

# News Editors Survey

A joint project of the American Society of News Editors, Reporters Committee for Freedom of the Press, the Associated Press Media Editors, and the John S. and James L. Knight Foundation  
**Frequency Questionnaire**

Dec. 2-21, 2015  
66 Respondents

**First, please tell us a bit of general information about your organization.**

1	Print only .....	-
	Online news source only .....	11
	Both print and online .....	89
	<b>Total Print</b> .....	<b>89</b>
	<b>Total Online</b> .....	<b>100</b>
<b>ref:ORGTYP</b>		

**Which of the following best describes your print circulation?**

2	More than 500,000 .....	3
	100,001 to 500,000 .....	28
	25,001 to 100,000 .....	48
	25,000 and lower .....	21
	<b>Over 100,000K</b> .....	<b>31</b>
	<b>Up to 100,000K</b> .....	<b>69</b>
<b>ref:CIRCULATION</b>		

**If you organization includes online, how many monthly unique views to your digital content?**

3	More than 10 million uniques .....	12
	1 million to 10 million uniques .....	44
	500,000 to 1 million uniques .....	18
	100,000 to 500,000 uniques .....	15
	1-to-100,000 uniques .....	11
	<b>Over 1 million</b> .....	<b>56</b>
	<b>Up to 1 million</b> .....	<b>44</b>
<b>ref:VIEWS</b>		

**Did your news organization file a lawsuit, go to court or settle a lawsuit in 2014 or 2015 for any issue involving the First Amendment, newsgathering rights or access to information?**

4	Yes .....	65
	No .....	35
<b>ref:LAWSUIT</b>		

**Thinking about both the number and intensity of the cases your news organization has been involved in 2014 and 2015, how would you compare the level of activity to 10 years ago?**

5

A lot more activity .....	10
Somewhat more activity .....	24
Same amount of activity .....	37
Somewhat less activity .....	24
A lot less activity .....	6
<b>Total More</b> .....	<b>33</b>
<b>Total Less</b> .....	<b>30</b>

ref:INTENSITY

**How would you rate your newsroom’s ability to pursue this type of legal activity today compared with 10 years ago?**

6

Much more able .....	8
Somewhat more able .....	13
About the same .....	36
Somewhat less able .....	38
Much less able .....	6
<b>Total More</b> .....	<b>20</b>
<b>Total Less</b> .....	<b>44</b>

ref:ABILITY

**Specifically, how would you rate your ability to pursue “defensive” cases, such as defending against a libel lawsuit, a lawsuit charging invasion of privacy, government subpoenas, etc.? Compared to 10 years ago, you are:**

7

Much more able .....	3
Somewhat more able .....	11
About the same .....	71
Somewhat less able .....	10
Much less able .....	5
<b>Total More</b> .....	<b>14</b>
<b>Total Less</b> .....	<b>14</b>

ref:DEFENSIVE

Specifically, how would you rate your ability to pursue “offensive” cases, such as seeking access to information, public meetings or court proceedings, challenging statutes or policies that hamper newsgathering, etc.? Compared to the past, you are:

**8**

Much more able .....	13
Somewhat more able .....	14
About the same .....	29
Somewhat less able .....	35
Much less able .....	10
<b>Total More</b> .....	<b>27</b>
<b>Total Less</b> .....	<b>44</b>

ref:OFFENSIVE

How do you rate your participation with legal advocacy organizations, state press associations, and civil rights and open government organizations, in the filing of amicus curiae briefs or other legal actions that seek to expand protections for journalists? Would you say that you have:

**9**

Significant participation .....	35
Some participation .....	44
Little participation, or .....	15
None .....	6
Unsure .....	-
<b>Significant/Some</b> .....	<b>79</b>
<b>Little/None</b> .....	<b>21</b>

ref:ORGANIZATIONS

Is there a legal action in 2014 or 2015 you decided not to pursue because your organization lacked resources? If yes, how many cases?

**10**

Yes 1 to 4 .....	23
Yes 5 to 9 .....	3
Yes 10 to 15 .....	-
More than 15 .....	-
Unsure .....	11
No .....	61
<b>Total Yes</b> .....	<b>27</b>

