



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

**Copyright Alternative in Small-Claims
Enforcement (“CASE”) Act Regulations**

Docket No. 2021–1

**COMMENTS OF THE COPYRIGHT ALLIANCE, APA, ASCRL, ASMP, THE
AUTHORS GUILD, CREATIVFUTURE, DMLA, GRAPHIC ARTISTS GUILD, IBPA,
MCNA, NMC, NPPA, NANPA, PPA, THE RECORDING ACADEMY, SAG-AFTRA,
SCL, SGA, AND SONA**

The organizations listed below appreciate the opportunity to submit comments in response to a [notice of inquiry](#) (“NOI”) published in the Federal Register on March 26, 2021 by the U.S. Copyright Office, regarding implementation of the Copyright Alternative in Small-Claims Enforcement (“CASE”) Act.

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.

American Photographic Artists (“APA”) is a leading nonprofit organization 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.

The American Society For Collective Rights Licensing, Inc., is the nation's largest 501(c)(6) collective rights administration society serving over 16,000 illustrator and photographer members. ASCRL's goal is to maximize revenue for collectively administered rights and public lending rights and to distribute these funds in an equitable, cost effective, and

efficient manner. ASCRL is a strong supporter of CASE Act provisions that enhance and help with the enforcement of the primary rights of illustrators and photographers, as well as strong secondary rights system for markets that illustrators and photographers find difficult or impossible to monetize due to the inefficiencies and costs of the licensing and enforcement systems.

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.

Digital Media Licensing Association (“DMLA”) 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.

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) leads and serves the independent publishing community through advocacy, education, and tools for success. With over 3,700 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. For more information, visit ibpa-online.org.

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 National Music Council of the United States (NMC) (<https://www.musiccouncil.org>) is the Congressionally-chartered umbrella organization of US music community advocacy groups, currently celebrating its 81st year as a forum for the study and advancement of American musical culture and education. Founded in 1940, NMC acts as an information clearinghouse for those working to strengthen the importance of music in American life, and through its prestigious American Eagle Awards program, focuses attention on the great benefits of music education and strong, intellectual property protections. The Council's membership has grown in the 21st Century to include almost 50 national American music organizations, encompassing every important form of professional, educational and commercial musical activity.

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 associations 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.

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.

Table of Contents

<i>Introduction</i>	7
1. Overarching Goals.....	7
2. Step-by-Step Process for a CCB Claim	9
<i>A. Initiating CCB Proceedings, Notice, and Service of Notice and Claim</i>	10
1. Content of Initial Notice.....	10
2. CCB Respondent Notifications (Second Notice).....	14
3. Service of Process and Designated Agents.....	15
<i>B. Opt-Out Provisions</i>	17
1. Respondent’s Opt-Out	17
2. Library and Archives Opt-Outs.....	20
3. Class Action Opt-Outs.....	21
<i>C. Additional CCB Practice and Procedures</i>	21
1. Discovery	21
2. Protective Orders.....	26
3. Smaller Claims.....	29
4. Other Rules of Practice and Procedure; Evidentiary Rules.....	29
<i>D. Public Access to Records and Proceedings; Certifications; Case Management System Considerations</i>	38
<i>E. Register’s Review of CCB’s Denial of Reconsideration</i>	38
<i>F. Fees</i>	39
<i>G. Permissible Number of Cases</i>	41
<i>H. Conduct of Parties and Attorneys</i>	42
<i>Conclusion</i>	45
<i>Appendix A</i>	47

Introduction

1. Overarching Goals

The CASE Act has been a critical legislative priority for hundreds of thousands of creators and small businesses across the country. As the Office documents in its 2013 Copyright Small Claims Report (“Report”),¹ for far too long, these creators have had rights but no means of enforcing them due to the expense and complexity of federal court. The passage of the CASE Act has, indeed, been a momentous victory for individual creators and small businesses, but it’s important to understand and appreciate that the creation of the Copyright Claims Board (CCB) stands to benefit *not only creators but also users* of copyrighted works by providing each a voluntary, inexpensive, and streamlined alternative forum for copyright disputes.

Congress intended the CCB “to be accessible especially for *pro se* parties and those with little prior formal exposure to copyright laws who cannot otherwise afford to have their claims and defenses heard in federal court.”² Below we outline several overarching goals and action items that the Office should prioritize as it begins the process of drafting regulations to implement the CASE Act. It is against the background of the purposes of the CCB, as stated by Congress—to act as a voluntary, inexpensive, streamlined, and accessible forum—and the goals and action items outlined below that we submit these comments.

- The legislative history of the CASE Act explains that, “[w]hile principles of federal procedure are relevant to the CASE Act, the Act is not intended to simply mimic federal practice.”³ The procedures adopted by the Office should be objectively simple and easy to understand to the typical Claimant and Respondent. If the Office adopts procedures that are too complex for the parties in the case to understand or manage, both Claimants and Respondents will be disgruntled and the CCB will fall short of the goals of the tribunal as envisioned by Congress. One simple way to avoid this complexity is to use language throughout the regulations and associated descriptions of the CCB process that

¹ United States Copyright Office, *Copyright Small Claims, A Report of the Register of Copyrights* (September 2013), available at <https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf>.

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

³ *Id.* at 23.

are simplified to avoid unnecessary legal jargon. For example, although the statute mentions “written interrogatories,” the regulations and the process itself should incorporate more commonly used language that the parties will more easily understand (e.g. “questionnaire for Claimant/Respondent”).

- The CASE Act was designed to meet the needs of those who cannot afford to hire an attorney or litigate in federal court. The process is intended to be streamlined and simplified to accommodate the vast majority of users, who will have to navigate the small claims system without legal counsel. The regulations should be drafted with those factors in mind.
- Where possible, we strongly encourage the Office to create and make available standardized forms/templates—with clear instructions on how to complete each form—to assist the parties through the CCB proceedings. (We would be happy to assist the Office is creating these forms and enlisting creators to review them and provide their input to the Office.) Many state courts take this approach because, not only does it help the parties, but it also helps the tribunal better understand the parties’ arguments, claims and defense. These forms can be made available to the parties as a packet of information provided to the parties at the commencement of the case, or perhaps in the alternative, if the Office believes that providing such a packet might overwhelm the parties, the forms can be provided in stages at the appropriate time during the proceedings. Alternatively or additionally, the forms could be made available online for the parties to access (as the USPTO does, see below), so long as accommodations are made to account for those parties who do not have reliable internet access.
- In the NOI, the Office says that it “tentatively expects to produce a CCB practice guide...” We fully support that and would be happy to assist the Office with this project, as appropriate. We also understand that there is much work to be done by the Office to get the CCB up and running and assume that a guide would not be available until sometime after the CCB begins taking cases.

2. Step-by-Step Process for a CCB Claim

Our responses throughout these comments are best understood in the context of how we envision the typical CCB ‘would proceed, from the first step of bringing a claim through the last step of issuance of a determination by the CCB. The process outlined below is intended to cover the more significant steps in the process and not minor or less typical steps that might occur:

Step 1. Claimant submits claim(s) to CCB.

Step 2. CCB Attorney reviews claim(s) for adequacy.

Step 3. Claimant serves Respondent with a summons including three documents (1) the Claim; (2) a CCB “Notice”; and (3) a cover sheet. Parties should be reminded that they can use the 60 day opt-out window to discuss a settlement, if interested. The CCB may also send a second notification. If Respondent does not opt out within 60 days after the date of service, the case becomes active.

Step 4. Shortly after the 60-day deadline expires, the CCB notifies the Respondent of the requirement to respond to the claim(s), including raising any defenses and counterclaims, and Respondent then submits a Reply along with any defenses and counterclaims by the deadline established by the CCB.

Step 5. If Respondent includes a counterclaim in the Reply, Claimant is given an opportunity to submit a Reply to that counterclaim.

Step 6. The CCB convenes a preliminary conference to discuss the case, including discovery, scheduling, the protective order and other matters with the parties. This conference should also be used to facilitate settlement discussions.

Step 7. A simple, limited discovery process takes place (on the claim(s), defense(s) and counterclaim(s)). The parties get an opportunity to ask a limited number of questions (*i.e.*, interrogatories and admissions) of the other party by using a form questionnaire created by the CCB (including a limited number of inquiries (for example, 10-15) commonly associated with the type of claim), along with up to 5 additional questions of the parties own choosing. If a party elects to ask additional questions beyond this number, it submits the additional questions in writing to the CCB for approval (subject to objection from the other party).

