



Copyright Office

37 CFR Parts 201, 232, and 234

[Docket No. 2021–9]

Copyright Claims Board: Law Student and Business Entity Representation

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is issuing a final rule establishing procedures governing the appearance of law student representatives and representatives of business entities in proceedings before the Copyright Claims Board.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at meft@copyright.gov, or by telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Alternative in Small-Claims Enforcement (“CASE”) Act of 2020¹ directs the Copyright Office (“Office”) to establish the Copyright Claims Board (“CCB”), an alternative forum to federal court in which parties may seek resolution of copyright disputes that have a total monetary value of \$30,000 or less.² The CCB has the authority to hear copyright infringement claims, claims seeking a declaration of noninfringement,

¹ Pub. L. 116-260, sec. 212, 134 Stat. 1182, 2176 (2020).

² 17 U.S.C. 1502(a), 1504(e)(1)(D); *see, e.g.*, H.R. Rep. No. 116-252, at 17–20 (2019); S. Rep. No. 116-105, at 11 (2019). Note, the CASE Act legislative history cited is for H.R. 2426 and S. 1273, the CASE Act of 2019, a bill nearly identical to the CASE Act of 2020. *See* H.R. 2426, 116th Cong. (2019); S. 1273, 116th Cong. (2019).

and misrepresentation claims under 17 U.S.C. 512(f).³ Participation in the CCB is voluntary for all parties⁴ and all determinations are non-precedential.⁵ The CASE Act directs the Register of Copyrights to establish the regulations by which the CCB will conduct its proceedings, subject to the provisions of chapter 15 and relevant principles of law under title 17 of the United States Code.⁶ The CASE Act also provides that any party in a CCB proceeding may be represented by “a law student who is qualified under applicable law governing representation by law students of parties in legal proceedings and who provides such representation on a *pro bono* basis.”⁷

In December 2021, the Office issued a notice of proposed rulemaking (“NPRM”), proposing regulations governing the representation of parties by qualified law students.⁸ To facilitate law student representation before the CCB, the Office proposed setting threshold eligibility requirements for law students and their supervising attorneys and creating a voluntary public directory of law school clinics whose students are available to represent clients before the CCB.⁹

The same NPRM also proposed regulations “governing the representation of corporations, limited liability companies, partnerships, sole proprietorships, and other unincorporated associations (collectively, ‘business entities’)” in CCB proceedings.¹⁰ Considering the small claims nature of the CCB and the fact that attorney representation

³ 17 U.S.C. 1504(c)(1)–(3).

⁴ *See id.* at 1504(a); H.R. Rep. No. 116-252, at 17, 21; S. Rep. No. 116-105, at 3, 11.

⁵ 17 U.S.C. 1507(a)(3); H.R. Rep. No. 116-252, at 21–22, 33; S. Rep. No. 116-105, at 14.

⁶ 17 U.S.C. 1506(a)(1).

⁷ *Id.* at 1506(d)(2); *see also* S. Rep. No. 116-105, at 4 (“Parties may also rely upon law school legal clinics to represent them before the Board.”); H.R. Rep. No. 116-252, at 17 (“Parties may . . . be represented . . . by a law student acting *pro bono*.”).

⁸ 86 FR 74394 (Dec. 30, 2021). Comments received in response to the NPRM are available at <https://www.regulations.gov/document/COLC-2021-0011-0001/comment>. References to comments responding to the NPRM are by party name (abbreviated where appropriate), followed by “Initial NPRM Comments” or “Reply NPRM Comments” as appropriate.

⁹ *See id.* at 74397–98.

¹⁰ *Id.* at 74394.

is not mandatory, the Office proposed that, in addition to attorneys or law students, business entities may be represented in a CCB proceeding by a fiduciary or properly authorized employee, and proposed requirements that these representatives must follow.¹¹

Commenters were generally supportive of the proposed regulations, except as discussed in the sections below, and offered many suggestions that the Office is adopting in the final rule. Based on the comments received, the final rule will expand the scope of law student participation in CCB proceedings in several ways. The prerequisites for law students to appear before the CCB have been adjusted to provide law clinics more discretion. In addition, law students will be permitted to participate before the CCB not only through law school clinics but also through *pro bono* legal services organizations that have a connection with the student's law school. Accordingly, under the final rule, the Office will provide a public directory of both participating law school clinics and participating *pro bono* organizations. As in the proposed rule, a clinic or organization will not be required to be on the published CCB list to participate in CCB proceedings.

Commenters were also supportive of the proposed rule governing business entity representation. The final rule adopts the proposed rule's approach and permits business entities to be represented before the CCB by in-house attorneys, fiduciaries, and employees expressly authorized by the business entity to represent it in a particular proceeding. The final rule also includes a revision to clarify that a business entity's representative may submit a single valid certification that will remain effective throughout a proceeding, but such certification does not extend to future proceedings.

II. Discussion of Final Rule

A. Requirements for Law Student Representation

1. Law Student Representation through Law School Clinics

¹¹ *Id.* at 74397.

Most comments addressing law student representation before the CCB expressed support for the Office’s proposed rule.¹² A typical comment, jointly submitted by “Law School Faculty With an Interest in CCB Procedures” (“Law School Faculty”), including professors and clinic directors from eight law schools, stated “[t]he Proposed Regulations properly take into consideration the need to ensure the quality of law student representation and the corresponding burdens placed on the law clinics and supervising attorneys.”¹³ Many commenters further wrote in favor of expanding opportunities for student representation beyond the law school clinic environment, as further discussed below.¹⁴

Some commenters requested that the Office consider defining the term “law school clinic” and proposed using the District of Columbia Court of Appeals Rule 48(a)(5) as a model.¹⁵ After considering the variety of operating structures and practices employed by clinical programs at law schools throughout the country,¹⁶ the Office declines to provide a specific, limiting definition of the term, to avoid unduly excluding

¹² See Law School Faculty With an Interest in CCB Procedures Initial NPRM Comments at 1–2 (commenting parties include Brianna Marie Christenson, Sabren Hassan Wahdan, Sandra Aistars, Amy Tang, Philippa Loengard, Robert Brauneis, Melissa Eckhause, Jon M. Garon, Laurie Kohn, Christopher Newman, Sean A. Pager, Zvi Rosen, Mark F. Schultz) (“[L]aw school clinics will play an important role in allowing parties to confidently pursue or defend their claims before the CCB.”) (“Law School Faculty”); Marketa Trimble Initial NPRM Comments at 1 (“a welcome new opportunity for law student experiential learning and an important additional support of access to justice in the realm of copyright law”); Norman Hedges Initial NPRM Comments at 2; Joel Rothman Initial NPRM Comments at 1; Anonymous Initial NPRM Comments; Sarah Mintz Reply NPRM Comments; Anonymous II Reply NPRM Comments.

