



JOINT STATEMENT

BEFORE THE
U.S. COPYRIGHT OFFICE

Copyright Claims Board: Initiation of
Proceedings and Related Procedures

Docket No. 2021–6

SUPPLEMENTAL REPLY COMMENTS OF SGA, SCL AND MCNA

I. Introduction and Statements of Interest

The following Supplemental Comments are respectfully submitted by the signatory organizations Songwriters Guild of America, Inc. (“SGA”),¹ Society of Composers & Lyricists (“SCL”),² and Music Creators North America (“MCNA”),³ and by the individual music creators Rick Carnes,⁴ Ashley Irwin⁵ and Eddie Schwartz⁶ (referred to collectively herein as the “Independent Music Creators”).”

SGA 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 reasoned and formulated independently and 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. SGA

¹ <https://www.songwritersguild.com/site/index.php>

² <https://thescl.com/>

³ <https://www.musiccreatorsna.org>

⁴ <https://www.songwritersguild.com/site/rick-carnes>

⁵ <http://www.ashleyirwin.com/bio.html>

⁶ <https://www.musiccreatorsna.org/mcna-executive-eddie-schwartz/>

is represented by signatory Rick Carnes, who is signing as an individual music creator and copyright owner, and as an organizational officer.

SCL is the premier US organization for music creators working in all forms of visual media (including film, television, video games, and musical theatre). It has a membership of over 2000 professional composers and lyricists, and is a founding co-member --along with SGA and other independent music creator groups-- of MCNA. SCL is represented by signatory Ashley Irwin, who is signing as an individual music creator and copyright owner, and as an organizational officer.

MCNA is an alliance of independent songwriter and composer organizations that advocates and educates on behalf of North America's music creator community. As the only internationally recognized voice of American and Canadian songwriters and composers, MCNA, through its affiliation with the International Council of Music Creators (CIAM), is part of a coalition that represents the professional interests and aspirations of more than half a million creators across Africa, Asia, Austral-Asia, North and South America, and Europe. MCNA is represented by signatories Rick Carnes and Ashley Irwin, who are signing as organizational officers, and by its president, Eddie Schwartz.

Of particular relevance to these comments, SGA, SCL and MCNA are also founding members of the international organization Fair Trade Music,⁷ which is the leading US and international advocacy group for the principles of transparency, equitable treatment, and financial sustainability for all songwriters and composers.

II. Supplemental Submission

By these Supplemental Reply Comments, the Independent Music Creators hereby repeat, reaffirm and incorporate the Initial⁸ and Reply Comments⁹ of the Copyright Alliance concerning Docket No. 2021-6, to which SGA, SCL and MCNA are signatories.

The Independent Music Creators, however, also wish to submit these Supplemental Comments for the purpose of respectfully emphasizing in the strongest possible terms their support for the principles that filing fees to commence a proceeding under the CASE Act should be structured with economic fairness and feasibility foremost in mind. As Congress clearly indicated, the entire purpose of the CASE Act is to provide a legal remedy to creators “who cannot otherwise afford to have their claims and defenses heard in federal court.”¹⁰

⁷ <https://www.fairtrademusicinternational.org/>.

⁸ <https://copyrightalliance.org/wp-content/uploads/2021/11/CA-Comments-Initiation-of-Proceedings-2021-6-FINAL.pdf>.

⁹ Filed contemporaneously with these Supplemental Reply Comments.

¹⁰ H.R. REP. NO. 116-252, at 17 (2021).

After years of demonstrating to Congress that the rights of music creators granted pursuant to Article I Section 8 of the Constitution had become economically unenforceable due to the prohibitive costs of seeking enforcement through the federal court system, Congress acted decisively in 2020 to provide creators with a reasonable means by which to assert our statutory rights against copyright infringers through the CASE Act. It would therefore be tragically self-defeating if rules promulgated under the resulting statute once again placed the opportunity for justice beyond the financial means of most creators, perpetuating a situation that has persisted through more than two decades of rampant digital looting of copyrighted musical and other works at an aggregate cost of billions of dollars in lost revenues to individual creators.

As stated in our Copyright Alliance Reply Comments filed contemporaneously with these Supplemental Reply Comments:

We reiterate our position, as stated in our initial comments, *strongly* urging the Office to reconsider its proposal to set a single fee of \$100 for commencing [a proceeding] before the CCB and we *strongly* encourage the Office, instead, to follow the guidance of the Senate Report in instituting a tiered/split fee structure for initiating [such] a proceeding for the reasons explained in our initial comments.¹¹ Of the 179 initial comments filed in response to this NPRM, the vast majority were comments submitted by individual creators expressing concern that the proposed \$100 fee would be cost-prohibitive. Therefore, if the Office still believes that it does not have authority under the statute to create a tiered/split fee structure, we strongly urge the Office to make a significant portion of the filing fee refundable if the respondent opts out.

In considering the foregoing proposals, we respectfully implore the Copyright Office to ponder the following, crucial questions regarding an issue that may drastically affect creators of all artistic disciplines and genres: Could Congress possibly have intended --in light of the stated principle purpose of the Act-- to add insult to injury by asking a creator to place \$100 of her or his hard-earned royalties at risk in order for a chance at fairness, only to have such amount forfeited by the stroke of a defendant's pen indicating a withdrawal from the process? And wouldn't rules put in place reflective of such a counter-intuitive policy render the CASE Act a nullity at its threshold, potentially converting it into a weapon of further abuse against creators rather than the promised cure for the "right without a remedy" conundrum Congress was seeking to address?

We suggest that Congress most certainly did not intend such results, and that a clear path exists for the Copyright Office to act within the statutory guidelines to establish (as cited above) either a carefully tailored, tier-based or segmented fee system, or alternatively, a refund structure in cases in which an opt-out negates the proceeding. It is our hope that the Copyright Office shares our view that Congress clearly intended by the CASE Act to assist economically challenged creators in enforcing their rights, rather than handing defendants another tool by which to punitively circumvent those rights for both personal and commercial gain.

¹¹ <https://copyrightalliance.org/wp-content/uploads/2021/11/CA-Comments-Initiation-of-Proceedings-2021-6-FINAL.pdf> pg 8-11

III. Conclusion

We thank the Copyright Office for this opportunity to submit these Supplemental Reply Comments, and as always remain available to answer any questions the Office may have.

Respectfully submitted,



Rick Carnes
President, Songwriters Guild of America
Officer, Music Creators North America



Ashley Irwin
President, Society of Composers & Lyricists
Co-Chair, Music Creators North America

cc: Mr. Eddie Schwartz, President, MCNA/International Council of Music Creators (CIAM)
Ms. Carla Hayden, US Librarian of Congress
The Members of the US Senate and House Judiciary Committees
The Members of the US Senate and House Appropriations Committees
Charles J. Sanders, Esq.