Step 8. Using a form provided by the CCB, parties submit a concise summary of their argument, explaining their argument(s) and documenting supporting evidence. For infringement claims and counterclaims, the form should also instruct the Claimant/Counterclaimant to “check” whether they wish to pursue damages, and if so, (1) the damages sought, and (2) whether they are pursuing actual and statutory damages. The deadlines for these submissions should be staggered, with the Claimant first submitting their summary of argument. After having a reasonable amount of time to review the Claimant’s summary of argument (i.e. a week or two later), the Respondent should submit its summary of argument, identifying their defense(s) to the claim(s) as well as any counterclaim(s). The Claimant should then have the opportunity to respond to Respondent’s summary if new issues are raised.

Step. 9. If the parties have not settled, the CCB can: (1) decide the case based on the record before it; or (2) conduct a hearing and/or send written questions to either side, if necessary, for determining the case.

Step 10. CCB renders its determination.

A. Initiating CCB Proceedings, Notice, and Service of Notice and Claim

1. Content of Initial Notice

Input on additional regulatory requirements to help ensure that the initial notice (1) conveys a clear explanation of the CCB, (2) deadlines associated with the pending claim, (3) the ability and method for the respondent to opt out of the proceeding, and (4) the benefits and consequences of participating or declining to do so.

The template notice and all other documents and forms related to the CCB should be available at least in English and Spanish. We address other portions of this inquiry in other sections of our comments.

Federal Rules of Civil Procedure (FRCP) 4, which prescribes the contents of a summons, requires a summons to name the court and parties, be addressed to the defendant, provide contact information for the plaintiff, state the time a defendant must appear, notify the defendant that failure to appear will result in a default judgment, and be signed by the clerk and bear the court's seal. Would analogous requirements be appropriate for a notice to a CCB respondent?

The Office should provide a template form for every Claimant to use, that is easy to complete, with drop-down selections (for web-versions of the form). It should permit the Claimant to insert Respondent(s)' name, phone number, address, and email address and other contact information deemed appropriate, as well as rudimentary information about the claim itself. This template should also provide important background information about the CCB process to Respondents, such as that the proceeding will not occur at an actual courthouse setting, but that instead the Office has remote, virtual jurisdiction so that personal appearances are not required. .

The summons should also provide clear information about a Respondent's right to opt out of the proceeding, and include links to a webpage set up by the Office that provides further background on what it means to adjudicate a claim through the CCB, and what the potential benefits and limitations are to engaging in such proceedings. This, or another link-through webpage, should also explain how Respondents may raise any defenses, such as fair use, that they may have. (see Appendix A for our proposed sample)

There are a variety of federal and state courts that provide templates for summonses, which are succinct documents of two to three pages. (see examples in NOI) Would any these serve as a good model?

The examples provided in the NOI are all good models in general. We reviewed them and several others that are used in small claims courts across the country and developed a sample summons (comprised, in part, by the notice and summons cover sheet) in Appendix A. Whatever language and style is chosen by the Office for the summons it ought to achieve the following goals:

- First and foremost it should be very easy for the Respondent to understand in style, format, and language;

- It should provide only the essential information about the process because providing too much information could overwhelm the Respondent. Additional information considered to be helpful can be provided in links to the specific areas of the Copyright Office website where the Respondent can find out more. This information should also be made available in hard copy upon request for those Respondents who do not have internet access;
- It should highlight the right to opt out and the consequences for not doing so, along with information about the differences between federal court and the CCB (this can be done by pointing to a URL link with more information);
- It should clearly and briefly explain the possible actions the Respondent can take upon receipt of the summons and what happens if they opt out or do not opt out.

The Office is tentatively inclined to require the inclusion of a docket number assigned by the CCB on the notice as well as the claim. Do you agree?

Yes, the Office should include a docket number on the notice and the claim, and that docket number should follow the case and attach to any filings associated with the case.

Whether additional data beyond inclusion of the docket number (with ability to verify the proceeding on a CCB website or case management system) should be required to provide indicia that the notice relates to an official government proceeding.

The Office should provide a template notice that, if completed and delivered properly, would satisfy the service requirements, and the template should include the Copyright Office Seal. If the docket number is information that will be publicly available, the Respondent should also be given a secret keycode to ensure the integrity of the opt-out process.

The Office is tentatively planning to require links to the Office’s public information about the CCB to be included on the notice. Is there other specific educational information that may be helpful to include. For example, should the notice provide information describing copyright or copyright infringement, as well as potential defenses that may be available to a respondent, such as fair use?

The template notice or other documentation included within the summons should include a link to a Copyright Office webpage that provides educational information about the CASE Act and the CCB process. Rather than describing the elements of infringement and defenses within the notice/summons, the notice/summons should simply state that all defenses are available and include a link to the Copyright Office webpage with information about copyright infringement, fair use, and other defenses that might be reasonably raised in a typical CCB proceeding.

Provide input on what specific field of information claimants should be required to include in the notice.

- Claimant’s name;
- whether the Claimant is being represented by legal counsel (including authorized law students), and if so, should identify who is representing them by providing counsel’s name and contact information;
- for infringement claims, a description of the copyrighted work and the copyright registration number. For works pending registration, Claimants should include the application number and identify the date the application was filed;
- for declarations of non-infringement, a description of the copyrighted work and the nature of the conflict (i.e., describing why this is a “case or controversy”), and copies of any correspondence between the parties that may serve to demonstrate that the copyright owner has accused the Claimant of infringing of his/her works;
- for 512(f) claims, a copy of the notice and, if relevant, counternotice, a description of the work allegedly being infringed and the alleged infringing work, including its location(s);
- whether the Claimant elects to have the case heard as a “smaller claim” (i.e., where the damages are \$5,000 or less, the case will be presided over by a single officer, etc.).

Provide input on the content of the prescribed notice form

Since Claimants before the CCB are highly likely to be inexperienced litigants acting *pro se*, the Office should develop and maintain a nonexclusive list of service processors to provide to prospective Claimants. The Office should further assist prospective Claimants by providing a template notice that, if completed and delivered properly, would satisfy the service requirements. The template notice or other documentation provided to prospective Claimants should include a link to a Copyright Office webpage that provides educational information about the CASE Act and the small claims process.

2. CCB Respondent Notifications (Second Notice)

Input on any issues that should be considered relating to the content of the second notice

The statutory text (17 USC 1506(h)) requires that the Register create regulations providing for a second notice, but appears to leave it up to the Register to decide whether and when a notice is sent. As a courtesy, the Office should attempt to directly notify the Respondent of the pending claim against them. This notice should also explain the role of the CCB and the small claims process. Since the notice requirements under 17 USC 1506(g) mirror the requirements for serving notice of process under the Federal Rules of Civil Procedure and therefore are sufficient on their own, the regulations should make clear that the second notice sent by the CCB is a courtesy notice and that there is no consequence if a Respondent fails to receive the second notice sent by the CCB or if the CCB fails to send the second notice.

Input on how recipients will most effectively understand that this is an official Federal Government notification

Both the notice itself and the mailing envelope should prominently identify the Copyright Office and include both the U.S. Copyright Office's seal and the signature of at least one CCB officer. The second notice should also include a phone number and email address where recipients-Respondents can verify the authenticity of the notice if they desire and links to the Office website where they can learn more about the CCB.

The format and procedure for sending the second notice

If after 30 days from the date of service the Respondent has not opted out (and has not waived personal service), the second notice should be sent by the Board through the U.S. Postal Service. However, the CCB should retain the right to send the notice sooner if the CCB deems it appropriate.

Should the Office create the notice and post it on the proceeding's docket for the claimant to download and deliver to the respondent?

No. The notification should come directly from the U.S. Copyright Office, not the Claimant, and in a mailing envelope that prominently features the U.S. Copyright Office's name and seal. Although this is a courtesy notice, it should be clear to the recipient that the piece of mail they've received is an important document from the U.S. government. Having the notification come from the Claimant could undermine that. As a general matter, we do not think it is a good idea to "deputize" anyone, whether it is a party to a CCB proceeding or any other participant in an official government proceeding, to send an official government notice on behalf of the government.

Should the Office require it to be delivered in hard copy or by email, and how should delivery be documented?

The second notice should be sent in hard copy through the U.S. Postal Service. Since the Claimant already has to serve formal notice, and this is merely a courtesy, it is not necessary for these deliveries to be tracked. Instead, the Office should maintain records of when these second notices are sent to Respondents.

3. Service of Process and Designated Agents

Whether, and to what extent, the Office should look into its DMCA designated agent regulations when implementing the statute's service agent directory

These regulations can largely mirror the regulations at 37 CFR 201.38 regarding the designation of an agent to receive notification of claimed infringement under the DMCA. Companies who wish to designate an agent should be required to renew their designated agent at least once every

5 years, and the Office should be able to charge a fee for this courtesy. (See below for more on fees.)

