SUMMARY OF THE ARGUMENT

At first glance, it may seem like the outcome of this case impacts only the biggest media companies and the biggest technology companies. But in the view of the amici, the fate of community media – the outlets that cover local schools, county government, and neighborhood parks – hinges upon this case. Community media are a critical, but often overlooked, component of the American news sector.

ARGUMENT

Amici first want to acknowledge that artificial intelligence ("AI") can help newsrooms do better journalism for their communities, if it is used in a responsible way.

But it is also clear that the benefits of those tools will amount to one step forward and many steps back if the economic models of local news outlets are devastated by the behavior of AI companies. This case will determine whether AI companies' current approach of not compensating news organizations for scraping content will undercut local news outlets' business models and remove the economic incentives for paying journalists to produce truthful information for our communities. The stakes go far beyond the economic health of news organizations. The evaporation of reliable local news causes severe civic, economic, and social harm to communities.

A. The Harm Caused by AI Companies Not Respecting Copyrights

Amici are deeply concerned that the current practices of AI companies will harm an already fragile local news system. AI companies scrape journalism from local news websites, mostly without compensation, both to pretrain their models and to supply up-to-date answers through retrieval-augmented generation ("RAG"). The chatbots used by AI companies aspire to provide complete answers, obviating the need for a reader to visit the websites that financially invested in creating the underlying journalism. Amici thoroughly agree with the OpenAI executive who said "[p]ublishers" face an "existential threat" from those products, which "are largely substitutive, period" and "will get more and more substitutive as they get better."

AI companies in this case, and almost all others, have argued that fair use excuses their scraping of amici's copyrighted works for training and ingestion. However, any fair use defense requires scrutiny of such a claim. Amici highlight the fourth factor of fair use, which considers "the effect of the use upon the potential market for or value of the copyrighted work." As described below, amici believe that interpreting fair use to enable the current AI business model to continue will undermine the local news market in several ways.

First, advertising revenue at local news outlets is usually based on ad impressions or user engagement; when traffic from human visitors declines, so does ad revenue. Axios found that "[t]raffic to news sites is plummeting in the U.S. as tech giants shift users from search and social sites to AI interfaces." A study by Chartbeat found that smaller publishers were hit hardest, with a 60% decline for small publishers (with 1,000–10,000 daily page views) versus 47% for medium-sized (10,000–100,000 daily page views) and 22% for large publishers. According to the 2026 State of Local News Report produced by the Medill School of Journalism at Northwestern University, the web traffic of the top 100 newspapers has declined nearly 50% since OpenAI released ChatGPT in 2022: "As more web services, including traditional search engines, move toward the 'answer machine' model of AI chatbots, audiences are increasingly presented with summaries of local news content and have less incentive to actually visit the news sites," the Medill report stated.

Second, the availability of news outlets' information for free through AI results makes it less likely that consumers will purchase a subscription or become a paying member. As search referrals decline, the number of potential subscribers declines. The calculus for the consumer also changes to: Why pay or donate if you can get the information (from an AI chatbot) for free?

Third, the ability of news organizations to demonstrate their value to the community is undermined. Local news, whether it is commercial or nonprofit, can only succeed if it provides important information and if residents are aware of the source of that information. AI agents will often confidently dispense knowledge without highlighting the entities that spent money, and the individuals who spent time, to generate that information.

Indeed, with rising concerns about “fake news,” our readers often look to the source of the news to determine its veracity.

This matters especially in the case of nonprofit local news organizations, which need to convince local residents or foundations that the news organizations are doing important work with significant impact. For example, the Bay City News Foundation, a 501(c)(3) nonprofit news organization serving Northern California, estimated that it costs an average of $500 to produce every news story. To help recoup those costs, nonprofit news organizations set up email-registration walls to solicit human readers. As the Foundation explained:

“If real human readers aren’t visiting the site, they’re also not signing up for our newsletters. And they’re also not donating the tax-deductible donations that we rely on most to compensate the reporters, cover the cost of running the website, and pay for all the other things we need like insurance, technology and travel. AI companies are extracting value from local journalism, while small newsrooms pay the price.” AI undermines this business model: “Instead of listing sources, AI bots are bombarding our site and scraping it for information, summarizing our information without giving us credit, payment or anything else of value…”

B. What Is Lost When Local News Sources Disappear

Crucially, the damage of the local news collapse is not just, or even primarily, to the publishers or the journalists. The civic and economic health of communities and of democracy rests on residents having reliable information of the kind traditionally gathered by local journalists, an essential civic function for which social media and AI have been inferior substitutes. Community coverage includes a wide range of topics and services – the new curriculum at the high school, plans for a sewage treatment plant, an obituary about the inspiring ice cream shop owner, a hard-headed analysis of the county budget, reviews of the community theater’s latest production, basketball highlights, new homelessness initiatives from houses of worship, crimes large and small, and video of local candidate debates. It includes watchdog reporting, holding officials accountable; utilitarian information, helping residents navigate their communities; and human interest coverage, enabling neighbors to know

each other and their community. All three of these types of news help communities function and thrive.

