

**INTELLECTUAL PROPERTY 101: HOW SMALL  
BUSINESS OWNERS CAN UTILIZE INTELLECTUAL  
PROPERTY PROTECTIONS IN THEIR BUSINESSES**

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**HEARING**

BEFORE THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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# CONTENTS

## OPENING STATEMENTS

	Page
Hon. Steve Chabot .....	1
Hon. Nydia Velázquez .....	2

## WITNESSES

Ms. Michal Rosenn, General Counsel, Expa, New York, NY .....	4
Mr. David Graham, CEO, Code Ninjas LLC, Pearland, TX, testifying on behalf of the International Franchise Association .....	6
Mr. Rick Carnes, President, Songwriters Guild of America, Inc., Brentwood, TN .....	7
Ms. Joan Fallon, DC, Founder and CEO, Curemark, Rye, NY .....	9

## APPENDIX

Prepared Statements:	
Ms. Michal Rosenn, General Counsel, Expa, New York, NY .....	28
Mr. David Graham, CEO, Code Ninjas LLC, Pearland, TX, testifying on behalf of the International Franchise Association .....	31
Mr. Rick Carnes, President, Songwriters Guild of America, Inc., Brentwood, TN .....	38
Ms. Joan Fallon, DC, Founder and CEO, Curemark, Rye, NY .....	42
Questions for the Record:	
None.	
Answers for the Record:	
None.	
Additional Material for the Record:	
The Authors Guild .....	49
Coalition of Visual Artists .....	51
Rachel King, CEO, GlycoMimetics, Inc. ....	54
Keith Kupferschmid, Chief Executive Officer, Copyright Alliance .....	61



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**WEDNESDAY, MAY 16, 2018**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The Committee met, pursuant to call, at 11:02 a.m., in Room 2360, Rayburn House Office Building, Hon. Steve Chabot [chairman of the Committee] presiding.

Present: Representatives Chabot, King, Luetkemeyer, Brat, Kelly, Blum, Norman, Velázquez, Evans, Lawson, Adams, Espaillat, and Schneider.

Chairman CHABOT. The Committee will come to order.

Good morning.

Today, the Small Business Committee will examine how small business owners have used intellectual property protections to help their businesses and the issues they face when navigating the intellectual property process.

Intellectual property plays a vital role in protecting creative and innovative products and ideas. Our nation's small business owners are essential to producing new, creative, and groundbreaking products and ideas that strengthen our nation's economy. In fact, entrepreneurs and small business owners have generated more than 63 percent of the new jobs over the last two decades, and small businesses represent about 96 percent of employer firms and manufacturing industries with a high number of patents.

Intellectual property protections also help small businesses grow. Studies have shown that small business owners can earn 32 percent more in revenue compared to their counterparts who have no intellectual property protections. Firms with intellectual property rights also pay, on average, 20 percent more in wages.

However, the process for obtaining intellectual property protections can be daunting, even for the most experienced small business owner. Studies have shown that small business owners are not always aware that they should be protecting their innovative products and ideas through intellectual property protections and those that are aware of their intellectual property rights do not always know how to navigate the process.

It can also be very expensive to hire professionals to traverse the intellectual property process. As this Committee knows all too well, most small business owners cannot afford to hire an army of ex-

perts to guide them through many processes, including the sometimes difficult process of obtaining these protections.

This leaves them vulnerable to their innovations being stolen, both here in the United States and internationally. And if someone steals their ideas, it can be financially devastating for the small business owner. The FBI has found that intellectual property theft costs billions of dollars every year to America's businesses. And thieves are targeting small business owners and startups because of their limited abilities to fight back.

To combat this problem, this Committee unanimously passed H.R. 2655, the Small Business Innovation Protection Act of 2017, this past March. This bipartisan legislation would leverage existing resources at the SBA and the U.S. Patent and Trademark Office to better assist small business owners and expand the agency's outreach efforts to provide small business with the resources they need to address intellectual property issues.

Today, we will hear from small business owners and their representatives who have been on the ground utilizing intellectual property protections. I look forward to hearing how intellectual property has helped their businesses and what we can do to foster America's creative small businesses moving forward.

And I would now like to yield to the Ranking Member for her opening statement.

Ms. Velázquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Many of our most successful ventures in America started as a note on a napkin, a schematic on a whiteboard, or a dream by an entrepreneur. When these ideas blossom into new products and services, they create jobs, a critical component of a healthy economy.

The success of these new ventures requires a system that effectively protects entrepreneurs' ideas from being unfairly copied and stolen. Businesses that develop new products need assurances that the economic value of their innovations will be maintained.

At the same time, we must ensure businesses know how to obtain those protections and enforce them. Doing so helps entrepreneurs reach global markets and the working capital they need to get off the ground.

Because of our entrepreneurs' creativity, the United States is an unparalleled global leader when it comes to new ideas. In fact, nearly 45 million American jobs are supported, directly or indirectly, by industries with an intellectual-property focus. This includes small firms that are independent television and movie producers, video game designers, songwriters, and manufacturers. Collectively, this trillion-dollar industry constitutes a significant aspect of our Nation's economic success.

Unfortunately, the full potential of this creative field has not been realized. Many more small firms could launch and contribute to this sector if they only knew how to protect their intellectual property.

As the internet continues evolving, the situation has become more complicated. While the internet has empowered artists, retailers, and researchers to rapidly disseminate their ideas, services, and goods, it has also created opportunities for bad actors.

For small innovative firms, many of which already face challenges accessing capital, it is vital their investment be protected from counterfeits and piracy. Without such protections, these entrepreneurs will be unwilling to assume the risk necessary to produce the next market-disrupting invention, thereby hampering growth.

This is especially true among women, minorities, and other underserved businessowners, who already face obstacles obtaining IP protections and funding. Not only do women-owned startups receive just 10 percent of all global venture dollars, they are awarded just 18 percent of U.S. patents. Addressing this disparity must be part of that conversation. Today's hearing will examine how the system for protecting intellectual property can foster innovation and parity among entrepreneurs.

I thank our witnesses for being here.

And, Mr. Chairman, I would like to also acknowledge Mr. Schneider, who is the father of our colleague Brad Schneider.

I yield back.

Chairman CHABOT. Thank you.

The gentlelady yields back.

And if Committee members have an opening statement prepared, I would ask that they be submitted for the record.

And I will take just a moment to explain our lighting system. It is pretty simple. You get 5 minutes to testify. And the green light will be on for 4 of those minutes. The yellow light will come on and let you know you have a minute to wrap up. And then the red light will come on. And we would ask you to stay within that, if at all possible.

And I would now like to introduce our distinguished panel here this morning.

Our first witness is Michal Rosenn, who is General Counsel for Expa. Expa is a startup studio that helps entrepreneurs build and grow their business. Expa has incubated 15 startup companies and advised and invested in 25 other companies across the country since 2014. Prior to her time at Expa, Ms. Rosenn was General Counsel at Kickstarter, a crowdfunding platform.

And we welcome you this morning.

Our next witness will be David Graham, who is the CEO of Code Ninjas, a franchise aimed to educate kids on computer coding. Mr. Graham has almost 20 years' experience as a professional software developer and entrepreneur and founded Code Ninjas in 2016. Code Ninjas began franchising in 2017, last year, and Mr. Graham is testifying today on behalf of the International Franchise Association.

And we welcome you here as well.

Our third witness will be Rick Carnes, who is the President of the Songwriters Guild of America, Incorporated, or SGA. SGA represents over 5,000 songwriters all across America. Based in Nashville, Tennessee, and a small business owner himself, Mr. Carnes has successfully co-written number one songs for various country artists.

And we welcome you here as well.

And I would now like to yield to the Ranking Member for the purpose of introducing our fourth and final witness this morning.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

It is my pleasure to introduce Dr. Joan Fallon, the founder and CEO of Curemark in Rye, New York.

She filed her first patent application in 1999 and has worked to research autism and related disorders and bring them to commercialization. Before Curemark, Dr. Fallon worked as a pediatric chiropractor for 25 years, specializing in pediatric development.

She has a B.A. from Franklin & Marshall College, a D.C. degree from Palmer University, and completed her work for MSC in clinical investigation from Harvard University's joint program with Massachusetts General Hospital.

Welcome, and thank you for testifying with us today.

Chairman CHABOT. Thank you very much.

And, Ms. Rosenn, you are recognized for 5 minutes.

**STATEMENTS OF MICHAL ROSENN, GENERAL COUNSEL, EXPA, NEW YORK, NEW YORK; DAVID GRAHAM, CEO, CODE NINJAS LLC, PEARLAND, TEXAS, ON BEHALF OF THE INTERNATIONAL FRANCHISE ASSOCIATION; RICK CARNES, PRESIDENT, SONGWRITERS GUILD OF AMERICA, INC., BRENTWOOD, TENNESSEE; AND JOAN FALLON, FOUNDER AND CEO, CUREMARK, RYE, NEW YORK**

**STATEMENT OF MICHAL ROSENN**

Ms. ROSENN. Thank you.