What would be an appropriate fee to charge is to maintain the designated agent database

The ability to designate an agent to receive notice under the CASE Act is for the benefit of large entities with multiple locations. Unlike designated agents under the DMCA, which is a requirement to qualify for the safe harbor, this designated agent registry is not required and is intended to be a courtesy for these large entities, so the Office can charge more for than they might otherwise charge for the accommodation. The proceeds could be used to help offset some of the operational costs of the CCB.

Whether foreign claimants should be required to designate a domestic service agent and provide this information to respondents

The CRB regulations, at 37 CFR 2.119(d), provide that

“If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, none of the parties to the proceeding is eligible to use the service option under paragraph (b)(4) of this section. The party not domiciled in the United States may designate by submission filed in the Office the name and address of a person residing in the United States on whom may be served notices or process in the proceeding. If the party has appointed a domestic representative, official communications of the Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under 37 C.F.R. 11.14(c) of this chapter. If the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney at law or other qualified person, the Office will send correspondence directly to the party, unless the party designates in writing another address to which correspondence is to be sent. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under 37 C.F.R. 11.14(a) of this chapter, or qualified under 37 C.F.R. 11.14(b) of this chapter and authorized under 37 C.F.R. 2.17(f).”

Modeled after this provision, a similar provision for the CCB could read something like this:

If a party to a proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, the party not domiciled in the United States shall designate by submission filed with the Board the name and address of a person residing in the United States on whom may be served notices or process in the proceeding.

B. Opt-Out Provisions

1. Respondent's Opt-Out

Provide input on any issues that should be considered relating to the respondent's written opt-out notice, including the methods that a respondent may use to execute that notice

The opt-out process should be as simple as possible. It should entail nothing more than a Respondent who wants to opt out going to a webpage the Copyright Office has created, entering the docket number and an email address to receive electronic confirmation, and clicking the opt-out box (or if the docket number is information that will be publicly available, they should be given a secret keycode to enter). In clicking the opt-out box, the person should be required to attest, under penalty of perjury, to the fact that they are the named Respondent, or an agent authorized by the Respondent to opt out. To ensure the integrity of the opt-out process, the Office should also consider additional precautions such as tracking IP addresses, and two-factor authentication (i.e., the docket number plus an additional secret keycode). If submitted electronically, the opt out should be required to be filed by 11:59:59 p.m. Eastern time on the due date.

An opt-out form, along with a self-addressed envelope, should also be included with the service materials so the Respondent can simply fill out and return the form if they do not have internet access and wish to opt out. Any paper opt out should be required to be postmarked within the 60-day window. The Respondent should be *encouraged* to notify the Copyright Office at a specific phone number and/or email address when the paper opt out is mailed (and before the 60-day window closes) so the Office will know to expect it (this is important in case the opt-out form is mailed close to the 60-day mark or there is some delay in delivery to the Office). The Respondent should bear the burden of proving that a mail-in opt-out is postmarked by the

deadline. The opt-out process should be as simple as possible, so the Office should not require that the opt-out be sent by certified mail, however, the Office should make absolutely clear that the burden of proof lies with the defendant and suggest those opting out by mail to obtain some form of USPS tracking.

After an opt-out is received, the Office should send an email (or other form of notification) confirming the opt-out to both the Claimant and the Respondent.

When setting the schedule for payment of a secondary fee (i.e., the fee that would be paid after the opt-out period expires), the Office should take into account that some opt-out forms may be sent by mail on or near the 60th day.

Provide input on the content of a notice

Rather than describing the elements of infringement and defenses within the notice, the notice or other documentation included with the summons should simply state that there are defenses available and include a link to the Copyright Office webpage with information about fair use and other defenses that would be typically raised in CCB proceedings.

Whether to create a publicly accessible list of entities or individuals who have opted out of using the CCB in prior proceedings

Yes, definitely. The Copyright Office should maintain a list of everyone that has opted out and how frequently they have opted out, and this list should either be made publicly accessible or, at the very least, accessible upon request by any potential Claimant. This is essential so that creators can make an informed decision before filing a claim against someone who has previously opted out or has opted out more than once. In addition, while a blanket opt-out for individuals and entities is not (and should not be) permissible under the CASE Act, by putting Claimants on notice that a Respondent has previously opted out and so may be likely to opt out again, a list of this kind will serve a similar purpose without undermining the very reason the process was designed as an opt-out system.

Whether the CCB should incorporate into its system a way to recognize entities or individuals that wish to consistently opt out of CCB proceedings

The CASE Act does not permit the Copyright Office to establish a blanket opt-out for individuals and entities other than qualifying libraries and archives (L/A). The law requires that a Respondent who does not qualify for the L/A blanket opt-out and wishes not to participate in a particular proceeding opt out within 60 days *beginning* on the date of service. Allowing an individual or entity other than a qualifying L/A to opt out *before* the date of service would run counter to this requirement. During the legislative process, a “blanket opt-out” was considered by Congress and ultimately rejected, except in the case of L/A.

As a practical matter, allowing for a blanket opt-out for individuals and entities other than a qualifying L/A would mean creating unnecessary and cumbersome work for the Office. Certain organizations would campaign to encourage all individuals to opt out even though most would have no prospect of ever being sued. The Office would be barraged by thousands of emails, letters and postcards from people blanket opting out, creating unnecessary work for the Office and leaving the Office the responsibility of managing and maintaining this information for no reason. It is much more cost efficient and practical for potential Respondents to opt out if and when there’s a case that they do not wish to participate in.

In addition, the educational value of the small claims process should not be taken for granted. Even if a potential Respondent wishes to opt out of a proceeding, they have at least been warned that they may be violating the law and given resources (i.e., links to webpages) that provide additional information about copyright law. Blanket opt-outs allow these potential Respondents to bypass even the educational materials.

It is to the benefit of Respondents to have the opportunity to weigh the merits of each case, their potential liability, and to decide on a case by case basis whether participating in a small claims proceeding is in their best interest. A blanket opt-out means the Respondent never has the opportunity to assess the situation and to make an informed decision.

2. Library and Archives Opt-Outs

Whether a library or archive should be required to prove or certify its qualification for the limitations on exclusive rights under 17 U.S.C. 108, and thus for the blanket opt-out provision

L/As should be required to prove their qualification for section 108 and the blanket opt-out, under penalty of perjury. If it is determined that a L/A does not qualify, the L/A should be permitted to request that the Board reconsider the decision for a fee (the statute only precludes a fee to apply not to request reconsideration when the application is denied).

How to address circumstances where a library or archives ceases qualifying

A L/A found to qualify for the blanket opt-out should be required to inform the Copyright Office of any changes that may call that status into question. In addition, since L/As are not required to renew the blanket opt-out, and because a decision by the Copyright Office that a L/A qualifies for the section 108 exceptions could influence a court's assessment of section 108, there should be a process to allow anyone, including members of the public who may not be seeking to bring a claim before the CCB, to challenge whether a L/A still qualifies. The Office should charge a fee for this kind of challenge, to be paid by the challenger if the L/A is found to still qualify, and by the L/A if it is found to be out of compliance.

If after a L/A is placed on the blanket opt-out list, a federal court determines that the entity does not qualify for the section 108 exceptions, the Copyright Office should receive that information (from both the court and the entity) and reconsider the blanket opt-out after giving the L/A an opportunity to defend its status.

Whether entities, principals, or agents may opt out on behalf of a library or archive, as well as any associated certifications.

Where a L/A is a part of a larger entity or municipality, such that the L/A itself does not have standing to act as a Claimant or Counterclaimant on its own, only the larger entity or municipality should be allowed to request the blanket opt-out on behalf of the L/A. Because the blanket opt-out could have major implications on an entity's exposure to liability, only the larger

entity should be allowed to make that decision. But to be clear, the blanket opt-out will only apply to the L/A itself.

Transparency and functionality considerations with respect to its publication of the list of libraries and archives that have opted out

As is the case with other entities and individuals that opt out, a list of L/As that have opted out should be made available to the public so that prospective Claimants are empowered to make an informed decision before bringing a case.

Whether the Office should include a regulatory provision that specifies that this opt-out extends to employees operating in the course of their employment

The blanket opt-out for L/A should not extend to claims brought against an individual employee. Whether an employee is operating within the course/scope of their employment is a question of fact that would need to be determined by the CCB. If a claim is brought against an individual, and it is determined that the claim should have been brought against a L/A that has elected to blanket opt-out, the claim should be dismissed.

