



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

**Copyright Alternative in Small-Claims
Enforcement (“CASE”) Act Regulations:
Expedited Registration and FOIA**

Docket No. 2021–2

**COMMENTS OF THE COPYRIGHT ALLIANCE, ACT, APA, ASCRL, ASMP, THE
AUTHORS GUILD, CREATIVEFUTURE, DMLA, GRAPHIC ARTISTS GUILD, IBPA,
MAC, MCNA, NMC, NPPA, NANPA, PPA, THE RECORDING ACADEMY, SAG-
AFTRA, SCL, SGA, AND SONA¹**

The organizations listed below appreciate the opportunity to submit comments in response to a [notice of proposed rulemaking](#) (NPRM) published in the Federal Register on April 26, 2021 by the U.S. Copyright Office, regarding proposed regulations relating to expedited registration and Freedom of Information Act (FOIA) in 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.

ACT | The App Association represents more than 5,000 app makers and connected device companies in the mobile economy, a \$1.7 trillion ecosystem. Organization members leverage

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

the connectivity of smart devices to create innovative solutions to make lives better. The App Association is the leading industry resource on market strategy, regulated industries, privacy, intellectual property and security.

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

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 Artists Coalition (MAC) was formed because the music business is at a critical point in its history. Decisions are being made today in the United States and abroad which will impact music creators for decades. MAC believes music creators should be driving the strategy and conversation about the issues that shape their lives and that artists should have the opportunity to decide how to best protect the fate of their music and their other rights. Founding board members include Anderson .Paak, Dave Matthews, Don Henley, Maren Morris, Meghan Trainor, Shane McAnally, and Verdine White, among others. MAC has been engaging on key issues since its founding in August 2019 and played a key role in advocating for independent artists and their rights around California's AB5.

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

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

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

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

Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) is the world's largest labor union that represents working media and entertainment artists. In 2012, SAG-AFTRA was formed through the merger of two labor unions: Screen Actors Guild, Inc. (SAG) and the American Federation of Television and Radio Artists (AFTRA). SAG-AFTRA members are the faces and voices that entertain and inform America and the world. SAG-AFTRA exists to secure strong protections for media artists. SAG-AFTRA's membership includes more than 160,000 actors, journalists, DJs, recording artists, and other media professionals, many of whom are creators of their own content.

Introduction

We appreciate the care that the Office has taken in drafting proposed regulations to create efficient and sensible processes regarding expedited registration and FOIA. We support most of the regulations proposed in the NPRM. The few areas of concern we have are discussed below.

A. Expedited Registration

a. Initiating small claims expedited registration (221.2(b))

The NPRM explains that, “The small claims expedited registration process can only be initiated after the claimant or counterclaimant has both completed an application for copyright registration and the respondent has *opted in* or not timely opted out” (emphasis added). This appears to have been written in error, since the CASE Act is an opt *out* process. “Opting in” is neither recognized nor sanctioned by the statute. The statute is clear that after being properly served, a respondent has a right to opt *out* of the proceeding, and has 60 days to exercise that right.² If, after 60 days, a respondent has not opted *out*, the law instructs that “the proceeding shall be deemed an active proceeding and the respondent shall be bound by the determination.”³ There is no “opt in” process for the CCB and references to “opt in” will only cause confusion. The Office should remove any references to “opting in” from regulations related to the CASE Act.

b. Fee (221.2(c))

The NPRM states that in order to expedite a registration application, a fee of \$50 must be paid *for each claim*. We believe the word “claim” in this context means a “claim to copyright” as used elsewhere in the regulations (in the context of registration),⁴ rather than as the term is used throughout the CASE Act (i.e., a *claim* for infringement, a *claim* for a declaration of noninfringement, or a *claim* under section 512(f)).⁵ The Office should make this clear and should take special care to ensure that the terms like “claim” and “claimant” are used clearly and

² 17 U.S.C. 1506(i).

