



October 4, 2021

**To:** U.S. Copyright Office, Library of Congress

**From:** Association of American Universities

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**Subject:** NPRM on Small Claims Procedures for Library and Archives Opt-Outs and Class Actions

We write to address the Copyright Office's September 2, 2021, Notice of Proposed Rulemaking (NPRM). The NPRM addresses procedures for libraries and archives to opt out of proceedings before the Copyright Claims Board ("CCB") under the Copyright Alternative in Small-Claims Enforcement ("CASE") Act.

We align ourselves with and endorse the comments on the NPRM submitted by the Library of Copyright Alliance (LCA). Accordingly, while we believe the proposed rule for the opt-out procedures is for the most part acceptable, we do not agree with Copyright Office's conclusion that the preemptive opt-out does not apply to library employees operating within the scope of their employment.

An employee should be held liable for an infringing act taken within the scope of employment; however, employees should be able to opt-out of CCB proceedings if the institution opts-out. Furthermore, under the scheme proposed in the NPRM, if claims can be filed against individual library employees, the library administration would likely have to ensure that they all opted-out within the allotted time. This would require a significant devotion of time and resources by library administration because an employee's failure to opt-out would result in the library becoming involved in the CCB proceeding on behalf of the employee. The net result is a rule that requires a library to participate in CCB proceedings against its will in defense of its employees.

The proposed rule excludes employees from scope of the opt-out and the Office asserts that including employees within the scope of the opt-out would be "inconsistent with principles of agency law." In accordance with current law, we disagree and believe that the inclusion of employees within the scope of the opt-out is consistent with principles of agency law.

Thank you for the opportunity to comment on this proposed regulation. We hope you will take our concerns into account as you move to finalize this rule.