

**U.S. Copyright Office**

**Second Comments on  
Alternative Dispute Resolution Mechanism**

**FR Doc. 2011-10**

**JOINT COMMENTS**

**of**

**PPA: Professional Photographers of America  
SPS: Student Photographic Society**

**David P. Trust, Chief Executive Officer  
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*AVA represents PPA and SPS***

**Submitted: *October 19, 2012***

## **Introduction**

On behalf of its members, Professional Photographers of America (PPA), and Student Photographic Society (SPS), are pleased to submit comments in response to the request for submissions printed in the August 23, 2012 Federal Register. We look forward to building on our January 17, 2012 comments by providing additional thoughts on the structure and format of an alternative dispute resolution mechanism.

Allow us to provide you with a brief description each organization's mission and membership:

**PPA** is the world's oldest and largest nonprofit trade association for professional photographers and photographic artists from dozens of specialty areas including portrait, wedding, commercial, advertising, and art. PPA consists of some 25,000 individual members and includes nearly 160 independent photography organizations that have elected to affiliate themselves with the association. For more than 130 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.

**SPS** was founded in 1999 to provide career-building resources, networking opportunities, and informational resources to photography students. SPS represents students and educators in 300 different colleges, universities and trade schools that offer degrees in photography.

## **Background**

As a participant in the March 2006 Subcommittee on the Courts, the Internet, and Intellectual Property referred to as the "Small Claims Hearing" in the Notice<sup>1</sup> PPA chief executive officer David Trust testified and provided a written statement stressing the importance and value of a photographer's ability to seek redress for copyright infringements outside of the federal court system.

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<sup>1</sup> Remedies for Small Copyright Claims, before the Subcomm. On Courts, the Internet, and Intellectual Property of the H. Comm. On the Judiciary, 109<sup>th</sup> Cong. (2006).

The traditional method of protecting copyrights (registration of images with the U.S. Copyright Office and litigation in Federal Court) is simply impracticable for a small business photographer with limited income. The volume of work produced by many photographers, easily 20,000 or more photographs each year, would prove costly and time consuming should a photographer attempt to register each and every image. As a result, we would argue that use of the courts by photographers like our members is virtually non-existent due to both the administrative and financial burden created by the registration process.

It is for this reason PPA has been a longtime advocate of establishing an alternative mechanism that is both affordable and easy to navigate is critical to legitimizing a photographer's defense of their work. The creation of a low-cost dispute resolution mechanism that could serve as a substitute for or even a precursor to Federal Court proceedings would give photographers an affordable way to enforce cease and desist demands and ebb the infringement of their works more broadly.

### **Alternative Dispute Resolution Mechanism**

It continues to be our desire to see the implementation of a system based on initial vision of an alternative dispute resolution mechanism enhanced by the additional considerations to follow.<sup>2</sup> Our response will focus on the structure and the processes of such a body in addition to its administration.

### ***Structure & Processes***

No photographer wishes to grow their reputation on the basis they sue their clients for copyright infringement. In our experience, many photographers allow "minor" infringements, like making a copy of a family portrait at a photo retailer, to go unaddressed. Enabling small business copyright owners to seek relief without the burdens of pursuing a lawsuit in the federal district court would allow photographers to better protect the exclusive rights afforded them under 17 U.S.C. §106.

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<sup>2</sup> Original legislative recommendation for alternative dispute resolution put forward in oral testimony included as Attachment A.

## **A. An Administrative Tribunal**

We believe the creation of an administrative tribunal capable of addressing small dollar infringements would offer photographers the venue they need to successfully defend their rights. The tribunal should be composed of individuals who are knowledgeable in this highly specialized area of the law and also have familiarity of the industry from which the claim results. Ensuring members of the tribunal are well versed both copyright law and the respective industry would not only provide participants in the process with a greater sense of predictability in regard to the anticipated outcome of any given case but, also allow for faster adjudication of claims.