³ *Id.*

⁴ See 37 C.F.R. 205.22(a); 37 C.F.R. 201.7; 37 C.F.R. 202.20(c); 37 C.F.R. 202.5(a)

⁵ If we are incorrect, and the Office intends to say that in order to expedite a registration for Work X, a fee of \$50 should be paid for each claim brought before the CCB related to a Work X—in other words, a \$100 fee would be due if someone brings a claim for infringement and a claim for misrepresentation related Work X—we strongly object.

consistently throughout the regulations and in a manner that makes a clear distinction between a CCB claim and a copyright claim. For instance, the Office should consider using the phrases “claim to copyright” rather than “claim,” and “copyright claimant”⁶ rather than “claimant” when used in the registration context.

The CASE Act allows the Office to expedite registration of an unregistered work “that is at issue before the Board,”⁷ but it is unclear how this will work in the context of group registrations. For example, if, while a group registration application is pending, one of the works in the group is infringed and the copyright owner wishes to initiate a CCB proceeding for that infringement, how might that copyright owner go about expediting registration for that particular work? Would the Office be permitted to expedite the entire group registration? If not, would there be some mechanism by which the Office could expedite registration of just that work without the copyright owner having to file a separate registration application (with a new effective date)? If all of the works in a group registration are works at issue in proceedings before the CCB, the entire group registration should be able to be expedited. However, it is unclear whether copyright owner be required to pay \$50 for each “claim to copyright” or if the \$50 fee would cover the entire group. Given the nature of and rationale for group registrations—to avoid unnecessary burdens and expenses on authors and copyright owners⁸—the \$50 for expedited registration should cover the entire group when each of the works in the group are at issue before the CCB.

c. Method of Payment (221.2(c)(2))

In carrying out Congress’ intent that this tribunal be “accessible especially for pro se parties ... who cannot otherwise afford to have their claims and defenses heard in federal court,”⁹ it is important that the Office accept a variety of payment methods to accommodate the diversity of owners and users of copyrighted works, including those from low income, marginalized or

⁶ See 37 C.F.R. 205.22(a); 37 C.F.R. 201.7; 37 C.F.R. 202.20.

⁷ 17 U.S.C. 1505(d).

⁸ H.R. Rep. No. 94-1476, at 154 (1976) (“The provision empowering the Register to allow a number of related works to be registered together as a group represents a needed and important liberalization of the law now in effect. At present the requirement for separate registrations where related works or parts of a work are published separately has created administrative problems and has resulted in unnecessary burdens and expenses on authors and other copyright owners.”), https://www.copyright.gov/history/law/clrev_94-1476.pdf.

⁹ H.R. Rep. No. 116-252, at 17 (2019), <https://www.congress.gov/116/crpt/hrpt252/CRPT-116hrpt252.pdf>.

underserved communities, and those otherwise less likely to own a credit card¹⁰ or have a bank account.¹¹ Therefore, the Office should accept not only credit and debit transactions, but it should also accept prepaid cards¹² and other widely accepted online payment options, like PayPal, Zelle, Venmo, and CashApp.

d. Denied Requests (221.2(d))

The proposed language in section 221.2(d) permits the Office to deny a request for expedited registration if it “would be unduly burdensome” without providing any context for what that means. Since the examination and registration of copyright claims are routine activities that the Office engages in and one of the primary functions of the Office, and the Office already provides “special handling,” it is unclear why a request for expedited registration would be “unduly burdensome.” Regarding special handling, the Compendium of U.S. Copyright Office Practices states that the Office may refuse to grant a request for special handling if the Office “is unable to process the request based on the Office’s workload or budget at the time the request is made.”¹³ We suggest the Office use language similar to this for expedited registration instead of “unduly burdensome” which is broad and ambiguous.

e. Registration Requirement (221.1(b))

Section 221.1(b) says, “If the proceeding has been held in abeyance for more than one year, the Copyright Claims Board may dismiss the claim or counterclaim without prejudice after

