



**BEFORE THE  
U.S. COPYRIGHT OFFICE**

**Copyright Claims Board: Representation  
by Law Students and of Business Entities**

**Docket No. 2021-9**

**REPLY COMMENTS OF THE COPYRIGHT ALLIANCE, APA, ASMP, THE  
AUTHORS GUILD, CREATIVEFUTURE, DMLA, DG, GRAPHIC ARTISTS GUILD,  
IBPA, MCNA, NSAI, NPPA, NANPA, PPA, RECORDING ACADEMY, SAG-AFTRA,  
SCL, SGA, AND SONA<sup>1</sup>**

The organizations listed below appreciate the opportunity to file reply comments in response to the notice of proposed rulemaking ([NPRM](#)) published in the Federal Register on December 30, 2021 by the U.S. Copyright Office, regarding procedures governing the appearance of law student representatives and employees of business entities in proceedings before the Copyright Claims Board (CCB).

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

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<sup>1</sup> The organizations identified here are both members and non-members of the Copyright Alliance. It is not our normal practice to identify members separately, but we are doing it in response to the Notices of Inquiry (NOI) and Notices of Proposed Rulemakings (NPRM) related to implementation of the CASE Act solely because the Office “encourage[d] parties to file joint comments on issues of common agreement” in the March 26<sup>th</sup> NOI. Copyright Alternative in Small-Claims Enforcement Act Regulations, 86 Fed. Reg. 16156, 16158 (proposed Mar. 26, 2021). As we did with the NOI initial and reply comments, to comply with the Office’s request, we are filing jointly with members that otherwise would have filed their own separate (but virtually identical in substance) comments.

American Photographic Artists (APA) is a leading national not-for-profit 501(c)(6) association run by, and for, professional photographers since 1981. Recognized for its broad industry reach, APA works to champion the rights of photographers and image-makers worldwide.

American Society of Media Photographers, Inc. (ASMP) is a 501(c)(6) non-profit trade association representing thousands of members who create and own substantial numbers of copyrighted photographs and media. In its seventy-five-year-plus history, ASMP has been at the forefront of protecting the rights of visual creators and the craft of photography.

The Authors Guild is a national non-profit association of approximately 10,000 professional, published writers of all genres including historians, biographers, academicians, journalists, and other writers of nonfiction and fiction. Among our members are historians, biographers, poets, novelists and freelance journalists of every political persuasion. Authors Guild members create the works that fill our bookstores and libraries: literary landmarks, bestsellers and countless valuable and culturally significant works that never reach the bestseller lists. We have counted among our ranks winners of every major literary award, including the Nobel Prize and National Book Award. We have a long history of contributing to the ongoing interpretation and clarification of U.S. copyright law, and it is our pleasure to continue to serve that role submitting comments concerning implementation of the CASE Act to the Copyright Office.

CreativeFuture is a nonprofit coalition of more than 560 companies and organizations and more than 260,000 individuals – from film, television, music, book publishing, photography, and other creative industries. Its mission is to advocate for strong but appropriate copyright protections and to empower creatives to speak out against piracy and how it affects their ability to create and to make a living. To learn more, visit [www.creativefuture.org](http://www.creativefuture.org).

Digital Media Licensing Association (DMLA) (<https://www.digitalmedialicensing.org>) founded in 1951 is a not-for-profit trade association that represents the interests of entities in North America and internationally that are engaged in licensing millions of images, illustrations, film clips, and other content on behalf of thousands of individual to editorial and commercial users. As part of its mission DMLA has been advocating to protect copyright and to ensure fair licensing standards exist.

Since its inception in 1912, The Dramatists Guild of America (DG) has been the professional association for playwrights, librettists, lyricists, and composers writing for the American stage. With over 8,000 members around the world, The Guild is guided by a governing council of writers who each give their time, interest, and support to advance the rights of dramatists everywhere, including the right for dramatists to own and control their own copyrighted work. The Guild's advocacy, programs, events, publications, and other services provide dramatists with the resources, the community, and the support they require to protect their property, their livelihoods, and their unique voices in the American theatre.

