

**Visual Artists Groups:
Summary Recommendations of
Key Components of a
Copyright Small Claims Tribunal Bill**

February 22, 2016

By American Photographic Artists, American Society of Media Photographers, Digital Media Licensing Association, Graphic Artists Guild, National Press Photographers Association, North American Nature Photography Association and Professional Photographers of America

Introduction

The undersigned Visual Artist organizations (“VAs”), **American Photographic Artists, American Society of Media Photographers, Digital Media Licensing Association, Graphic Artists Guild, National Press Photographers Association, North American Nature Photography Association and Professional Photographers of America**,¹ appreciate the Committee’s interest in exploring the possible enactment of a Copyright Small Claims Tribunal to handle relatively modest copyright claims. We also welcome the opportunity to share with the Committee what we believe to be the essential purposes and fundamental components of any such legislation.

Our members include illustrators, graphic designers, artists, photographers, photojournalists, videographers, and other visual artists who create, provide and license their creative works for the news media, magazines, advertising, books and other publications, consumer products, digital platforms, multimedia presentations, and broadcast, as well as their licensing representatives. We are major providers of creative visual content, but in most cases are the smallest of professional businesses. Other than our licensing representatives, our members are one or two person studios and small family enterprises that function as creators and support staff who are responsible for running all facets of a business. In many cases we create works, schedule the jobs, do client contact, keep the books and pay the bills. Collectively, we depend on effective copyright protection for our livelihood.

Purposes of the Legislation

From our perspective, the fundamental purpose of a copyright small claims proposal is narrow and straightforward: to provide photographers, illustrators, graphic artists and their licensing representatives with a fair, cost-effective and streamlined venue in which they can seek relief for relatively modest copyright infringement claims. An alternative tribunal to federal court is necessary to maintain respect for copyright laws and protect the licensing livelihood of our members who earn significant income from the licensing of their images and whose revenues suffer dramatically when infringers use images without authorization.

It is essential that the copyright system in America continues to protect creators whose works are frequently infringed but the value of which is relatively low in comparison to claims brought by others. One cannot deny that the more than one million visual artists throughout the United States, most of whom are small business owners, make a substantial economic contribution. Given the vast and diverse range of business models and income levels within the copyright industries, it is no surprise that the one-size-fits-all system does not work for everyone. The

¹ Appendix A contains a brief description of these entities.

current copyright review, and specifically small claims legislation, creates the opportunity to remedy this decades-long inequity.

Importantly, an effective copyright small claims system could also help combat the all too common public perceptions that (1) in our digital world, creative works are free for the taking, and (2) “copyright law is far more effective in protecting the interests of big content providers than those of individuals or small businesses.”²

Need for Congressional Action

Under current law, too many legitimate copyright claimants are unable to pursue a copyright infringement action in federal court. This is due primarily to the prohibitive cost of retaining counsel and maintaining the litigation for some of these high volume, relatively low value claims brought by visual artists — a situation exacerbated by the fact that “they are often opposed by large corporations with limitless resources and the resolve to complicate and protract a case in hopes that the plaintiff runs out of patience, money or both.”³ In sum, “[a]s a practical matter, except for large corporate copyright owners, our current copyright laws are virtually unenforceable when it comes to the infringement of visual works,”⁴ — a view that was echoed forcefully during the Committee’s recent session in Los Angeles devoted to the challenges facing photographers in today’s marketplace.

For visual artists and their licensing representatives, copyright infringement is a pernicious problem. Copyright infringement reduces the economic incentive for creators to produce creative works dramatically, which in turn limits the works available for licensing. Visual artists create original intellectual property for licensing. Copyright infringement of this material has contributed to a devastating economic loss for our members, and those who license our work. The burden of policing infringements stretches the resources of artists and business owners who must create, deliver and distribute relevant visual content in a market that only functions when images are properly licensed. At the same time creators are also seeking and fulfilling assignments, working on self-initiated projects and maintaining all of the tasks of running on a 24/7 cycle. For many, losses due to infringement have been overwhelming.

² Kernochan Center for Law, Media and the Arts (“Kernochan Center”), Comments Submitted in Response to First Notice of Inquiry at 1 (Jan. 17, 2012) (“Kernochan First Notice Comments”).

