



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

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

Docket No. 2021-9

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

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

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

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. Copyright Alternative in Small-Claims Enforcement Act Regulations, 86 Fed. Reg. 16156, 16158 (proposed Mar. 26, 2021). As we did with the NOI initial and reply comments, to comply with the Office’s request, we are filing jointly with members that otherwise would have filed their own separate (but virtually identical in substance) comments.

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

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

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

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

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) (ibpa-online.org) leads and serves the independent publishing community through advocacy, education, and tools for success. With over 4,100 members, IBPA is the largest publishing association in the U.S. Its vision is a world where every independent publisher has the access, knowledge, and tools needed to professionally engage in all aspects of an inclusive publishing industry.

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

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

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

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

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

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

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

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

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

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

We thank the Office for its continued work on the creation of the CCB and ensuring that the new small claims court process is accessible and transparent for a wide spectrum of participants. Overall, we believe that the proposed regulations in this NPRM largely achieve the goals of encouraging law school clinic participation in CCB representations, ensuring transparency of those representations, and facilitating flexible standards of representation for business entities wishing to participate in CCB proceedings. However, there are a few areas in the proposed regulations that we invite the Office to further consider to better achieve these goals.

1. The Definition and Scope of a “Supervisory Attorney” and “Law School Clinic”

§234.1 would benefit from the addition of a subsection or an amendment to § 234.1(c) to clearly define the term “supervising attorney” because this term is utilized throughout §§ 234.1 and 234.2. We also suggest that any language discussing the required qualifications of a “supervising attorney” mirror the language in §232.6(b)(1) regarding the necessary qualifications of an attorney representing business entities which states that the attorney must be “[a] member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States.” Importantly, because matters before the CCB relate to the federal subject matter of copyright law, supervising attorneys should not need to be qualified to practice law in the geographic location where the clinic is located (absent any additional requirements under applicable state law) so long as they are qualified to practice law in a U.S. jurisdiction. The structure of the definition of a “supervising attorney” should be modeled off of the structure of the definition of a “Faculty Clinic Supervisor” as laid out in the regulations governing the U.S. Patent and Trademark Office’s (USPTO) Law School Clinic Certification Program.² In addition to enumerating the required qualifications for a Faculty

² See generally 37 C.F.R. §11.16(c) (2016).

Clinic Supervisor, the USPTO regulation also lays out the specific responsibilities of these supervisors in the definition.³ If that structure is followed, other provisions in §234.1 of this current NPRM, including but not limited to subsection (i), may need to be reorganized under this new definition.

Additionally, the Office should consider adding a definition of “law school clinic” in §234.1 as not all programs operated by law schools may truly be clinical in nature. Such a definition may be modeled off of the District of Columbia Court of Appeals Rule 48(a)(5) which states that a “clinical program” is a “law school program for credit, held under the direction of a faculty member of such law school, in which a law student obtains practical experience in the practice of law or in the operation of the District of Columbia legal system by participating in cases and matters pending before the courts or administrative tribunals, or by otherwise providing legal services to clients with regard to legal issues.”

We also renew our request that the regulations be expanded to allow supervised law students to participate outside of the law school clinic context under conditions similar to those required in the law school clinic setting. It is common for law firms and associations to offer internships to law students to work with one of the organization’s experienced, licensed lawyers to provide pro bono and non-pro bono services. In addition, organizations offering pro bono legal services to individual creators also take on legal interns who could benefit from such an invaluable legal experience. Such expansions may help to reach underserved communities and claimants, particularly given the limited number of law schools that presently or will soon offer copyright clinical programs, when the CCB begins operations and for some time thereafter—a situation that we are hopeful will change over time given the creation of the CCB.

