); Ella Creamer, *HarperCollins to Allow Tech Firms to Use Its Books to Train AI Models*, THE GUARDIAN (Nov. 19, 2024), <https://www.theguardian.com/books/2024/nov/19/harpercollins-tech-firms-books-train-ai-models-nonfiction-artificial-intelligence> (discussing HarperCollins' licensing deal with an AI developer); Matilda Battersby, *Wiley Confirms It Is Seeking Further Generative AI Partnerships as Its Quarterly Revenue Rises to £296m*, THE BOOKSELLER (Sep. 6, 2024), <https://www.thebookseller.com/news/wiley-confirms-it-is-seeking-further-generative-ai-partnerships-as-its-quarterly-revenue-rises-to-296m> (discussing Wiley's recent AI licensing deals); Kyle Wiggers, *Perplexity Expands Its Publisher Program*, TECHCRUNCH (Dec. 5, 2024), <https://techcrunch.com/2024/12/05/perplexity-expands-its-publisher-program/> (discussing the second cohort of Perplexity's Publish Program).

⁹ See, e.g., *Thomson Reuters Enter. Ctr. GmbH v. Ross Intel. Inc.*, 2025 U.S. Dist. LEXIS 24296, at *27-29 (D. Del. Feb. 11, 2025).

¹⁰ *Oversight of A.I.: Rules for Artificial Intelligence, Hearing Before the Subcomm. On Privacy, Technology, and the Law of the S. Comm. on the Judiciary*, 118th Cong. (2023) (response of Sam Altman, CEO, OpenAI).

property law — does not require revision. Our intellectual property law is capable and sufficient to address developments related to generative AI. For centuries, our copyright law has adeptly balanced the exclusive rights of creators to control the use of their works with appropriate exceptions and limitations. In this way, intellectual property protects core American principles that have fostered a thriving creative economy at home and robust cultural exports. There is effectively no section of the economy that is not protected or benefited by copyright, and stakeholders rely on legal consistency and predictability to support continued investments.

Our intellectual property framework is tested and proven to address questions posed by new and disruptive technologies – from the photocopier to the VCR to the internet to streaming services, and beyond – and facilitate exciting innovations while protecting the incentive to produce and distribute creative works. It is not an accident that America both leads the world in the production of its cultural industries (including media), and is also home to most of the world-leading technology companies – including those in the AI space. IP laws have directly driven U.S. economic growth and protected uniquely-American innovation. Our laws set us apart from countries like China with notoriously lax IP frameworks that lead to fragile economies lacking the depth of American original creativity and innovation. AI companies rely on the long-criticized Chinese business practice of rampant copyright infringement to argue that we in America ought to abandon our historical commitment to protecting and promoting the development of intellectual property. This argument wrongly suggests that American AI cannot compete without violating our laws. Nothing could be farther from the truth.

And when disputes arise, courts can and do resolve issues concerning unauthorized, new, and unexpected uses of protected content. Presently, courts across the country are still deciding questions concerning AI and copyright and, as AI developers and rightsholders agree,¹¹ to the extent that there are novel questions of law, the courts are expected to be able to resolve these cases in a manner that balances AI innovation and IP protections. To that point, a district court recently ruled, consistent with Supreme Court precedent, that fair use did not apply to AI training to create the directly competitive products at issue in that case.¹² Our fair use doctrine allows for a fact-specific, case-by-case analysis of different uses and technologies, allowing judicial precedents to develop over time when considering different technologies and products.

¹¹ Meta, Comments in Response to the U.S. Copyright Office Notice of Inquiry on Artificial Intelligence & Copyright (Dkt. 2023-6) at 19 (Oct. 30, 2023) (“The AI industry is in its infancy, and the United States has the enviable position of leading the world in AI innovation and development due to its long-standing and principled approach to copyright law, which has made this country both a creative and technological leader”; OpenAI USCO Comments: “As yet, the courts have not had an opportunity to pass on most of the questions raised in the NOI ... OpenAI believes that the existing provisions of U.S. copyright law provide a sound foundation on which the courts can build as cases arise.”).