It is our hope this alternative can serve as an additional method for copyright owners to seek redress for minor infringements and/or those of relatively low economic value. Electing to go before such a tribunal should not compromise the ability to have the matter also heard through the federal court system as a means of more thoroughly enforcing their rights. This said we do not intend for any alternative method for pursuing copyright infringement claims to be a substitute for the existing court system. Copyright owners should continue to have the option to access the federal courts for claims that could otherwise be heard by this body. It is also our belief that electing to take advantage of an administrative tribunal would not waive a photographer's right to pursue all other defenses available under Title 17.

As means of preserving the mission of the Copyright Office and Library Congress access to this body, like the federal courts, should be contingent upon registration of the infringed photograph(s). Copyright registration, however, should not impact the content owners' ability to seek damages through such a proceeding as we believe one of the goals of the tribunal is to ensure the copyright owner is able to recover reasonable compensation upon successful demonstration of the infringement.

In pursuing a claim via this body, it is our hope that all forms of infringement would be eligible to be heard. This includes, but is not limited to, disputes relating to a violation of a license, or similar contractual matter, to the more straight forward types of infringement our members experience when a client visits a photo services retailer to seek reproductions.

Additionally, we believe the possibility exists for this venue to hear cases relating to Digital Millennium Copyright Act (DMCA) violations as they relate to ignored take down requests. When it comes to the abuse of photographer's rights, digital violations of their copyright (ex. unauthorized posts, downloads, and "print to store" ordering, etc.) are one of the top forms of abuse by their clients and we believe to be a type of claim easily adjudicated by the tribunal.

In accepting cases, the tribunal should reserve the right to point a copyright owner to the federal court system. Although the tribunal should be capable to hear the types of claims described above it should also have the ability to reject certain filings. A decision of this nature could have two possible outcomes: the case fails to meet the criteria to be heard (i.e. exceeds the maximum allowance for damages) or is deemed frivolous, or the complexity of the matter merits pursuit via the federal court system.

An appeals option should also be available to the parties pursuing an infringement via this tribunal. Enabling the decision of the body to be appealed should act as a deterrent to those potentially filing frivolous claims and present the possibility for the body's decisions to be reviewed. As we believe this process should exist separate and apart from the existing federal court system, we also believe part of the appeals process should include the ability to refer the appellant to the courts when the complexity of the matter warrant it. In addition, to appealing the outcome reached by the tribunal we also believe copyright owners should have the option of appealing the body's decision to refuse to hear the matter.

## **B. Financial Considerations**

Being that time and money are major factors considered by a professional photographer when choosing to defend their copyright ownership any alternative implemented must be easy on the purse strings of a small business copyright owner. On this end, we believe the adjudication of claims submitted to the tribunal must be cost effective. This means controlling expenses associated with travel, legal representation, court costs, and similar fees. By extension this also means that cases should be addressed in a timely manner so as not to impact the small business creator's ability to continue to serve clients.

Cases brought before the tribunal must be subject to a predetermined dollar limit. The dollar amount established should be an amount that will curb the pursuit of frivolous infringement accusations without handicapping a small business creator's ability to seek a reasonable settlement they might otherwise not achieve through the existing system. Wherever the cap for monetary compensation is set, it should ensure the tribunal is able function as a method by which photographers, or other creators, can seek reasonable compensation for the infringement of their work. For this to occur we recognize the need for a sliding scale of maximum damage amounts based on the industry or creative medium may exist.

We additionally recognize the need for assessment of a nominal fee to those filing a claim. As cost is almost always a factor in pursuing an infringement, a filing fee should deter to unintended infringement cases and serve as a means of regulating the body's caseload. The amount established should take into account other cost associated with the filing such as the probably requirement for Copyright Registration and other costs associated with the actual hearing.