3. Class Action Opt-Outs

Any issues that should be considered relating to regulations governing dismissal or opt-outs related to class action proceedings

If a party receives notice of a class action and wishes to dismiss the case before the CCB, the regulations should require that party to notify the CCB and the other parties to the case within 10 business days following receipt of the class action notice.

C. Additional CCB Practice and Procedures

1. Discovery

Input on any issue that should be considered relating to discovery in CCB proceedings

- Where possible, we strongly encourage the Office to create and make available standardized forms/templates—with clear instructions on how to complete the form—to

assist the parties through the CCB proceedings. Many state courts do this because not only does it help the parties but it also helps the tribunal understand the parties' arguments, claims and defenses. These forms can be given to the parties as a packet of information provided to the parties at the commencement of the case, or perhaps in the alternative, if the Office believes that providing such a packet might overwhelm the parties, the forms can be provided in stages at the appropriate time during the proceedings. Alternatively or additionally, the forms could be made available online for the parties to access, so long as accommodations are made to account for parties who do not have reliable internet access.

- The general rule for admissibility of evidence should be to admit any evidence that is relevant, probative, and fair. The regulations should reflect that in language similar to 37 CFR 351.10(a), for example: "All evidence that is relevant and not unduly repetitious or privileged, shall be admissible. Hearsay may be admitted to the extent deemed appropriate by the Copyright Claims Board."
- All discovery requests, including requests for production of documents, should be required to be: (i) narrowly targeted; (ii) highly likely to result in the production of evidence that is directly relevant to the claims and defenses; and (iii) serve the goal of efficient resolution of the case in light of the nature of the claims and defenses and the amount in dispute. This is important because limited discovery may be perceived by Respondents as a potential benefit of the CASE Act over federal court and could cause them not to opt out. On the other hand, overly broad discovery may deter both Claimants and Respondents from participating.
- The regulations should incorporate language from 37 CFR 351.10(f) to allow parties to informally raise objections if evidence is not furnished by a party: "Parties are entitled to raise an objection that an opposing party has not furnished unprivileged underlying documents." Officers should rely primarily on the adverse inference provided for in 17 USC 1506(n)(3) for resolving disputes related to discovery, rather than on conferences and briefing, as the latter will drive up the cost of discovery, making the small claims process less appealing for Respondents and Claimants alike.

Views on a limit on the number of interrogatories and requests for admission allowed without leave

As a general matter, the language used throughout the process should be simplified to avoid unnecessary legal jargon. For example, although the statute mentions “written interrogatories,” the regulations and the process itself should incorporate more commonly used language (e.g. “questionnaire for Claimant/Respondent”).

The parties should get an opportunity to ask questions (i.e., interrogatories and admissions) of the other party by using a questionnaire created by the CCB, which would include a limited number of inquiries (for example, 10-15) commonly associated with the given type of claim. In addition, parties should be permitted to add up to 5 additional questions of the parties’ own choosing. If a party elects to ask additional questions (beyond these), it should be required to submit the additional questions in writing to the CCB for approval (subject to objection from the other party). Parties should also be required to provide evidence to support the contentions made in response to inquiries. In addition, the CCB officers should have the authority to ask the parties questions to clarify the record, in the interests of justice. This is especially important if the number of “interrogatories and admissions” in the questionnaire is set at a low number.

What constitutes “good cause” to request additional information

“Good cause” exists where the additional information is relevant to a material issue in the case and probative (i.e., the CCB would have difficulty deciding the case without it), and where producing the additional information is in the interests of justice and does not create an unreasonable burden on the party.

Standards for determining when information is confidential

The Copyright Claims Board should publish each final determination online, as provided for in the legislation, but the information provided in the course of discovery, such as documents,

interrogatories, testimony, etc. should be presumed to be confidential.⁴ The initial claim and replies may be made available upon request. The presumption of confidentiality is especially important because this is a voluntary tribunal, and parties are less likely to participate if they are required to make documents and other information public and/or subject to the Freedom of Information Act.⁵

Which provisions of FRCP Rule 26 should or should not be imported or adapted into the CCB's regulations

After the Respondent has submitted its Reply, the CCB should set up a conference call or virtual video with all parties to explain how the CCB process will work and to find out if the parties will need to exchange information, if oral testimony will be required, or if there are any other unique circumstances of the case, that would require expert testimony, for example. When discussing information gathering and disclosure with the parties, the CCB Officer should probe into what both parties need to know, such as the Respondent's need to know that the Claimant in fact owns the material at issue, which would be satisfied by the Claimant's disclosure of a copyright registration. Respondents should typically be required to disclose how long the infringing material has been available and how it has been used, whether the Respondent has made any money from its availability (via click-through advertising or use on a product, for example), information about sales, and information about whether the Respondent has allowed third parties to access the material. To streamline the information disclosure process, the Office should create a checklist or series of checklists applicable to certain types of claims providing a baseline of questions for both Claimants and Respondents.

Considering that many of the small claims brought before the CCB may likely be garden-variety infringements and will be brought by pro se claimants, information disclosures should be much less formal and voluminous than in a typical federal case.

The documents required to be produced should also be limited to what is absolutely necessary to decide the dispute, based on a checklist for specific types of use of content. The Office should

⁴ None of the material exchanged in discovery should be provided to the CCB, except to the extent the material is presented as part of the evidence in the case. This is relevant here and elsewhere where we discuss discovery.

⁵ See 17 U.S.C. § 1506(t)(4) (2020).

also avoid legalese, such as “document production” or “disclosure,” and should define any term used by the CCB that the parties might not understand. As in federal court and as we noted above, there should also be limits on the number of questions one side is allowed to pose to the other, and assuming the parties include inexperienced non-lawyers, the Office should provide them with pre-printed checklists, templates and a questionnaire of common inquiries relevant to the type of claim (to steer them away from posing a list of open-ended broad questions that could be burdensome and yield unintended, irrelevant, additional information gathering). This approach will benefit the parties and the CCB. Although there is no means to compel a party that refuses to answer questions or produce requested documents to do so, the CCB should be able to draw inferences against them for this decision, as stated in 17 USC 1506(n)(3).

Whether there are circumstances where a Rule 26(f) conference is appropriate and, if so, should the Office require the use of a specific template that sets out proposed deadlines and allows parties to fill in the blanks

As discussed immediately above, an initial conference with the parties and at least one CCB Officer should be a required starting place for the CCB Officers, giving the Office the chance to review the case and provide applicable guidance and forms to the parties, as well as informing the parties of the required next steps and helping determine what information should be shared.

Parties should be able to request additional virtual conferences if they believe they require information that cannot readily be conveyed through other forms of communications. Any conference requests should include and copy the other party. These conferences should all be virtual and the scheduling of them should take into account the time zones where the parties reside.

Where discovery extends to production of electronically stored information (“ESI”) should the CCB create rules specifically relating to ESI

Parties should be able to provide electronically stored information in the form in which it is usually kept in the normal course of business. Requests that require hiring of an ESI vendor should not be permitted, and ESI discovery should be limited to what can be located via simple manual searches by a reasonable lay person.

It may be necessary for the Office to provide a simple electronic system for storing, sharing, and managing electronic discovery. Since discovery will be limited, and in some cases excluded completely, the system should not need to be overly complex. For example, the Office need not provide a system to help verify the authenticity of ESI. If there is a dispute about authenticity that cannot be otherwise resolved, and that dispute causes a “lack of essential evidence,” the CCB can dismiss the proceeding pursuant to 17 USC 1506(f)(3).

The Office should create regulations prohibiting and giving the parties the ability to object to “document dumps,” submitting multiple copies of the same document, and other practices that would overwhelm these parties who are inexperienced with litigation and discovery, and who almost assuredly do not have access to the technology necessary for sorting through pages and pages of documents (whether electronic or hard copy). Likewise, a party should be permitted to object and ask to limit/narrow a request that is too broad and would result in an overwhelming number of documents. Parties should also be required to label/number ESI so that it can be properly identified in any filings by the parties.

2. Protective Orders

The CCB’s handling of confidential information (including the redacting of such information) and the issuance of protective orders

The USPTO’s Trademark Trial and Appeals Board (TTAB) (at 37 C.F.R 2.116 (g)) automatically imposes a protective order in every case. The model order is provided through a link on the USPTO website (see <https://www.uspto.gov/trademarks/ttab/standard-documents-and-guidelines-0>)

37 CFR 2.116 (g): The Trademark Trial and Appeal Board's standard protective order is automatically imposed in all inter partes proceedings unless the parties, by stipulation approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. The standard protective order is available at the Office's Web site. [...]