Chairman Chabot, members of the Committee, thank you for the opportunity to appear before you today. I hope to give you some insight today into the value that startups bring as today's small businesses and into the experiences that we have with the patent system and the intellectual property system.

Chairman CHABOT. Would you mind pulling the mic a little closer?

Ms. ROSENN. Sure.

Chairman CHABOT. Thank you.

Ms. ROSENN. So my name is Michal Rosenn. I am general counsel of Expa. As the Chairman explained, Expa is a startup studio that helps the world's best entrepreneurs bring their ideas to life. We are a group of about 20 people. I am in New York; a bunch of us are in California, as well as in Vancouver. And we are bringing together founders, designers, and people with great ideas and giving companies that are at their earliest stages the foundation, the resources, and the funding to turn their ideas into businesses.

Expa has incubated more than 30 startups from across the country. These include Current, which is a parent-controlled debit card that allows teens to build their financial skills; Spatial, which is a company that is building revolutionary virtual-reality-based collaboration tools; and Shift, which helps veterans find careers that match their skills, values, and potential and connects those veterans to today's most promising companies. We are proud to be creating and supporting the businesses that will drive tomorrow's economy.

The startups and small businesses like these Expa companies rely on the immense value that the patent system provides to entrepreneurs. It is a system that is meant to reward true innovation



by allowing a patentholder to reap the benefits of her work while providing a service to the public in sharing her discoveries.

Now, filing for patents is a long, arduous, and very expensive process. It is difficult and can be frustrating. But when the process works well, you are rewarded with a valuable asset, both for your business and for society.

Now, reforms made by Congress, the Patent and Trademark Office, and the courts over the last few years have helped to increase the strength and integrity of the patent system, increasing the likelihood that the system does work well. Unfortunately, though, these reforms haven't been quite enough to prevent an insufficiently rigorous patent review process and subsequent abuse of the system.

That is why, for many startups and small businesses, the only interaction that they are ever going to have with the patent system will come through predatory patent litigation, the dreaded patent trolls.

One of our companies recently went through this process when it was named, alongside dozens of other companies, as a defendant in a patent infringement suit. Instead of focusing on a big upcoming product launch, the team had to divert its attention to find a law firm and to fight the charge that they were violating a vague patent.

Luckily, Expa was able to draw upon some of its resources and help them get the complaint dismissed by showing that the company didn't even use the underlying technology that the plaintiff was alleging in the complaint. Unfortunately, we know that this is not going to be the last patent troll suit that Expa companies are going to face.

Before joining Expa, I was at Kickstarter, and during my time there, we faced five patent troll suits, directed both at us and at the creators and independent entrepreneurs that were using our site. Kickstarter was lucky enough to have the resources to fight these suits. Expa's companies are at earlier stages of their business lives and don't have the same funds to stand up to patent trolls. But they at least can take advantage of a network that will help guide them through the terrifying world of patent litigation that opens up when you get that first demand letter.

Most small businesses do not have access to these kinds of resources. They find themselves facing these threats alone, and they are forced to either pay a settlement or face years of very costly litigation. These situations have a major impact on businesses, leading to changes in strategy, diversion of resources, deferred hiring, and even complete shutdown in some cases.

This is the reality that startups and small businesses face because of the proliferation of low-quality patents. When patents are unreasonably vague or incomprehensible, they allow the kind of predatory and extortionist behavior that I have been describing to you.

Some recent developments have helped to improve patent quality: the PTO's post-grant review process that allows bad patents to be challenged after they have been granted; and the Supreme Court's Alice decision, which helped clarify that abstracts ideas and processes can't be patented. But we still have a long way to go, and

we are heartened by the attention that you and the rest of Congress are paying to this important topic.

Now, today's small businesses may look different than those of yesterday. There are startups and technology companies that are in co-working spaces rather than storefronts. They are using the internet to reach not just their local communities but a global audience.

But startups still share so many of the same experiences, excitements, and struggles that small businesses have faced in every generation. They are a few people putting everything they have into bringing an idea to life. They are balancing checkbooks, stretching dollars, and working around the clock to build their businesses.

Whether that business starts as a small grocery store in Cincinnati and goes on to become the largest supermarket chain in the U.S. or starts by building computers in a garage in California and goes on to become the world's largest technology company, the potential of small businesses we know is vast.

And as startups and technology-based companies make up an ever-growing part of the small business landscape, it is incumbent on all of us to protect true innovation and to allow these businesses to flourish free from the threat of predatory litigation.

Thank you for your time, and I look forward to your questions. Chairman CHABOT. Thank you very much.

Mr. Graham, you are recognized for 5 minutes.

#### **STATEMENT OF DAVID GRAHAM**

Mr. GRAHAM. Thank you.

Chairman Chabot, Ranking Member Velázquez, and members of the House Small Business Committee, thank you for this opportunity.

My name is David Graham. I am the CEO of Code Ninjas, the fastest-growing and largest kids coding franchise in the United States. At our centers, kids learn to code using video-game-based curriculum in a fun, safe, and inspiring learning environment. In March of 2017, we started franchising to expand our brand, and we have grown to more than 250 centers in more than 30 States. None of this would have been possible without the franchising business model and the IP protections it relies on.

Small businesses actually constitute a large majority of franchisors and franchisees. The common denominator in franchising is that we rely on the small business model and use economies of scale to grow. In Code Ninjas' case, we use franchising to teach youth STEM education at an accelerated rate.

Because franchisees are individual owners, ensuring brand protection is key to ensuring the customer's experience is consistent. The only way to give legal effect to brand consistency is through intellectual property protections. In other words, franchising should be understood as a system of licensing intellectual property where the franchisees are small businesses that hire, fire, and set the hours of their own people but the brand controls the look and feel of that system so the customer experience is consistent.

Because of the Lanham Act and its requirement that licensors police the use of intellectual property licensed to third parties,

franchisors have the right and obligation to determine how their marks are used and to do so in a way that protects the consuming public.

This means that we need a standardized set of training materials, branded uniforms, sales processes, and even jargon to use with the parents so that Code Ninjas isn't distilled into a simple curriculum that can be found online. In fact, one of our trademarks is the term "Kids Have Fun, and Parents See Results," and this is the soul of our brand. This is to say that intellectual property protections are vital to the franchising model.

But there are some areas IP law falls short.

First, some States make franchise disclosure document registration relatively easy because they exempt franchisors if the brand has federally registered and approved trademarks. This could be done nationally and would save everyone time, effort, and money.

Second, we have seen a number of companies apply for trademarks that would have confused our brand with theirs. The government should provide immediate feedback when someone attempts to register a mark so we can identify copycats.

Third, we have seen international copycats who are essentially squatting on our brand. These squatters are able to game the system in part because there are no implicit protections for URLs that contain our U.S.-registered trademarks.

Fourth, we need to strengthen our protections against misleading advertisements. One competitor used our trademark of Code Ninjas in their advertisement in an effort to funnel people into their own company. There aren't strong protections to help us remedy this IP infringement, and this is especially true for social media platforms, where there is zero protection.

Finally, we need clarity on the confusing joint employer standards. For example, I am concerned if I provide certain training materials to my franchisees, which are important materials for brand consistency and that add real value to their small businesses, that those provisions and those materials could be construed as creating a joint-employer relationship. I hope that Congress will continue to call for clarity in this area.

Thank you for your time and for hearing my perspective on these important IP protections, and I look forward to your questions.

Chairman CHABOT. Thank you very much.

Mr. Carnes, you are recognized for 5 minutes.

#### **STATEMENT OF RICK CARNES**

Mr. CARNES. Thank you.

The Songwriters Guild of America thanks the Committee for this opportunity to testify on the importance of strong copyright laws to small business, specifically the small business of creating musical works.

Our copyrights are our only product. We don't sell T-shirts or concert tickets. We just sit in a room all day, slumped over a guitar, trying to create magic on a blank page. And sometimes we have a good day, and on those days we write a song that perhaps puts our kids through college or buys a new pickup truck or a refrigerator.

And, by the way, my name is Rick Carnes. I am president of the Songwriters Guild of America, the Nation's oldest and largest songwriting organization run exclusively by and for songwriters. I have been fortunate enough to have had a long, long career and have had number-one songs recorded by Garth Brooks and Reba McEntire and hits by Alabama and Steve Warner and even, I am proud to say, Dean Martin, among others.

Yet, despite my success and good fortune, I am reminded every time I see unauthorized copies of my songs posted online just how perilous the profession of songwriting is in the digital music age.