¹³ Law School Faculty Initial NPRM Comments at 1.

¹⁴ See *id.* at 6; Marketa Trimble Initial NPRM Comments at 2; Elizabeth Townsend Gard Reply NPRM Comments at 2–3; Copyright Alliance et al. Initial NPRM Comments at 7; Copyright Alliance et al. Reply NPRM Comments at 10 (“[I]n line with many other clinic and professor authored comments, we again urge the Office to expand the scope of law student participation to include other programs, organizations, and groups that utilize law school students.”).

¹⁵ Law School Faculty Initial NPRM Comments at 5–6; Copyright Alliance et al. Initial NPRM Comments at 7; see D.C. App. R. 48, <https://www.dccourts.gov/sites/default/files/2019-05/DCCA%20Rule%2048.pdf> (last visited March 28, 2022); see also Elizabeth Townsend Gard Reply NPRM Comments at 2–4 (proposing definition of “clinic” to include all education to assist with *pro bono* legal representation, or to cover other law school educational programs).

¹⁶ See generally Cynthia L. Dahl & Victoria F. Phillips, *Innovation and Tradition: A Survey of Intellectual Property and Technology Legal Clinics*, 25 Clinical L. Rev. 95, 137–47 (Fall 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3184486.

capable clinics from participation.¹⁷ A participating law student must comply with the applicable law of the jurisdiction that certifies the student to practice law in conjunction with a law school clinic. Further, the student’s supervising attorney must also be qualified to practice under applicable law and must certify the student’s eligibility to participate. The same commenters urged the Office to “allow law school clinics to set their own rules with regard to the handling of costs”¹⁸ when defining “law school clinic.” As noted above, the Office does not purport to define that term at all.

The proposed rule did not include any limits on the number of proceedings in which a law student representative or clinic may participate. The Law School Faculty commenters asserted that the Office may lack the authority to impose such a limit.¹⁹ The Office does not include any limitations in this final rule, but it intends to address the issue of limits, if any, on the number of proceedings that parties and their representatives may bring over a 12-month period in a separate rulemaking proceeding.²⁰

A few commenters expressed reservations or opposition to law student representation through clinics. Notably, a comment submitted jointly by directors of 12 intellectual property and technology law school clinics (“Technology & IP Clinical Law Professors”) stated “that CCB proceedings are not well-suited to clinic participation.”²¹

¹⁷ See Law School Faculty Initial NPRM Comments at 2 (cautioning against “placing additional CCB-specific burdens on clinic operations”); *id.* at 6 (identifying concerns related to the role of “faculty” and “fee-shifting” in a potential definition of “law school clinic”); Elizabeth Townsend Gard Reply NPRM Comments at 3 (noting that Tulane Law School has a trademark and patent lab but no formal intellectual property clinic, so its students would likely be precluded from participating under the proposed definition).

¹⁸ Law School Faculty Initial Comments at 6. The Office understands the reference to “costs” to denote what are called “court costs” in litigation, such as filing fees and service-related fees. *See id.*

¹⁹ *Id.* at 7.

²⁰ See 86 FR 69890, 69917 (Dec. 8, 2021).

²¹ Technology & IP Clinical Law Professors Initial NPRM Comments at 1 (commenting parties include Jonathan Askin, Lynda Braun, Cynthia L. Dahl, Ron Lazebnik, Jack I. Lerner, Amanda Levendowski, Phil Malone, Art Neill, Vicki Phillips, Jef Pearlman, Blake E. Reid, Jason Schultz, and Erik Stallman); *see also* Southlaw Ent. Initial NPRM Comments (“I am not for law students handling these cases,” considering the seriousness of the offenses and the life-altering effect of a damages award “if cases are mishandled”); Trenton Seegert Initial NPRM Comments at 1 (supporting law student representation while urging the Office to “be more concerned with ensuring that student representatives exhibit the necessary and proper qualifications”).

These commenters cited CASE Act provisions that they believe limit the suitability of law school clinics' participation in CCB proceedings. Specifically, they contend that the voluntary nature of CCB proceedings,²² which permit a respondent to “opt out” and have the proceeding dismissed without prejudice at the outset,²³ provide few learning opportunities for the law school clinic student.²⁴ In the view of these 12 clinic directors, this opt-out procedure poses “significant limitations on the kinds of clients that clinics can represent in CCB proceedings and the possibilities for pedagogically sound learning opportunities for law student attorneys.”²⁵ Because the parties to a CCB proceeding that is dismissed after a respondent opts out retain their rights to litigate in federal court, these commenters explained that their clinics were not well situated to engage in federal court copyright litigation in the event their client's CCB claim is dismissed after the respondent opts out.²⁶ They expressed concern that “[e]ven when cases present a viable set of representational and pedagogical circumstances to proceed to adjudication before the CCB, . . . the degree of complexity may be beyond the capacity of our clinics to handle without taking matters out of our law student attorneys' hands.”²⁷ Finally, noting the non-precedential nature of CCB decisions, they observed that “many clinics aim to square their public service missions with their limited capacity to serve deserving clients by taking on those whose cases are likely to advance the state of the law more broadly and advance the interest of others by setting precedent.”²⁸

²² 17 U.S.C. 1504(a).