¹² *Thomson Reuters Enter. Ctr. GmbH v. Ross Intel. Inc.*, 2025 U.S. Dist. LEXIS 24296 (D. Del. Feb. 11, 2025).

In this way, our copyright system allows courts to address and allocate liability for unauthorized uses of content, and industries to adjust and iterate accordingly. These issues, therefore, are best left to the courts. The sufficiency of existing copyright law notwithstanding, we remain concerned that many AI stakeholders have used copyright protected material to build and operationalize their models without consent, in ways damaging to publishers. While the legality of such activities are the subject of litigation, there is a danger that it will not be possible to undo the damage before a judicial resolution can occur. The AI Action Plan should therefore encourage AI developers to engage more collaboratively with content industries in a manner that serves the broader national interest and a win-win result for our global aspirations.

Indeed, AI innovation and content creation can and should be mutually beneficial, with the United States as a leader in both sectors. Competitive AI models and applications rely on high-quality content to thrive and survive in the digital marketplace.¹³ As OpenAI’s Josh Tobin recently noted, discussing the company’s Deep Research, “the quality of the data that you put into the model is probably the biggest determining factor in the quality of the model that you get on the other side.”¹⁴ Enforcement of intellectual property rights helps ensure AI model quality, which affects users’ trust and adoption of AI technology and the resultant outputs. High-quality models require high-quality raw materials, while the use of low-quality, synthetic material to train AI systems can create a phenomenon known as “model collapse.”¹⁵

International competitiveness. The Administration should push back on the flawed text and data mining (TDM) opt-out frameworks being considered or recently adopted in various countries.¹⁶ These opt-out policies do not work, have the potential to harm American creators and businesses through the uncompensated taking of their property, overregulate content licensing, and turn copyright law and free market licensing upside down. Unlike in the United States where creators’ right to control their own property is recognized, opt-out requirements

¹³ See, e.g., Meta, Reply Comments of Meta Platforms, Inc. in Response to U.S. Copyright Office Notice of Inquiry on Artificial Intelligence & Copyright (Dkt. 2023-6) at 7 (Dec. 6, 2023) (“...machine learning models do not work without ‘high quality’ data—meaning that the data must be complete, de-duplicated, and free of errors ... a large language model trained on a dataset containing sentences with proper grammar, vocabulary, and syntax will be more useful than a language model trained on garbled or incomplete text.”)

¹⁴ Sequoia Capital, Training Data Podcast, Episode 31 (Feb. 25, 2025), transcript available at <https://www.sequoiacap.com/podcast/training-data-deep-research/>.

¹⁵ See, e.g., Ben Lutkevich, *Model collapse explained: How synthetic training data breaks AI*, TechTarget, Jul 7, 2023, <https://www.techtarget.com/whatis/feature/Model-collapse-explained-How-synthetic-training-data-breaks-AI>; Ali Borji, *A Note on Shumailov et al. (2024): “AI Models Collapse When Trained on Recursively Generated Data”*, arxiv.org, Oct. 24, 2024, <https://arxiv.org/abs/2410.12954>; Daniele Gambetta et al, *Characterizing Model collapse in Large Language Models Using Semantic Networks and Next-Token Probability*, Arxiv.org, Feb. 2, 2025, <https://arxiv.org/abs/2410.12341>; Elvis Dohmalob, *A Tale of Tails: Model Collapse as a Change of Scaling Laws*, Arxiv.org, May 31, 2024, <https://arxiv.org/abs/2402.07043>.