¹⁰ See Federal Deposit Insurance Corporation, *How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey 8* (2019) (“[In 2019], [l]ower-income households, less-educated households, Black households, Hispanic households, American Indian or Alaska Native households, and working-age disabled households were less likely to use bank credit [i.e., Visa, MasterCard, American Express, or Discover credit card, or a personal loan or line of credit from a bank]... in 2019, only 37.1 percent of households without a high school diploma used bank credit, compared with 87.5 percent of households with a college degree. Similarly, only 37.0 percent of households with less than \$15,000 in income used bank credit, compared with 89.9 percent of households with income of \$75,000 or more.”), <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

¹¹ See *id.* at 1-2 (In 2019, 13.8% of Black households and 12.2% of Hispanic households were unbanked (compared to 2.5% of white households). Unbanked rates were also higher among “lower-income households, less-educated households, American Indian or Alaska Native households, working-age disabled households, and households with volatile income.”).

¹² See *id.* at 32 (In 2019, “[p]repaid card use was higher among lower-income households, less-educated households, younger households, Black households, working-age disabled households, and households with volatile income. For example, 14.8 percent of Black households used prepaid cards in 2019, compared with 7.6 percent of White households.”).

¹³ U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* § 623.2 (3d ed. 2021), <https://www.copyright.gov/comp3/>.

providing thirty days written notice.” The Office should clarify in the language to whom written notice will be provided (presumably, all parties to the proceeding).

B. Freedom of Information Act (203.1)

The CASE Act requires that each final determination be made publicly available on the Office’s website.¹⁴ The statute also gives the Register discretion regarding whether to publish “records and information relating to such determinations” online,¹⁵ but stipulates that any records and other information that are published online will be subject to FOIA.¹⁶ The NPRM proposes amending the FOIA regulations to provide that “All information relating to proceedings of the Copyright Claims Board under chapter 15 of the Copyright Act is exempt from disclosure under FOIA, except for Copyright Claims Board determinations published on the Copyright Office website *and related records and information published on that website*” (emphasis added). Our concern is that, as drafted,¹⁷ it is unclear whether the Office intends to subject *all* records to FOIA (which would mean publishing all records online), or if it intends to publish only *certain* records online thereby making them subject to FOIA. We would oppose the former. As we stated in our initial and reply comments to the NOI, the initial claim and replies should be made available upon request, but information provided in the course of discovery, such as documents, interrogatories, testimony, etc. should be presumed to be confidential and should not be published/subject to FOIA. The Office should insert a comma immediately preceding “and related records” in the proposed amendment to 37 CFR 203.1 to clarify that only those records *published on the Office’s website* are considered to be subject to FOIA under this provision.

Conclusion

We thank you for the opportunity to submit these comments, and for the Office’s dedication to timely 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 comments as the Office continues to solicit input on CASE Act

¹⁴ 17 U.S.C. 1506(t)(3).

¹⁵ *Id.*

¹⁶ 17 U.S.C. 1506(t)(4).

¹⁷ Without a comma preceding “and related records,” it is unclear whether “on that website” is intended to modify both “related records and information” or just “information.”

implementation and would be happy to answer any questions or provide any additional information or clarification to these comments upon request

Respectfully submitted,

Copyright Alliance	Music Artists Coalition (MAC)
ACT The App Association	Music Creators North America (MCNA)
American Photographic Artists (APA)	National Music Council (NMC)
American Society for Collective Rights Licensing, Inc. (ASCRL)	National Press Photographers Association (NPPA)
American Society of Media Photographers (ASMP)	North American Nature Photography Association (NANPA)
Authors Guild	Professional Photographers of America (PPA)
CreativeFuture	Recording Academy
Digital Media Licensing Association (DMLA)	SAG-AFTRA
Graphic Artists Guild	Society of Composers & Lyricists (SCL)
Independent Book Publishers Association (IBPA)	Songwriters Guild of America, Inc. (SGA)
	Songwriters of North America (SONA)

May 26, 2021