Graphic Artists Guild, Inc. has advocated on behalf of illustrators, graphic designers, and other graphic artists for fifty years. The Guild educates graphic artists on best practices through webinars, Guild e-news, resource articles, and meetups. The *Graphic Artists Guild Handbook: Pricing & Ethical Guidelines* raises industry standards and provides graphic artists and their clients guidance on best practices and pricing standards.

Founded in 1983 to support independent publishers nationwide, the Independent Book Publishers Association (IBPA) ([ibpa-online.org](http://ibpa-online.org)) leads and serves the independent publishing community through advocacy, education, and tools for success. With over 4,100 members, IBPA is the largest publishing association in the U.S. Its vision is a world where every independent publisher has the access, knowledge, and tools needed to professionally engage in all aspects of an inclusive publishing industry.

Music Creators North America (MCNA) (<http://www.musiccreatorsna.org/>) is an alliance of independent songwriter and composer organizations who advocate for the rights of, and educate on behalf of, North America's music creator community. In addition, MCNA works with sister alliances across every populated continent to further the interests of music creators throughout the world. Each MCNA member organization (including SGA, SCL, The Alliance for Women Film Composers (AWFC), Music Answers (M.A.), The Screen Composers Guild of Canada (SCGC), and The Songwriters Association of Canada (SAC), is run exclusively by and for songwriters and composers. MCNA stands with over a half-million songwriters, composers and artists in Africa, Asia, Latin and South America and Europe through its membership in The International Council of Music Creators (CIAM), in advocating for the strongest possible protections of music creator rights everywhere in the world.

The Nashville Songwriters Association International (NSAI) is the world's largest not-for-profit trade association for songwriters. NSAI was founded in 1967 by 42 songwriters including Eddie Miller, Marijohn Wilkin, Kris Kristofferson, Felice and Boudleaux Bryant and Liz and Casey Anderson as an advocacy organization for songwriters and composers. NSAI has around 5,000 members and 100 chapters in the United States and abroad. The Nashville Songwriters Association International is dedicated to protecting the rights of songwriters in all genres of music and addressing needs unique to the songwriting profession.

Since its founding in 1946, the [National Press Photographers Association](#) (NPPA) has been the Voice of Visual Journalists. NPPA is a 501(c)(6) non-profit professional organization dedicated to the advancement of visual journalism, its creation, editing and distribution in all news media. NPPA encourages visual journalists to reflect the highest standards of quality and ethics in their professional performance, in their business practices and in their comportment. NPPA vigorously advocates for and protects the constitutional and intellectual property rights of journalists as well as freedom of the press and speech in all its forms, especially as it relates to visual journalism. Its members include still and television photographers, editors, students, and representatives of businesses serving the visual journalism community. NPPA's sister organization, the National Press Photographers Foundation (NPPF) supports NPPA's charitable and educational efforts.

Since its founding in 1994, the North American Nature Photography Association (NANPA) has been North America's preeminent national nature photography organization. NANPA promotes responsible nature photography as an artistic medium for the documentation, celebration, and protection of our natural world and is a critical advocate for the rights of nature photographers on a wide range of issues, from intellectual property to public land access for nature photographers.

Professional Photographers of America (PPA), the world's largest photographic trade association, represents over 30,000 photographers and photographic artists from dozens of specialty areas including portrait, wedding, commercial, advertising, and art. The professional photographers represented by the PPA have been the primary caretakers of world events and family histories for the last 150 years and have shared their creative works with the public secure in the knowledge that their rights in those works would be protected.

As the only trade association in Washington representing all music creators, the Recording Academy represents the voices of performers, songwriters, producers, engineers, and all music professionals. Dedicated to ensuring the recording arts remain a thriving part of our shared cultural heritage, the Academy honors music's history while investing in its future, advocates on behalf of music creators, supports music people in times of need, and celebrates artistic excellence through the GRAMMY Awards — music's only peer-recognized accolade and highest achievement.