²³ *Id.* at 1506(i).

²⁴ Technology & IP Clinical Law Professors Initial NPRM Comments at 2.

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.* at 4.

²⁸ *Id.* at 5.

Several reply comments responded directly to these concerns.²⁹ Reply comments submitted by Law School Faculty (including the directors of law school clinics) opined that the Technology & IP Clinical Law Professors’ comments “seemed to more directly address the policy considerations underlying the CASE Act as a whole,” and were “less directly addresse[d to] the questions asked in the NPRM regarding the procedures governing the appearance of law student representatives before the CCB.” With regard to those broader policy considerations, the Law School Faculty reply comment noted that though “the matters raised by our colleagues are of deep concern to us as well . . . we do not believe these questions are within the scope of this NPRM and urge the [Office] to leave them within Congress’s purview.”³⁰

Attorney Joel Rothman suggested that respondents are less likely to opt out than projected by the Technology & IP Clinical Law Professors’ comment. By example, Mr. Rothman noted that infringement claims related to advertising uses of copyrighted works are likely to be covered by commercial general liability insurance, suggesting that insurance companies covering copyright claims for respondents have an incentive to participate in CCB proceedings, which offer lower exposure to significant damages and expenses than do cases before the federal courts.³¹ While some commenters disagreed on whether CCB proceedings would raise questions too complex for law student representatives, Mr. Rothman pointed out that law school clinics routinely represent

²⁹ Law School Faculty Reply NPRM Comments at 2–3 (“We likewise appreciate the thoughtful discussion and analysis offered by the Technology and IP Clinical Professors concerning whether or not they are likely to find cases they deem of appropriate pedagogical value or how they would advise clients seeking their services to use the CCB process.”); Elizabeth Townsend Gard Reply NPRM Comments at 4 (“The Reply Comment is written, in great part, to respond to the thoughtful Comment by Technology and Intellectual Property Clinical Law Professors . . . [who] brought up all of the difficulties and problems they see in adding CCB representation to their clinics.”); Joel Rothman Reply NPRM Comments at 2 (“I could not disagree more with the IP Professors’ view.”).

³⁰ Law School Faculty Reply NPRM Comments at 3.

³¹ Joel Rothman Reply NPRM Comments at 3. The Office takes no view on any role that insurance may play in a respondent’s decision to respond to a claim or opt out of a CCB proceeding.

clients in complicated legal fields such as taxation, immigration, workers' compensation, social security disability, real estate, and bankruptcy law.³²

Law student representation is expressly envisioned by the CASE Act. The Act aims to increase access to justice, and as intellectual property law professor Marketa Trimble observed, "law school clinics typically provide an ideal setting for the type of representation envisioned by the proposed rules."³³ As stated in the NPRM, "[c]onsistent with Congress's directive to develop a system that is accessible to 'those with little prior formal exposure to copyright laws,' the Office is committed to facilitating law student representation through law school clinics, which play an important role in providing expanded legal access to often underserved members of the public."³⁴

2. Law Student Representation Outside of Clinics

Commenters encouraged the Office to allow CCB participants to be represented by law students outside of law school clinics. The statute provides for representation by "a law student who is qualified under applicable law governing representation by law students of parties in legal proceedings and who provides such representation on a *pro bono* basis."³⁵ It does not indicate that such representatives must be under the auspices of a law school clinic. Though the regulation proposed in the NPRM would have limited representation by eligible law students to those "affiliated with a law school clinic,"³⁶

³² *Id.* at 4 (citing ABA, *Directory of Law School Public Interest & Pro Bono Programs*, https://www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs (last visited Mar. 28, 2022); *see also* Joel Rothman Initial NPRM Comments at 1 ("In my experience, copyright law can be learned as required. I never took an IP course in law school, yet that never stood in my way.").

³³ Marketa Trimble Initial NPRM Comments at 2.

³⁴ 86 FR 74394, 74394 (quoting H.R. Rep. No. 116-252, at 17) (footnotes omitted).

³⁵ 17 U.S.C. 1506(d)(2).

³⁶ 86 FR 74394, 74397.

several commenters persuasively urged the Office to expand the scope of law student representation beyond that environment.³⁷

The Office recognizes that “not all programs operated by law schools may be truly clinical in nature.”³⁸ The Office further recognizes that not all law schools have clinics focused on copyright, though many sponsor programs “in which attorneys who work on pro bono cases are paired with law students who assist with the cases under the attorneys’ supervision and guidance.”³⁹ Such programs can ensure that parties in CCB proceedings are represented by law students who have sufficient training and oversight. The Office is persuaded that, if these programs have a connection with the student’s law school, and they follow the same rules as any law school clinics would have to follow, they may also participate in CCB proceedings.

The Office believes that facilitating representation by qualified students, whether through law school clinics or comparable, law school-connected *pro bono* programs offering similar supervision and support, is consistent with the goal of expanding access to “those with little prior formal exposure to copyright laws.”⁴⁰ Such representation can help alleviate the concern, raised in the Technology & IP Clinical Law Professors’ comment that “clinics likely will be unable to fill the significant access-to-justice gap that the opening of proceedings before the CCB may create.”⁴¹ As the Law School Faculty comment noted, “[a]n expanded field of properly trained and supervised students will allow more students to help underserved communities and claimants, especially if the

³⁷ Marketa Trimble Initial NPRM Comments at 2 (“Participation in a law school-sponsored pro bono program should be accepted as an alternative to participation in a law school clinic focused on copyright.”); Elizabeth Townsend Gard Reply NPRM Comments at 3; Law School Faculty Initial NPRM Comments at 6; Copyright Alliance et al. Initial NPRM Comments at 7.

³⁸ Copyright Alliance et al. Initial NPRM Comments at 7; *see* Law School Faculty Initial NPRM Comments at 5 (“not every law school operates programs that can be categorized as clinical in nature”).