The copyright protection enshrined in the Constitution has allowed the U.S. to become the world's commercial and artistic leader in the creative industries. But every generation or so, the government has to address whether or not those protections are still actually working—like back in the 19th century, when British and Irish sheet music was brought into the U.S. without copyright. It made American songwriters have to compete with royalty-free songs from abroad.

During this period, the U.S. lost its greatest pop songwriter of the century, Mr. Stephen Foster, who died in poverty in the Bowery in New York City with only 38 cents and two song titles in his pocket. As a result of such tragic cultural losses, the U.S. now respects foreign copyrights and our copyrights are valid in other countries. There was a problem, Congress fixed it, and we all prospered thereby. Let's let that lesson not be forgotten.

The digital age has brought new challenges and exposed serious flaws in what has today become an antiquated copyright system that is no longer protecting our songs online and, thus, isn't allowing us to achieve fair remuneration for our works since we are forced to compete with pirated copies of our own songs. What other small business has to price its goods based on competing with outright theft?

The government could certainly help in protecting songwriters with the elimination of unnecessary safe harbors for wealthy digital music distributors, the sunseting of 75-year-old consent decrees on our performance right organizations, and, finally, enforcing antipiracy laws.

But in the meantime, our best hope is self-help. The SGA supports the development of content delivery networks that give consumers better and safer access to music online at fair rates of remuneration for creators. And SGA is pleased to see that the Music Modernization Act is addressing some of these issues and was recently passed in a unanimous vote in the House.

But there are other practical legislative fixes that songwriters, as small business people, need immediately. The single greatest issue of importance to the songwriting community which remains fully unaddressed in the Copyright Act is that, in order to enforce our rights against infringers, songwriters literally need to make a Federal case out of it, at an average cost of nearly \$350,000 per Federal suit. Since precious few songs ever earn that much money, songwriters are left with a right but no remedy.

Strangely, if my neighbor borrows my \$60 lawnmower and wrecks it, I can take him to small-claims court, and Judge Judy will make him pay for it. But if that same neighbor takes my entire

life's work and posts it online for free, he can just thumb his nose at me and laugh, reposting it as many times as I can ask the infringer's network to have it taken down.

Towards correcting that, the SGA has worked with the Copyright Office and the Congress to craft the bipartisan Copyright Alternative and Small-Claims Enforcement Act of 2017 to establish a small-claims venue in which to address such copyright infringement problems in a way that would make copyright more accountable, responsive, and efficient. Individuals would benefit from the small-claims process, as it would allow them to resolve copyright issues in an economically feasible way, which would be attractive to both plaintiffs and defendants.

It is for these reasons that the SGA respectfully requests that the House Small Business Committee consider cosponsoring the CASE Act—long-overdue legislation that would provide small business owners who devote their lives to creating value and copyrighted works with a remedy to protect those works.

Once again, I want to thank the Committee for giving us this opportunity to discuss the way that copyright helps to foster the small business community of songwriters. I look forward to answering your questions. Thank you.

Chairman CHABOT. Thank you very much.

Ms. Fallon, you are recognized for 5 minutes.

#### **STATEMENT OF JOAN FALLON**

Ms. FALLON. Good morning. I want to thank you, Chairman Chabot, Ranking Member Velázquez, and members of the Committee, for this opportunity to speak with you today about the juxtaposition of intellectual property and small and startup businesses.

One of the hallmarks of small and startup businesses is that they often have aspirations to be larger ones with economic and social impact that are the backbone of job creation, economic independence, and prosperity.

Great ideas are ones that solve problems. Protecting those ideas so they can mature for the benefit of others is key when we consider the growth and scalability of small business. The protection of ideas, designs, and innovation takes many forms, including patents, trademarks, and copyrights. The existence of patents and intellectual property was a vision held by our forefathers, and they created those rights under our Constitution.

I am the founder and CEO of a bio-pharma company called Curemark, located in Rye, New York. Curemark is currently working on an enzyme replacement drug for autism. The company was founded in 2007, but I personally have been working on the science since 1998. As a company, we have conducted two FDA Phase 3 clinical trials at 33 sites across the U.S. We plan to meet with FDA later this year to discuss our findings and to file a new drug application.

Curemark, like almost all other startups, has transitioned through a process of discovery, validation, and scale. We would not exist as a company today if it were not for our intellectual property protection. Our IP has allowed us to protect our findings, raise

money, demonstrate efficacy, and put forth the novel science which hopefully will benefit millions of American children.

Curemark, since inception, recognized not only the need to patent its discoveries but to develop and execute on a well-rounded IP strategy. The extraordinary length of time pharmaceuticals require to develop, become validated through benchtop testing and human clinic trials, obtain regulatory approvals, and bring a drug to market requires the creation of an environment for relentless discovery and innovation.

The issuance of a patent, in my opinion, is one of the most egalitarian processes that exists in our country. Patents are granted without regard for race, age, gender, socioeconomic, education, geography, or even living status, because, yes, even a deceased person can be granted a patent if their heirs apply for one.

In the early days of our republic, women did not share in equal rights with men to own property, to vote, or to have a separate economy. Despite this, they could still be granted a patent, thus rewarding their innovation and creativity equally despite their inability to benefit from it financially.

Today, there remains a significant dearth of women patentholders. Recent statistics from the Institute for Women's Policy Research shows that 18.8 percent of all patents list at least one woman, but only 7.7 percent of all patents list a woman as the primary inventor. The National Bureau of Economic Research makes the case that, if the patenting gap were closed just between women and men, it will result in an increased GDP of 2.7 percent.

Further, the research shows that there is a socioeconomic patenting disparity as well, where children in the top 1 percent of income distributions are 10 times more to be inventors than children with below-median-income parents.

We also know that children exposed to innovation are more likely to be inventors, and where they live influences that exposure. Eighty percent of the patentholders live in the 100 largest metro areas in this country. The need for innovation and intellectual property, however, exists in rural and manufacturing communities as well.

A U.S. Chamber of Commerce report found that in IP-intensive industries workers make, on average, higher wages. Additionally, IP drives each State's manufacturing exports, leads to increased R&D investment, and stimulates and protects innovation. We also know that companies that have intellectual property are more likely to receive venture capital.

In conclusion, I would like to state that the intellectual property belongs to all Americans. Innovation is a foundational principle of our great Nation, and I believe that the Federal Government is key in fostering innovation. I propose that we set up Federal offices of innovation in every State, thus making the patent process accessible to everyone.

We need to encourage and teach innovation and design thinking in our schools so that young people nationwide, regardless of whether they have an idea for a new blockchain technology, a new method for growing corn, or for a car that runs on water, have the opportunity to realize these ideas.

The USPTO, the SBA, and the U.S. Congress form a powerful platform, and, together, we can change the face of our Nation through our innovation.

Thank you again for giving me the opportunity to speak with you this morning. I look forward to your questions.

Chairman CHABOT. Thank you very much.

And I will begin with myself. I recognize myself for 5 minutes.

And I will begin with you, Ms. Rosenn, if I can. What advice would you have for startups or other small business owners when it comes to intellectual property protections? What do you think they ought to be looking out for? What experiences have you had that you could give folks out there?

Ms. ROSENN. Sure. Thank you, Chairman.

So, yeah, I think, with my experience at Kickstarter and at Expa, I have a lot of experience working with people at the earliest stages of their businesses. At Kickstarter, it was creators and entrepreneurs who were putting their projects on the site, and at Expa, as I mentioned, we are working with the earliest startups.

And the thing that I would recommend most is start thinking about these things early and to draw upon all the resources that their community and that the government provides.

And why I am so heartened that we are having this hearing today is to know that the government is paying attention to this and exploring ways that they can provide additional resources to the smallest businesses, the people who don't already know how to take advantage of the protections that the Patent Office and others provide for them.

So I would tell them to think about patents, trademarks, and copyright protections as a core asset of their business to consider at the same level as their product and to think about how they can really take advantage of the existing resources, as well as push for additional ones, so that they can build their businesses on the value of their intellectual property.

Chairman CHABOT. Thank you very much. Thank you.

Mr. Graham, could you describe the process that you went through as a small business owner to obtain a trademark for Code Ninjas? Where did you start? What resources did you use as you went through the process?

Mr. GRAHAM. Sure.

First of all, we had counsel already set up for our franchising, and they counseled us to go ahead and start the trademark process as early as possible.

As I mentioned earlier, in certain States, you can go through the registration process for your FDD a lot easier if you have a registered trademark nationally. So it is a bit of a chicken-or-egg problem because to get a trademark you have to be in business, but we needed one to be in business. So it was a bit of a contest to see which came first for us.

That said, you know, there wasn't a lot of resources—I would agree with her that there weren't a lot of resources as a small business person to get in front of this problem without going to a lawyer and basically having them settle it up for us.

Chairman CHABOT. Okay. Thank you.