³ National Press Photographers Association (“NPPA”), Comments Submitted in Response to Second Notice of Inquiry at 5 (Oct. 19, 2012) (“NPPA Second Notice Comments”).

⁴ U.S. COPYRIGHT OFFICE, COPYRIGHT SMALL CLAIMS, A REPORT OF THE REGISTER OF COPYRIGHTS 1 (2013), available at <http://copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf> (“Copyright Office Small Claims Report”)(quoting Graphic Artists Guild (“GAG”), Comments Submitted in Response to U.S. Copyright Office’s Oct. 27, 2011

Notice of Inquiry at 3 (Jan. 16, 2012) (“GAG First Notice Comments”). It should also be noted that major copyright infringement cases are worth upwards of hundreds of thousands of dollars.

It is not surprising that many potential Tribunal claimants now feel disenfranchised. The Copyright Office's recent study on copyright small claims indicates that the cost of bringing an infringement case is far beyond the reach of most visual artists and even most companies that license the works on their behalf. The cost of litigating a copyright case through appeal averages \$350,000⁵ and the cost of discovery in federal court alone can easily dwarf any potential recovery for infringements of typically high volume, low value creative works. Nor are the costs of copyright infringement litigation limited to money — “years of investing time and energy in a single case are crippling to people whose sole source of income is their ability to create and market their work.”⁶

Other factors complicate the situation for creators and licensors of copyrighted works. For example, finding a willing lawyer can prove daunting. It is reported that most copyright lawyers believe that it is not worth it to bring an infringement suit worth less \$30,000.⁷ In addition, the cost and burden of registering works, especially for individual photographers, who may create as many as 50,000 individual photographs per year, causes many visual artists to forgo registration, and with it the ability to pursue infringers in federal court. This is particularly true when a typical infringement may only be valued at less than \$3,000; an amount well below the threshold for bringing a federal action, but representing a significant loss of income to the visual artists and their representatives. For individual artists, \$3,000 may make the difference between remaining in business or closing with many only earning approximately \$35,000 per year.

While these types of enforcement challenges have plagued individual copyright owners for years, the advent of the Internet has been a truly negative game changer. Today, photographers and other visual artists see their creative efforts distributed without authorization, credit or compensation on myriad online sites while virtually powerless to intervene. Within seconds of its creation an image may be downloaded and re-posted becoming “viral” in short order. It is absurdly easy for a digital image to be stripped of its metadata, preventing law-abiding publishers from identifying the rights holder or being able to legally license the work. More than one generation has come to believe that uninhibited access to online visual images is not only the norm, but their rightful entitlement.

Now more than ever, it is incumbent upon Congress to amend the copyright law so all copyright claimants may have a realistic opportunity to defend their property rights.

⁵ Copyright Office Small Claims Report at 8 (quoting AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION, REPORT OF THE ECONOMIC SURVEY 2011, at 35 (2011) (“AIPLA Report”)).

⁶ American Society of Media Photographers (“ASMP”), Comments Submitted in Response to First Notice of Inquiry at 3 (Jan. 16, 2012) (“ASMP First Notice Comments”)

⁷ Copyright Office Small Claims Report at 9 n.35.

Key Components

In 2011, the Copyright Office was tasked by the then-chairman of this Committee with “furnish[ing] specific recommendations, as appropriate, for changes in administrative, regulatory and statutory authority that will improve the adjudication of small copyright claims and thereby enable all copyright owners to more fully realize the promise of exclusive rights enshrined in our Constitution.”⁸

In its 2013 Report, *Copyright Small Claims*, the Copyright Office did an exceptional and comprehensive job both in analyzing the numerous and complex issues implicated by copyright small claims legislation and in drafting a model copyright small claims bill. We agree with many of the Office’s recommendations. We also concur wholeheartedly in the Office’s recommendation that while any forthcoming bill should spell out the general, basic framework of a copyright small claims system, many of the details of the new process should be articulated in the regulations adopted by the Office and we urge the Committee to give the Copyright Office broad authority to do so. Where appropriate, we offer alternative suggestions in those instances in which we differ with the Office’s proposal.

Following is a discussion of our thinking regarding the key components of a copyright small claims bill. This is a non-exhaustive list of issues of interest to us and we anticipate that additional ones will arise as the congressional process unfolds.