³⁹ Marketa Trimble Initial NPRM Comments at 2 (discussing the Partners in Pro Bono Program at the William S. Boyd School of Law at the University of Nevada, Las Vegas).

⁴⁰ 86 FR 74394, 74394 (quoting H.R. Rep. No. 116-252, at 17).

⁴¹ Technology & IP Clinical Law Professors Initial NPRM Comments at 5.

demand is high for law student representation or when there are few (or no) eligible legal clinics in a particular area, or during particular times of the year, like summer breaks.”⁴²

Accordingly, the final rule provides that a qualified law student must be affiliated with a law school clinic, or with a *pro bono* legal services organization that has a connection with the student’s law school.

Finally, in addition to the qualified law student representation described in the rule, the Office encourages the participation of law students in CCB proceedings more broadly. For example, under the supervision of a licensed attorney, a law student may assist with drafting a pleading or other document to be filed before the CCB. In addition, a licensed lawyer representing a party before the CCB may have a law student intern or clerk attend any part of the party’s proceeding.

3. Competency Prerequisites

The NPRM proposed a standard of competency for law student representatives that would require successful completion of both “[t]he first year of studies at an American Bar Association-accredited law school,” and “[a] copyright law course, formal copyright law training, or formal training in Board procedures.”⁴³ Commenters addressed the prerequisites and the Office is modifying the rule after consideration of those comments.

Commenters supported the requirement that law student representatives must have completed their first year of law school: “We do wholeheartedly agree that law students participating in this program should be required to complete their first year of studies at an American Bar Association (ABA)-accredited law school. To our knowledge

⁴² Law School Faculty Initial NPRM Comments at 6.

⁴³ 86 FR 74394, 74397.

this is a pre-requisite of all clinical programs.”⁴⁴ The Office believes that the completion of a first year of law school is a minimum requirement that is part of “an appropriate standard of competence”⁴⁵ for law student representatives and will retain that requirement.

Most commenters considered the Office’s proposed law student competency prerequisites to be too restrictive and unnecessary.⁴⁶ Some deemed unclear what would constitute sufficient “formal” training in copyright law or CCB procedures.⁴⁷ Commenters also noted that administrative issues, such as the fact that some law schools may offer copyright law courses only at limited times, may hamper students’ completion of the prerequisite in time to participate in the clinic.⁴⁸ Several commenters suggested that supervising attorneys charged with ensuring competent representation will take responsibility for providing students sufficient instruction in copyright, in a clinical setting or elsewhere, if the students have not completed a copyright law course beforehand, with one group noting, “[c]ompetent representation can be rendered through necessary study, and providing training in copyright advocacy and counselling may well

⁴⁴ Law School Faculty Initial Comments at 4. The Copyright Alliance et al. commented that “completion of the first year of studies” should be the only requirement, though it also proposed revisions to the rule that would allow representation by students who had not completed a year of law school, or had taken only a copyright course or training instead. Copyright Alliance et al. Initial Comments at 8.

⁴⁵ 86 FR 74394, 74395 (citing Model Rules of Prof’l Conduct R. 1.1 (Am. Bar Ass’n 1983) (“Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation [of a client].”)).

⁴⁶ Law School Faculty Initial NPRM Comments at 3–4; Norman Hedges Initial NPRM Comments at 3–4; Joel Rothman Initial NPRM Comments at 1–2; Copyright Alliance et al. Initial NPRM Comments at 8–9; Elizabeth Townsend Gard Reply NPRM Comments at 2–3. *But see* Trenton Seegert Initial NPRM Comments at 2 (supporting the formal training proposed prerequisites and noting that “by requiring all participating law students to have a similar base knowledge of copyright law, representation becomes more efficient”).

⁴⁷ Copyright Alliance et al. Initial NPRM Comments at 8 (“It is not clear what would constitute ‘formal’ training versus ‘informal’ training.”); *see also* Law School Faculty Initial NPRM Comments at 2.

⁴⁸ Law School Faculty Initial NPRM Comments at 3; Norman Hedges Initial NPRM Comments at 3–4; Elizabeth Townsend Gard Reply NPRM Comments at 2–3.

be among the pedagogical goals of clinical programs that will be taking on CCB representations.”⁴⁹

The Office agrees. The CCB is designed to allow parties to represent themselves, or to be represented by an attorney or a *pro bono* law clinic. Neither parties, nor their representatives need to be versed in the entire body of copyright law to participate before the CCB.⁵⁰ Determining whether a student is sufficiently trained to represent a party in each proceeding can be entrusted to an attorney supervisor with access to information specific to the dispute, who can tailor any needed copyright training to the pertinent matters. Accordingly, the final rule will not require a copyright law course or “formal” copyright law training, but instead will require “training in relevant copyright law, as determined by the supervising clinic or *pro bono* organization.”

However, any CCB proceeding will also require party representatives to be familiar with, at a minimum, the language in the CASE Act and the governing CCB regulations. The Office expects that parties who secure *pro bono* law school student representation will likely be heavily reliant on the student representative’s guidance on matters of CCB procedure. Therefore, the final rule includes a requirement that, to be competent to represent a party, a law student must first review the CASE Act’s statutory text and the CCB’s regulations. The legislative history of the CASE Act indicated that the Office may require that parties “have reviewed the [CCB’s] procedural rules” to participate.⁵¹ The Office acknowledges that reviewing detailed regulatory text could be

⁴⁹ Law School Faculty Initial NPRM Comments at 3; *see also* Norman Hedges Initial NPRM Comments at 4 (“With the supervision of an attorney, the need for students to have taken copyright or CCB courses becomes an unnecessary barrier to eligibility for students and should be withdrawn from the proposed rules.”).

⁵⁰ *See* Copyright Alliance et al. Initial NPRM Comments at 8 n.4 (commenting that a requirement of “completion of a copyright law course may not be desirable . . . particularly since the legal issues in a CCB proceeding are narrow and since the supervising attorney will be supervising the law student representative throughout the proceeding”).