Mr. Carnes, I will go to you. Could you walk us through the process of obtaining copyright protection, you know, in your industry, the songwriting industry? How long does it take, how much does it typically cost, and that sort of thing?

Mr. CARNES. It has changed a lot recently, because, in the past, we basically had music publishers that took care of all the paperwork for us and we just spent time in a room writing.

But now, since the internet has sort of decimated the middle class of songwriters, most songwriters are self-published, and so we have to do a lot of that paperwork ourselves. So you have to register the song at the Copyright Office, you have to register with the performing rights organizations, you know, issue mechanical licenses. It is a pain. I mean, there are a lot of different rights in copyright, so it has become very complicated now.

Chairman CHABOT. Okay. Thank you very much.

And, Ms. Fallon, I probably have just enough time for you.

We had a hearing here, just last week, actually, on people who have some sort of developmental disability, and two of the main ones that we were dealing with were autism and Down syndrome. And some were as an employee, some were as entrepreneurs themselves. And, in some instances, one in particular, you know, the father was very involved in his son, who had Down syndrome and had a very successful sock company.

And so I am just interested in—you mentioned autism and the drug that you are working on. In fact, my chief of staff, her daughter has autism, and it is something that they work on, and she informs me about the struggles that they have to go through.

So how is the autism drug that you were talking about? Where are you at in that, and how do the prospects look?

Ms. FALLON. Thank you for that.

Our drug is an enzyme replacement. So what I found early on was that there is a large group of children with autism, on the spectrum, who are missing a particular enzyme that digests protein. And the children have very self-selected diets, that they don't usually eat protein. And so the physiology of it is that it breaks down protein and frees up amino acids that are used to make neurotransmitters. And that is sort of a very succinct way of describing that.

But supplementing the children has been done now for almost 10 years, and we have ongoing trials, open-label trials.

Chairman CHABOT. Thank you. I am not sure what you just said, but I am going to tell my chief of staff about it.

My time has expired, and I will now—the Ranking Member, Ms. Velázquez, has 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Dr. Fallon, in our meeting last year, you got me thinking about equity within the patent system. And that is one of the reasons I introduced H.R. 3517, the Women Inventor Development and Equity Act.

Dr. Fallon, we all know that women already face challenges accessing venture capital at a higher rate than men. So how can not holding a patent further compound this existing barrier?

Ms. FALLON. Thank you, Congresswoman Velázquez.



I believe that holding a patent actually is a sort of third-party verification of the fact that you have a novel idea or a novel discovery. And I think that is something that you can actually hold out to investors. It is one thing for you to talk about it; it is another thing to show that the USPTO believed that this was novel.

Ms. VELÁZQUEZ. Thank you.

And do you support legislation that will require the federal government, specifically USPTO, to collect data on gender, race, and income gaps in patenting and their impact on small business and entrepreneurship?

Ms. FALLON. I believe if we don't know the extent of the gap, then we are going to have problems fixing it. So, yes, I do support that.

Ms. VELÁZQUEZ. Thank you.

Mr. Carnes or Mr. Graham, piracy continues to constrain your industries. Can you discuss how your industry is addressing this problem on its own and what Congress can do to alleviate the problem?

Mr. CARNES. Yes. We have always advocated for safe and easily accessible alternatives to piracy, because so many times the excuse for piracy is, well, we couldn't find this song online that we could pay for, so we just stole it. And it has taken, you know, almost two decades to get those businesses built and up and running because those businesses are competing against free.

So it would have really helped to have more enforcement on the government side to make those businesses more profitable. So that would be, you know, the way that we mostly handle them.

Ms. VELÁZQUEZ. Thank you.

Mr. Graham?

Mr. GRAHAM. Piracy is a concern within franchising, and our small business specifically would be related to around what I call squatters making attempts at our URLs internationally. So codeninjas.eu, for example, is held by somebody that registered after our trademark went through. And yet, when we go into the EU, we will have to pay them, you know, basically a ransom in order to get our own domain back, where we should have had a mechanism built within the government or within the ICANN or some other entity to go ahead and register those internationally so that when we—especially ones that are geographically based, like the EUs and the dot-co-dot-UKs and that that kind of thing, we should be able to get our own domains.

Ms. VELÁZQUEZ. Thank you.

Ms. Rosenn, you mentioned slow processing times and high costs for patents. Can Congress or the USPTO do anything to ensure small firms are not hindered by this process or cost? And are there any models in other countries that we can look to?

Ms. ROSENN. Thank you for the question, Ranking Member Velázquez.

I think that the best thing that this Committee and Congress can do is work on the educational resources that are available to small businesses and really direct it to the specific needs of small businesses and startups.

And, you know, hiring lawyers is always going to be expensive. We want the patent system to be rigorous. We want to make sure

that the patents that get through are high-quality. So that is going to take time and, therefore, money.

But there is a lot of room for the Small Business Committee to represent the interests of startups and small businesses and to work together with the Patent Office to make educational resources available.

I don't currently have any other foreign models available, but I will look into that get back to you.

Ms. VELAZQUEZ. Thank you.

Mr. Chairman, I yield back.

Chairman CHABOT. Thank you.

The gentlelady yields back.

The gentleman from Missouri, Mr. Luetkemeyer, who is the Vice Chairman of this Committee, is recognized for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Interesting discussion today. I thank all of you for being here.

It is a little frustrating, I know, as a small business person, to have your, you know, heart and soul poured into whatever product or song or research you have done and then see somebody run off with it and beat you to the punch to the marketplace. We need to make sure we, you know, find a way to protect those folks from that.

Ms. Fallon, you made a comment a while ago that you even patent the discoveries. So, in other words, just to make sure I understand what you are saying here, that you patented the process by which you were able to discover the enzyme that was the problem.

Ms. FALLON. Uh-huh.

Mr. LUETKEMEYER. But then, I guess, would you patent then, also, the drug or the cure for this situation? Is that what you do?

Ms. FALLON. Thank you, Congressman. Yes, absolutely, in addition to the makeup of the drug and how it is manufactured. So there are multiple places where we have patents around this.

Mr. LUETKEMEYER. So the fact that you patented a discovery process or whatever it was, how you found this, would protect your ability, then, to figure out how to find a cure for it. Is that why you patent that? Is that how that works?

Ms. FALLON. Yes, it was the relationship between the low level of an enzyme that is missing and then the replacement of it and the results of that.

Mr. LUETKEMEYER. Okay.

Mr. Carnes, I kind of figure out that you pretty well know when somebody is infringing on your patents, because you hear the tune somewhere or somebody will give you a heads-up on it.

But, Mr. Graham and Ms. Rosenn here, how do you find some of these other folks that are infringing on your patent in a timely enough fashion that you can get out in front of it before these folks destroy your product or your service, whatever it may be?

Mr. GRAHAM. Yeah, so that is a very proactive outreach, you know, using the USPTO website, using different resources. We hire a firm, actually, to protect our assets in that way—

Mr. LUETKEMEYER. Well, that would be my question. You almost have to have somebody who sits there and patrols, actually, whatever is going out there in the world in your—

Mr. GRAHAM. Yes, that is exactly right.

Mr. LUETKEMEYER.—in your industry to be able to protect it, no?

Mr. GRAHAM. That is exactly right.

And if I could make another request, get one of her guys to go ahead and build a better user experience on that USPTO website. That would be great.

But one of those features that I think would be good is if we could put in, like, a Code Ninjas—the term, and then if either “code” or “ninjas,” in my example, ever gets registered again, I would just get a simple email. I mean, that would be a very easy system to put into place, and it would notify us reactively, instead of us having to go the proactive approach.

Mr. LUETKEMEYER. Mr. Carnes, I think you mentioned it costs about \$350,000 to defend yourself on an average suit. Is that what you just said?

Mr. CARNES. Yes. We have to make a Federal case out of every infringement suit.

Mr. LUETKEMEYER. How does that affect the ability to protect your copyrights?

Mr. CARNES. It virtually makes it impossible.

Mr. LUETKEMEYER. The average songwriter can’t afford to do that, can he?

Mr. CARNES. Not at all.

Mr. LUETKEMEYER. Do you find a sugar daddy somewhere, or do you find a—

Mr. CARNES. No. Actually—

Mr. LUETKEMEYER.—distributor somewhere that wants your song and wants to protect it? Is that how you do it?

Mr. CARNES. Well, if you have major publisher, like, you know, a record label publisher or something, and they look at the infringement and they deem it so egregious that it is worth spending the \$350,000 to go after it, they would have the resources to do that.

But I would point out that in the last 20 years, as far as I know, the only, you know, big piracy infringement suits were, like, launched by the RIAA, and neither one of them really netted any return. I mean, they proved that there was piracy, but there was no money there to recoup the \$2 million, in one case, that the suit cost.

Mr. LUETKEMEYER. Oh, my gosh.