2. Qualifications, Requisite Coursework, and Training for a Law Student Representative

Overall, we believe the proposed regulation contains sufficient flexibility on requirements for law student representatives, though a few suggested changes may further assist the Office’s goal of encouraging law school clinic participation. However, we believe that law school clinics should be afforded flexibility in determining what coursework, prior training in copyright law, or training in CCB procedures should be required of participating law students who already must operate under the direct supervision of the law school clinic’s supervising

³ See *Id.*

attorney.⁴ As the CCB is designed to be a simplified, streamlined, and navigable process, this is an opportunity for the Office to allow law student representatives to learn more about copyright law and the CCB in a real-world client context under the guidance of a supervising attorney. Thus, as discussed below, the specific qualifications and requirements for law student representatives may be best left to individual law school clinics which typically have their own requirements for participating students.

- Law school clinics will have varying prerequisite or corequisite requirements for clinic participation. To encourage more law school clinics to participate in this program, §234.1(a)(3)(ii) may benefit from the addition of the phrase “successful completion of” to the beginning of that clause and the removal of the word “formal” wherever it appears. It is not clear what would constitute “formal” training versus “informal” training. These changes would give law school clinics flexibility to train their students according to what the law school clinic’s director deems necessary and appropriate for CCB representation. Moreover, some students may have practical experiences and knowledge from working in creative sectors, which they may utilize during client representations. Thus, §234.1(a)(3)(ii) might be refined further to read: “successful completion of a copyright law course, copyright law training, training in Board procedures, or any other coursework and training that is desirable or required for the law student representative’s participation in the law school clinic as determined by the law school clinic’s director.”
- In a similar vein, because of the streamlined nature of CCB proceedings, law student representatives should not be required to have any prior background or training other than completion of the first year of studies at an American Bar Association (ABA)-accredited law school. For comparison, the U.S. Patent and Trademark Office’s (USPTO) Law School Clinic Certification Program does not

⁴ After further consultation with members who have had extensive law school clinic experiences, completion of a copyright law course may not be desirable for the reasons stated in this comment, but particularly since the legal issues in a CCB proceeding are narrow and since the supervising attorney will be supervising the law student representative throughout the proceeding.

require student representatives to complete any specific coursework or have certain technical training in order to represent a party before the USPTO, other than in certain instances where students are representing clients in certain patent matters.⁵ Accordingly, we suggest that the phrase “successful completion of” be deleted from the end of the clause in §234.1(a)(3). We also suggest that §234.1(a)(3)(i) instead state: “successful completion of the first year of studies at an American Bar Association-accredited law school; or”.

3. Responsibilities of Supervising Attorneys

The proposed regulations are well drafted in terms of allocating responsibilities to a supervising attorney. However, we believe that both supervising attorneys and law student representatives should sign all legal filings submitted to the CCB and that it should be mandatory for supervising attorneys to appear at both hearings and conferences. Particularly for certain conferences such as settlement conferences, a supervising attorney ought to be present to ensure proper guidance and direction in a possibly crucial moment of the proceeding.

The Office should make clear that it is possible for a law student representative to be supervised by multiple attorneys who are officially affiliated (e.g., as a law school clinic director, adjunct professor, or a fellow) with the law student representative’s law school clinic. Some law school clinics may have several adjunct professors who support the law school clinic director in project management and supervision. Granting a law school clinic the ability to assign more than just one supervising attorney to law student representatives would allow for greater flexibility for a clinic, ensure greater continuity of law student representations, and efficient allocation of a clinic’s workload and resources.

⁵ See 37 C.F.R. § 11.16(d)(2)(viii); see also *Law School Application Packet 2020-2022 Expansion*, USPTO, 4 https://www.uspto.gov/sites/default/files/documents/2020-2022-Law_School_Application_Packet-May-2021.pdf (last visited Feb. 3, 2022); Office of Enrollment and Discipline, *General Requirements Bulletin for Admission to Examination for Registration to Practice Patent Cases before the United States Patent and Trademark Office*, 3–7 (issued Dec. 2021), https://www.uspto.gov/sites/default/files/documents/OED_GRB.pdf.