To make things easier on the parties, especially the Respondent—who may factor the availability of a protective order into their decision whether to opt out or not—we tend to support this general approach.

Perhaps, the provision could read as follows:

The Copyright Claims Board's standard protective order is automatically imposed in all proceedings unless the parties agree to an alternative order or a Board attorney modifies the standard order. The standard protective order is available at the Office's web site.

Whether the CCB should adopt a default model protective order that the parties can enter into, with appropriate adaptations as needed

In the interest of keeping the CCB process as simple and efficient as possible we strongly support the adoption of a default model protective order by the CCB so that the parties do not need to negotiate one for each case. The CCB attorneys should be permitted to modify the protective order on a case-by-case basis, if necessary, or similar to the TTAB proceedings, the parties should be able to jointly agree to an alternative order.

Views on the Copyright Royalty Board's confidentiality and redaction regulations and recent protective orders⁶

The Copyright Claims Board should publish each final determination online, as provided for in the legislation, but the record, including documents, interrogatories, testimony, etc. should be presumed to be confidential. The initial claim and replies may be made available upon request. The presumption of confidentiality is especially important because this is a voluntary tribunal, and parties are less likely to participate if they are required to make documents and other information public and/or subject to the Freedom of Information Act.⁷

The regulations regarding protective orders and privacy requirements should embody the concepts in the language governing the CRB in 37 CFR 303.5(i) and (k), for example:

(i) *Documents subject to a protective order.* A person filing a document by electronic means must ensure, at the time of filing, that any documents subject to a protective order are identified to the electronic system as “restricted” documents. This requirement is in addition to any requirements detailed in the applicable protective order. Failure to

⁶ 37 C.F.R. § 303.5(k) (2021).

⁷ See 17 U.S.C. § 1506(t)(4) (2020).

identify documents as “restricted” to the electronic system may result in inadvertent publication of sensitive, protected material.

(k) *Privacy requirements.*

(1) Unless otherwise instructed by the Copyright Claims Officers, parties must exclude or redact from all electronically filed documents, whether designated “restricted” or not:

(i) *Social Security numbers.* If an individual's Social Security number must be included in a filed document for evidentiary reasons, the filer must use only the last four digits of that number.

(ii) *Names of minor children.* If a minor child must be mentioned in a document for evidentiary reasons, the filer must use only the initials of that child.

(iii) *Dates of birth.* If an individual's date of birth must be included in a pleading for evidentiary reasons, the filer must use only the year of birth.

(iv) *Financial account numbers.* If a financial account number must be included in a pleading for evidentiary reasons, the filer must use only the last four digits of the account identifier.

(v) *Home address.* If a home address must be included in a filed document for evidentiary reasons, the filer must use only the city and state.

(2) Protection of personally identifiable information. If any information identified in paragraph (k)(1) of this section must be included in a filed document, the filing party must treat it as confidential information subject to the applicable protective order. In addition, parties may treat as confidential, and subject to the applicable protective order, other personal information that is not material to the proceeding.

Regarding confidentiality, the CCB regulations should also incorporate the concepts embodied in language governing the CRB in 37 CFR 380.5(d) and 382.6(d). For example:

Any person authorized to receive Confidential Information from the Copyright Claims Board must safeguard against unauthorized access to or dissemination of Confidential Information using a reasonable standard of care, but no less than the same degree of security that the recipient uses to protect its own Confidential Information or similarly sensitive information.

Regarding protective orders, the regulations should adopt concepts embodied in language governing the CRB in 37 CFR 355.3(a). For example:

The CCB shall create a model protective order to preserve the confidentiality of any confidential documents or other information exchanged or filed by the parties in the proceeding.

The form of protective order should be clear about how compliance with the order can be enforced. Whatever the enforcement mechanism is, it should be equally impactful on Claimants and Respondents.

3. Smaller Claims

Input on any issues that should be considered relating to smaller claims proceedings

Similar to the CRB regulations at 37 CFR 351.3, determinations in smaller claims proceedings should be made “on the basis of the filing of the written direct statement by each party (or party group filing a joint petition), the response by any opposing party, and one optional reply by a party who has filed a written direct statement.” The default rule in smaller claims proceedings should exclude discovery, and an exception should only be made upon a showing of good cause or where the CCB officers need to ask questions to complete the record and make a determination. Where an exception is made, discovery should be limited to only a few specific items that are relevant, probative, and likely to impact the outcome of the case. Parties in smaller claims proceedings, as well as in regular proceedings, should have an opportunity to preview the evidence against them, but these previews should not be made available too far in advance to relevant deadlines.

Input on any regulations that will increase the efficiency of the single-Officer proceeding while retaining the CCB’s standard procedural protections.

For smaller claims in which only one or two Officers presides over a case, only those Officers required to have “substantial experience in the evaluation, litigation, or adjudication of copyright infringement claims” should be permitted to preside over these cases.

4. Other Rules of Practice and Procedure; Evidentiary Rules

As a general matter, we do not think that most of the CRB, TTAB and PTAB regulations are relevant or should be used here. The proceedings are very different and its essential that the

small claims process shy away from formalities (see 17 USC 1506(o)). However, there are several more general rules found in the CRB, TTAB and PTAB regulations that would make sense to adopt, including the following:

- The general rule for admissibility of evidence should be to admit any evidence that is relevant, probative, and fair. The regulations should reflect that in language similar to 37 CFR 351.10(a), for example: “All evidence that is relevant and not unduly repetitious or privileged, shall be admissible. Hearsay may be admitted to the extent deemed appropriate by the Copyright Claims Board.”
- In federal court, a corporation may only be represented by an attorney (can’t be represented by a non-attorney officers). The CCB is intended to enable parties to navigate the system pro se, without legal counsel, and this should extend to corporations and other legal entities as well. The Office should include an express rule allowing corporations and other legal entities to be represented by an officer, partner, or other person authorized by and able to bind the organization, rather than an attorney, before the CCB. The TTAB regulations provide a model for some of this at 37 CFR 11.14(e).
- The regulations should incorporate language similar to 37 CFR 351.10(b), requiring that, “All witnesses shall be required to take an oath or affirmation before testifying.”
- The regulations should incorporate language similar to 37 CFR 351.10(c)(1), requiring that, “Writings, recordings and photographs shall be presented as exhibits and marked by the presenting party.”
- Since parties are likely to participate pro se, it is important that evidence that is especially voluminous or complex be simplified enough for a layperson’s interpretation. The regulations should incorporate language similar to 37 CFR 351.10(c)(3): “*Summary exhibits*. At the request of the Copyright Claims Board, the contents of voluminous writings, recordings, or photographs may be presented in the form of a chart, summary, or calculation.”
- The regulations should incorporate language mirroring 37 CFR 351.10(d) to ensure that all parties have an opportunity to examine evidence presented by other parties: “Anyone

presenting exhibits as evidence must present copies to all other participants in the proceedings, or their attorneys, and afford them an opportunity to examine the exhibits in their entirety and offer into evidence any other portion that may be considered material and relevant.”⁸

- The regulations should incorporate language from 37 CFR 351.10(f) to allow parties to raise objections if evidence is not furnished: “Parties are entitled to raise an objection that an opposing party has not furnished unprivileged underlying documents.”
- The regulations should incorporate language mirroring 37 CFR 351.12: “To close the record of a proceeding, the presiding Copyright Claims Officer shall make an announcement that the taking of evidence has concluded.”
- The regulations should take an approach to timing that is similar to 37 CFR 352.2: The Copyright Claims Officers will issue the determination within 3 months after the presiding Officer announces the conclusion of the taking of evidence.”
- See page 36 for other relevant TTAB and PTAB regulations

Whether to propose adopting additional provisions of the FRCP on areas relevant to the CCB’s operations, with potential modifications to simplify them and make them more accessible

In addition to the presumption of confidentiality, there should be a standard simple protective order, similar to the USPTO’s Trademark Trial and Appeals Board (TTAB) (at 37 CFR 2.116 (g)), which automatically imposes a protective order in every case. For example: (see page 26 for further discussion on protective orders)

The Copyright Claims Board's standard protective order is automatically imposed in all proceedings unless the parties agree to an alternative order or a Board attorney modifies the standard order. The standard protective order is available at the Office's web site.

⁸ It may make sense for exhibits to be exchanged some period of time before the summaries of arguments are due.

For example, commenters may consider addressing rules such as:

serving and filing pleadings and other papers (Rule 5)

Only the summons—comprised of (1) the Claim; (2) a CCB “Notice”; and (3) the cover sheet—should be formally served. All other documents should be exchanged electronically where possible, and where a party does not have internet access, those documents should be mailed to the Copyright Office and made available to other parties online.

privacy protections for filings made with the court (Rule 5.2).