Ms. Rosenn, how do your entrepreneurs, your incubator folks there, how do they afford to fight this? Or what is your average cost, I guess I should say?

Ms. ROSENN. Sure. I think, actually, for most of our companies, they are too early-stage to even get to the point where they are fighting this. But they are working on building their trademark portfolio, for example, and their patent portfolio as they build their businesses.

And, as Mr. Graham said, a service provided by the PTO that monitors new registrations and allows you to be aware when there are new trademark registrations that might possibly infringe on yours would certainly be helpful.

I would actually argue that, in the patent context, it is not the threat of infringement that is the biggest issue for small busi-

nesses. It is people who actually weaponize their patents and seek infringement anywhere they can or a potential argument for infringement. And those are the sort of patent trolls that I was describing before.

Mr. LUETKEMEYER. Okay.

I want to get one more question in quickly here.

Ms. ROSENN. Sure.

Mr. LUETKEMEYER. You made a comment a while ago with regards to needing more resources.

Ms. ROSENN. Uh-huh.

Mr. LUETKEMEYER. What do you mean when you say that they need more resources? Define "resources" for me.

Ms. ROSENN. Sure. So what I was describing is really educational resources.

Let me back up and say that, really, they across the board would need more money, you know, more affordable lawyers, more education.

But if we are talking specifically about what the government can provide, that would be education and outreach and guidance specifically aimed at small businesses and startups for filing patents, for filing for trademarks, for working through that process and—

Mr. LUETKEMEYER. So you are talking about maybe a how-to manual whenever you apply for a patent, how to do this all?

Ms. ROSENN. Whether that is a how-to manual or specific people within the PTO who are there as people that small businesses can reach out to as, kind of, guides through that system, I think there are a lot of opportunities there.

Mr. LUETKEMEYER. I thank the Chairman for indulging me. Chairman CHABOT. Sure. Thank you.

The gentleman's time has expired.

The gentlelady from North Carolina, Ms. Adams, who is the Ranking Member of the Subcommittee on Investigations, Oversight, and Regulation, is recognized for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman. And I want to thank you and the Ranking Member for holding this meeting.

And thank you for your testimony. It is a very interesting topic. It is certainly one of concern to me. I am a visual artist. And I have just seen, over the years, works actually being hijacked in various ways, especially with the internet now and folks putting their work out there. So I just wanted to say that. And I appreciate, you know, your interest and what you are doing with your businesses.

My first question is for Ms. Fallon.

As a first step to address the gender and race gap in patenting, would it be helpful for the Small Business Administration to examine the gender, race, and income gaps in patenting and their impact on small business and entrepreneurship?

Ms. FALLON. Yes, I believe absolutely. I think that to solve a problem you need to understand what it is and to look underneath the hood, as it were, to understand that gap, where it exists, and also why it exists.

Ms. ADAMS. Thank you.

According to the Institute for Women's Policy Research, even among college graduates, African Americans and Hispanic Americans hold nearly half as many patents as Whites, about 1 percent

each. African-Americans and Hispanic Americans also apply for patents at nearly half the rate of Whites.

Professor Cook at Michigan State has also estimated that including more women and African Americans in the innovation pipeline would increase U.S. GDP anywhere from 0.65 to 3 percent.

Are we wasting economic potential by letting gender, income, and race determine which of our children will participate in the innovation pipeline? And what steps should Congress take to help narrow the gaps?

And this question is for anyone on the panel who would like to speak to it.

Ms. ROSENN. Sure. Thank you, Congresswoman Adams.

I think you are absolutely right, and this needs to be a collective effort from all industries and government.

I think that the pipeline issue, as with so many questions of diversity and inclusion, is at the core of what the problem is. If we don't have people who are being educated in STEM fields, if we don't have people of color and women who are adequately represented among startups, we are not going to have an equal representation within the patent system either.

And so I would love to see more industries working together. I am very heartened by the fact that the tech industry is one where there has been enormous attention to diversity and inclusion, and rightfully so, and I would love to see that done more broadly. And realize that it is truly systemic.

Thank you.

Ms. ADAMS. Thank you.

Mr. Graham?

Mr. GRAHAM. Yeah, so the tech industry has changed over my career. Obviously, the nerds had it going pretty good there for a minute, and then the word got out it was a pretty good job. So everybody is getting on board with being a computer programmer or in some kind of STEM. And we love that, to be honest with you.

This has been a fascinating journey, because, you know, over 60 percent of our franchisees are women or minorities. So we are proud of the fact that we are able to bring a tech-based education system to help more people get in there and fill that pipeline.

We are teaching kids, you know, for jobs—by 2035, 70 percent of the jobs that will exist then don't even exist today. So automation, all kinds of different things are coming, and we are preparing kids of all backgrounds for that next generation.

Ms. ADAMS. Do you focus in on women in particular?

Mr. GRAHAM. We don't have a specific focus, but they are certainly very involved with what we are doing. They come from the education background typically, so we are kind of bridging two worlds, technology and education.

Ms. ADAMS. Okay.

Yes, sir.

Mr. CARNES. Growing up in Memphis in the 1960s, I can certainly tell you how much including African Americans in the copyright community can boost the local economy—not just local but national too.

Ms. ADAMS. Uh-huh.

Mr. CARNES. And, as a visual artist, I would like to remind the Committee that the CASE Act would certainly help photographers. My daughter is a professional animator. I mean, that is one thing that would really help, if the Committee would cosponsor the CASE Act.

Ms. ADAMS. All right. Well, I certainly support it.

Did you want to comment? You have 22 seconds.

Ms. FALLON. Yes.

Talent exists in every corner of this country. And I think finding that talent, encouraging that talent, and encouraging that innovation is really our job. And so I absolutely support looking for that talent and innovation.

Ms. ADAMS. Great. Thank you.

Mr. Chairman, I yield back.

Chairman CHABOT. Thank you very much.

The gentlelady yields back.

The gentleman from Iowa, Mr. Blum, who is the Chairman of the Subcommittee on Agriculture, Energy, and Trade, is recognized for 5 minutes.

Mr. BLUM. Thank you, Chairman Chabot.

Thank you to our panelists for being here today.

And I would like to compliment my colleague Ms. Adams on her wonderful hat today. Very nice. Very nice.

Mr. Graham, I wrote down here you mentioned a better user interface with government software. That is kind of an oxymoron, you know. We had an executive from Silicon Valley here in Washington a year ago talking about IT in the Federal Government, and his quote was, "I felt like I went back in time."

Mr. GRAHAM. I agree with his sentiment. Yes.

Mr. BLUM. I have a question, Ms. Rosenn, for you. You mentioned in your testimony, I believe, patent trolls.

Ms. ROSENN. Yes.

Mr. BLUM. I am a part-owner of a software company. I have been in software—some small, some bigger, some went public—over the last 20, 25 years.

Ms. ROSENN. That is great.

Mr. BLUM. To me, it is almost like legalized extortion, in that you can get a letter—and we have, our company has—get a letter that says, you know: You are violating this innocuous patent we have never heard of because you—I will use an extreme to make an example—because you used the word "the" on your opening page of your software. Cease and desist immediately, or pay us money.

Now, to me, it is almost like a big-business-versus-a-small business thing. And we all know that the complex favors the large. So big companies don't have problems with excessive regulations, and big companies can do these types of things to small companies, because we don't have a bevy of attorneys and lawyers that can fight for us. And it is a very frightening thing, and it can bring some small businesses to their knees.

Can you comment, please, on patent trolls?

Ms. ROSENN. Yeah. Thank you, Congressman.

As you mentioned, this is an enormous issue for the smallest businesses. And it really is those businesses that find themselves crippled by these demand letters that they receive.

And what has happened is that, up until 2011—and the America Invents Act was passed in 2011 and really helped the situation progress, and we have seen patent trolls fall, to a certain extent, since then. But, like I said, there is still a ways to go, and we would like to see more reforms, but—

Mr. BLUM. What do we need to do specifically? Congress.

Ms. ROSENN. Sure. What I would like is to protect the innovations that have passed. So, you know, protect section 101 and the Supreme Court decisions that I mentioned, like Alice, that clarify that abstract ideas can't be patented.

So, at Kickstarter, we were sued by someone who had a patent for, essentially, crowdfunding for music. And, you know, this is an abstract idea, and we went through a 4- or 5-year court battle, spent millions of dollars, and eventually got that patent invalidated based largely on that Supreme Court decision, which said that this is just an abstract idea that you added a computer process to; that can't be patented.

So it really important to protect—

Mr. BLUM. How much money, if I can—I am sorry to interrupt. How much money was spent on that effort, approximately?

Ms. ROSENN. It was about \$4 million. Yeah. So—

Mr. BLUM. Go ahead.