¹⁶ See, e.g., Digital Creators’ Coalition, DCC Written Comments in Response to USTR’s Request for Comments Regarding the 2025 Special 301 Review (Docket No. USTR-2024-0023 89 Fed. Reg. 97161) (Jan. 27, 2025).

effectively force rightsholders to forfeit their rights as technical reservation measures are not respected, in addition to many being largely untested and often too cumbersome to adopt at scale. Not only is the necessary rights reservation technology not available, the continuous monitoring of crawlers, AI developers, and intermediaries is next to impossible – especially for small and medium-sized creators – as is adapting to ever-changing technological measures and standards. Opt-out requirements also do not resolve any marketplace uncertainty over the scope of permitted uses, while licensing deals can provide the economic and legal certainty for AI developers and creators alike, incentivizing content creation and innovation.

The United States legal system is built on respect for individual property rights – intellectual or otherwise – and the Administration has recently expressed concerns over other foreign measures that “limit American companies’ global competitiveness” as well as policies that “could require a United States company to jeopardize its intellectual property,”¹⁷ in addition to emphasizing the need to respect IP rights and support American businesses.¹⁸ Opt-out requirements – including those currently being considered by the UK Government, risking divergence between our two countries with currently similar copyright laws – threaten the copyright industries’ continued ability to invest in new, original content and to create new employment opportunities for the American people, and may benefit bad-faith actors who would be able to misappropriate American content with impunity. The Administration should oppose measures to undermine the intellectual property rights of Americans, or facilitate a race to the bottom. The AI Action Plan should support free market negotiations and solutions globally, and require those wishing to use protected content to negotiate and pay for it.

2. Transparency

For licensing markets to be efficient and competitive, market participants need accurate and reliable information about market conditions and the use of their products. Transparency regarding AI developers’ collection and use of protected materials can support market-based licensing and industry-led solutions by facilitating negotiations and allowing rightsholders to identify when their works have been used. Model transparency can also mitigate against the

¹⁷ Pres. Memorandum on Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties, 90 Fed.Reg. 10,685 (Feb. 21, 2025).

¹⁸ *Artificial Intelligence for the American People*, THE WHITE HOUSE (2020), <https://trumpwhitehouse.archives.gov/ai/> (last visited Mar, 14, 2025) (“The United States has long been a champion and defender of the core values of ... respect for intellectual property, and opportunities to all to pursue their dreams. The AI technologies we develop must also reflect these fundamental American values and our devotion to helping people.”); *Fact Sheet: President Donald J. Trump Restores American Competitiveness and Security in FCPA Enforcement*, THE WHITE HOUSE (Feb. 10, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-american-competitiveness-and-security-in-fcpa-enforcement/> (“[e]very policy must be geared toward that which supports the American worker, the American family, and businesses, both large and small, and allows our country to compete with other nations on a very level playing field.”).

suppression of ideas and viewpoints by shedding light on whether AI is trained or operating in a biased manner or facilitating censorship. Currently much content on the internet is crawled and scraped by “bots” which are agents of US and foreign AI companies or those operating on their behalf, which collect content in ways which can often be opaque, leaving web operators, publishers and other creators without the ability to determine the identity or purpose of the bot in question. This vulnerability has implications for copyright, but also security and safety. Promoting greater transparency in this arena would have broad benefits.

Transparency requirements and disclosures do not need to be burdensome. The guiding principle should be to enable the identification of when and which content is being collected, used or has been used for purposes related to AI, and allow American rightsholders to accurately identify when and to what extent their works have been collected and used in AI models and systems. Some AI companies are already taking this opportunity to innovate and come up with transparency and attribution solutions that work for both developers and content creators alike.¹⁹ Transparency measures can also provide exclusions for proprietary and licensed materials, protecting genuine trade secrets and commercially sensitive information.

The digital ecosystem benefits from consensus – whether led by the government or by industry – and dialogue and standards-building can help develop transparency disclosures and other standards that work for all parties and are mutually beneficial. These standards can support any potential legislative transparency measures and take into account relative risks to allow market conditions to develop further. They can also ensure that foreign AI developers and operators offering services in the United States do not unfairly disadvantage American creators or AI stakeholders, protecting U.S. cultural and AI leadership.