- Creation of a Small Copyright Claims Tribunal. We agree with the Copyright Office that Congress should enact legislation that creates within the Copyright Office an administrative body (the “Tribunal”) to handle copyright infringement claims that do not exceed \$30,000 in damages. Critically, a claimant should not be locked into the copyright small claims action if it appears during the proceeding that the injury suffered by the claimant exceeds the statutory cap. In such cases, the claimant should have the option of terminating the proceeding and removing the case to federal court.
- Staffing the Tribunal. We concur with the Copyright Office’s suggestion that the Tribunal would consist of three “adjudicators two of whom would have significant experience in copyright law ... with the third to have a background in alternative dispute resolution.”⁹
- Tribunal Docket. Congress should take care that any new copyright small claims apparatus addresses (1) the compelling needs of copyright claimants such as visual artists who are all too often unable to proceed in federal court and (2) is not inundated by claims brought that would be better suited for federal court. Congress should consider giving the Copyright Office wide

⁸ Letter from Hon. Lamar Smith, Chairman of the U.S. House of Representatives Judiciary Committee, to Hon. Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office (Oct. 11, 2011) at 2.

⁹ Copyright Office Small Claims Report at 4.

latitude to place limits on the number of claims filed in a given time period as a means of ensuring that the Tribunal is not overwhelmed by an unmanageable caseload.

- Straightforward Process. The adoption of a Copyright Small Claims Tribunal only makes sense if it offers copyright claimants a straightforward, less formalistic and cost-effective alternative to federal court. Here it is critical that the Copyright Office have broad authority to engage in case management that is clearly tied to the particulars of a given case. It is also imperative that the system be crafted to prevent deep-pocket respondents from driving up costs.¹⁰ We agree with the Copyright Office that (1) proceedings should be conducted via remote telecommunication facilities; (2) all documents should be submitted electronically; (3) discovery should be limited with interrogatories and production permitted; (4) expert witnesses should be permitted only under special circumstances; and (5) formal rules of evidence should not apply.¹¹ Depositions should be discouraged but should be allowed in the Tribunal's discretion (a) upon a showing of substantial need and for limited purposes; (b) where the taking of a deposition would be a more efficient and effective means of adducing relevant information than other forms of discovery as to any particular question or issue in the case, or (c) if after exhausting other forms of discovery which might reasonably be used to address the question or issue at, the relevant information has yet to be obtained.
- Voluntary/Opt Out System. We agree with the wisdom of the “voluntary/opt out” option proffered by the Copyright Office.¹² Under this approach, claimants would serve “respondents” with notice of the claim in a manner analogous to that set forth in Rule 4 of the Federal Rules of Civil Procedure. A properly served defendant would be deemed to consent to participate in the Tribunal process and to be bound by its decision unless he or she opts out in writing within a certain time frame (the Copyright Office suggests 60 days). Those who receive notice of a copyright small claims action would be free to decide whether it is the appropriate forum in which to address any particular claim against them or whether they would prefer to confront the claim in federal court. Under such an “opt-out” system, a claimant may seek a default judgment against a properly served and unresponsive respondent upon a sufficient showing of infringement and damages.
- Initiation of Proceedings. As suggested by the Copyright Office, in order to initiate a claim, a claimant must file documents indicating the nature of the claim, material facts supporting it and written certification that the alleged facts are true. Upon receiving the claim, Tribunal staff would review the

¹⁰ “[A] defendant with a deep pocket [could] put a sole proprietor plaintiff in the poor house through endless discovery requests, depositions and motions. The wealthy and/or corporate defendant is in a position to drive up the plaintiff’s legal fees while forcing the plaintiff to choose between searching for and copying documents, on one hand, or working for a living, on the other.” ASMP First Notice Comments at 3.

¹¹ Copyright Office Small Claims Report at 126.