**11**

ref:LACK/HOWMANYCASES

**What type of case or cases? Please explain:****12****Access cases**

- *I don't have a number here; we just have a slightly tougher bar because of costs, even as we continue to take on the most important cases/issues.*
- *Open records cases; we didn't have the financial resources to pay attorneys to fight the case.*
- *Overturing of publication bans. They appear to be cropping up more and more frequently in our court system.*
- *Public records cases in which a government agency heavily redacted information provided to us based on arguments that the information was private or not in the best interest of the government. Also cases in which a government agency never responded to our public records request.*
- *Ridiculously high charges to get relatively simple request for email.*
- *We felt the Tennessee Valley Authority was misusing an exemption to FOIA. We appealed and sought assistance from The Office of Government Information Services. But when ultimately faced with suing the federal agency, we decided not to because of the likelihood of a protracted legal battle.*
- *We routinely run up against Freedom of Information Law denials that we would challenge in court if we had unlimited resources. I don't know of any news organization that doesn't feel somewhat constrained by the cost of litigation.*

**ref:CASETYPE**

For each of the following statements, please indicate if you strongly agree, somewhat agree, somewhat disagree or strongly disagree with the statement.

	Strng Agree	Smwt Agree	Neut ral	Smwt Disag	Strng Disag	Total Agree	Total Disag
<b>13</b> 13. First Amendment law is largely settled. ....	-	18	24	53	6	18	59
<b>14</b> 14. News organizations are prepared for occasional legal issues that may arise. ....	12	41	12	35	-	53	35
<b>18</b> 15. In the digital age, there are many unsettled legal questions about the scope of free expression. ....	35	53	12	-	-	88	-
16. First Amendment law has not kept up with technological developments. ....	29	41	18	12	-	71	12
17. The public is generally aware of freedom of information laws. ....	-	-	12	71	18	-	88
18. News organizations are no longer prepared to go to court to preserve First Amendment freedoms. ....	12	41	12	18	18	53	35

ref:AGREE

Now we'd like to ask you some specific questions about past legal activity. First, to ask you again, did your news organization file a lawsuit, go to court or settle a lawsuit in 2014 or 2015 for any issue involving the First Amendment, newsgathering rights or access to information?

<b>19</b> Yes .....	72
No .....	28

ref:PASTACT

**(IF YES IN PASTACT) The following questions concern whether your news organization sought to expand its ability to access or provide information. Did your organization file a lawsuit, settle a lawsuit or go to court during 2014 or 2015 to:**

	<b>Yes</b>	<b>No</b>
<b>20</b> 20. Seek access to public records through federal or state open records laws? .....	<b>88</b>	<b>12</b>
21. Seek access to public meetings? .....	<b>33</b>	<b>68</b>
<b>21</b> 22. Seek access to trials or trial materials, such as exhibits or juror questionnaires? .....	<b>49</b>	<b>51</b>
23. Seek access to sealed court records or other judicial documents? .....	<b>55</b>	<b>45</b>
<b>29</b> 24. Seek to cover trials live via social media? .....	<b>20</b>	<b>80</b>
25. Fight a gag order or any other type of “prior restraint” on a third party, such as a trial participant or a lawyer? .....	<b>34</b>	<b>66</b>
26. Challenge the validity of statutes or policies that hamper newsgathering? .....	<b>48</b>	<b>52</b>
27. Expand legal protections, such as shield laws, to bloggers or other digital content providers? .....	<b>8</b>	<b>92</b>
28. Seek to cover trials via cameras? .....	<b>26</b>	<b>74</b>
29. Other type of legal action (please specify) .....	<b>12</b>	<b>88</b>

- Major lawsuit challenged secret city police/fire pension negotiations.
- Suing office of the executive secretary of the Supreme Court of Virginia for access to criminal case info.
- Went to court multiple times to quash subpoenas seeking reporter testimony in routine court cases.
- We are defending against a libel suit Tenborg v. CalCoastNews, Karen Velie and Daniel Blackburn.
- Defend a defamation claim.
- Obtaining police dash camera video.

ref:WHYCOURT

**(IF YES IN PASTACT) How many separate cases in 2014 and 2015 were there in all?**

**30**

1 to 4 .....	<b>68</b>
5 to 9 .....	<b>18</b>
10 to 15 .....	<b>11</b>
More than 15 .....	<b>2</b>
<b>1-9</b> .....	<b>86</b>
<b>10 or more</b> .....	<b>14</b>

**ref:CASECOUNT**

**(IF NO IN PASTACT) If you did not file a lawsuit or defend a case in 2014 or 2015, did your news organization take any legal action on any of the above issues in 2014 or 2015?**

**31**

Yes, took legal action .....	<b>35</b>
No, did not take any legal action .....	<b>65</b>

**ref:ANYLEGAL**

**If yes, please indicate what type of legal action was taken.**

**32**

Pre-publication legal review of a story .....	<b>57</b>
Co-signing coalition letter: e.g. on access to information, to protest restrictions on newsgathering, etc. ....	<b>48</b>
Pursuing administrative action: e.g. filing agency appeals over an open records request .....	<b>48</b>
Joining amicus curiae briefs or other advocacy, such as lobbying for legislative change .....	<b>43</b>
Yes, negotiating outside of court: e.g., over the scope of a subpoena, over a demand letter alleging libel, etc. ....	<b>43</b>
Other (please specify) .....	<b>17</b>