As a means of further controlling cost for copyright owners, our expectation would be that such filings, both initial and subsequent appeals could be completed by the copyright owner without the need to seek the advice or assistance of specialized legal counsel. In fact, it would be our expectation that any creator could engage in the process from start to finish without the need of specialized legal assistance. We do recognize that many may wish to seek out the advice of legal counsel which is a cost they would bear the burden of carrying. Much like a "people's court" we would hope that a small business copyright owner, like a photographer, would be able to represent his or herself with little to no difficulty.

In addition to the hard costs associated with filing and pursuing a case and/or appeal via this tribunal photographers must also factor in costs associated with the time away from their studio/clients as well as any costs associated with travel should they be required to appear before the panel. On this end we would recommend the tribunal use all reasonable available methods of communication in order to conduct a hearing. This might mean engaging each party via e-mail, teleconference, fax, online videoconference platforms, or other virtual

discussion forum. Not only would this allow a case to be heard in an efficient manner it should also minimize administrative costs associated with hearing a case.

### **C. Settlement**

A copyright claim adjudicated via the tribunal should offer each party a sense of finality once a decision has been reached. Adjudicators would be tasked with the decision to award damages, if applicable; suggest a more suitable venue. Despite a resolution having been reached through the tribunal the losing party should still reserve the right to engage in an appeal.

As mentioned previously, we believe any alternative dispute resolution mechanism must enable the small business copyright owner to attain reasonable compensation as a result of the infringement. This means awards should take into account the value of the work. In addition to looking at the photographer's own receipts for transactions similar to the infringing act the tribunal might also take into consideration what a reasonable buyer and seller might have agreed upon. Awarding damages in this manner could prove especially helpful in cases brought by photographers whose works were presumed "orphaned" by the infringing party.

Recognizing that many images will not be registered until after the infringement has occurred and we would not recommend allowing this body to make an award of statutory damages. However, registration notwithstanding, we do believe that recovery of filing fees should be considered as component of any monetary damages awarded. Recovering a hard cost of this nature could be the difference between a photographer choosing to defend their rights or letting the infraction fall by the wayside. This said in order to ensure the process is equitable, if a tribunal does find a case was filed frivolously we believe it should have the ability to award court costs and related fees to the defendant.

### ***Administration***

Unlike mounting a federal court suit, any alternative should provide a more timely method for defending a copyright. While we recognize that there are hundreds of thousands of photographers alone, it would be our hope that a tribunal or other forum dedicated to copyright

claims of low economic value would be able to more rapidly review, hear, and decide cases as compared to the courts. The length of time required to engage in a federal court suit is simply not practical for many of our members and we believe may be one of the many factors infringers use as leverage in trying to slough off any accusation of infringements brought against them.

As a means of ensuring the process of accessing any alternative dispute system is simple and efficient, we propose establishing a singular protocol. This process should be readily available to copyright owners and could easily be accomplished by accepting submissions through an electronic platform. Much like the proceeding itself the process by which a claim is presented for consideration should not require specialized legal assistance.

In addition to a common filing procedure a clearly outlined due process procedure should be made available to each party to ensure a common understanding of the methodology followed by the tribunal in hearing the claim. While it is our hope that neither copyright owner nor infringer are repeat users of this process, the creation of guidelines and processes of this nature will create a sense of familiarity and consistency for both parties. Establishing a standard process by which claims are heard should also aid in expediting a resolution.

A hub, or similar clearinghouse, should be established as a means of collecting filings, storing hearing records, and other information relating to a given claim. Ideally, such a repository would be maintained via the Copyright Office and presumably made available as part of their records search to those seeking information about a given work. This would allow both parties to explore any precedents set by the tribunal as a means of preparing for their own hearing.

While a need for a central repository exists, the need for a single hearing venue may not. As we previously mention when discussing the potential cost of a hearing, we believe many of these cases may easily be adjudicated by the tribunal using the alternative means of communication we previously described. Should an in person hearing be deemed necessary, we would again look to the Copyright Office as a possible venue to host such an occurrence.