⁵¹ S. Rep. No. 116-105, at 8 (“Nothing in the legislation prevents the imposition of a requirement that parties to a claim acknowledge in writing that they have reviewed the procedural rules and/or watched such

challenging for *pro se* parties without legal training, and it is not imposing such a requirement on parties at this time. However, a review of the statute and regulations should not pose the same challenges for students who have completed a year or more of law school, and who can turn to a supervising attorney for help in understanding the rules.

4. Professional Conduct

In a joint comment, three law school professors suggested that the Office should set explicit standards of professional conduct for “anyone representing clients before the CCB,”⁵² including requirements to “conduct proper investigations of the facts and law before filing a claim, similar to the duties specified in FRCP 11.”⁵³ The professors further asked the Office to set specific “consequences for representatives who repeatedly engage in improper conduct before the CCB,”⁵⁴ and establish disciplinary proceedings against such representatives.⁵⁵ Other commenters replied and opposed the Office establishing such a separate disciplinary system.⁵⁶ The Office agrees with the Copyright Alliance et al. reply comment noting that “[a]ttorneys are already subject to professional ethics standards” and that creating a separate disciplinary process relating to law student representatives under the Office would be “duplicative or conflict with preexisting systems.”⁵⁷ In addition, there is no basis in the statute to permit the CCB to establish a separate disciplinary standard for law students.

videos [about how parties to the proceeding should act] prior to the filing of a claim or responded to claim.”).

⁵² Eric Goldman, Tyler Ochoa & Rebecca Tushnet Initial NPRM Comments at 1.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Copyright Alliance et al. Reply NPRM Comments at 9; Law School Faculty Reply NPRM Comments at 2.

⁵⁷ Copyright Alliance et al. Reply NPRM Comments at 9.

The three law school professors' comments regarding professional conduct apply to all party representatives appearing before the CCB, including attorneys, so they are necessarily broader than the issues of law student and business entity representations raised in this rule. The Office has discussed issues regarding truthful filings and professional conduct under earlier notices of proposed rulemaking.⁵⁸ This separate rulemaking when finalized will apply equally to all party representatives appearing before the CCB, including business entity and law student representatives.⁵⁹ The Office's intent is that the standards for conduct before the CCB as a whole should foster professional conduct as well as truthful and accurate submissions by all parties and their representatives.

5. Attorney Supervision

The Office proposed that all law student representatives must be supervised by a licensed attorney.⁶⁰ No commenter disagreed with this requirement. Commenters generally stated that “the proposed regulations are well-drafted in terms of defining the role of a Supervisory Attorney to ensure proper guidance and direction to law student representatives.”⁶¹

Commenters asked the Office to “clarify that law student representatives may be supervised by multiple attorneys” affiliated with a law school clinic.⁶² The Office acknowledges that multiple attorneys may supervise students in some law school clinics,

⁵⁸ See 86 FR 53897, 53906 (Sept. 29, 2021); 86 FR 69890, 69916 (Dec. 8, 2021).

⁵⁹ See 86 FR 74394, 74397 (“Representatives of business entities who appear pursuant to paragraphs (b)(3) or (4) of this section are equally subject to the standards of conduct . . . as any other party representative.”); see also *id.* at 74398 (“Law student representatives are equally subject to the standards of conduct . . . as any other attorney representatives.”).

⁶⁰ *Id.* at 74395 (“[L]aw student representatives must be supervised by an attorney”).

⁶¹ Law School Faculty Initial NPRM Comments at 5; see also Copyright Alliance et al. Initial NPRM Comments at 9 (“The proposed regulations are well drafted in terms of allocating responsibilities to a supervising attorney.”).

⁶² Law School Faculty Initial NPRM Comments at 5; see also Copyright Alliance et al. Initial NPRM Comments at 9 (“Some law school clinics may have several adjunct professors who support the law school clinic director in project management and supervision.”).

and nothing in the regulation limits their ability to do so. The Office simply requires that at least one attorney be identified as the supervising attorney on each document that the law student representative submits, even if several attorneys supervise the student's work. Any supervising attorney linked to the law student through the CCB's electronic filing system ("eCCB") shall have responsibility over case management and professional responsibility for the law student representative's actions.⁶³ Furthermore, at hearings and conferences, one of the law student representative's supervising attorneys must attend with the student, and the Office is revising the proposed regulation to clarify that point.⁶⁴

The Office invited comments on "whether documents submitted to the CCB must be signed by both the supervising attorney and the law student representative,"⁶⁵ rather than by the student alone. The Office received one responsive comment, from the Copyright Alliance et al., stating, "we believe that both supervising attorneys and law student representatives should sign all legal filings submitted to the CCB," without additional context.⁶⁶ The Office has set up eCCB to be as streamlined as possible, often with fillable templates to complete required forms, and so mandating multiple signatures at this time for every filing would interfere with the ease of eCCB use. Rather, while the final rule allows both the law student representatives and the supervisory attorney sign any document they submit, the final rules require a single signature. If the student representative is the sole signatory, that student must certify that the supervising attorney assented to the filing.

Commenters suggested that the Office issue a definition of the term "supervising attorney" that would mirror language in the proposed regulation regarding attorneys

⁶³ See 86 FR 74394, 74397–98.

⁶⁴ See *id.* at 74398.

⁶⁵ *Id.* at 74396.

⁶⁶ Copyright Alliance et al. Initial NPRM Comments at 9.

representing business entities, requiring the attorney to be a “member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States.”⁶⁷ A supervising attorney must comport with the applicable state laws governing a clinic or legal services organization in the jurisdiction where the attorney’s clinic or organization is based. The Office believes that the current requirement addresses the appropriate qualifications for attorneys supervising law student representatives.