The Society of Composers & Lyricists (SCL) (<https://thescl.com/>), is the premier US organization for music creators working in all forms of visual media (including film, television, video games, and musical theatre). Established in 1945, SCL's membership has for 76 years been comprised of many of the world's most accomplished composers and lyricists in their respective audio-visual fields, today numbering over 1900.

The Songwriters Guild of America, Inc. (SGA) (<https://www.songwritersguild.com>), is the longest established and largest music creator advocacy and copyright administrative organization in the United States run solely by and for songwriters, composers, and their heirs. Its positions are formulated solely in the interests of its members. Established in 1931, SGA has for 90 years successfully operated with a two-word mission statement: "Protect Songwriters," and continues to do so throughout the United States and the world on behalf of its approximately 4500 members.

Songwriters of North America (SONA), founded by songwriters Michelle Lewis and Kay Hanley with attorney Dina LaPolt in 2015, is a grassroots organization that advocates on behalf of songwriters' interests before legislative bodies, administrative agencies, and the courts. SONA seeks to ensure that songwriters are paid fairly and reliably for the works they create and played a vital role in securing passage of the Music Modernization Act, which updates the licensing system for musical works. SONA believes it is critical that songwriters and other individual creators who can't afford federal court have a meaningful way to address infringing uses of their copyrighted works.

Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) is the world's largest labor union that represents working media and entertainment artists. In 2012, SAG-AFTRA was formed through the merger of two labor unions: Screen Actors Guild, Inc. (SAG) and the American Federation of Television and Radio Artists

(AFTRA). SAG-AFTRA members are the faces and voices that entertain and inform America and the world. SAG-AFTRA exists to secure strong protections for media artists. SAG-AFTRA's membership includes more than 160,000 actors, journalists, DJs, recording artists, and other media professionals, many of whom are creators of their own content.

When Congress created the Copyright Claims Board (CCB) through the Copyright Alternative in Small-Claims Enforcement (CASE) Act, it intended that this new process be a voluntary, affordable, streamlined, and accessible alternative to federal court, especially for *pro se* individuals with little to no formal exposure to copyright law.<sup>2</sup> As the Office noted in its 2013 Copyright Small Claims Report,<sup>3</sup> federal court was often inaccessible, too complex, and too expensive, especially for smaller, independent, individual creators. Congress understood the problems and responded by creating an opportunity for both creators and users of copyrighted works to access a streamlined, affordable, and noncomplex tribunal in the form of the CCB.

To adhere closely with the CASE Act's history and Congressional intent, it is vital for the Office to continue to ensure that all rules governing the CCB process, including the proposed rules within the scope of this NPRM, provide access and opportunities for participants within the CCB ecosystem. Multiple commenters shared similar concerns with us and encouraged the Office to build in more flexibility to increase participation by law school clinics. We would like to address a few points brought up by other commenters so that we may continue to assist the Office as it works to finesse these rules according to the Congressional objectives mentioned above.

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<sup>2</sup> H.R. REP. NO. 116-252, at 17 (2019), <https://www.congress.gov/116/crpt/hrpt252/CRPT-116hrpt252.pdf>.

<sup>3</sup> UNITED STATES COPYRIGHT OFFICE, COPYRIGHT SMALL CLAIMS (2013), <https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf>.

## 1. Unsophisticated Business Entities and Improper Conduct

Comments by Verizon<sup>4</sup> and a group of law professors<sup>5</sup> state that the proposed rules insufficiently address parties who act improperly before the CCB or parties who are unsophisticated in copyright law. These comments not only fail to address any truly outstanding problems with the CCB process for which the Office’s resources and attention is necessary, but they also propose to deny access to the small claims court for an important constituency of the CASE Act as recognized by Congress– the individual or *pro se* party (whether a small business or an individual) who was unable in the first instance to avail themselves of the federal court process.