Lastly, we would urge the consideration of an evaluation or review process to which the body would be subject. Not unlike the triennial review of anticircumvention rulemaking required under Title 17 § 1201(a) we would recommend a periodic review of the tribunal to ensure it is equipped to handle the ever changing nature of infringing acts. Such a review process, should take into account not only the types of claims likely to be brought before the tribunal but, also a review of fees and costs associated with the proceedings, as well as potential changes and improvements to its operating procedure. The results of the study should ultimately improve the access and affordability to the copyright owner as well as address any inefficiencies relating to the manner in which claims are addressed.

### **Conclusion**

In closing, we appreciate this opportunity to offer these additional recommendations and comments on behalf of our member photographers. While the organizations that we represent have expressed their preferences in these comments, we wish to make it clear to the Copyright Office that any proposal which provides the owners of low-value copyrights an economically-feasible opportunity to have their claims heard and their rights adjudicated would be welcomed.

We hope that you will take these additional thoughts into consideration as you complete your study of alternative dispute resolution mechanisms. We look forward to engaging the Copyright Office in an open dialogue to further explore the protection and enforcement of photographic copyrights.

Respectfully Submitted,

/s/ David P. Trust  
Chief Executive Officer  
Alliance of Visual Artists (AVA)

/s/ Maria D. Matthews  
Manager, Copyright & Government Affairs  
Alliance of Visual Artists (AVA)

## Attachment A

### **Professional Photographers of America's Proposal for an Alternative to Federal District Court for Small Dollar Copyright Claims as included in Oral Testimony of David Trust**

#### SECTION \_\_\_\_: ALTERNATIVE PROCEDURE FOR CERTAIN INFRINGEMENTS

(a) In any case where the damages claimed by a copyright owner in relation to a particular infringement are less than \$15,000, the copyright owner may elect to submit the infringement claim to an administrative proceeding, as described herein, in lieu of making a filing in federal district court.

(b) Prior to filing a claim with the administrative proceeding, the copyright owner must register his or her work with the United States Copyright Office. There is no requirement that a copyright owner register their work prior to an infringement in order to gain full relief as described in this section.

(c) The Copyright Office, through notice and comment rulemaking, shall develop standardized procedures for the administrative proceedings held under this Act. This shall be done with a focus on providing accurate decisions while minimizing costs involved to all parties.

#### (d) REMEDIES

##### (1) Monetary Damages

(A) Damages available to a successful copyright owner in this proceeding shall be calculated as being three times the actual damages. If the copyright owner successfully proves that the infringement was willful, the maximum damages shall be five times the actual damages.

(B) A defendant who proves that the infringement was innocent or that it complied with all of the requirements of 17 USC 514(a) shall only be liable for damages equal to a reasonable royalty as determined by this administrative proceeding.

##### (2) Injunctive Relief

(A) The administrative law judge presiding over this proceeding shall also have the power to provide injunctive relief identical to that described in sections 503 and 504 of Title 17.

##### (3) Costs and Fees

No costs or attorney fees shall be awarded in this proceeding unless the administrative law judge presiding over the proceeding shall determine that the losing party brought their claim or defense frivolously or in bad faith.



PROFESSIONAL PHOTOGRAPHERS OF AMERICA

November 9, 2012

Catherine Rowland  
Senior Counsel for Policy and International Affairs  
U.S. Copyright Office  
101 Independence Ave. S.E.  
Washington, D.C. 20559-6000

Dear Ms. Rowland:

Thank you for considering our resubmission for the second round of comments relating to the Copyright Office Study on Small Claims Proceedings as published in the Federal Register on August 23, 2012 (FR Doc. 2011-10).

As per my e-mail dated Monday, October 29, 2012 in reviewing the comments of fellow respondent posted to the U.S. Copyright Office website we noted that submission we supplied was incorrect.