Rigorous academic studies have shown over and over that the loss of local news has devastating effects on communities:

- Corruption rises.
- Police solve fewer violent crimes.
- Polluters are less likely to be penalized.
- Municipal governments pay higher interest rates in areas with no local news; investors figure that without local watchdogs, government will be more wasteful. The municipal bond effects of losing local news outlets by themselves cost governments $1.1 billion more per year, acting like an invisible tax on local communities.
- Residents are less likely to be informed about local issues than national news. This "proximity paradox," in which it is harder to stay informed about your neighborhood than about another country, means people know far more about the U.S. Senate candidates than the mayor or the high school principal.
- News deserts also exacerbate polarization, according to multiple academic studies. How? The information vacuum that emerges gets filled by national media (which tend to focus on partisan issue framing) or social media, which incentivize outrage. This has been measured both in terms of the decline of split-ticket voting and the rise of hostile attitudes measured in public opinion surveys.
- Finally, the lack of reliable local news will also mean more local misinformation. AI chatbots are more likely to err when there is a shortage of information about a topic; most local news ecosystems reflect that kind of information scarcity, so the risk of misinformation is higher. This danger grows as bad-faith actors learn how to influence AI systems. A recent study by NewsGuard showed how political groups used AI to create massive amounts of partisan content to influence the AI agents' depictions of their candidates. Another NewsGuard study found that in 2025, the largest AI tools repeat misinformation in about 35 percent of cases when it came to current news.

As local news declines, it will be less effective at watchdogging scurrilous creations of deepfakes. In one recent campaign advertisement, a

candidate mouths the words, “I just voted to keep the government shut down. They say it would hurt farmers, but I wouldn’t know. I’ve only seen a farm on Instagram.” The candidate never actually uttered those words. In national elections, we can count on The New York Times or others to smoke these out, but in a town with one (or no) journalists, deepfakes on a hyperlocal level are unlikely to be authoritatively identified or corrected before an election.

If the status quo of AI scraping and ingestion persists, amici foresee the likelihood of a relentless downward spiral for all of the local news ecosystems and markets. AI uses the journalism created by local news outlets, without compensation. The local news outlets wither, and investment dries up. That hollowing out of local news, in turn, makes AI agents less accurate, though no less confident.

Can the local news crisis be reversed? Unfortunately, if the current AI system persists, investing in local journalism as a commercial matter would be a fool’s game. Put time and energy into creating journalism, earn little money for it, and watch others extract all the financial value, while you fail to recover the costs of newsgathering? It is simply not a plausible business strategy.

Meanwhile, the philanthropic world will face a cruel conundrum. Donors and foundations have responded to the previous decline of local news with great generosity and concern. Although charitable support has not fully filled all the gaps, flowers of innovation have been blooming. Now, many of those gains could be wiped out – and the philanthropic sector would confront an uncomfortable reality: they are devoting their precious dollars to remediate harms caused by the AI companies’ unwillingness to compensate news organizations. Philanthropy will, in effect, be subsidizing the AI companies.

Amici clearly disagree with the U.S. Justice Department’s statement that ruling in favor of the New York Times would be bad for smaller news outlets. Amici argue that the opposite is true. Right now, in a no-holds-barred AI training environment, it is only large media outlets that are able to make one-off commercial deals with the AI companies. Small outlets mostly do not get the time of day, resulting in our smallest local news proprietors simply donating their time and labor to Silicon Valley.

CONCLUSION

If this Court were to reaffirm strong copyright protection by ruling for the New York Times, then small media would have a much stronger claim for compensation to fund the development of critically important news media. The risk of copyright infringement would create incentives for AI companies to find solutions that fairly support the local news creators. This could include simple, low-friction licensing solutions capable of dispensing fair compensation for the broad range of community news providers, including many small outlets without legal or technical resources. Many advocates have already suggested such structures, although they have not yet delivered support for small local news providers for the simple reason that AI companies can simply take their work for free.

An appropriate licensing, compensation, or subsidy system could help create a virtuous circle: local news would grow stronger and, in turn, feed reliable information to AI systems, which would, in turn, become more accurate and helpful.

Alternatively, the current system – the vicious (not virtuous) version of the circle – will sap the incentives for producing good local journalism. This dynamic threatens not only the individual local news outlets, but the ability of American communities to understand and govern themselves.

Amici urge the Court to reject the fair use defenses for AI scraping and ingestion of our creations.