Professor Elizabeth Townsend Gard proposed that a supervising attorney should not be required to act as the *pro bono* client’s attorney, but simply as a facilitator or teacher overseeing the student.⁶⁸ However, if the Office were to adopt this rule, it could violate the requirements of applicable law governing the clinic. In jurisdictions surveyed by the Office including California, New York, Tennessee, the District of Columbia, Maryland, and Virginia, the supervisory attorney is generally required to assume professional responsibility for any activity performed by the law student.⁶⁹ The Office is therefore maintaining the requirement for a supervising attorney to be responsible for the actions and filings of a law student representative.

The proposed rule would have required a supervising attorney to accompany a law student representative to hearings on the merits, but not to conferences.⁷⁰ Several commenters advocated that “it should be mandatory for supervising attorneys to appear at both hearings and conferences”⁷¹ or, going even further, that they must “be present in *all*

⁶⁷ *Id.* at 6 (quoting 86 FR 74394, 74397); Law School Faculty Initial NPRM Comments at 4 (same).

⁶⁸ Elizabeth Townsend Gard Reply NPRM Comments at 3 (“Taking on a client requires a great deal of vetting and responsibility.”).

⁶⁹ Cal. Rules of State Bar R. 3.6(B)(3); N.Y. Comp. Codes R. & Regs. tit. 22, sec. 805.5(e) (2017); Tenn. Sup. Ct. R. 7, sec. 10.03(h)(3)(C); D.C. Ct. App. R. 48(e)(2); Md. R. 19-220(d); Va. Sup. Ct. R. pt. 6, sec. IV, 15(d)(ii).

⁷⁰ *See* 86 FR 74394, 74395.

⁷¹ Copyright Alliance et al. Initial NPRM Comments at 9.

situations where a client is represented, whether or not the situations are on the merits.”⁷² There were no comments to the contrary. The Office agrees that direct supervision in such circumstances serves the interests of a law student’s client and is appropriate in view of the supervising attorney’s responsibility for case management.⁷³ The Office will require that a supervising attorney must appear at any hearing or conference absent leave from the CCB.

B. *Pro Bono* Representation Directory

No commenters opposed the creation of a directory of *pro bono* representation. Professor Marketa Trimble proposed that the Office directory listings include “not only participating law school clinics, but also participating law school-sponsored *pro bono* programs.”⁷⁴ Because the Office will permit law student representation outside the clinical context with supervision through a law school-connected *pro bono* legal services organization, the Office agrees with Professor Trimble’s proposal. The final rule provides for such organizations to be able to indicate, in the public directory, their availability to assist CCB parties.

Several commenters asked the Office to ensure “that clinics can choose whether to be listed in a directory of participating clinics separate from their ability to appear in any given proceeding.”⁷⁵ Clinics and legal services organizations that are eligible and available to facilitate *pro bono* student representation before the CCB are encouraged to make their availability known through a public directory listing, but the Office will not make inclusion in the directory a requirement. The regulation clarifies that the duty to

⁷² Norman Hedges Initial NPRM Comments at 5 (stating students expressed that they would not be comfortable proceeding without a supervisor present).

⁷³ 86 FR 74394, 74395.

⁷⁴ Marketa Trimble Initial NPRM Comments at 3.

⁷⁵ Technology & IP Clinical Law Professors Initial NPRM Comments at 5; *see also* Law School Faculty Initial NPRM Comments at 8 (noting that “inclusion in this directory should be voluntary and not a prerequisite to participate in CCB proceedings”); Copyright Alliance et al. Initial NPRM Comments at 10.

maintain current information in the directory applies only to participants that have chosen to be listed, and that directory listing is not a requirement for representing clients in CCB proceedings.

The Law School Faculty commenters requested that participating clinics be permitted to submit directory listings that do not provide all of the information required in the proposed regulation, so that the clinics need “not to answer questions they do not wish to answer or feel they cannot adequately keep current under the guidelines.”⁷⁶ Some commenters took issue with requirements to disclose whether the clinic or organization has handled copyright matters in the last two years, and the nature of such matters, at a time when the CCB has not yet been in operation for two years.⁷⁷ A disclosure that there have been few or no recent copyright matters will not prohibit a law clinic’s inclusion in the directory. Nothing stops a clinic or organization from explaining why it has limited experience, and the Office does not believe it should craft a regulation that it will need to change in the future. Since qualified clinics and public service organizations may fully participate in supervising law student representatives whether or not they are listed in the directory, those that choose to be listed must provide all information requested and can explain any perceived gaps in their experience. The Office believes that all such information would be relevant to a potential client seeking representation through the directory and notes that updates are required only once a year.⁷⁸

The Copyright Alliance et al. asked that the Office accept a general description of the nature of such recent copyright matters, and not require that the listing “divulge any

⁷⁶ Law School Faculty Initial NPRM Comments at 8.

⁷⁷ Copyright Alliance et al. Initial NPRM Comments at 10, Elizabeth Townsend Gard Reply NPRM Comments at 5; Law School Faculty Initial NPRM Comments at 8–9.

⁷⁸ See 86 FR 74394, 74398.

specific details of prior client representations.”⁷⁹ The Office is not requesting or requiring disclosure of any confidential or privileged information for inclusion in the directory.

The final rule maintains the proposed disclosure requirements for law school clinics and requires the same disclosures of eligible legal services organizations, if they seek to be listed in the CCB *pro bono* representation directory.

C. Representation of Business Entities

The NPRM proposed that, in addition to attorneys or law students, business entities may be represented in a CCB proceeding by a fiduciary or properly authorized employee, and proposed requirements that these representatives must follow.⁸⁰ The comments received in response to the NPRM were supportive of the proposed rule, which expands access to the CCB by smaller business entities.

While two commenters took the position that the Office should require business entities to use in-house lawyers or outside counsel in order to appear before the CCB,⁸¹ the CASE Act does not require business entities to be represented by counsel.⁸² As other commenters noted, Congress envisioned the CCB as a forum that will enable parties to resolve low-value copyright claims without the expense of an attorney, and “intended [the CCB] to be accessible especially for *pro se* parties and those with little prior formal exposure to copyright laws who cannot otherwise afford to have their claims and defenses heard in federal court.”⁸³ Representation of business entities by their own fiduciaries and

⁷⁹ Copyright Alliance et al. Initial NPRM Comments at 11; *see also* Law School Faculty Initial NPRM Comments at 8.