**If yes, how many times did you take legal action?**

33

Zero, no legal action .....	-
1 to 4 .....	52
5 to 9 .....	30
10 to 15 .....	17
More than 15 .....	-
<b>5 or more times</b> .....	<b>48</b>

ref:HOWMANYTIMES

**The following questions concern whether your news organization has defended cases in court, such as a libel lawsuit or an effort to compel you to reveal information pursuant to a subpoena. Did your organization defend a lawsuit, settle a lawsuit or go to court during 2014 or 2015 to:**

34

	Yes	No
34. Defend a journalist arrested or detained during a news event? .....	2	98
35. Defend the organization against a subpoena seeking access to unpublished material (such as notes, interview transcripts, photos, videos, etc.)? .....	46	54
36. Protect the identity of a confidential source? .....	20	80
37. Defend the organization in a libel case? .....	29	71
38. Defend the organization in an invasion of privacy case? .....	6	94
39. Fight a court order seeking either to prevent or end digital distribution of content? .....	10	90
40. Fight a gag order or any other type of “prior restraint” on your news organization? .....	22	78
41. Curb or end government surveillance of any kind? .....	-	100
42. Protect the identity of a commenter on your site? .....	2	98
43. Defend statements from a commenter that appeared on your site? .....	4	96
44. Defend your news organization’s social media content? .....	4	96
45. Fight a SLAPP suit (Strategic Lawsuit against Public Participation) by filing a motion under a state anti-SLAPP law? .....	6	94
46. Other type of legal action (please specify) .....	9	91

46

- *Just to clarify: We are extremely proactive with our first amendment lawyers so that we don't end up in some of these situations. In one instance of libel it did not get to the courtroom stage; we handled outside of court. We typically handle subpoenas outside of court. Etc.*
- *Editors talked to police chief about officers' failure to see reporter and her child as victims when confronted in a mall by group of people angry about a story.*
- *Preparation for possible libel case against us. Case was not filed.*
- *On SLAPP, we had to use it when city officials threatened editor and lawyer after they sued on sunshine law violations. SLAPP backed them off.*
- *1) Court appeal to fight an agency's appeal of our successful right-to-know case;*  
*2) Court appeal to gain access to information about a settlement by a public agency.*
- *Motions to quash; complainants and witnesses in criminal prosecution for FOIA violation.*

ref:WHYDEFEND

**How many times did your organization take these actions?**

47

1 to 4 .....	<b>79</b>
5 to 9 .....	<b>18</b>
10 to 15 .....	<b>3</b>
More than 15 .....	-
<b>5 or more times</b> .....	<b>21</b>

ref:HOWMANYDEFENDED

**If you replied yes to any of the previous questions, who represented your organization in any legal matter in 2014 or 2015—whether you went to court or not? Please check all that apply.**

48

Private law firm (paid by your organization) .....	<b>80</b>
In-house counsel .....	<b>61</b>
Private law firm (pro-bono) .....	<b>6</b>
Nonprofit legal defense group .....	<b>4</b>
Law school clinic.....	<b>2</b>
Other (please specify) .....	<b>6</b>

ref:WHOREP

Please indicate in the allotted space what role these lawyers played.

49

**In-House Council**

- *Engaged with outside counsel.*
- *Almost all our legal work is handled through our parent company's general counsel office, which has a strong cadre of First Amendment lawyers. We are lucky.*
- *Oversaw all legal action.*
- *Corporate legal department vets all legal matters as the first step in any contemplated legal action.*
- *A little bit. Lawyer in corporate office.*
- *Publisher is a lawyer and member of bar in state. Helped discuss issue with police chief.*
- *General advice; coordination with private law firm.*
- *Corporate attorney who led and formed the legal strategy and guided the newsroom participants.*
- *Prepublication editing and advise on records fights.*
- *All legal actions necessary to protect news gathering.*
- *Managing the case, recruiting outside counsel.*
- *(Corporate in-house) Consulted.*
- *Advice and counsel.*
- *Overall strategy.*
- *Corporate attorney advises on policies/direction from corporate.*
- *All work is done in house.*
- *Direction and approval.*
- *None.*
- *Not much.*
- *Head counsel.*
- *Reviewed cases prior to referring them to private counsel.*
- *Wrote letters contesting subpoena.*
- *We have a corporate legal team that serves all the papers in the group.*

