JOINT STATEMENT

April 26, 2021

Comments of the Songwriters Guild of America, Inc.,
Joined by the Society of Composers & Lyricists
Endorsed by Music Creators North America, Inc.

LIBRARY OF CONGRESS
U.S. Copyright Office
[Docket No. 2021–1]

Re: Copyright Alternative in Small-Claims Enforcement (‘‘CASE’’) Act Regulations

I. Introduction and Statement of Interest

These Joint Comments are respectfully submitted by the Songwriters Guild of America, Inc. (SGA), 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 reasoned and formulated solely in the interests of music creators, without financial influence or other undue interference from parties whose interests vary from or are in conflict with those of songwriters, composers, and other authors of creative works. 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.

SGA’s organizational membership stands at approximately 4500 members, and through its affiliations with both Music Creators North America, Inc. (MCNA) (of which it is a founding member) and the International Council of Music Creators (CIAM) (of which MCNA is a key Continental Alliance Member), SGA and The Society of Composers & Lyricists (SCL) are part of a global coalition of music creators and heirs numbering in the millions. Of particular relevance to these comments, SGA and SCL are also founding members of the international organization Fair Trade Music, which is the leading US and international advocacy group for the principles of transparency, equitable treatment, and financial sustainability for all songwriters and composers.

The Society of Composers & Lyricists (SCL) (https://thescl.com/), the premier US organization for music creators working in all forms of visual media (including film, television, video games, and musical theatre), and a founding co-member of MCNA along with SGA, joins in submitting these Comments on behalf of its more than 1700 members.

Both SGA and SCL have been deeply involved in the legislative process concerning the Copyright Alternative in Small-Claims Enforcement (''CASE'') Act from the beginning (with SGA's advocacy concerning small claims initiatives stretching back nearly two decades), and have filed numerous and extensive comments regarding its enactment and implementation with Congressional Offices, the United States Copyright Office, and other US Governmental departments and agencies.

The member organizations of MCNA have endorsed these comments in full. Such organizations are listed at http://www.musiccreatorsna.org.

II. Comments

A. The Joining by SGA, SCL and MCNA in the Comments Filed Today by the Copyright Alliance

SGA, SCL and MCNA have each joined in the Comments pertaining to this matter filed today by the Copyright Alliance. Each organization hereby repeats those endorsements, and takes this further opportunity to emphasize the importance of a principle that they particularly believe to be a *sine qua non* to the successful implementation of the CASE Act: the bifurcation of contingent filing fees.

As stated in the Joint Copyright Alliance Comments submitted today:

> The sum of any filing fees for commencing a claim should be significantly less than the fee for federal court (as close to $100 as possible), and the initial fee should account for no more than a small portion of the total to minimize the financial loss to the Claimant if the Respondent ultimately opts out. A secondary fee can be charged once the case becomes active….
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> The fees should be staggered to minimize the financial loss to the Claimant in the event that the Respondent ultimately opts out. The initial fee, which would be due upon filing, should be no more than $25. The secondary fee would be due after the optout period elapses, and the total of these fees should be as close to $100 as possible. Minimizing the financial loss that results from a Respondent's opt out is essential to the success of the system.[1]

In amplifying the crucial nature of this concept, the plain truth is that after two decades of enduring rampant copyright infringement and below market-value royalty payments, most current songwriters and composers will not be able to shoulder the financial burden of absorbing significant, initial filing fees for cases that are subsequently blocked from moving forward by opt-out defendants/respondents. Placed in such a position, most

[1] Copyright Alliance Comments dated April 26, 2021 at [36].

music creator claimants simply will not be able to afford the economic risk of filing at all, extinguishing at the threshold any chances for the fulfillment of the CASE Act's goals. Thus, a law nearly two decades in the making whose stated Congressional purpose is to help level the playing field for creators in the digital age,[2] could be rendered into a mockery of the justice it seeks to facilitate.

As SGA president Rick Carnes stated in a December 8, 2020 letter to US Congressional leaders in support of CASE Act passage:

> In the digital age, copyright protection for US songwriters and composers has degenerated into a right without a remedy. It now requires an expenditure by a creator of well over a quarter million dollars at minimum to bring a copyright infringement action in federal court, at a time when music and other creators are being forced to leave their professions in droves to escape the poverty brought on by the violation of their rights with near-total impunity. It is not hyperbole to state that the very future of American culture is being put at risk, along with the livelihoods of hundreds of thousands of individual authors and creators who form the bedrock of a significant segment of the US economy, by failing to address this very solvable problem.

After having been assured by Congress that the CASE Act will alleviate at least some of the harsh realities described above, it would be profoundly unfair and contrary to both the letter and spirit of the new law to impose a fee system that requires creators --in order to exercise their rights under the Act-- to place at risk a significant filing fee that could easily be forfeited in whole at the whim of an opt-out defendant/respondent. Such a condition would almost certainly produce the classic result of "adding insult and *more injury* to injury," leaving a claimant who was initially unable to pursue alternative means of redress due to financial constraints, in an even deeper economic hole than when he or she first placed trust in the small claims process. Congress could not possibly have intended such a result, a reality that we are certain the US Copyright Office will recognize and take to heart.

III. Conclusion

SGA, SCL and MCNA thank the USCO for the opportunity to present these additional Comments, and as always, remain available to provide any further, necessary information or input.

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[2] As stated in the House Report on the Act, "The CASE Act is the product of more than 15 years of consideration by the Committee. In 2006, the House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property held a hearing focused on alternatives to district court litigation for small copyright claims, including, most notably, a small claims court. In 2011, the House Judiciary Committee, observing that ``the costs of litigating in federal court have become increasingly prohibitive," requested that the Copyright Office undertake a study on the shortfalls of the current system and, after soliciting input from interested stakeholders, recommend changes ``that will improve the adjudication of small copyright claims *and thereby enable all copyright owner to more fully realize the promise of exclusive rights enshrined in our Constitution*." [emphasis added] See, https://www.congress.gov/congressional-report/116th-congress/house-report/252/1?overview=closed

Respectfully submitted,

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cc: Charles J. Sanders, SGA Outside Counsel
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