This rule should be carried over but simplified, with the goal to make parties comfortable that information relating to filings will not be public. The Copyright Claims Board should publish each final determination online, as provided for in the legislation, but the record, including documents, interrogatories, testimony, etc. should be presumed to be confidential. The initial claim and responses may be made available upon request. (see response to protective orders on page 26)

computing and extending time for motion papers (Rule 6); pleadings allowed (Rule 7)

There should be no formal motions practice before the CCB, pursuant to 17 USC 1506(m). Submissions and requests should be made informally (e.g., through the electronic system used by the Copyright Office).

Except where required otherwise by the statute, “days” should be computed as “business days” rather than calendar days.

disclosure statement (Rule 7.1)

If a parent or affiliate company has also been involved in the disputed use, some form of informal disclosure may be appropriate. The best way to handle this might be discussed via a Copyright Office checklist or at an initial conference.

general and special rules of pleadings (Rule 8)

Submissions of claims, counterclaims, and replies should be facilitated via a Copyright Office form that guides parties to explain the nature of the dispute, the material at issue, ownership of the material, and provide required responses. The Office should also prepare and provide a list of standard defenses, and should generally compile and make available educational material on copyright and aspects of copyright law that might arise in the typical CCB dispute, so that the CCB is not faced with claims involving ideas, trademarks, ownership disputes and other unviable claims and claims that the CCB is not permitted to address.

form of pleadings (Rule 10)

The initial claim filed by the Claimant should follow a Copyright Office template that identifies what is required for a valid copyright claim (i.e., an owner, specific types of content), and that instructs Claimants to explain how they believe their work was infringed. It should also contain form statements necessary to establish infringement, including substantial similarity and access, with instructions on what those statements mean. A similar form should be provided to the Respondent for the Respondent's Reply.

signing pleadings, motions, and other papers; representations to the Court, sanctions (Rule 11)

The parties should be required to represent, under penalty of perjury, that the information they include in their responses is accurate to the best of their knowledge. The Copyright Office should develop material discussing bad faith filings and outlining their consequences and provide that material (via website link and/or paper) to the parties.

defenses and objections (Rule 12); counterclaim and crossclaim (Rule 13)

The Copyright Office should provide checklists of available defenses. The Office should also outline the procedure for raising and responding to counterclaims. The notice should also allow the Claimant to indicate whether the case is a "smaller claim" (i.e., where the damages are \$5,000 or less, the case will be presided over by a single officer, etc.).

amended and supplemental pleadings (Rule 15)

Amendments should be allowed for mistakes in claims and replies, and the CCB Officer should have discretion to allow someone to correct a claim or reply and should use that discretion liberally, considering that Claimants and Respondents are not professionals and will often be *pro se*.

scheduling and management (Rule 16)

Once the presiding CCB Officer announces that the collecting of evidence has closed, the Officer should have the discretion to hold a conference, during which he or she may ask the parties for additional information to clarify any facts or arguments that remain unclear. The Officer should also be able to request this additional information without the need for a conference.

Whether other rules or adjudicatory bodies offer useful models, such as: various state court systems operate small claims courts

We were able to review several state small claims court rules and in our view the most relevant was something called “Limited Civil” in the California courts, which has a limit of \$25,000, similar to CCB. The process by this court is relatively streamlined, there are lots of form documents and discovery is fairly limited. The idea of a questionnaire, which we suggest elsewhere in our comments, derives from this court’s procedures. More information about this court can be found here:

<https://www.courts.ca.gov/1064.htm?rdeLocaleAttr=en>

<http://www.lacourt.org/division/civil/pdf/FAQs-LimitedJuris.pdf>

Federal courts (which often have model rules for their districts, including rules tailored to *pro se* representations)

The CCB should consider judicial models that account for *pro se* litigants, as the CCB will be a means for creators to directly seek redress for small claims infringements.

Comparable agency tribunals, such as the Copyright Royalty Board's regulations (codified at 37 CFR parts 350 through 355)

As noted above, most of the CRB regulations are inapplicable. Where we think the CRB regulations make sense to import into the CCB regulations we have noted that above and in the answer to this question below:

- Scheduling should permit for an initial statement/claim from the Claimant, a reply from the Respondent regarding the claims. The Board should then confer with the parties and issue a discover schedule (including the scope of discovery). The regulations should incorporate language similar to 37 CFR 351.5(a), for example:

Following the submission of the initial claim and reply by the parties, and after conferring with the participants, the Copyright Claims Board will issue a discovery schedule.

- Regarding document production, the regulations should incorporate concepts from 37 CFR 351.5(b), for example:

Any party may request of an opposing party nonprivileged documents that are directly related to the written direct statement or written rebuttal statement of that party. Broad, nonspecific discovery requests are not acceptable. All documents offered in response to a discovery request must be furnished in as organized and useable form as possible.

- 17 USC 1506(r) provides that the parties can request a settlement conference. The regulations should take it a step further and require all parties to participate in a settlement conference. The regulations could incorporate language similar to the language at 37 CFR 351.7, for example: "A post-discovery settlement conference will be held among the parties, within 21 days after the close of discovery, outside of the presence of the Copyright Claims Officers."

USPTO rules governing procedures and practices with respect to operation of the Trademark Trial and Appeals Board as well as the Patent Trial and Appeals Board

In most respects, the PTAB and TTAB are very different from the CCB. As a result, after reviewing both the PTAB and TTAB regulations, we concluded that neither is particularly helpful or instructive to the process of drafting the CCB regulations. Nevertheless, there were a few instances where we thought the PTAB and/or TTAB regulations could provide useful guidance. In some instance, we discuss these helpful regulations in other portions of our responses (e.g., see our responses to the protective order or representation responses on pages 26 and 43, respectively).

Some areas where we found the PTAB regulations and materials to be helpful include:

- **Party Resources.** The USPTO maintains an extremely thorough and useful section of its website offering a trial practice guide manual, exemplary model orders, latest decisions, webinars, board side chats with the APJs, and comprehensive case statistics. See <https://www.uspto.gov/patents/ptab> and <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL=>

Some areas where we found the TTAB regulations and materials to be helpful include:

- **Suspension of Proceedings.** 37 CFR 2.117 (a) provides:
Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.
- **Foreign Parties.** 37 CFR 2.119(d) provides that:
If a party to an inter partes proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, none of the parties to the proceeding is eligible to use the service option under paragraph (b)(4) of this section. The party not domiciled in the United States may designate by submission filed in the Office the name and address of a person residing in the United States on whom may be served notices or process in the proceeding. If the party has appointed a domestic representative, official communications of the Office will be addressed to the domestic representative unless the proceeding is being prosecuted by an attorney at law or other qualified person duly authorized under 37 C.F.R. 11.14(c) of this chapter. If the party has not appointed a domestic representative and the proceeding is not being prosecuted by an attorney at law or other qualified person, the Office will send correspondence directly to the party, unless the party designates in writing another

address to which correspondence is to be sent. The mere designation of a domestic representative does not authorize the person designated to prosecute the proceeding unless qualified under 37 C.F.R. 11.14(a) of this chapter, or qualified under 37 C.F.R. 11.14(b) of this chapter and authorized under 37 C.F.R. 2.17(f).

Modeled after this provision, a similar provision for the CCB could read something like this:

If a party to a proceeding is not domiciled in the United States and is not represented by an attorney or other authorized representative located in the United States, the party not domiciled in the United States shall designate by submission filed with the Board the name and address of a person residing in the United States on whom may be served notices or process in the proceeding.

- **Signing.** 37 CFR 2.119 (e) provides that:
Every submission filed in an inter partes proceeding, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned submission will not be refused consideration if a signed copy is submitted to the Office within the time limit set in the notification of this defect by the Office.

Modeled after this provision, a similar provision for the CCB could read something like this:

Every submission filed must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned submission will not be refused consideration if a signed copy is submitted to the Board within the time limit set in the notification of this defect by the Board.

- **Discovery.** There are is also various language found throughout 37 CFR 2.120 that could be imported into the CCB regulations, such as:
 - **In (a)(1):** “The Board will specify the deadline for a discovery conference, the opening and closing dates for the taking of discovery, and the deadlines within the discovery period for making initial disclosures and expert disclosure.”
 - **In (a)(2)(i):** The discovery conference shall occur no later than the opening of the discovery period.
 - **In (a)(2)(iv):** The parties may stipulate to a shortening of the discovery period, that there will be no discovery, that the number of discovery requests ... be limited,

- **In (a)(3):** [Discovery requests] must be [made] early enough in the discovery period, as originally set or as may have been reset by the Board, so that responses will be due no later than the close of discovery. Responses to [discovery requests] must be [made] within thirty days from the date of [receipt] of such discovery requests. The time to respond may be extended upon [agreement] of the parties, ..., or by order of the Board, but the response may not be due later than the close of discovery.
- **In (g):** The Board is allowed to issue a protective order “which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense.”