Ms. ROSENN. Sure. And, like I said, Kickstarter was lucky enough to be able to afford that. Very, very few businesses are that lucky and sometimes shut down simply because they can't afford to pay the settlement fees, the sort of extortionist fees that are charged.

So these are usually people who are taking the patent system and weaponizing it. Hence—

Mr. BLUM. Exactly. Exactly.

Ms. ROSENN. Hence, our a tool to build a business, to protect ideas that you are developing in the course of building a business and to help you build something larger than that.

What we are seeing with patent trolls is that they are using the patent system to secure an idea solely to monetize that idea. Right? And usually those—

Mr. BLUM. It reminds me of someone buying a drug that there is only one available in the country and then raising the price 100-fold.

Ms. ROSENN. It is very similar to that.

Mr. BLUM. It kind of reminds me of that very thing. Would you agree?

Ms. ROSENN. Absolutely. Absolutely. I think it is abuse of a system that is really, at its core, trying to accomplish something good for society and for small businesses and entrepreneurs everywhere. But we see that, like every system, it is prone to abuse.

And, you know, I am heartened by Congress and the government generally taking steps to protect against that kind of abuse.

Mr. BLUM. It is an issue, especially in high tech.

Ms. ROSENN. Thank you, Congressman.

Mr. BLUM. Anyone else, quickly, briefly, want to comment on patent trolls?

Ms. Fallon, you are grinning.

Ms. FALLON. I haven't seen one yet. But I—thank goodness.

But I also want to comment on your comment on the hat, because the first patent for a woman that was issued to a woman was for a hat.

Mr. BLUM. For a hat.

Ms. FALLON. Yes.

Mr. BLUM. Excellent. Well, thank you for adding that on.

Mr. Chairman, I yield back the time I do not have.

Chairman CHABOT. Thank you very much. You probably knew that anyway, didn't you, Mr. Blum?

Mr. BLUM. Yeah, I knew that.

Chairman CHABOT. Okay. Thank you very much.

See, we learn all kinds of new things in this Committee.

The gentleman from Pennsylvania, Mr. Evans, who is the Ranking Member of the Subcommittee on Economic Growth, Tax, and Capital Access, is recognized for 5 minutes.

Mr. EVANS. Thank you, Mr. Chairman.

Good afternoon.

Ms. Rosenn, you mentioned resources. And I have a bill, House Resolution 2655, that talks about leveraging Small Business Administration resources and partnership in terms of this relationship. Can you speak a little bit to this particular bill?

Ms. ROSENN. Yeah, of course. Thank you, Congressman.

I think that this bill is exactly the type of thing that we want to see: collaboration across the different parts of government to make sure that different voices are heard so that, whether you are working with the Patent and Trademark Office and making sure that, you know, fees for the post-grant review process are lower for small businesses than they are for the biggest businesses, for example, or making sure that the voices of small businesses are represented where these conversations happen in the executive branch, in other parts of the legislative branch, in the Judiciary Committee—so I think that the Small Business Innovation Act is an example of the system working and ensuring that voices are heard across the board.

So I thank you for your work on that, and I would love to see that passed and more bills like that.

Thank you.

Mr. EVANS. Thank you.

Mr. Graham, could you discuss the franchise disclosure document procedure and why this continues to be a roadblock for franchises in some States?

Mr. GRAHAM. Yes.

So, whenever you go into franchising, you have a Federal disclosure document. This isn't a contract. This is just a disclosure saying, here is the state of our business and here is how things are going to go, generally speaking; here is the nature of the relationships of our different companies and how they work together; and if you have any history, what is the history of the performance of franchisees in the past, so that they get a full picture of the nature of your company and what you are about and what they are about



to buy into. You know, most of these people are spending a large portion of their money that they have ever earned.

So it is important. It is an important document. And we don't think that document needs to go away. We just need to make sure that all the States consistently allow us to register across those States.

So, for example, in Illinois or California or a few others, it is very difficult for us to get that registration without putting up unnecessary bonds that—I could see it restrict other franchises from being able to operate in that State.

Mr. EVANS. Thank you.

I want to go back to Ms. Rosenn.

Basically, the BIO organization, led by a former colleague of mine, a Pennsylvania colleague, Jim Greenwood, had written a letter of support, in consistent support, of innovation in America.

And I am reviewing the STRONG Patents Act, and, though I have not cosponsored, I believe that it is critical that we continue to work to make our system of intellectual property stronger and more efficient.

And, to that end, one of our witnesses—I should say, Ms. Fallon talked in her testimony about the fairness of the patent system. Can you speak to that, about the fairness of the system?

Ms. FALLON. Yes. I can only speak from my own experience, but I believe that it has been an enormously fair and egalitarian system and that novel works can get a patent and that we have the opportunity to present that novel piece and have it validated by the USPTO.

So I feel very strongly about the fact that it is egalitarian and that everyone should avail themselves of it if they need to.

Mr. EVANS. Thank you, Mr. Chairman. I yield back the balance of my time.

Chairman CHABOT. Thank you very much.

And the chair would note that the legislation that the gentleman mentioned, 2655, that Ms. Rosenn indicated is good legislation, was introduced by Mr. Evans, and one of the principal sponsors on this side was Mr. Fitzpatrick, both gentlemen from Pennsylvania. And it shows, again, the bipartisanship of this Committee, and I want to commend both gentlemen for their work on this.

And it passed this Committee unanimously, actually. And we are working with the Judiciary Committee, because there are some judiciary issues in it, to try to get it to the floor and get it passed into law.

So thank you for that.

And the chair would now recognize the gentleman from South Carolina, Mr. Norman, for 5 minutes.

Mr. NORMAN. Thank you, Mr. Chairman.

Thank all of you for taking the time to come.

You know, we all get back to the fact that, as you say, Ms. Rosenn, it has been weaponized. To be able to afford the legal cost alone, for small business, is almost impossible. I am a small business owner, and it is a serious issue. And as I go around my district, going into different companies, it is a growing problem that is not going to go away.

Mr. Carnes, in your world, walk me through, to get a copyright, the timing, dollars that it typically costs and the steps that you would take in your world.

Mr. CARNES. Okay. Well, in terms of cost, I think it is, like, \$60 or something to register one song at the Copyright Office. But you can do several songs at once, you can, you know, make it, like, 12 songs, and you can keep the fee steady. So it is not that expensive.

It is kind of time-consuming. And the process is—you know, after writing all day, you don't want to come home and then spend your time copyrighting things. And I have written thousands of songs, literally, and only, you know, a handful of them really make any money. So you have a tendency not to copyright everything until you see that it is going to be recorded, and sometimes that can be a problem.

So the system works pretty well. I mean, it could be streamlined some.

Mr. NORMAN. And what position does a songwriter have who just doesn't have any copyright protections? Is it really, as you say—

Mr. CARNES. Well, publication is supposedly, you know, a copyright. Like, if you take the song and put it up on YouTube or something like that, that public, you know, expression of that is publishing the song. So basically that gives you a copyright. However, you do need to register your copyrights.

Mr. NORMAN. Okay.

And, I guess, is it pretty widespread that when you go into the music industry, a songwriter, you need to be doing this? I mean, does the education—

Mr. CARNES. Oh, yes. The education, unfortunately, comes after the fact, most of the time. You know, you start out writing and you just put stuff out there, and then out of the blue somebody records something, and then you start realizing, Hey, I am supposed to get money, right? How do I do that? I mean, I didn't know anything about performance rights, I knew nothing about sheet music, grand rights—there are, like, six rights or something—until I started getting stuff recorded.

And because copyright has evolved with technology over the years, it has become more and more complex, so it is hard to do the education. The Songwriters Guild has a foundation that does that. Other songwriting groups have a foundation that, you know—the Copyright Office does it.

So we get the word out as much as we can, but, you know, most of these writers start out writing when they are 16 and 17 years old, and they have other interests in life than reading the Copyright Act.

Mr. NORMAN. Right. Okay. Thank you.

And, Ms. Fallon, you had mentioned at Curemark you had foreign patents. How difficult was it to navigate that process?

Ms. FALLON. Thank you for that question.

It is very difficult, because in some places you have to have them translated. You have to have the references translated that are cited against you during the prosecution. So it can be a very, very costly process to have them in multiple countries.

Mr. NORMAN. And how did you know where to go to begin the process—I guess, who to go to?

Ms. FALLON. Well, our patent attorneys are very skilled in having colleagues in different locales across the world, and so we utilize their services. And we also looked at areas where we felt that we could get protection and that the protection would be valid and hold.

Mr. NORMAN. Great. Thank you so much.

Thank all of you for taking the time.

I yield back, Mr. Chairman.

Chairman CHABOT. Thank you very much.

The gentleman yields back.

The gentleman from Florida, Mr. Lawson, who is the Ranking Member of the Subcommittee on Health and Technology, is recognized for 5 minutes.

Mr. LAWSON. Thank you, Mr. Chairman.