4. Required Information for the Law Clinic Directory

As proposed in the NPRM, in order for law school clinics to be included in the Law Clinic Directory the Office requires sufficient information from law school clinics to aid CCB participants in choosing a law school clinic to represent them. However, there are a few areas where further refining the proposed regulations would be beneficial.

- In §234.2(b), the Office should make explicit that §234.2 only applies to law school clinics that wish to be included in the Office’s public database and that non-participation in the public database will have no bearing on a law school clinic’s ability to participate in the CCB law school clinic program.
- In §234.2(b)(6), we suggest that at least until a reasonable amount of time has passed after the CCB has been fully operational (at a minimum, two years), the fact that a law school clinic has just launched and has thus not been operational for the specified two-year period, should not adversely affect its ability to be included in the Directory. In those instances, it makes sense for the Office to delay the requirement that law school clinics provide information about whether the clinic has handled copyright matters in the past two years. To our knowledge, only a limited number of law schools currently have clinics focused on handling copyright law matters. We are hopeful that a number of new clinics will emerge in the near future to handle copyright law and CCB matters. To encourage maximum participation from the law school community, the Office should delay this requirement until more law schools have the chance to set up copyright law focused clinics. During the delay period, the Office could also provide these law school clinics, the option to indicate as to whether supervising attorney(s) have had two years prior experience handling copyright law matters, without requiring the supervising attorney(s) to provide specific information which may run afoul of any disclosure requirements under applicable local, state, and professional responsibility laws and requirements.

- In §234.2(b)(7), the Office should only require law school clinics (unless the Office implements a delay of the requirement with respect to §234.2(b)(6) as described above) to submit a general description of the copyright matters handled in the past two years instead of detailed descriptions that divulge any specific details of prior client representations. Additionally, it would help for the Office to note to database viewers that a law school clinic’s prior experience in copyright matters may assist in CCB representation but is not required under the Copyright Alternative in Small-Claims Enforcement Act.
- We believe that §§ 234.2(b)(8)-(9) should be omitted from the final regulation to broaden law school clinic participation and to provide clarity for database viewers. The small claims proceedings are designed to be streamlined and different from traditional legal proceedings so that participants should not be required to demonstrate such backgrounds or expertise. A database viewer who sees information about a law school clinic’s litigation experience might be incorrectly led to believe that such experience is necessary or desired for effective CCB representation. Additionally, some law school clinics will not have significant litigation experience or may not be situated in regions where they can easily partner with a litigation clinic. An alternative that the Office might consider for the future, after the minimum two-year delay recommended above with respect to §234.2(b)(6), would be require law school clinics to provide information in the database as to whether they have experience in CCB representations. This would be valuable information for database viewers to consider in the future when deciding on which law school clinics they would like to reach out to.

5. Encouraging Law School Participation

Various Copyright Office outreach strategies to encourage participation by law school clinics in CCB representations could include partnering with organizations such as The Association of American Law Schools’ Section on Clinical Legal Education and the Copyright Society to encourage law school clinic participation in the CCB process. The Office may

consider implementing various events to generate interest such as webinars, brown bag lunches, panels, and other events.

6. Clarification on Regulations Regarding Representation of Business Entities

We believe the proposed regulations for the representation of business entities are sufficiently flexible and simple for small and large business entities alike. To further streamline the small claims court process for both business entities and the CCB, we suggest that the Office amend § 232.6(c) so that the required certification for a particular business representative qualified under §§ 232.6(b)(3)-(4) can be valid for a period of up to one year. This would not only lighten a business entity's administrative burden of having to re-certify the same representative to appear in subsequent CCB proceedings, but the CCB would not have to seek such certifications each time when the business entity is involved in a CCB proceeding.

We thank the Office for the opportunity to submit these comments and for its continued hard work in ensuring that the Copyright Claims Board process is flexible and accessible for a spectrum of participants including individual creators/ business owners and law students.

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

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