¹² We recognize that the Copyright Office Report put forth both opt-in and opt-out options.

sufficiency of the submission and, if in compliance, the service of process could be issued. Such staff review should help reduce faulty and frivolous claims.¹³

- Funding the Tribunal. The VAs appreciate concerns raised regarding the potential cost of operating a copyright small claims system and how those costs would be met. We also understand, as discussed below, that any fee structure should serve, in part, as a deterrent to frivolous claims. At the same time, it is critical that small copyright claimants enforcing their rights are not priced out of the process. It is unfair and unrealistic to expect that these copyright claimants should shoulder all or a substantial portion of these costs. From their perspective, some level of federal funding is imperative. Further, it is essential that fees and other costs not deter their participation. One possible option is a sliding fee schedule based on size of damages sought¹⁴ or claimant's income. Given the Tribunal will alleviate some of the burden now shouldered by federal district courts, it seems only reasonable that a commensurate contribution from the federal judiciary's budget be made to support the Tribunal.
- Role of Attorneys. We agree with those private parties and the Copyright Office who opined that parties should have the option of being represented by counsel before the Tribunal. At the same time, we believe that the system should be designed to encourage *pro se* proceedings and anticipate that many small copyright claimants will choose not to be accompanied by counsel.
- Eligible Claims. We agree in general with the Copyright Office's assessment here. In particular, we concur with the Office's overall conclusion that "the main focus of any small claims proceeding should be on infringement matters arising under one or more of the exclusive rights set forth in section 106 of the Copyright Act."¹⁵ In addition, as the National Press Photographers Association stated, "infringement claims involving contractual agreements must also be eligible to be heard under the small claims process so long as they have a common nexus to the copyright claim."¹⁶ At the same time, however, claims that commonly arise in copyright suits such as unfair competition or trademark matters should be beyond the scope of the Tribunal's jurisdiction. We agree with the Copyright Office that the Tribunal should have authority to hear misrepresentation cases brought pursuant to 17 U.S.C. §. 512 (f) with respect to take down and counter notices. We also believe that the Tribunal should have jurisdiction to hear claims based on removal of copyright management information under 17 U.S.C. Section 1202, (if they have a common nexus with the infringement giving rise to the claim)

¹³ Copyright Office Small Claims Report at 121-22.

¹⁴ Picture Archive Council of America, Inc. ("PACA") Comments Submitted to Second Notice of Inquiry at 6, (Oct. 18, 2012) ("PACA Second Notice Comments"). PACA has since changed its name to Digital Media Licensing Association ("DMLA") and is a signatory to this document.

¹⁵ Copyright Office Small Claims Report at 104.

¹⁶ NPPA Second Notice Comments at 4.

but that the remedies for any such violations should be governed by those set forth in the small claims legislation.

- Counterclaims. We approach this issue with some trepidation. We worry that the inclusion of counterclaims could well work to the detriment of claimants by unreasonably adding burdensome time and expense to Tribunal proceedings. Nonetheless, we recognize both that fairness may well dictate the availability of appropriate counterclaims and that such availability can serve as an incentive to participation in the Tribunal process; thus we agree with the Copyright Office's recommendation that respondents in copyright small claims cases should be allowed to bring a counterclaim based on the same transaction or occurrence as the initial claim if it pertains to an exclusive right set forth in Section 106 or a related contract. Allowable counterclaims should be governed by the damage restrictions discussed below.
- Eligible Works. The VAs agree with the Copyright Office that there should be no limit on the scope of works eligible for review by the Tribunal. In addition, we take no position on the dispute within the music industry regarding whether sound recordings and musical compositions should qualify as eligible works.
- Available Defenses. As the Copyright Office suggests, as a matter of fairness and to encourage participation, respondents should have access to all defenses available in federal court such as fair use, independent creation and safe harbors arising under the DMCA, as well as appropriate counterclaims.¹⁷
- Sua Sponte Dismissals by Tribunal. We concur with the Copyright Office's suggestion that the Tribunal should have the authority to *sua sponte* dismiss claims that it deems beyond its technical competence such as those involving especially challenging fair use issues and complex software programs.¹⁸
- Incentives. Given a respondent's opt-out ability, it is critical that the proposal provides sufficient incentives to encourage them to participate before the Tribunal. The frequently cited incentives are the \$30,000 damages cap and the ability of the respondents to invoke all defenses, including fair use, and file appropriate counterclaims. With respect to the former, we worry, however, that this cap will not prove to be a compelling incentive given the far lesser sums that are typically sought by copyright claimants of visual works — even if the cap were not applicable in federal court. More robust would be a rule that if a respondent opts out of the Tribunal and later loses the case in federal court involving the same parties and occurrences, (a) respondent *must* pay claimant's attorney fees and costs and (b) claimant is deemed to satisfy registration requirements with respect to eligibility for statutory damages and attorney fees.
- Weeding Out Frivolous Claims. While we recognize that the success of the copyright small claims process will turn in part on its ability to weed out frivolous claims, it is also critical that any attempts to do so not deter valid

¹⁷ Copyright Office Small Claims Report at 105

¹⁸ Copyright Office Small Claims Report at 119.