⁸⁰ 86 FR 74394, 74397.

⁸¹ Verizon Initial NPRM Comments at 1–2; *see also* Southlaw Ent. Initial NPRM Comments at 1 (noting that “these proceedings should be handled by a professional”).

⁸² 17 U.S.C. 1506(d).

⁸³ Copyright Alliance et al. Reply NPRM Comments at 7–8 (quoting H.R. Rep. No. 116-252, at 17); *see also* Elizabeth Townsend Gard Reply NPRM Comments at 5–6 (stating that CCB regulations “should be clear and not present a barrier to solopreneurs or start ups that may not have access to legal representation”).

authorized employees is consistent with the CASE Act and with express Congressional intent.

Another commenter proposed that “lawyers with foreign credentials” be allowed to represent foreign authors, suggesting that such lawyers “have more knowledge than a student.”⁸⁴ The Office considers it impracticable to allow representation by such attorneys. An attorney representative in a CCB proceeding, including an attorney supervising a qualified law student, will be required to be in good standing to practice before the bar of the highest court of a State, the District of Columbia, or a territory or commonwealth of the United States.⁸⁵ While the Office can depend on a domestic state bar’s professional responsibility requirements to ensure that the attorney’s conduct before the CCB will comport with ethical standards for practice,⁸⁶ the Office would not have the capacity to ensure that attorneys admitted elsewhere are subject to the same ethical obligations.

The Copyright Alliance et al. suggested “that the Office amend [proposed 37 CFR] 232.6(c) so that the required certification for a particular business representative qualified under [proposed 37 CFR] 232.6(b)(3)–(4) can be valid for a period of up to one year.”⁸⁷ The certification requirement is on a per-proceeding basis, not an annual basis. To avoid any potential confusion, the Copyright Office is amending the proposed regulation to clarify that a business entity representative who certifies the entity’s authorization in a particular CCB proceeding shall remain authorized for the duration of that proceeding, so long as the business entity continues to authorize the representative.

⁸⁴ Anonymous Initial NPRM Comments at 1.

⁸⁵ See 86 FR 74394, 74397; *see also* 86 FR 69890, 69917 (Dec. 8, 2021).

⁸⁶ See Law School Faculty Initial NPRM Comments at 6 n.2 (noting, in the context of supervision of law school representatives, “the Copyright Office should rely on state entities to govern the Supervising Attorneys to ensure proper oversight”).

⁸⁷ Copyright Alliance et al. Initial NPRM Comments at 12.

Finally, Professor Elizabeth Townsend Gard expressed support for opportunities to educate small businesses about copyright in ways that would not entail representation, such as workshops on copyright registration, and suggested that student or alumni groups could be organized to provide such legal information to the public.⁸⁸ Professor Townsend Gard also suggested creating CCB fellowships whereby faculty or student groups could apply to the Office with research proposals and have their research published on the CCB website.⁸⁹ The Office appreciates the suggestions of various methods of education and outreach to the public, as well as future research possibilities, but does not understand these suggestions to require the Office to promulgate any regulations.

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 232

Claims, Copyright.

37 CFR Part 234

Claims, Copyright.

Final Regulations

For reasons stated in the preamble, the U.S. Copyright Office amends chapter II, subchapters A and B, of title 37 Code of Federal Regulations as follows:

Subchapter A—Copyright Office and Procedures

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

⁸⁸ Elizabeth Townsend Gard Reply NPRM Comments at 3–4, 6; *see also* Norman Hedges Initial NPRM Comments at 3 (proposing that the Office direct members of the public to law school clinics for assistance filing copyright registrations).

⁸⁹ Elizabeth Townsend Gard Reply NPRM Comments at 5.

Section 201.10 also issued under 17 U.S.C. 304.

2. In §201.2, revise paragraph (a)(2) to read as follows:

§201.2 Information given by the Copyright Office.

(a) * * *

(2) The Copyright Office does not furnish the names of copyright attorneys, publishers, agents, or other similar information to the public, except that it may provide a directory of *pro bono* representation available to participants in proceedings before the Copyright Claims Board.

* * * * *

Subchapter B—Copyright Claims Board and Procedures

3. Add part 232 to read as follows:

PART 232—CONDUCT OF PARTIES

Sec.

232.1 - 232.5 [Reserved]

232.6 Representation of business entities.

Authority: 17 U.S.C. 702, 1510.

§§ 232.1 - 232.5 [Reserved]

§232.6 Representation of business entities.

For purposes of this part:

(a) *Definition.* A *business entity* is a corporation, limited liability company, partnership, sole proprietorship, or unincorporated association.

(b) *Appearance of a business entity.* A *business entity* may appear before the Copyright Claims Board (Board) through—

(1) A member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States;

(2) A law student who meets the requirements set forth in 37 CFR 234.1;

(3) An owner, partner, officer, or member, of the *business entity*; or

(4) An authorized employee.

(c) *Certification*. Someone appearing before the Board in a proceeding to represent a *business entity* in that proceeding pursuant to paragraph (b)(3) or (4) of this section shall certify that they are an authorized agent of the *business entity* and may bind that entity in the proceeding pending before the Board. If the representative qualifies only as an authorized employee under paragraph (b)(4) of this section, then within 30 days of the authorized employee's initial appearance, the representative also must submit written authorization, signed by an owner, partner, officer, or member of the *business entity* under penalty of perjury, stating that the representative may bind that entity on matters pending before the Board. A valid certification under this subsection shall remain effective throughout the proceeding, so long as the representative continues to be authorized by the *business entity*.

(d) *Subject to standards of professional conduct*. Representatives of business entities who appear pursuant to paragraph (b)(3) or (4) of this section are equally subject to the standards of conduct as any other party representative.