3. Competition & Innovation

American intellectual property laws promote competition and protect small creators and Little Tech against unfair trade practices, foreign and domestic, by enforcing fundamental property rights and facilitating market-based solutions. The AI Action Plan should support measures to promote competition amongst actors, reduce abusive dominance by Big Tech, and prevent unfair competition in the marketplace.

Without transparency and other guardrails to protect the marketplace, AI risks being captured by Big Tech, discouraging competition, reducing investments, undermining innovation and

¹⁹ See, e.g., ProRata, *ProRata Invents Generative AI Attribution Technology to Compensate and Credit Content Owners While Facilitating Fairness and Fact* (Aug. 6, 2024), <https://www.businesswire.com/news/home/20240806000889/en/ProRata-Invents-Generative-AI-Attribution-Technology-to-Compensate-and-Credit-Content-Owners-While-Facilitating-Fairness-and-Fact>.

ultimately hurting American consumers. The Trump Administration has already rightly acknowledged these concerns, with FTC Chair Andrew N. Ferguson and Commissioner Melissa Holyoak recently having noted the need to “remain a vigilant competition watchman [to ensure that]...Big Tech incumbents do not control AI innovators in order to blunt any potential competitive threats.”²⁰ Similarly, in nominating his pick to lead the Department of Justice’s Antitrust Division, President Trump stated that “Big Tech has run wild for years, stifling competition in our most innovative sector and . . . using its market power to crack down on the rights of so many Americans, as well as those of Little Tech!”²¹

Dominant Big Tech companies are already tying their services, including tying search to generative AI, effectively keeping both rightsholders and consumers within their walled gardens and forcing them to accept their terms, thereby entrenching their market position at the expense of rightsholders, consumers, and competitors.²² With no real way for rightsholders to opt out of these uses without risking visibility and vital revenue streams, these dominant companies gain access to vast amounts of data that they use for unanticipated and unrelated use cases. Startups and smaller entities simply have no way of reasonably acquiring access and competing at scale with these Big Tech practices and advantages. Meanwhile, by inserting themselves between rightsholders and their audiences, the dominant companies also disrupt and manipulate that fundamental relationship to redirect revenue flows to themselves, disincentivizing future investments and threatening jobs.

Meanwhile, it is often the smaller companies that are exploring licensed solutions with rightsholders, including by utilizing models like revenue sharing – showing that appropriate licensing is both possible and financially viable for both buyer and seller. Strong marketplace conditions will further promote and protect Little Tech against Big Tech’s efforts to dominate the marketplace.

4. Conclusion.

While our intellectual property laws are well-designed to protect rightsholders and innovation alike, adequate transparency and competition in the digital marketplace is fundamental for the

²⁰ Federal Trade Commission, *Concurring and Dissenting Statement of Commissioner Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak, Regarding the FTC Staff Report on AI Partnerships & Investments 6(b) Study*, FTC Matter No. P246201 (Jan. 17, 2025)

²¹ Trump, D. [@realDonaldTrump], “I am pleased to nominate Gail Slater as Assistant Attorney General for the Antitrust Division at the Department of Justice. Big Tech has run wild for years, stifling competition in our most innovative sector and, as we all know, using its market power to crack down on the rights of so many Americans, as well as those of Little Tech!” Truth Social (Dec. 4, 2024)

²² For examples of such products and strategies, see, e.g., News/Media Alliance, *How Google Abuses Its Position as a Market Dominant Platform to Strong-Arm News Publishers and Hurt Journalism* (Sep. 6, 2022), https://www.newsmediaalliance.org/wp-content/uploads/2022/09/NMA-White-Paper_REVISED-Sept-2022.pdf.

sustainable development of generative AI systems and the future of content industries. We urge the Administration to recognize the importance of respecting existing U.S. intellectual property laws, while expressing support for AI governance measures including potential risk-based frameworks, voluntary licensing solutions and transparency and competition policy measures that support licensing negotiations in the AI Action Plan.

We thank the Administration for this opportunity to provide these comments and stand ready to answer any questions and to work with the Administration in developing the AI Action Plan going forward.