- claims. We believe that frivolous claims can be minimized by inclusion of an amalgam of provisions — e.g., a sufficient showing of infringement *before* respondent is notified of a claim, barring those who file multiple false claims from using the Tribunal in the future, and providing ample information to the public about the rules and requirements of the system.
- Role of Registration. With one exception discussed below, we concur in general with the Copyright Office’s recommendations regarding the role of registration in the Tribunal process. Claimants should be required to register the work or file a registration application, deposit and fee before the action commences. Ultimately, if registration is not issued or is disapproved during pendency of the case, the claim will be dismissed. With respect to previously unregistered works, the claimant should be able to file the registration application contemporaneous with the claim. At the same time, we urge the Committee to consult with the Copyright Office in order to address existing registration issues that continue to hamper the ability of visual artists and others to register their works. These include expanded group registration rules and the distinction between published and unpublished images at the registration stage — an incredibly burdensome and ineffective distinction that requires published and unpublished images to be registered on separate forms with separate fees.
 - Expedited Registration. Recognizing that it can take several months for the Office to issue a registration, we recommend that the Tribunal be given the discretion to order the issuance of a registration certificate on an expedited basis. The fees for such an accelerated registration should be reasonable and based on financial hardship and the importance of the particular claim proceeding expeditiously.
 - Registration of Claims of \$5,000 or Less. Given the burden imposed by registration on small copyright claimants, the extremely low registration rates among many such copyright owners, and the modest nature of many infringement claims, we suggest that the Committee consider ensuring that registration is not a prerequisite for filing suit before the Tribunal with respect to claims seeking damage awards of \$5,000 or less. Absent such a provision, it is reasonable to assume that many small copyright claimants will choose not to incur the fees and burdens associated with registration, as well as the expense of bringing suit in the Tribunal.
 - Subpoenas and Unknown Infringers. As so many infringements suffered by small copyright claimants occur online, it is essential that (1) the Tribunal be empowered to issue subpoenas to determine the identity of John Doe respondents where the complainant has sworn to material facts and the claim has been reviewed for sufficiency by the Tribunal and (2) federal district courts shall have authority to enforce such subpoenas. We disagree

with the Copyright Office that Congress defer action on the subpoena issue for unknown infringers to await future study.¹⁹

- Damages. We agree with the Copyright Office that the Tribunal should be authorized to award actual damages and profits up to \$30,000. As to statutory damages, we also agree with the Copyright Office that with respect to (1) cases where registration was timely under §412, statutory damages be capped at \$15,000; and (2) cases where registration was not timely under Sec. 412, statutory damages be available, but capped at \$7,500. We also suggest that in non-registration cases of \$5,000 or less, that statutory damages be capped at \$2,500.
- Attorney Fees and Costs. Here we depart from the Copyright Office's suggestion that, at least at the outset, the legislation should not provide for fees and costs shifting. We believe that the Tribunal, in its discretion, may allow the recovery of attorney fees and costs by or against any party other than the United States or an officer thereof. Given the real possibility that corporate respondents, and individual respondents with means, will engage counsel in this setting, it is important that individual visual artists have the opportunity to retain counsel in order to avoid being placed at a distinct disadvantage. In addition, such a rule would provide an additional incentive for the respondent to remain in small claims court — where a fee award is likely to be far lower than it would be in district court — and at the same time, would help a claimant who desires legal counsel to obtain some level of assistance. The availability of attorney fees in the Tribunal will also serve a very important purpose, as it does in federal court: to encourage settlement and terminate proceedings in order to avoid the possibility of a fee exposure. In cases where a frivolous claim, counterclaim, or defense was made by an attorney, the Tribunal should consider placing monetary responsibility for such violations on said attorney(s).²⁰
- Reconsideration and Review of Tribunal Ruling. Here we agree in part with the position articulated by the Copyright Office. We suggest that it is reasonable to allow either party, not merely the losing party, as suggested by the Copyright Office, to seek reconsideration of a Tribunal ruling based not