And welcome to the Committee.

And I was just sitting here thinking about intellectual properties and especially when you say you can get a patent across the world, that must be quite expensive, to be able to do that. And from the songwriting standpoint, I have a couple of songs, but nobody really wants them, you know, but—

Mr. CARNES. I feel your pain.

Mr. LAWSON. So, getting to my point now, I introduced H.R. 2702, Commercialization Assistance Act of 2017. This bill promotes the third phase of the program that allows startups to engage in Federal research and development.

In listening to you all this morning, how can the Federal Government, particularly SBA, better promote IP rights with regards to small firms?

It is a question for everybody there, because I think that is where it really comes to the heart of everything.

Ms. Fallon?

Ms. FALLON. I think that having access to information, as Ms. Rosenn said, is very important, and understanding that patent protection is really key to, sort of, protecting your ideas and being able to go further in your development.

And I think that a lot of startups—because I do a lot of advising of startups. And they don't always—it is the thing that gets put on the back burner, because it is so expensive. And it is sort of an unknown, in some cases, to the entrepreneurs.

So I think that having education, having access to lawyers, maybe pro bono lawyers, who could help with that process would be enormously helpful. I had a brother who had been through it all, and so he was enormously helpful to me in understanding and teaching me about the process.

Mr. LAWSON. Great.

Anyone else want to respond to it?

Ms. ROSENN. Sure, Congressman. Thank you for the question.

I think the Federal Government can actually look to some local governments for initiatives that are addressing these issues. And there is one in New York City, for example, called the Women Entrepreneurs Fund that is really focusing on directing funds and cre-

ating programs for women entrepreneurs to address some of the inadequacies that exist.

And so, you know, to the extent that the intellectual property system prevents unique challenges to underrepresented groups like women and like minorities, I think that there are a lot of local efforts like those that serve as wonderful models for creating resources, directing funds, creating programs specifically addressing those groups.

Mr. LAWSON. I am going to try to get in one more question. Does the SBA really understand—when you are seeking funding in small firms for intellectual things that are related to intellectual properties, do you have much problem accessing capital?

Anyone care to respond to it?

Mr. Graham?

Mr. GRAHAM. Do you mean specifically as it relates to getting trademarks and patents—

Mr. LAWSON. Right.

Mr. GRAHAM.—getting a loan from the SBA in order—

Mr. LAWSON. Right. Is the SBA pretty reasonable on that aspect of it?

Mr. GRAHAM. We have never taken an SBA loan as a corporation, and our franchisees use our own trademark. So that is not something that we would have addressed.

Generally speaking, the SBA does give us many of our loans that we get for franchisees to start their own companies, but that doesn't relate to exactly what you are asking. And that process is pretty onerous, but, still, it also has some great things that they can use their capital as—they can spend their capital as they are applying and things like that that are really great for the SBA.

Ms. ROSENN. I—

Mr. LAWSON. Okay. Mr. Chairman, I yield back.

Chairman CHABOT. Did somebody want to answer?

Yeah.

Ms. ROSENN. Yeah, I was just going to add, so, coming from the technology sector, I think that we don't make enough use of the SBA. And I think there is enormous opportunity for the SBA and the technology and startup world to collaborate, because, as I mentioned, all startups are small businesses, and they are not really aware of the resources that the Federal Government already provides. So I hope to see more collaboration along those fronts.

Mr. LAWSON. And just before I yield back, earlier on, you talked about the internet and all of the aspects going on. How can you control it, intellectual properties, by people having so much access to everything you are doing? I mean, I don't understand how you can control it. I really don't.

Ms. FALLON. We had a trademark for a drug name which we put through the FDA process. And, of course, that is not given to you or allowed to be used by FDA until after the drug is approved, but it goes through the process. We had a full trademark on it. And someone just put it up on the internet for something on eBay or on Amazon, selling a sleep aid, over-the-counter sleep aid. Once that name is out there, associated with anything—nutraceutical, pharmaceutical, et cetera—it denied us of our name. And we had no recourse.

Mr. LAWSON. Well——

Chairman CHABOT. Thank you very much.

Mr. LAWSON. I yield back, Mr. Chairman.

Chairman CHABOT. Thank you.

The gentleman's time had expired.

The gentleman from New York, Mr. Espailat, is recognized for 5 minutes.

Mr. ESPAILLAT. Thank you, Mr. Chairman.

Good morning. And I want to thank Chairman Chabot and Ranking Member Velázquez for holding this very important hearing on the connection between intellectual property and small businesses.

Intellectual property is the result of hard work and innovation that drives many small businesses. It is ideas that transform and streamline information connectivity, lifesaving medicine, and health intervention and, in many cases, are part of a chain of continuing the reliance on small businesses to drive and create products that we can all rely on.

Protection from bad actors seeking to take advantage of small business products is harmful to their success and longevity. And I am glad that we are having this hearing to explore some of these particular issues.

Dr. Fallon, my congressional district has a large number of recipients both for public and private grant moneys through Federal agencies like FDA, CDC, and NIH for biomedical research and development. We have some of the finest medical institutions—New York Presbyterian Hospital, Mount Sinai Hospital, Montefiore, and other hospitals—and some of the finest academic institutions—Columbia University, Yeshiva University, City College, et cetera. So it is a hub for research. And, in addition to that, we also have the Audubon Biomedical Science and Technology Park, which is an incubator for startups and emerging companies that do research.

So I am concerned—I also sit on Foreign Affairs. And I am concerned about the predatory practices of even rogue countries that are out there violating intellectual property rights, and even our own country is concerned about that.

So how can we protect small businesses from these predators when we are even concerned about countries like China violating rampantly, you know, the intellectual property rights of our companies and other companies across the world?

How can we then protect small businesses from this kind of predatory practice where they—at any moment, one of these incubators that we have in the Audubon Park could be subject to a violation of their intellectual property rights. What measures could be taken?

If we can't handle this at the broader level, how can we protect small businesses down on the ground in each and every one of our districts?

Ms. FALLON. And that is a very good question. Thank you, Congressman. I don't know the answer. I think that is an answer that we all search for.

I know, for us, we have been very quiet about what we are doing and not done a lot of external talking about it, only because then it attracts attention so that people will be looking at that. And I

think that is something that we live with every day, you know, concern about whether that is going to come into our realm.

So I don't really have an answer for you except to say that I think that things like the America Invents Act and, you know, the Track One applications, where you get protection right away in a year, that is really helpful, instead of having it wait a couple of years, going through the process, so you know whether you have a patent or not. And I think those kinds of things are really important for companies like mine.

Mr. ESPAILLAT. I don't know if any of the other panelists would like to weigh in.

Ms. ROSENN. I would love to speak to that.

So I think when you are talking about foreign threats to intellectual property, certainly efforts like the TPP, which attempted to address these issues specifically in Asia—you know, not everything in the TPP was perfect, for sure, but to tackle those issues and to sit down with the countries where this intellectual property infringement is happening and try to work out the start of a solution, I think, is one good way to address these.

And I would just add that—the importance of protecting the reforms that have already taken place here within the United States and making sure that the Supreme Court decisions, that section 101, that the post-grant review process, and the America Invents Act are all protected.

I know that Congressman Evans mentioned the STRONGER Act. That bill would roll back a number of those protections and leave small businesses and startups vulnerable again, as vulnerable as they used to be. So shoring things up at home is really important as well.

Thank you.

Mr. CARNES. I would like to just add, no intellectual property has been more threatened over the last 20 years, particularly by the internet, than music and movies. And what we learned in this process has been very valuable: You have to start off with a safe, legal alternative that is easily accessible; you have to have education; and then you have to have an effective deterrent to the crime.

So, if you can get those three things in place, you can have some control, even in an environment where rampant copying is in place.

Mr. ESPAILLAT. Thank you, Mr. Chairman, for extending additional time.

Chairman CHABOT. Absolutely.

The gentleman's time has expired.

And we want to thank the panel for being here today.

I think all of the members that had questions on both sides got to ask them. And whether it is patents or trademarks or copyright or trade secrets, all of these protections are vital to helping our innovative small business owners thrive and grow our nation's economy.

And I would like to thank our four very distinguished witnesses here this morning and now into this afternoon for shedding some light on how this Committee can play a role in strengthening those protections and assisting small businesses all across this country.

So thank you very much for that.

I would ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record.

Without objection, so ordered.

And if there is no further business to come before the Committee, we are adjourned. Thank you very much.

[Whereupon, at 12:00 p.m., the committee was adjourned.]

## APPENDIX

Statement of Michal Rosenn  
General Counsel, Expa

**Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property  
Protections in Their Businesses**

**Before the Committee on Small Businesses**

**May 16, 2018**

Chairman Chabot, members of the committee, thank you for the opportunity to appear before you today. I hope to give you some insight into the value of startups as today's small businesses, and into the experiences we have with patents and the intellectual property system.