4. Add part 234 to read as follows:

PART 234—LAW STUDENT REPRESENTATIVES

Sec.

234.1 Law student representatives.

234.2 *Pro bono* representation directory.

Authority: 17 U.S.C. 702, 1510.

§234.1 Law student representatives.

(a) *Eligibility for appearance*—(1) *State law compliance*. Any law student who is affiliated with a law school clinic or a *pro bono* legal services organization with a connection to the student's law school, is qualified under applicable laws governing

representation by law students of parties in legal proceedings, and meets the other requirements of this paragraph (a)(1) may appear before the Copyright Claims Board (Board). Applicable law is the law of the jurisdiction that certifies the student to practice law in conjunction with a law school clinic or *pro bono* legal services organization with a connection to the student's law school.

(2) *Pro bono representation.* Any law student who appears before the Board must provide representation on a *pro bono* basis.

(3) *Competency.* Law student representatives must meet a standard of competency. For the purpose of appearances before the Board, competency includes successful completion of—

- (i) The first year of studies at an American Bar Association-accredited law school;
- (ii) Training in relevant copyright law, as determined by the supervising clinic or *pro bono* organization; and
- (iii) Review of the Board's regulations found in this subchapter, and of the Copyright Alternative in Small-Claims Enforcement Act of 2020 statutory text, as codified at chapter 15 of title 17 of the United States Code.

(b) *Client consent.* The law student representative shall have the written consent of the client to appear on that client's behalf.

(c) *Attorney supervision.* A law student who represents a party in a proceeding before the Board shall be supervised by an attorney who is qualified under applicable state law governing representation by law students, as specified in paragraph (a) of this section. In supervising the law student, the attorney shall adhere to any rules regarding participant conduct.

(d) *Confirmation of eligibility.* In accordance with the standards of professional conduct set forth in paragraph (j) of this section, the attorney supervising the work of the law

student representative is responsible for confirming the law student's eligibility to appear before the Board as set forth in paragraph (a) of this section.

(e) *Signature and assent.* The law student representative or supervising attorney shall electronically or physically sign each document submitted to the Board on behalf of the law student's client. If the law student representative signs, the law student must identify the name of the supervising attorney on all documents signed by the law student representative. The law student must certify that the law student sought and obtained the supervising attorney's assent to the submission.

(f) *Notice of appearance.* In any proceeding in which a law student represents a party, a notice of appearance shall be filed identifying both the law student representative and the supervising attorney, unless already identified in the party's claim or response.

(g) *Filing documents.* All filings by a law student representative shall be made with the knowledge of the supervising attorney, who shall maintain an association with the law student representative in the Board's electronic filing system (eCCB). Supervising attorneys and law students shall maintain their own accounts in eCCB. A notice of withdrawal, and a notice of appearance if applicable, shall be filed whenever the identity of a law student representative or a supervising attorney has changed.

(h) *Appearance at hearings and conferences.* A supervising attorney shall accompany the law student representative to any hearings and conferences held in the course of the proceeding, absent leave of the Board for the law student to appear without a supervising attorney present.

(i) *Responsibility for continuity of case management.* The supervising attorney shall be responsible for all aspects of case management, including appearances and withdrawals, as well as continuity of representation during law school term transitions.

(j) *Applicability of rules of professional conduct.* Law student representatives are equally subject to any rules regarding participant conduct as any other attorney representatives.

The supervising attorney has professional responsibility for the actions of the law student representative. The Board may hold supervising attorneys responsible for law student representative activity.

§234.2 *Pro bono* representation directory.

(a) *Publicly available directory.* The Board shall make a directory available on its website of law school clinics and of *pro bono* legal services organizations with a connection to a law school that have advised the Board that they are available, on a *pro bono* basis, to provide law student representation to clients in proceedings before the Board, and wish to be listed in the directory. Listing in the directory is not a requirement for eligible law school clinics or a *pro bono* legal services organizations to represent clients in Board proceedings.

(b) *Form for inclusion.* To be included in the public directory, the director of the law school clinic or *pro bono* legal services organization shall submit a form providing the following information for public dissemination:

- (1) The name of the participating clinic or organization;
- (2) The name of the law school where the clinic is based, or with which the organization is connected;
- (3) The name of the director of the clinic or organization;
- (4) A general contact email address and phone number;
- (5) The geographic area from which the clinic or organization may accept clients;
- (6) Whether the clinic or organization has handled copyright matters in the past two years;
- (7) The nature of any copyright matters handled by the clinic or organization in the past two years;
- (8) Whether the clinic or organization has experience in handling litigation matters;

- (9) If the clinic or organization does not have litigation experience, whether it has a partnership with a litigation clinic or experience supervising law students in litigation matters;
- (10) A brief statement describing the clinic or organization's interest in handling matters before the Board; and
- (11) A certification that student representatives participating in Board proceedings in affiliation with the clinic or organization will meet all requirements of § 234.1(a).
- (c) *Standards for inclusion.* Subject to paragraph (d) of this section, the Board will accept for inclusion in the public directory any law school clinic or *pro bono* legal services organization with a connection to a law school that certifies that its law student representatives will meet all requirements of § 234.1(a) and provides sufficient information pursuant to paragraph (b) of this section for participants in Board proceedings to evaluate whether representation is available and appropriate.
- (d) *Removal from directory.* The Board may, in its discretion, remove a clinic or *pro bono* legal services organization from the directory if it determines that the clinic or organization is not suitable for representing clients before the Board, including, without limitation, if it determines that the clinic or organization has failed to properly update its information in the public directory.
- (e) *Duty to update directory.* Participating clinics and *pro bono* legal services organizations, which have been listed in the directory, have a duty to maintain current information in the directory and shall confirm the currency of the information on an annual basis.

Dated: April 4, 2022.

Shira Perlmutter,

Register of Copyrights and
Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,
Librarian of Congress.

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