¹⁹ See, e.g., Getty Images, Comments Submitted in Response to Third Notice of Inquiry at 2 (April 12, 2013) (“We frequently encounter infringement of images on websites where the infringer’s identity is unknown, often because the domain name has been registered through a proxy and there is no valid contact information. For this reason, we believe there should be a mechanism through the small claims process to subpoena an internet service provider or domain name registrar to learn the identity and location of the infringer.”)

²⁰ Here the Committee could paraphrase language found in 17 U.S.C. § 505 [Remedies for infringement: Costs and attorney's fees](#): “In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof. Except as otherwise provided by this title, the court may also award a reasonable attorney’s fee to the prevailing party as part of the costs”. *Id.* See also, Fed. R. Civ. Proc. 11 advisory committee notes (1983 Amendment).

only on a material error or technical mistake but also fraud or misleading testimony. We believe this would address situations where subsequent to the completion of litigation, the claimant belatedly determines that the defendant misrepresented the scope or circumstances of the infringement (either by omission of facts or by false representations). In those instances, the claimant must have the limited right to appeal or re-litigate the matter, irrespective of whether the claimant prevailed or not. In the event that request for reconsideration is denied, the appellant should have an opportunity to appeal the Tribunal's final decision to the Register of Copyrights. Should the Register decide that the denial of reconsideration was erroneous, he or she could remand the case for further proceedings. As discussed below, once final, the Tribunal's decision could be challenged on a limited basis in federal court.

- Challenges to Determinations by Tribunal. We respect that fairness dictates that there should be carefully cabined situations where a losing party could seek judicial review of Tribunal decisions. At the same time, VAs worry that deep pocketed respondents could abuse an overly broad appeals process. The proposal must be calibrated to prevent well-heeled respondents from routinely appealing in order to exhaust the resources of claimants. Thus, as the Copyright Office suggests, the losing party before the Tribunal should have a limited ability to appeal — but not re-litigate — the decision below. While a losing party should have the opportunity to ask the federal district court in D.C. to set aside a Tribunal determination, the court should be able to do so only if it finds that the Tribunal exceeded its authority or the challenged ruling was obtained by fraud, corruption, or undue means, or as a result of misconduct.²¹
- Precedential Effect of Tribunal Ruling. Rulings of the Tribunal should only bind the parties to its terms; Tribunal rulings should neither act as binding precedent for the Tribunal, nor act to preclude the litigation of any issues decided by the ruling with respect to a third party. Neither the panel nor unrelated litigants should be allowed to rely on Tribunal rulings as legal precedent. The Tribunal's rulings should also have no legal effect on the resolution of issues outside of its jurisdiction (e.g., trademark infringement), even if those issues arose out of the same transaction or occurrence. This is the same general position articulated by the Copyright Office.
- Enforcement. Here we again agree with the Copyright Office. A party having difficulty collecting damages or securing other relief awarded by the small claims Tribunal would have the option of obtaining a federal court judgment enforcing the Tribunal's decision.²²

²¹ This approach tracks that found in the Federal Arbitration Act ("FAA"). See 9 U.S.C. § 10(a) (permitting an order vacating the award "where the award was procured by corruption, fraud, or undue means" or as a result of misconduct)

²² Again the FAA provides guidance. See 9 U.S.C. § 13 ("The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is

- Statute of Limitations. We concur with the Copyright Office's recommendation that the statute of limitations parallel the three-year period for federal court actions found in §507 of the Copyright Act. As the Office also noted, it is essential that if an action is commenced before the Tribunal, the statute of limitations for claims to be brought in federal court be tolled.
- Educational Material Regarding Tribunal Procedure. Given the possibility that large numbers of copyright claimants will proceed *pro se*, it is incumbent that the Copyright Office provide the public with clear and understandable guidance as to the Tribunal's rules and procedures as well as form pleadings. Such guidance is commonly provided in jurisdictions around the country.²³
- Periodic Review of Tribunal Process. Careful consideration should be given to requiring the Copyright Office to conduct a periodic review of the Tribunal process, including but not limited to: review of costs and fees, types of claims and claimants, duration of proceedings, number of times respondents opt out of the process and size of monetary awards rendered by Tribunal.