D. Public Access to Records and Proceedings; Certifications; Case Management System Considerations

Input on issues relating to the CCB’s provision of access to records and proceedings to the general public

The Copyright Claims Board should publish each final determination online, as provided for in the legislation, but the information provided in the course of discovery, such as documents, interrogatories, testimony, etc. should be presumed to be confidential and not be made available publicly. The initial claim and replies may be made available upon request. The presumption of confidentiality is especially important because this is a voluntary tribunal, and parties are less likely to participate if they are required to make documents and other information public and/or subject to the Freedom of Information Act.⁹

E. Register’s Review of CCB’s Denial of Reconsideration

Input on any potential regulatory provisions addressing the substance of the request. (e.g. inclusion of the reasons the party believes the CCB abused its discretion)

The party requesting review by the Register should have to explain why they believe the CCB Officer(s) abused its discretion. This is important because otherwise people will routinely request

⁹ See 17 U.S.C. § 1506(t)(4) (2020).

reconsideration by the Board and review by the Register as a matter of course, rather than for cause. These decisions by the Register should be non-precedential.

Input on the post-review process

A party is permitted to request that the Board reconsider its determination if the party “identifies a clear error of law or fact material to the outcome, or a technical mistake.” The Board has the option to deny this request, at which point the party can request the Register review the denial of reconsideration, for a fee. Instances where the Board abuses its discretion will undoubtedly be rare, as the Board will have the necessary experience and expertise to render an informed and appropriate decision when a reconsideration is requested. However, in the rare situation where the Register finds that the Board abused its discretion in denying the reconsideration, the fee for review should be refunded. It is important that this process be kept as inexpensive, streamlined, and accessible as possible. Although there may be reasonable instances where the Board wrongly denies a request for reconsideration, denying a request for reconsideration that should have been granted detracts from the streamlining and efficiency intended in this process, which ultimately hurts the users of the system. When the Register determines that the Board abused its discretion in not granting the review, it seems unreasonable (and counter to the objective of keeping the small claims process inexpensive) for a party to incur a fee for what is ultimately a discrepancy (abuse of discretion) by the Board.

Input on the amount of a reasonable filing fee

The fee should be no more than the actual cost to the Office for providing the service.

F. Fees

The amounts for specific fees

The sum of any filing fees for commencing a claim should be significantly less than the fee for federal court (as close to \$100 as possible), and the initial fee should account for no more than a

small portion of the total to minimize the financial loss to the Claimant if the Respondent ultimately opts out. A secondary fee can be charged once the case becomes active.

Whether fees to commence a proceeding should be staggered to require an initial fee and an additional fee once the proceeding is active. (i.e. obligating claimants with proceedings that are likely to proceed to a determination to bear greater costs than claimants where respondents opt out)

The fees should be staggered to minimize the financial loss to the Claimant in the event that the Respondent ultimately opts out. The initial fee, which would be due upon filing, should be no more than \$25. The secondary fee would be due after the opt-out period elapses, and the total of these fees should be as close to \$100 as possible. Minimizing the financial loss that results from a Respondent's opt out is essential to the success of the system.

Whether fees for consideration and determination by a single CCB Officer should be lower than fees for standard CCB proceedings

Claims determined by a single CCB Officer should have a lower fee because presumably the cost expended by the Office is less in those cases.

Any other related topics

A Claimant or Counterclaimant should be permitted to register a work on an expedited basis and the Copyright Office should charge an additional, yet reasonable, fee (e.g. \$50)—significantly less than the fee for special handling (—to examine a registration certificate on an expedited basis.

17 USC 1505(a)(1) states that a party may not bring a claim or counterclaim for infringement until “first deliver[ing] a completed application, a deposit, and the required fee for registration.” The regulations should enable a party to institute a claim and simultaneously submit the application, deposit, and fee (including any fee for expedited service). This will help minimize abuse of the expedited registration process. The Register should also consider issuing a regulation that permits the Office to charge for the difference between the fee for special

handling and an application expedited under the small claims system in extraordinary circumstances where it is apparent that a party has taken advantage of the discounted rate for an expedited application in bad faith, with no real intent on maintaining the action before the CCB.

Neither special handling nor applications expedited under the small claims system should be given priority over one another. These applications should be processed on a first-come, first-served basis.

G. Permissible Number of Cases

Input on any issues that should be considered relating to the limitation of the permitted number of proceedings each year by the same claimant in CCB proceedings; Whether the limitation should be based on a claimant's filings or active claims

Individual creators and small businesses have waited for years for the CASE Act to pass into law and not surprisingly they are eagerly anticipating the day when the CCB finally begins taking cases. As with any long-awaited “grand opening,” there may be a throng of creators who want to file claims the first few months after the CCB becomes effective. For the sole reason of ensuring that the CCB is not overwhelmed initially we are suggesting something akin to a “soft launch” of the CCB by imposing claims limits that will eventually sunset when the initial excitement and backlog of infringement cases that small copyright owners have subsides.

Accordingly, we suggest that the Office should permit up to 20 active claims per Claimant for the first year, with discretion to allow for more than 20 cases (on a case-by-case basis) for good cause and in the interests of justice. Examples of scenarios that should qualify as “for good cause and in the interests of justice ” include claims that are at risk of running the statute of limitations, and claims requiring joinder of a joint copyright owner who has otherwise reached the limit (in other words, if Co-Owner A has reached the 20 claims limit on claims involving works that he owns alone, Co-Owners A and B should not be precluded from bringing a claim involving a work of joint ownership). Counterclaims should not count toward the limit, and organizations acting on behalf of numerous rights holders (i.e., an association, photography agency, etc.) should not be subject to the limit (however, these cases should still count toward the limits of the underlying rights holders).

While there should not be an annual limit on the number of cases filed—since doing so could mean that people will reach that limit without ever having a single case *heard* by the CCB, which would not be in the interests of justice—the Office should permit no more than 20 filings *at one time*. In other words, if someone has 20 filings, they cannot file another case until at least one of those 20 filings results in an opt out. This would continue on until the party has reached 20 *active* claims.

The limitation we have suggested should sunset after the first year and the Office should thereafter review anew whether any claim limitations are appropriate based on empirical data and experience, and if so, what such limits should be.

Other small claims tribunals’ experiences with comparable limitations

We are not aware of any comparable limitations in state small claims court or elsewhere.

H. Conduct of Parties and Attorneys

How can the CCB verify that filings do not contain fraudulent information

All filings should be required to be submitted under penalty of perjury, and any legal counsel (including legal clinics) representing a party should be required to be identified (and to sign filings).

Procedures for reporting bad-faith conduct

Parties should be able to report bad-faith conduct easily, and informally. The Office should provide an email address, webform, and phone number for reporting such conduct, and parties should be permitted to report bad-faith conduct for up to one year following the ending of a case.

A lawyer practicing before the CCB who knows that another lawyer has committed a violation of the CCB’s rules or has otherwise acted in bad faith should be required to inform the CCB. (See Rule 8.3 ABA’s Model Rules of Professional Conduct).

Whether the Office should prohibit attorneys who have been suspended from the practice of law from participating in CCB proceedings.

The CCB regulations should mirror the CRB regulations, which state that “The appearance of an attorney on behalf of any party constitutes a representation that the attorney is a member of the bar, in one or more states, in good standing” (see 37 CFR 303.2). An attorney representing a Claimant in a case before the CCB should be required to sign documents submitted on behalf of the Claimant, and otherwise identify herself as counsel of record.¹⁰ In doing so, this should constitute an “appearance on behalf of [a] party.” Likewise, all parties should be required to disclose, under penalty of perjury, whether they are being represented by counsel and, if so, that person’s name and contact info.

Views on USPTO rules with respect to the operation of the Patent Trial and Appeals Board and the Trademark Trial and Appeals Board, as well as for attorneys and entities prosecuting applications before the agency. Those rules address various issues, such as conduct and discipline, duties of candor, fraud prevention, and, if necessary, sanction, suspension, exclusion or censure. Views on other models, including any adopted by state small claims courts.

