



American Society of Media Photographers

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BACKGROUND: SMALL CLAIMS COPYRIGHT LEGISLATION

The more than two-year-old legislative campaign by ASMP and other individual artists and small business people to secure enactment of their top legislative priority—creation of a small claims copyright court—is gaining momentum on Capitol Hill. On October 4, 2017, Representatives Hakeem Jeffries (D-NY) and Tom Marino (R-PA) introduced H.R. 3945, the “Copyright Alternative in Small-Claims Enforcement Act of 2017.” The bill is cosponsored by Reps. Smith (R-TX), Collins (R-GA), Chu (D-CA) and Lieu (D-CA).

The introduction of H.R. 3945 presents visual artists and others with a rare opportunity to achieve a groundbreaking legislative victory.

The following brief primer is designed to help ASMP members better understand the importance of this critical issue to photographers.

The Need for Reform. Today the only legal option for a photographer who is the victim of copyright infringement is to seek vindication in federal court—a process that all too often proves too far expensive and leaves photographers with rights but no remedies. This historically untenable situation has worsened dramatically with the advent of the digital age where visual artists are virtually powerless to stop their works from being distributed without authorization, credit, or compensation on myriad online sites.

The Proposed Solution. As suggested by the Copyright Office in its 2013 Small Claims Report, Congress should pass legislation creating a small claims tribunal within the Copyright Office. This tribunal will act as a true alternative to federal court litigation by providing small creators whose works are infringed with a fair, cost-effective and streamlined venue in which they can seek relief for infringements that are decimating their licensing revenues.

Key components of H.R. 3945

- creates a copyright small claims tribunal for claims that do not exceed \$30,000, with adjudicators with experience in copyright law and alternative dispute resolution.

- provides a less formal, streamlined process where legal representation is optional, in-person appearances before board are not required, proceedings are conducted electronically, and discovery is limited.
- to satisfy, constitutional norms, allows defendants, upon receiving notice, to opt out within a certain time frame and choose federal court instead.
- representation by lawyers is optional and parties must pay their own legal fees;
- allows qualified laws students to represent parties on pro bono basis before small claims board.
- contains some incentives (e.g., lower level of statutory damages than potentially available in federal court and no injunctions) to encourage defendants to remain before the tribunal.
- enables the court not to only decide copyright infringement cases, but contractual issues related to the infringement as well.
- allows defendants to raise all defenses available in federal court, including fair use.
- permits claimants to register either before or contemporaneously with the filing of a claim.
- to move lower valued claims more quickly through the system, authorizes the Copyright Office to adopt a two-tier system under which it puts in place even more-streamlined rules for such claims.
- Allows claimants to enforce judgments in a federal court that is convenient to them.
- if a federal district court enforces a decision against an uncooperative defendant, mandates that the defendant must pay the claimant's costs, including attorney fees related to the enforcement action.
- given that many online infringements are undertaken by "anonymous" infringers, empowers the board to issue subpoenas to determine the identity of John Doe defendants.
- because it currently can take more than a year for Copyright Office to issue copyright registrations, authorizes the Copyright Office to order registration to be expedited for a reasonable fee.