Conclusion

We are aware the Committee may be receiving many views on this issue, and we greatly appreciate the opportunity to be heard on behalf of those whose works can only be protected when copyright law is strong and enforceable.

In a digital age of ever-expanding creativity and consumption, updated legal principles along with new legislative, administrative and judicial mechanisms are needed to ensure that copyright law remains viable. The rights of copyright holders and the needs of users must be integrated into a functioning system that incentivizes and rewards creativity and innovation on both sides of the issue while simultaneously recognizing an inherent right to exercise at least some control over the use of those works.

The enactment of a Copyright Small Claims Tribunal is imperative if the exclusive rights imbued in copyright law and the threat to the ability to receive fair value for created works are to be protected.

We thank the Committee for the opportunity to present our views and proposals.

entered. *See also*, Copyright Office Small Claims Report at 128 (endorsing the FAA as a model for enforcement).

²³ *See, e.g.*, Cal. Civ. Proc. Code §116(a) (Supp. 1989) (each small claims division may formulate and distribute to litigants and public a manual on small claims court rules and procedures); N.Y.C. Civ. Ct. Act §1803(b) (1987) (clerk shall provide information to claimant explaining small claims court in "clear and coherent language"). *See also*, Divorce Set 1 Uncontested, No Minor Children, No Real Property, available at <http://www.txcourts.gov/media/515764/divorceset1forms.pdf> (forms and instructions for an uncontested divorce, approved by the Supreme Court of Texas)

Respectfully submitted,

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Appendix A

American Photographic Artists

American Photographic Artists (“APA”) is a 501(c)(6) not-for-profit association for professional photographers. Recognized for its broad industry reach, APA works to champion the rights of photographers and image-makers worldwide. APA is a leading national organization run by and for professional photographers, providing essential business resources to help its members achieve their professional and artistic goals.

American Society of Media Photographers

The American Society of Media Photographers (“ASMP”) is a 501(c)(6) not-for-profit trade association, established in 1944 to protect and promote the interests of professional photographers who earn their living by making photographs intended for publication. There are more than 6900 members of ASMP, organized into 39 local chapters across the United States, with members representing literally every genre of professional publication photography. ASMP photographers work in still and motion formats, providing visual imagery to clients in print, broadcasting, and digital media across the world. ASMP is the leader in promoting photographers’ rights, providing education in better business practices, producing business publications for photographers, and helping to connect professional photographers with clients.

Digital Media Licensing Association

For over 60 year the Digital Media Licensing Association (“DMLA”), formerly known as PACA, has developed business standards, promoted ethical business practices and actively advocated copyright protection on behalf of its members. In this era of continuous change, we have remained an active community where vital information is shared and common interests are explored. In addition, DMLA educates and informs its members on issues including technology, tools, and changes in the marketplace. We also connect our members through webinars, our annual conference, industry networking events, and by bringing together buyers and sellers with DMLAsearch (formerly PacaSearch).

Graphic Artists Guild

The Graphic Artists Guild is a professional organization for graphic artists that embraces creators at all levels of skill and expertise, who create art intended for presentation as originals or reproductions. The mission of the Guild is to promote and protect the economic interests of its members, to improve conditions for all creators and to raise standards for the entire industry. Since its founding in 1967, the Guild has established itself as the leading advocate for the rights of graphic artists on a wide range of economic and legislative issues, from copyright to tax law.

National Press Photographers Association

The National Press Photographers Association (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of photojournalism in its creation, editing and distribution. NPPA’s approximately 6,000 members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism community. Since its founding in 1946, the NPPA has been the Voice of Visual Journalists, vigorously promoting the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

North American Nature Photography Association

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

Founded in 1869, Professional Photographers of America (“PPA”) is the world’s oldest and largest association for professional photographers. PPA’s membership consists of more than 29,000 direct members and an additional 20,000 affiliated members from more than 130 affiliated organizations. In total, PPA’s membership reach includes some 50,000 professional photographers. For more than 140 years, PPA has dedicated its efforts to protecting the rights of photographers and to creating an environment in which these members can reach their full business and creative potential.