### a. Small or Unsophisticated Business Entities

Verizon proposes that the Office should require business entities to hire attorneys with copyright law experience as representatives,<sup>6</sup> claiming that parties should have knowledge about copyright law “regardless of whether the relief being sought is small or large.”<sup>7</sup> This proposal runs directly contrary to Congress’ clear intent to allow parties, including *pro se* parties, without formal exposure to copyright law to freely take part in CCB proceedings. Congress specifically stated that:

“[t]he copyright small claims process the bill establishes is intended to be accessible especially for *pro se* parties and those with little prior formal exposure to copyright laws

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<sup>4</sup> Verizon, Comments on Proposed Rule: Copyright Claims Board: Representation by Law Students and of Business Entities under the Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2020 at 1 (Feb. 3, 2022), <https://www.regulations.gov/comment/COLC-2021-0011-0007>.

<sup>5</sup> Eric Goldman, Tyler Ochoa, and Rebecca Tushnet, Comments on Proposed Rule: Copyright Claims Board: Representation by Law Students and of Business Entities under the Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2020 at 1 (Jan. 20, 2022), <https://www.regulations.gov/comment/COLC-2021-0011-0004>.

<sup>6</sup> Verizon, *supra* note 4, at 3.

<sup>7</sup> *Id.* at 1-2.

who cannot otherwise afford to have their claims and defenses heard in federal court."<sup>8</sup>  
(emphasis added)

As seen in legislative history, Congress designed the CCB process so that individuals and business entities have a choice to represent themselves. As the Office noted in the NPRM, the proposed rule is modeled off preexisting rules in certain state small claims courts which provide flexibility for representation of business entities, facilitating access to CCB proceedings for a greater range of participants.<sup>9</sup>

More importantly, Verizon's proposal would effectively deny certain business entities access to the small claims court process based on the entity's inability to hire an attorney. Many individual creators are sole proprietorships or small businesses that operate with a very small team where there is no lawyer on staff— let alone a lawyer who specializes in copyright and intellectual property law. Verizon's proposal would deny access to the CCB for most small businesses or sole proprietorships running on limited resources— one of the key constituencies that Congress had in mind when it designed and crafted the CASE Act.

Moreover, Verizon argues that its proposal is necessary because the increased presence of unsophisticated parties in the small claims court will feed into widespread abuse of the CCB process and that small companies will be set up to monetize the CCB process. This argument is unpersuasive as it is not clear if there is enough of a difference in purported "abuse" from an unsophisticated small company bad actor compared to "abuse" from an attorney representing that same bad actor, which would warrant consideration of Verizon's proposal. This proposal is just an attempt to undercut small business owners and individual creators who have chosen to incorporate, the very same parties the CASE Act meant to provide relief for. Additionally, the CASE Act already addresses bad-faith conduct and the Office has an ongoing notice of proposed rulemaking which more adequately addresses concerns of bad actors.

The CCB is meant to be an affordable and accessible alternative to federal court, and that includes parties opting to not hire an attorney when they cannot afford one. Verizon's proposal runs completely contrary to the underlying objectives of the CASE Act by shutting out certain

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<sup>8</sup> H.R. REP. NO. 116-252 *supra* note 2, at 17.

<sup>9</sup> Copyright Claims Board: Representation by Law Students and of Business Entities, 86 Fed. Reg. 74394, 74397 (proposed Dec. 30, 2021).



participants (especially small or independently owned businesses) from the small claims court process. The Office’s current proposed rule as laid forth in the NPRM is flexible and sufficient as-is (with the one proposal regarding the duration of certification as set forth in our initial comments) to allow business entities to access and take part in CCB proceedings.