The document supplied electronically on October 19, 2012 was an earlier version of our reply which contained references to "Evidence Photographers International Council" or "EPIC", an allied organization of Professional Photographers of America and Student Photographic Society under the Alliance Visual Artists umbrella. Aside from references to this sister organization we have made no substantive changes to our vision of an alternative dispute resolution mechanism.

Please find enclosed an updated version of our comments.

Sincerely,

A handwritten signature in black ink that reads 'Maria D. Matthews'. The signature is written in a cursive style with a large, prominent 'M'.

Maria D. Matthews  
Manager, Copyright & Government Affairs  
Alliance of Visual Artists

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It continues to be our desire to see the implementation of a system based on the initial vision of an alternative dispute resolution mechanism enhanced by the additional considerations to follow.<sup>2</sup> Our response will focus on the structure and the processes of such a body, in addition to its administration.

#### ***Structure & Processes***

No photographer wishes to be known as one who sues their clients for copyright infringement. In our experience, many photographers allow “minor” infringements, like making a copy of a family portrait at a photo retailer, to go unaddressed. Enabling small-business copyright owners to seek relief without the burdens of pursuing a lawsuit in the federal district court would allow photographers to better protect the exclusive rights afforded them under 17 U.S.C. §106.

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It is our hope that this alternative can serve as an additional method for copyright owners to seek redress for minor infringements and/or those of relatively low economic value. Electing to go before such a tribunal should not compromise the ability to have the matter also heard through the federal court system as a means of more thoroughly enforcing their rights. This said, we do not intend for any alternative method for pursuing copyright infringement claims to be a substitute for the existing court system. Copyright owners should continue to have the option to access the federal courts for claims that could otherwise be heard by this body. It is also our belief that electing to take advantage of an administrative tribunal would waive a photographer's right to pursue all other defenses available under Title 17.

As a means of preserving the mission of the Copyright Office and Library of Congress, access to this alternative body, like the federal courts, should be contingent upon registration of the infringed photograph(s). Copyright registration, however, should not impact the content owner's ability to seek damages through such a proceeding—we believe one of the goals of the tribunal would be to ensure the copyright owner is able to recover reasonable compensation upon validation of the infringement.

In pursuing a claim via this body, it is our hope that all forms of infringement would be eligible to be heard. This includes, but is not limited to, disputes relating to a violation of a license, or similar contractual matter, and the more straightforward types of infringement our members experience when a client visits a photo services retailer to seek reproductions.

Additionally, we believe the possibility exists for this venue to hear cases relating to Digital Millennium Copyright Act (DMCA) violations as they relate to ignored takedown requests. When it comes to the abuse of photographers' rights, digital violations of their copyright (i.e., unauthorized posts, downloads and "print to store" ordering) are one of the top forms of abuse by their clients, and we believe it's a type of claim that could be easily adjudicated by the tribunal.

In accepting cases, the tribunal should reserve the right to point a copyright owner to the federal court system. Although the tribunal should be capable of hearing the types of claims described above, it should also have the ability to reject certain filings. A decision of this nature could have two possible outcomes: the case fails to meet the criteria to be heard or is deemed frivolous, or the complexity of the matter merits pursuit via the federal court system.

An appeals option should also be available to the parties pursuing an infringement via this tribunal. **Allowing participants in this process to seek an appeal should act as a deterrent to those potentially filing frivolous claims and present the possibility for the body's decisions to be reviewed.** As we believe this process should exist separate and apart from the existing federal court system, we also believe the tribunal should have the ability to refer the appellant to the courts should the complexity of the matter warrant it. In addition to appealing the outcome reached by the tribunal, we also believe copyright owners should have the option of appealing the tribunal's decision to refuse to hear the matter.

## **B. Financial Considerations**

Being that time and money are major factors considered by professional photographers when choosing to defend their copyright ownership, any alternative implemented must be easy on the purse strings of a small-business copyright owner. To this end, we believe the adjudication of claims submitted to the tribunal must be cost-effective. This means controlling expenses associated with travel, legal representation, court costs and similar fees. By extension this also means that cases should be addressed in a timely manner so as not to impact the small-business creator's ability to continue to serve clients.

