

January 16, 2012

Ms. Maria A. Pallante
Register of Copyrights
U.S. Copyright Office
101 Independence Avenue, SE
Washington, DC 20559-6000

Re: Comments Submitted Pursuant to Notice of Inquiry Regarding
“Remedies for Small Copyright Claims,” 76 Fed. Reg. 66,758 (Oct. 27, 2011)

Dear Register Pallante:

The American Intellectual Property Law Association (AIPLA) is pleased to offer comments in response to the above-referenced U.S. Copyright Office Notice of Inquiry regarding “Remedies for Small Copyright Claims.”

AIPLA is a national bar association with approximately 16,000 members who are primarily intellectual property lawyers in private and corporate practice, in government service, and in the academic community. AIPLA represents a wide and diverse spectrum of individuals, companies, and institutions involved directly or indirectly in the practice of copyright, patent, trademark, and unfair competition law, as well as other fields of law affecting intellectual property. Its members represent both owners and users of intellectual property.

Based on our review of the notice of inquiry, AIPLA offers the following comments.

Any Small Copyright Claims Legislation Must Do No Harm

AIPLA applauds efforts by Congress and the Copyright Office to ensure that copyright owners of all kinds—large and small—have the ability to effectively protect their rights in their works. Any copyright owner facing infringement must weigh a number of legal and practical considerations in deciding whether to enforce his or her rights in court. Such considerations include the rightsholder’s need for judicial relief, the economic damages suffered and the amounts available for recovery, the likelihood of prevailing on the merits of a claim, and the cost and amount of time required to pursue litigation. It is appropriate for policymakers to consider whether existing law strikes the proper balance among these and other factors and whether reforms are needed to ensure that copyright owners are reasonably able to protect their rights.

It is crucial that any legislation that may be proposed concerning small copyright claims do no harm to copyright owners and legitimate users of copyrighted works. The Copyright Office and Congress should work to ensure that any proposed reforms not shift the balance among the above-mentioned factors too far one way or another with harmful results—for example, by encouraging frivolous claims that both copyright owners and legitimate users of copyrighted works would have to defend against at undue expense.

AIPLA welcomes the opportunity to consider and comment further on any substantive legislative proposals and their potential implications for the copyright owner and user communities.

AIPLA Opposes State Court Involvement in Small Copyright Claims

AIPLA in particular opposes one proposal that is referenced in the notice of inquiry: involving state courts in the adjudication of small copyright claims.

The overwhelming majority of infringement actions arise under federal law and are brought in federal court and, as a consequence, federal judges have developed substantial expertise in hearing copyright matters. State courts, in contrast, lack expertise in adjudicating copyright matters, and state small claims courts have no experience whatsoever. Making state courts the venue to hear such matters carries a number of significant risks, including the potential for incorrect and inconsistent decisions and burdening those courts with having to learn—and more likely the litigants with having to teach—the applicable copyright law.

One of the bedrock principles of modern copyright law is that copyright is virtually the exclusive domain of the federal courts. Allowing state small claims courts to hear copyright matters conflicts with the goals behind federal preemption in the copyright space, and thus in many ways would represent a step backwards. For all these reasons AIPLA opposes proposals to have state courts hear small copyright claims.

AIPLA will continue to monitor developments regarding small copyright claims, and we welcome the opportunity to provide Congress and the Copyright Office with any assistance and comments on the issue in the future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William G. Barber", with a long, sweeping horizontal line extending to the right.

William G. Barber
AIPLA President