## **b. Improper Conduct**

We strongly object to the proposals made by Professors Goldman, Ochoa, and Tushnet that the Office budget for and establish a disciplinary review process which would apply when anyone who represents clients before the CCB engages in improper conduct before the CCB.<sup>10</sup> While we believe that parties should act in a responsible and ethical manner, the ill-advised proposals would not only divert the Office’s valuable and limited resources, money, and time from ensuring proper implementation of other key aspects of the CCB process, but they would also inappropriately turn the CCB process into a forum for disciplining attorneys.<sup>11</sup>

Attorneys are already subject to professional ethics standards and disciplinary proceedings arising from a complex web of applicable local and state laws in the state in which the attorney is licensed to practice. With a robust set of professional responsibility and disciplinary laws already set in place in every U.S. jurisdiction, a separate disciplinary system created by the Office would result in a set of rules that would either be duplicative or conflict with preexisting systems. Moreover, the Office is already working to address concerns of “bad-faith” conduct, which are outside the scope of this particular NPRM, and which we discuss more fully in our comments submitted in response to the Office’s notice of proposed rulemaking regarding CCB active proceedings.

These proposals undercut the Office’s efforts in establishing a CCB process and would siphon resources away from other important endeavors such as developing and maintaining efficient and streamlined electronic filing systems and educational materials to inform parties of

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<sup>10</sup> Goldman, et al., *supra* note 5.

<sup>11</sup> Indeed, the Copyright Royalty Board seemingly abandoned an attempt to create a disciplinary system to bar certain individuals or entities from participating in proceedings before the Copyright Royalty Board Judges. Proceedings of the Copyright Royalty Board; Violation of Standards of Conduct, 82 Fed. Reg. 18601 (proposed Apr. 20, 2017), ). <https://www.govinfo.gov/content/pkg/FR-2017-04-20/pdf/2017-07403.pdf>; Proceedings of the Copyright Royalty Board; Violation of Standards of Conduct, 82 Fed. Reg. 28800 (proposed June 26, 2017), <https://www.govinfo.gov/content/pkg/FR-2017-06-26/pdf/2017-13277.pdf>.

their rights. We see no merit in the Office expending its resources to instill such disciplinary processes for a CCB proceeding.

## **2. Law School Clinics, Law Student Representations, and the Law School Clinic Directory**

Multiple comments from various clinics and professors from around the country share our views that law school clinics and their law schools should be given the flexibility to determine how to adequately prepare their students for CCB client representations. Additionally, in line with many other clinic and professor authored comments, we again urge the Office to expand the scope of law student participation to include other programs, organizations, and groups that utilize law school students. This will help ensure that underrepresented communities have the option of seeking law student representation year-round, particularly over the longer summer breaks when law schools are not in session or operate in limited capacities. Moreover, it would assist with continuity issues by ensuring that there is a steady supply of law student representatives year-round for CCB parties seeking such representations.

We thank the Office once more for the opportunity to submit reply comments to further assist the Office in ensuring low-cost or no-cost representation for parties to a CCB proceeding, especially for individuals or smaller parties who would have been otherwise unable to navigate or even use the federal court system for copyright law related claims. We hope that the final rules that arise from this NPRM realize Congress' vision that the CCB will encourage participation from various groups, including law school clinics and small creators and businesses.

Copyright Alliance  
American Photographic Artists (APA)  
American Society of Media Photographers  
(ASMP)  
Authors Guild  
CreativeFuture  
Digital Media Licensing Association (DMLA)  
Dramatists Guild of America (DG)  
Graphic Artists Guild  
Independent Book Publishers Association  
(IBPA)  
Music Creators North America (MCNA)

Nashville Songwriters Association  
International (NSAI)  
National Press Photographers Association  
(NPPA)  
North American Nature Photography  
Association (NANPA)  
Professional Photographers of America (PPA)  
Recording Academy  
SAG-AFTRA  
Society of Composers & Lyricists (SCL)  
Songwriters Guild of America, Inc. (SGA)  
Songwriters of North America (SONA)

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