Cases brought before the tribunal must be subject to a predetermined dollar limit. The dollar amount established should be an amount that will curb the pursuit of frivolous infringement accusations without handicapping a small-business creator's ability to seek a reasonable settlement they might otherwise not achieve through the existing system. Wherever the cap for monetary compensation is set, it should ensure the tribunal is able to function as a method by which photographers, or other creators, can seek reasonable compensation for the infringement of their work. To do so, we recognize the need for a sliding scale of maximum damage amounts based on the industry or creative medium.

We recognize the need for assessment of a nominal filing fee to those filing a claim. Establishing a reasonable filing fee could prove a deterrent to unintended infringement cases and serve as a means of regulating the body's caseload. The amount associated with a file should take into account our proposal to require copyright registration prior to accessing the tribunal. For many photographers, this could represent a significant expenditure in filing a claim with this body as so few (1% or fewer) actually register their work.

As a means of further controlling cost for copyright owners, our expectation would be that such filings, both initial and subsequent appeals, could be completed by the copyright owner without the need to seek the advice or assistance of specialized legal counsel. In fact, it would be our expectation that a photographer, or any creator, could engage in the process from start to finish without the need of specialized legal assistance. We do recognize that many may wish to seek out the advice of legal counsel, which is a cost they would bear the burden of carrying. However, much like a "people's court," we would hope that a small-business copyright owner, like a photographer, would be able to represent his- or herself with little to no difficulty.

In addition to the hard costs associated with filing and pursuing a case and/or appeal via this tribunal, photographers must also factor in costs associated with the time away from their studio/clients as well as any costs associated with travel should they be required to appear before the panel. To this end, we would recommend the tribunal use all practical methods of communication in order to hear an infringement case. This might mean engaging each party

via email, teleconference, fax, online video conference platforms, or other virtual discussion forums. Not only would this allow a case to be heard in an efficient manner, it should also minimize administrative costs associated with hearing a case.

### **C. Settlement**

A copyright claim adjudicated via the tribunal should offer each party a sense of finality once a decision has been reached. Adjudicators would be tasked with the decision to award damages, if applicable; suggest a more suitable venue; as well as make the decision to hear an appeal.

As mentioned previously, we believe any alternative dispute resolution mechanism must enable the small-business copyright owner to receive reasonable compensation as a result of the infringement. This means awards should take into account the value of the work. In addition to looking at the photographer's own receipts for transactions similar to the infringing act, the tribunal might also take into consideration what a reasonable buyer and seller might have agreed upon. Awarding damages in this manner could prove especially helpful in cases brought by photographers whose works were presumed "orphaned" by the infringing party.

Recognizing that many images will not be registered until after the photographer becomes aware the infringement we would not recommend allowing the tribunal to award statutory damages. However, registration notwithstanding, we do believe that recovery of filing fees should be considered as a component of any monetary damages awarded. Recovering a hard cost of this nature could be the difference between a photographer choosing to defend their rights or letting the infraction fall by the wayside. This said, in order to ensure the process is equitable, if a tribunal does find a case was filed frivolously, we believe it should have the ability to award court costs and related fees to the defendant.

### ***Administration***

Unlike mounting a federal court suit, we believe any alternative should provide a more timely method for defending a copyright. While we recognize that there are hundreds of thousands of

photographers alone, it would be our hope that a tribunal or other forum dedicated to copyright claims of low economic value would be able to more rapidly review, hear and decide cases as compared to the courts. The length of time required to engage in a federal court suit is simply not practical for many of our members, and we believe this may be one of the many factors infringers use as leverage in trying to slough off any accusation of infringements brought against them.