**Private Law Firm (Paid by Your Organization)**

- *Performed all First Amendment-related work*
- *We rely on a private attorney to handle newsroom access and legal actions.*
- *Used in cases where local appearances needed.*
- *Local firm represents our interests in public records suits, libel cases, legal actions to get access to pre-trial discovery in criminal cases.*

- *Almost everything.*
- *Advised on status of law in a couple of cases.*
- *Motions; court appearance.*
- *Represented us in court, wrote motions, wrote letters, did pre-publication review of investigations, counseled us during fights for information or access, etc.*
- *Provided special local insight into judges and laws. Did a lot of the actual detail work as it developed.*
- *Writing the case, arguing the case in court, filing briefs.*
- *Handled filings, appearances.*
- *Advice, counsel, communications with opposing litigant, provided knowledge of state law.*
- *Participation in state court case.*
- *Local counsel writes/files briefs, makes court appearances, makes local contacts.*
- *Filed suit on our behalf in state court to obtain records.*
- *Prepared and filed documents to obtain access to a preliminary hearing. Followed case to its completion.*
- *Handle all aspects of filing, responses and trials.*
- *Filed motions, negotiated with DAs.*
- *A media law expert handles all our legal issues, such as records fights, lawsuits, etc.*
- *Mediated and/or took matters to court.*
- *Prepub review, taking action through conversations, lawsuits, arbitration, etc.*
- *Insurer's lawyer, with company paying deductible.*
- *Support.*
- *Haggerty, McDonnell & Hinton, LLP.*
- *Defended our news organization in libel cases; fought to obtain public records; helped our reporters avoid having to testify in civil and criminal cases.*
- *Joined in several lawsuits at state level.*
- *Attorneys of record.*

**Private Law Firm (Pro-Bono)**

- *Filed suit in federal court on our behalf and those of two other Arizona media organizations to obtain records.*
- *Amicus briefs, met with lawmakers on access issues.*
- *DWT filed the anti-SLAPP motion and then appealed when it failed.*

**Law School Clinic**

- *Represented us in a federal FOIA suit seeking records related to the detention center at the U.S. Navy base in Guantanamo Bay, Cuba.*

**Other**

- *We use the Florida First Amendment Foundation where appropriate.*
- *Advice by state media association counsel.*
- *State access counselor.*
- *Help decide / approve cases to pursue.*
- *State press association lawyer.*

ref:WHATROLE

How would you rate the overall strength of the news industry to pursue legal action of any type when it comes to free expression? Compared to the past 10 years, we are:

50

A lot stronger .....	4
Somewhat stronger .....	7
About the same .....	25
Somewhat weaker.....	40
A lot weaker .....	25
<b>Total Stronger</b> .....	<b>11</b>
<b>Total Weaker</b> .....	<b>65</b>

ref:INDSTRENGTH

**If you think the news industry’s ability to pursue legal action is weaker, what is the main reason?**

51

Don't have the money .....	<b>89</b>
Staff bandwidth .....	<b>5</b>
Fewer media organizations rising to challenge .....	<b>3</b>
USA Patriot Act and other federal legislation .....	<b>3</b>
Our need for access to public records and documents is less than in the past .....	-
No longer do major investigations .....	-
Don't see it as our role .....	-
Other (please specify) .....	-

ref:WHYWEAKER

**Please add any further comments on the issue of the news industry’s ability to defend, preserve and/or expand First Amendment rights.**

52

- *The loss of journalist jobs and publishers’ declining profits mean there’s less opportunity to pursue difficult stories and sue for access to information.*
- *We’ve had to file many more “Access to Public Records Act” requests in our state (Indiana) rather than simply verbally ask for a record and get it...*
- *Newspaper-based (and especially TV-based) companies have tougher budgets and are less willing to spend on lawyers to challenge sunshine and public records violations. Fortunately, my company is spending more than ever -- and winning every case.*
- *It takes a lot of commitment and recognition that we are among the foremost defenders of those rights, including contributing to maintaining statehouse lobbyists to see that public meeting; public records laws in particular are not weakened.*
- *It varies by company and by the mission of the newspaper -- those that continue to prioritize watchdog journalism need the legal representation more than those that don’t. I know of some smaller operations that just don’t have money for legal fights (an alternative newspaper in my city asked for donations to pay its bills) although small papers within my organization have the money and use the same lawyer we do in my newsroom.*
- *I have been fortunate to work for corporations that provided the legal muscle to pursue what we wanted to pursue.*

