



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

**Small Claims Procedures for Library and
Archives Opt-Outs and Class Actions**

Docket No. 2021-4

**COMMENTS OF THE COPYRIGHT ALLIANCE, ACT, APA, ASCRL, ASMP, THE
AUTHORS GUILD, CREATIVFUTURE, DMLA, GRAPHIC ARTISTS GUILD, IBPA, MAC,
MCNA, 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 the notice of proposed rulemaking ([NPRM](#)) published in the Federal Register on September 2, 2021 by the U.S. Copyright Office, regarding procedures for library and archives opt-outs and class actions under 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.

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.

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 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.

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.

1. General comments

After reviewing the proposed rules, our most significant concern deals with an issue that is raised in the NPRM but goes unaddressed in the regulatory text. On page 49275, the notice discusses comments submitted jointly by the Motion Picture Association (MPA), the Recording Industry Association of America (RIAA), and the Software and Information Industry Association (SIIA), which, “asked that the Office make clear that ‘an entity’s status as a library or archive for the purposes of opting out under CCB does not constitute a determination of that entity’s status, and may not be cited as such, in any other context, including in any federal court litigation in which that entity is a party.’” Footnote 29 indicates agreement on this point in comments filed by the Library Copyright Alliance (LCA). However, we do not see any additional discussion about this issue, nor is it addressed in the proposed regulations. We agree that the regulations should clearly state that a determination by the CCB regarding an entity’s status as qualifying for the blanket opt-out should not be relied upon or cited to by any other tribunal in determining whether an entity qualifies for the exceptions under section 108 of the Copyright Act. This is especially critical given that entities will be permitted to “self-certify” with limited review by the Office.

In addition, the regulations should clarify that a preemptive opt-out is forward reaching only, and does not apply to an existing claim against the library or archives. So, for example, if a copyright owner initiates a claim with the CCB *before* the library or archives is added to the publicly available list, the library or archives would be required by the statute to opt out of that particular case within the 60-day window. This should be the case even if the library or archives has already applied for the preemptive opt-out but a decision has yet to be made by the Office when the claimant initiates the claim. If the Office disagrees with this approach, at the very least, it must make any fees paid by the claimant refundable if a claimant is prevented from moving forward with a case because the library or archives had filed to preemptively opt-out before the case was filed.

2. § 223.2(a) Libraries and archives opt-out procedures: Opt-out notification

Section 223.2(a)(2) requires a library or archives on the blanket opt-out “list” to notify the Copyright Office if their relevant contact information changes but the regulations do not articulate any consequence for failing to update that information. Likewise, section 223.2(a)(4) requires a library or archives to notify the Copyright Office if a federal court determines that it does not qualify for the exceptions in section 108 but does not stipulate any consequence for failing to do so. In both instances, we believe that the ability of a library or archives to take advantage of the privilege of a blanket opt-out should be contingent on it properly notifying the Office of these changes.

3. 223.2(b) Libraries and archives opt-out procedures: Review of eligibility

Sections 223.2(a)(3) and 223.2(b)(1) permit the Office to exclude an entity from the blanket opt-out list, or to remove an entity from the list, if it does not qualify based on the information provided by that entity in its request for preemptive out-out, as well as information known to the CCB or the general public. However, the proposed regulations are unclear about the scope and timeline of the Office’s review. For example, although the Office uses a similar approach with regard to reviewing registration applications, information about the nature of an entity’s business (i.e., whether it indeed operates as a bona fide library or archives) is often publicly available information—and, as such, also publicly known—that can be easily verified through a simple web search (this is especially true for entities required to file annual or biannual reports in their respective states or with the IRS). In the context of reviewing an application for copyright registration, ownership information about a particular work is usually not as easily verifiable and may not be publicly known. Therefore, while these approaches may be similar, the scope of the review in the library and archives opt-out context would require, at minimum, a simple web search to determine if in fact the facts stated within the opt-out submission are in conflict with information known to the public.

Since the regulations permit the Office to both exclude an unqualified entity from the list and to remove an unqualified entity from the list in the context of review for eligibility, it is unclear whether the Office intends to take a ministerial approach, whereby it places entities on the list with little or no initial review, with the ability to later remove those entities, or if it will take a more proactive and discretionary approach, whereby it reviews each submission *before* placing the entity on the list, while maintaining the ability to remove the entity later if appropriate. We strongly urge the Office to take the

latter approach, and make that clear in the regulations, as the former would undermine the integrity of the list, making it unreliable for claimants, and make the process for bringing a claim against entities improperly added to the list more difficult, confusing, and time consuming.

The proposed regulations also do not explain how frequently the list will be updated. Ideally, the list will be updated immediately upon any changes to the status of relevant entities, but at minimum, the list should be updated bi-weekly to ensure that the information is accurate and up-to-date.

We thank you for the Office’s attention to these comments and its dedication to implementing the CASE Act and ensuring that the Copyright Claims Board is the inexpensive, streamlined, and accessible forum that Congress intended.

Respectfully submitted,

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

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