To help ensure that the process of accessing any alternative dispute system is simple and efficient, we propose establishing a singular protocol. This process should be readily available to copyright owners and could easily be accomplished by accepting submissions through an electronic platform. Much like the proceeding itself, the process by which a claim is presented for consideration should not require specialized legal assistance.

In addition to a common filing procedure, a clearly outlined due process procedure should be made available to each party to ensure a common understanding of the methodology followed by the tribunal in hearing the claim. While it is our hope that neither copyright owner nor infringer are repeat users of this process, the creation of guidelines and processes of this nature will create a sense of familiarity and consistency for both parties. Establishing a standard process by which claims are heard should also aid in expediting a resolution.

A central location should be established as a means of collecting filings, storing hearing records, and other information relating to a given claim. Ideally, such a repository would be maintained by the Copyright Office and presumably made available as part of their records search to those seeking information about a given work. This would allow both parties to explore any precedents set by the tribunal as a means of preparing for their own hearing.

While a need for a central repository exists, the need for a single hearing venue may not. As we previously mention when discussing the potential cost of a hearing, we believe many of these cases may easily be adjudicated by the tribunal using the alternative means of communication we previously described. Should an in-person hearing be deemed necessary, we would again look to the Copyright Office as a possible venue to host such an occurrence.

Lastly, we would urge the consideration of an evaluation or review process to which the body would be subject. Not unlike the triennial review of anticircumvention rulemaking required under Title 17 § 1201(a), we would recommend a periodic review of the tribunal to ensure it is equipped to handle the ever-changing nature of infringing acts. Such a review process should take into account not only the types of claims likely to be brought before the tribunal, but also a review of fees and costs associated with the proceedings, as well as potential changes and improvements to its operating procedure. The results of the study should ultimately improve the access and affordability to the copyright owner as well as address any inefficiencies relating to the manner in which claims are addressed.

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We hope that you will take these additional thoughts into consideration as you complete your study of alternative dispute resolution mechanisms. We look forward to engaging the Copyright Office in an open dialogue to further explore the protection and enforcement of photographic copyrights.

Respectfully Submitted,

/s/ David P. Trust  
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Alliance of Visual Artists (AVA)

/s/ Maria D. Matthews  
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## Attachment A

### **Professional Photographers of America's Proposal for an Alternative to Federal District Court for Small Dollar Copyright Claims as included in Oral Testimony of David Trust**

#### SECTION \_\_\_\_: ALTERNATIVE PROCEDURE FOR CERTAIN INFRINGEMENTS

(a) In any case where the damages claimed by a copyright owner in relation to a particular infringement are less than \$15,000, the copyright owner may elect to submit the infringement claim to an administrative proceeding, as described herein, in lieu of making a filing in federal district court.

(b) Prior to filing a claim with the administrative proceeding, the copyright owner must register his or her work with the United States Copyright Office. There is no requirement that a copyright owner register their work prior to an infringement in order to gain full relief as described in this section.

(c) The Copyright Office, through notice and comment rulemaking, shall develop standardized procedures for the administrative proceedings held under this Act. This shall be done with a focus on providing accurate decisions while minimizing costs involved to all parties.

#### (d) REMEDIES

##### (1) Monetary Damages

(A) Damages available to a successful copyright owner in this proceeding shall be calculated as being three times the actual damages. If the copyright owner successfully proves that the infringement was willful, the maximum damages shall be five times the actual damages.

(B) A defendant who proves that the infringement was innocent or that it complied with all of the requirements of 17 USC 514(a) shall only be liable for damages equal to a reasonable royalty as determined by this administrative proceeding.

##### (2) Injunctive Relief

(A) The administrative law judge presiding over this proceeding shall also have the power to provide injunctive relief identical to that described in sections 503 and 504 of Title 17.

##### (3) Costs and Fees

No costs or attorney fees shall be awarded in this proceeding unless the administrative law judge presiding over the proceeding shall determine that the losing party brought their claim or defense frivolously or in bad faith.