The Copyright Office should promulgate regulations for the Copyright Office Clinic Certification Participation Program (“Program”) that contain the following key components, (many of which mirror requirements for the USPTO’s program):¹¹

- American Bar Association (ABA) Certification. “All law schools accredited by the American Bar Association are eligible for participation in the program, and shall be examined for acceptance using identical criteria.” (see 37 CFR 11.16(a))
- Clinical Programs. ABA accredited law schools seeking to participate in the program must maintain a legal clinic whose focus includes the copyright practice area. Participation in the program should be renewable on a biennial basis.

¹⁰ As a general matter, electronic signatures should be permitted throughout the CCB process.

¹¹ See 37 C.F.R. § 11.16 (2016); *see also* USPTO Law School Certification Program, *Law School Application Packet 2020-2021 Expansion*, available at https://www.uspto.gov/sites/default/files/documents/2020_Law_School_Application_Packet.pdf.

- Attorney Supervision. To be eligible, a clinic must have a faculty supervisor who (see 37 CFR 11.16(c)):
 - is a member of the bar, in one or more states, in good standing;
 - shall assume full responsibility for supervising and instructing the participating students, and legal services offered by the clinic (including filings); and
 - has at least 3 years of experience in copyright law within the last 5 years

- Student Participation. The Office should grant “limited recognition to practice” to qualifying students who (see 37 CFR 11.16(d)):
 - Are enrolled in the school’s qualifying clinic;
 - Have completed their first year of law school;
 - Have passed a basic copyright course;
 - Are supervised by a qualifying faculty member; and
 - Are in good standing in the law school.

- Database of Participating Law School Clinics. To facilitate law student representation of parties before the CCB, the Copyright Office maintain a public database of participating law school clinics that should be available to the public.

- Copyright Office Report to Congress. The regulations should require the Register of Copyrights, as part of the report to Congress required by Section 17 USC 1511(e), to address the experiences to date under the Program, including the extent of student representation before the CCB, and any recommendations for modifications to the Program.

We believe that there are other instances where law students should qualify to participate outside of the law school clinic context. For example, it is common for law firms to offer internships to law students to work with one of the firm’s licensed lawyers to provide pro bono and non-pro bono services. We urge the Copyright Office to acknowledge in its regulations that such pro bono-based relationships are allowable in the CCB context, as is the case in the clinic context as long as (1) the student is properly supervised; (2) the

supervising attorney is in good standing and takes responsibility for legal services provided to the client; (3) the student is enrolled in law school, in good standing, at an institution accredited by the ABA (4) the student has passed a basic copyright course offered at an accredited law school; and (5) the student has completed at least one year of law school at an institution accredited by the ABA. Also, we urge the Copyright Office to maintain a database of law firms affiliated with laws schools that in tandem are capable of providing student services.

Conclusion

We thank you for the opportunity to submit these comments, and for the Office’s dedication to implementing the CASE Act and ensuring that the Copyright Claims Board is the inexpensive, streamlined, and accessible forum that Congress intended. We look forward to providing additional input in the reply comment period and as this process proceeds to the NPRM stage. Please let us know if we can provide any additional input.

Respectfully submitted,

Copyright Alliance

American Photographic Artists (APA)

American Society for Collective Rights
Licensing, Inc. (ASCRL)

American Society of Media Photographers
(ASMP)

Authors Guild

CreativeFuture

Digital Media Licensing Association
(DMLA)

Graphic Artists Guild

Independent Book Publishers Association
(IBPA)

Music Creators North America (MCNA)

National Music Council (NMC)

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)

April 26, 2021

Appendix A

NOTICE COVER SHEET FIELDS TO BE COMPLETED

1. **Claimant's name, address, phone number, and email** (there can be more than one)
2. **If Claimant is represented by an attorney or law clinic click the box and provide attorney's name, address, phone number, and email, and if appropriate, bar number**
3. **Respondent's name, address, and, if known, phone number and email** (there could more than one respondent)
4. **Case Docket Number** (for CCB to complete/provide)
5. **Case Name** (for CCB to complete/provide)
6. **Number of claims filed** (*specify*) (identify if there is more than one claim and fields in #8 below will expand to account for the filing of multiple claims)
7. **"Check the box(es) below that best describes the type of claim(s) you are filing":** (alternatively there could be a different cover letter for the different type of claims)
 - a. Claim for copyright infringement
 - b. Claim for a declaration of noninfringement
 - c. Claim for a violation of 17 U.S.C. 512(f) for misrepresentation(s) contained in a notice filed under 17 USC 512
 - d. Claim for a violation of 17 U.S.C. 512(f) for misrepresentation(s) contained in a counternotice filed under 17 USC 512
8. **For each claim filed, identify the copyright work(s) at issue (as well as the infringing material) in the case by:**
 - a. Title of the copyrighted work at issue
 - b. Name of the copyright owner
 - c. Checkbox if the copyrighted work at issue is registered
 - i. If Registered list registration number(s).
 - d. Check *at least* one box to identify the rights of the copyright owner that have been allegedly violated
 - i. Reproduction right
 - ii. Distribution right
 - iii. Public Performance right
 - iv. Public Display Right
 - v. Right to Create Derivative Works
 - e. Title of the allegedly infringing work(s), if different from the allegedly infringed work, and known.

- f. Location of the infringing copies, if applicable and known.
- 9. Check the box if you believe that your damages resulting from this claim are \$5,000 or less.**
- 10. Identify any related claims filed in federal court or the CCB (specify)**
- 11. Signature affirming, under penalty of perjury, that the information is true and correct.**

[See “Notice” on next page]

NOTICE

YOU ARE BEING SUED IN THE FEDERAL COPYRIGHT SMALL CLAIMS COURT

- The Copyright Small Claims Court (which is called the “Copyright Claims Board” or CCB) is a tribunal comprised of three judges (called “officers”) within the U.S. Copyright Office. It is an alternative to U.S. federal court for disputes involving copyright infringement of smaller value. You can learn more about the CCB here: [\[insert URL\]](#).
- In the documents attached to this notice, the “claimant” (the person or entity suing you) briefly describes the claim against you and the their understanding of the facts supporting the claim.

DO NOT IGNORE THIS NOTICE. You should read and consider all of the information in this summons before making a decision. Unlike a summons in federal court where you are required to appear in court to respond to the claim, in proceedings before the CCB **YOU HAVE THE RIGHT TO CHOOSE WHETHER TO PARTICIPATE IN THIS PROCEEDING OR “OPT OUT.”**

- You have sixty (60) days from the day you received this notice to make a decision whether you want to participate in the proceeding against you or not.
- If you opt out within the sixty (60) days after receiving this notice, the CCB case against you will be terminated immediately. Although the case against you in the CCB will no longer exist, opting out does not prevent a case being brought against you in federal court. In federal court, the case may be decided by a jury and be subject to remedies available in federal court. For more information about the differences between federal court and the CCB visit [\[link here\]](#).
- If you decide to participate in the proceeding by not opting out, you do not need to act until you are contacted by the CCB, which will occur after the sixty (60) day period that you are given to opt out of the proceeding elapses. At that time, you will be given the opportunity to submit your response to the claim. Should you participate in this case you will have all available defenses under copyright law. See [\[link here\]](#) for more information.
- **IT IS IMPORTANT THAT YOU UNDERSTAND THAT TAKING NO ACTION IS THE SAME AS NOT OPTING OUT AND THAT BY NOT OPTING OUT, YOU ARE CONSENTING TO:**
 1. **HAVING THIS CASE DECIDED BY THE COPYRIGHT CLAIMS BOARD (CCB)**
 2. **WAIVING YOUR RIGHT TO HAVE THIS CASE DECIDED BY A U.S. FEDERAL COURT; AND**
 3. **WAIVING YOUR RIGHT TO A JURY TRIAL FOR THIS CASE.**

What do you do next?

1. Read the attached documents and decide whether you want to participate in the case.
2. *If you **do not want to participate** in the case against you*, simply either go to [here] and complete the form on the U.S. Copyright Office website to opt out of the proceedings **or** complete the attached opt-out form and send it back to the U.S. Copyright Office within 60 days after you have received this notice. The forms are easy to complete and should take you only a few minutes to complete.
3. *If you **want to participate** in the case against you and defend yourself against the claimant's accusations*, you do not need to do anything. After 60 days, you will be contacted by the CCB who will ask you to file a response, including any defenses or counterclaims you may have.
 - **PLEASE UNDERSTAND THAT -- IF YOU DO NOTHING -- THIS CASE WILL MOVE FORWARD WITHOUT YOUR PARTICIPATION AND INPUT.**
 - FOR MORE INFORMATION about this process, go to [here].
 - If you have any questions we encourage you to please call XXXX or email XXXX