- *News organizations are pooling resources and joining to make challenges more often and to show strength in numbers. Some emanate from traditional media and others from less traditional media.*
- *We have ramped up our coverage of government secrecy in recent years, running more stories, columns and editorials about attempts to withhold information and giving those stories more prominent play.*
- *Several issues here: Government officials know the news industry is facing difficulties. So some of them are deliberately doing things to keep news organizations from meetings or records because they know no one has the time or the money to fight them. Also I believe news organizations don't want to upset government officials because they are struggling and they don't want to lose the revenue from public notices, which government officials are trying to take away from them.*
- *Many of the access issues are happening at a local level, where denying records / closing meetings is happening at a greater rate and small papers don't have the resources to contest illegal denials or meeting closures. The problem is less with the major organizations than the small communities where, arguably, it matters most.*
- *Government agencies are well aware that we do not have the money to fight. More and more, their first response to our records request is "Sue us if you want to get the records."*
- *We simply must continue to pursue the good fight.*
- *My impression is that the industry is far less tenacious about legal challenges than in the past because our newsroom budgets are smaller and far tighter and legal fights for information are expensive. Also, with fewer people the industry is in general doing less investigative work, which is often the type of reporting that results in legal fights over records and access. Plus, so many newsrooms do not cover government to the extent they used to. Instead, they are focusing on "passion" or "franchise" topics and they often are not topics that require record-based reporting. At the paper in Nashville, for example, one of its areas of focus is country music. My guess is that covering the music scene and industry does not require one to deal much (or at all) with issues such as open meetings or public records the way, say, covering state politics would. My personal opinion is that as the industry has lost some of its power and standing, newspapers have been more timid about challenging powerful people in their communities (which is typically what happens in freedom of information cases). Even if editors want to spend the money on legal battles, many of the publishers they*

*report to do not want to spend money in that way.*

- We face significant budget constraints but have still taken advantage of laws allowing us to recoup fees in access litigation. I know of many other organizations that have stopped doing it altogether.*
- Overall, I believe the legal costs to news organizations greatly impede ability to pursue public documents. In New York, the FOIL is clear that most everything is public, but the reality is most agencies refuse, stall and ignore the bulk of public requests. The costs to pursue those appeals in court are pricey. One suggestion that we used in a previous job was to hire an attorney on staff to act as our legal muscle on everything from access to public documents to defending aggressive attacks on our ability to collect public information. From writing warning letters to agency heads to going to court, that lawyer paid for herself over and over. This is clearly a better strategy than outsourcing the work to a firm.*
- News media have lost a good deal of money and no longer is willing to consider FOIA or state open records lawsuits. Shrunken news staffs means few, if any, reporters are digging into stories that would require gaining access to public records. There aren't enough reporters in some communities to cover government meetings so open-meetings laws aren't being used. Finally, because news organizations aren't pursuing more difficult stories, they aren't willing to defend law suits or perhaps it is the other way round: because news organizations aren't willing to defend law suits they aren't willing to pursue more difficult stories. In my community, we are the only news source pursuing public corruption stories. We're also the only news source being sued for libel.*
- In the 1980s, our news organization vigorously contested all First Amendment cases -- often regardless of costs. In this era, our in-house lawyer is acutely aware of the cost of litigation and other issues that require hiring outside counsel.*
- The biggest change for us is less regular consultation with attorney or attorneys in day-to-day newsgathering, and as a result, fewer challenges on public records and meetings.*

ref:ABILITYOE



Finally, a few more questions for statistical purposes. Approximately, how many people work in your newsroom? Please enter a whole number.

53

1-20 .....	15
21-50 .....	23
51-100 .....	38
101-200 .....	17
201 or more .....	8
<b>1-50</b> .....	<b>38</b>
<b>51-100</b> .....	<b>38</b>
<b>101 or more</b> .....	<b>25</b>

ref:NEWSROOM

Which of the following best describes the ownership of your publication?

54

Legacy media company .....	60
Local owners .....	24
Private equity firm .....	13
Nonprofit .....	2
Private non-local owner .....	2
Other (please specify) .....	-

ref:OWNER

How many years have you worked as a top editor or senior manager?

55

1-5 .....	18
6-10 .....	16
11-15 .....	13
16-20 .....	29
More than 20 .....	24
<b>1-15</b> .....	<b>47</b>
<b>More than 15</b> .....	<b>53</b>

ref:YEASED

**How many years have you worked in the news?**

56

1-20 .....	17
21-30 .....	23
31-40 .....	45
More than 40 .....	15
1-30 .....	40
More than 30 .....	60

ref:YEARSNEWS

**Which of the following best fits your current job title?**

57

Editor-in-chief .....	80
Managing editor .....	9
Senior editor .....	4
Other top editor .....	6
Other (please specify) .....	2

ref:TITLE