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January 17, 2012

Register of Copyrights
United States Copyright Office
101 Independence Ave. S.E.
Washington, DC 20559

RE: Notice of Inquiry—Remedies for Small Copyright Claims

To the Register of Copyrights:

Pursuant to the Notice of Inquiry (“NOI”) published in the Federal Register on October 27, 2011 (76 Fed. Reg. 66,758), I submit these comments on behalf of the Association of American Publishers (“AAP”) regarding the Copyright Office’s determination to “assess whether and, if so, how the current legal system hinders or prevents copyright owners from pursuing copyright infringement claims that have a relatively small economic value” (“small copyright claims”).

AAP’s core mission includes supporting publishers by promoting respect for copyright, and advocating for adequate legal protection and effective legal enforcement of their rights as copyright owners. As the principal national trade association of the U.S. book publishing industry, AAP represents more than 250 member companies and organizations that include most of the major commercial book publishers in the U.S., as well as many small and non-profit publishers, university presses and scholarly societies. Thus, our members bring a diversity of perspectives to the discussion of possible methods for strengthening copyright enforcement in the context of small copyright claims.

To the extent that they have offered their views to AAP, member publishers seem to reflect two broadly different perspectives regarding prospects for the development of new standards, procedures and/or venues to streamline the pursuit of small copyright claims. Some large publishers, for example, have expressed concerns that creating less formal venues, devising simple new procedures, and eliminating legal costs and requirements for those seeking to enforce small copyright claims could potentially produce a surge in frivolous claims surrounding publishers’ legitimate uses of third-party works as free-standing publications, inserts within publications, or contributions to collective works. However, as discussed below, some smaller publishers have indicated that they face *de-facto* non-enforceability of their copyrights under the current private cause of action provisions of the Copyright Act due to the costs, formalities and other burdens involved in filing lawsuits against alleged infringers in federal court. While AAP

welcomes the opportunity to provide preliminary views on issues concerning the ability to pursue small copyright claims, it is still in the process of learning about the sometimes conflicting concerns and experiences of its diverse membership and is not yet in a position to endorse or reject any specific approach to the matter, including those potential proposals on which the NOI seeks public comment.

However, given the Copyright Office's request for examples of current strengths and weaknesses in pursuing remedies for copyright owners with small claims, AAP submits the following anecdotal responses from its members, without specific attribution, to illustrate the various viewpoints within the book and journal publishing community:

- **From a Small Academic Publisher:** When the introduction to an author's book was used in the first chapter of another book published by a larger publisher under a different title and author's name, the small academic publisher was not able to reach a settlement outside of court, and ultimately decided not to pursue litigation because the value of the potential remedy did not justify the costs involved in obtaining it.
- **From a Mid-Sized University Press:** According to its executive director, this mid-sized nonprofit publisher is typically able to resolve copyright infringement claims through out-of-court settlement, but fears that such alternative dispute resolutions would become more difficult to achieve if new standards, procedures or venues for pursuing small copyright claims makes it easier and less expensive to bring adversarial actions.
- **From a Large International Publisher:** While this publisher recognizes that eliminating or mitigating some of the obstacles to bringing small copyright claims may result in it becoming the target of an increased number of legal actions of dubious merit, it also believes that improving the viability of small claims enforcement will, as a general proposition, strengthen the copyright protection and enforcement system as a whole and thus benefit *all* copyright owners.

AAP is committed to representing the best interests of *all* of its members. We look forward to working with the Copyright Office to formulate solutions that strengthen copyright protections and provide fair and effective enforcement mechanisms for *all* copyright owners, without potentially opening a floodgate to frivolous suits, or continuing a pattern of *de facto* non-enforceability for small copyright claims.

As the Copyright Office continues its assessment of small copyright claims enforcement, AAP will develop a more specific sense of its diverse membership's views regarding specific problems and proposals for effectively addressing such claims. The further Notice of Inquiry that the Copyright Office expects to publish, posing specific questions and possibly exploring additional alternatives based on the comments it has received in response to the current NOI, should help to focus our further internal industry inquiry. We also look forward to the possibility

of participating in any public roundtables or formal hearings that the Copyright Office may host on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Allan R. Adler".

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