I am General Counsel of Expa, a startup studio helping the world's best entrepreneurs build and grow their businesses. Based in California, New York, and Vancouver, we were founded in 2014 to bring together founders, designers, and people with great ideas, and provide a platform for creating companies. We do that in a few ways. First, as a team of entrepreneurs, our partners incubate startups internally, building a company from scratch and nurturing it into a full-fledged business. Second, we work with outside founders who are at the earliest stages of building their companies, advising them and making them a part of the Expa network so that they can benefit from our expertise and resources. And finally, we find the most exciting new teams and ideas, using our capital to invest in them as they take their businesses to the next stage.

We give companies at their earliest stages the foundation and the tools to turn their ideas into businesses. We have incubated 15 companies, and advised and invested in 25 more from across the country. These include Current, a parent-controlled debit card that allows teens to build their financial skills; Spatial, a company building revolutionary virtual reality-based collaboration tools; and Shift, which helps veterans find careers that match their skills, values, and potential, and connects those veterans to today's most promising companies. We are proud to be creating and supporting the companies that will drive the economy forward.

Startups and small businesses like these Expa companies rely on the immense value that the patent system provides to entrepreneurs. It is a system that is meant to reward **true** innovation by allowing a patent holder to reap the benefits of her work while providing a service to the public in sharing her discoveries. When our companies file for patents, they do so knowing they are benefiting the long-term public domain, as well as building their own value.

Filing for patents is a long, arduous, and expensive process. It requires lawyers, months—or years—of back and forth communications with the patent office, and long hours spent sitting with engineers, working through process explanations and revising descriptions. It is difficult and can be frustrating, but when the process works well, you are rewarded with a valuable asset, both for your business and for society. Reforms made by Congress, the Patent and Trademark



Office (PTO), and the courts over the last few years have helped to increase the strength and integrity of the patent system, increasing the likelihood that it does work well.

Unfortunately, these reforms have not been enough to prevent an insufficiently rigorous patent review process and abuse of the system. That is why, for many startups and other small businesses, the only interaction they will ever have with the patent system will come through predatory patent litigation — the dreaded patent trolls.

One of our companies recently went through this nightmare, when it was named, alongside dozens of other companies, as a defendant in a patent infringement suit. Instead of focusing on a big upcoming product launch, the team had to divert its attention to find a law firm and to fight the charge that they were violating a vague patent. Luckily, we at Expa were able to draw upon some of our resources and help them get the complaint dismissed by showing that the company did not even use the underlying technology that the plaintiffs alleged in the complaint. Unfortunately, we know that this will not be the last patent troll that Expa companies will face.

Before joining Expa, I was General Counsel at Kickstarter, the crowdfunding platform. Kickstarter was a place for artists, creators, and entrepreneurs of all kinds to raise funds from their communities to bring their ideas to life. Thousands of restaurants, bookstores, podcasts, gaming companies, and creative spaces got their start on Kickstarter and have been able to sustain themselves through continued funding.

During my time at Kickstarter, we faced five patent troll suits, directed both at Kickstarter and our users. Each of these suits involved low-quality patents, and alleged infringement on the vaguest of terms. We spent more than four years fighting the first of these suits, spending several millions of dollars in total until, eventually, a court ruled that the patent claimed against us was invalid because it attempted to patent an abstract idea. This helped us to establish a precedent of fighting patent troll suits, credibly telling plaintiffs when they tried to come after us that we were prepared to litigate. By doing this, we were able to force them to drop their suits without putting up the tens—or even hundreds—of thousands of dollars that businesses are often forced to pay in order to continue operating under the threat of patent trolls.

Kickstarter was lucky to have the resources to fight these suits. Expa's companies are at earlier stages of their business lives, stretching every dollar to build their products and their businesses. They do not have the same funds to stand up to patent trolls. But they, at least, can take advantage of a network that will help guide them through the terrifying world of patent litigation that opens up when they receive that first demand letter. Most small businesses do not have access to these kinds of resources. They find themselves facing these threats alone, and are forced to either pay a settlement or face years of costly litigation. These situations have a major impact on businesses, leading to changes in strategy, diversion of resources, deferred hiring, and even complete shutdown.

This is the reality that startups and small businesses face because of the proliferation of low-quality patents, particularly in the technology and software spaces. More than 40,000 software patents are granted in any given year. There are certainly many legitimate innovations among these. But too many of these patents are unreasonably vague or incomprehensible, allowing the kind of predatory and extortionist behavior I just described.

Some recent developments have helped improve patent quality: the Patent and Trademark Office's post-grant review process, known as the Inter Partes Review, that allows bad patents to be challenged after they have been granted; and the Supreme Court's *Alice v. CLS Bank* decision, which helped clarify that abstract ideas and processes cannot be patented. But we have a long way to go. And we are heartened by the attention you and the rest of Congress are devoting to this important topic.

Today's small businesses may look different than those of yesterday: they are startups and technology companies, in coworking spaces rather than storefronts, using the internet to reach not just their local communities, but global audiences as well. Yet startups still share so many of the same experiences, excitements, and struggles that small businesses have faced in every generation. They are few people putting everything they have into bringing an idea to life. They are balancing checkbooks, stretching dollars, and working around the clock to build their businesses. Whether that business starts as a small grocery store in Cincinnati and becomes the largest supermarket chain in the U.S., or builds a computer in a garage in California and then becomes the world's largest technology company, the potential of small businesses is vast. And as startups and technology-based companies make up an ever-growing part of the small business landscape, it is incumbent on all of us to protect true innovation, and to allow these businesses to flourish free from the threat of predatory litigation.

Thank you for your time. I look forward to your questions.



**DAVID GRAHAM**

**CEO, CODE NINJAS LLC**

TESTIMONY BEFORE THE  
U.S. HOUSE COMMITTEE ON SMALL BUSINESS

HEARING ENTITLED "INTELLECTUAL PROPERTY 101: HOW SMALL  
BUSINESS OWNERS CAN UTILIZE INTELLECTUAL PROPERTY  
PROTECTIONS IN THEIR BUSINESSES"

**MAY 16, 2018**

Chairman Chabot, Ranking Member Velázquez, and Members of the House Small Business Committee, thank you for the invitation and the opportunity to speak with you on the importance of intellectual property protections for small businesses.

My name is David Graham, and I am the CEO of Code Ninjas, the fastest growing and largest kids coding franchise in the United States. After nearly twenty years as a professional software developer and entrepreneur, I founded Code Ninjas in 2016 because I believe that coding is not just a great career choice but also a valuable life skill.

A recent study out of Australia looked at the future of the global job market and concluded that over 70% of the jobs in 2035 would be in positions that don't exist today, working on technology that has yet to be invented. The only practical way to prepare our children for this future is by creating a generation of problem solvers that can take on the challenges when presented, no matter what field, technology, or industry they are involved in.

At our centers, kids learn to code using a game-based curriculum in a fun, safe, and inspiring learning environment. Our curriculum focuses on teaching kids to code, but the goal is to teach them how to think and solve problems. We do this by engaging with the children at their level, on a topic that they enjoy and can stay engaged with over a four-year period: video game development.

Our students are called "ninjas" and our teachers are "Code Senseis" (which is a pending trademark). Ninjas and Code Senseis work inside of the "dojo" to create games from the kids' imaginations as well as fix problems that we present to them to teach a particular topic. To the ninjas, nothing is academic, because everything at Code Ninjas is designed to engage the children in a fun way. We believe playing is the very best way to learn something for a lifetime.

We stress teamwork, collaborations, and effective communication throughout the entire process. As I traveled around the country talking with parents about what Code Ninjas means to their families, a resonating theme emerged – they have finally found a place for their kids to feel comfortable with other kids like them and how wonderful it is to be able to call Code Ninjas their second home. Many parents have come in with children that are even on the autism spectrum and have noted marked improvements in their ability to relate and communicate in other parts of their lives outside of the dojo.

Our Code Senseis are usually advanced seniors in high school or undergraduates in college. These are the kids that I would have loved to hang out with when I was young – the geeks and the nerds. But what was once a stigma is now worn as a badge of honor. The creativity and ingenuity of our Code Senseis when we give them a project to work on never ceases to amaze. They are constantly inventing new ways to teach problem solving skills to our ninjas in ways that the adults in the room would never consider. For this reason and more, we have setup a certification program for the Code Senseis so that they can add their skillsets to their applications going into college and resumes for their first careers, whether as programmers or in another field.

I am not only testifying today on behalf of Code Ninjas, but also as a member of the International Franchise Association (IFA), the world's oldest and largest organization representing franchising worldwide. IFA works to protect and promote franchising through advocacy and education on behalf of more than 733,000 franchise establishments and the 7.7 million people who support them. IFA members include franchise companies of all shapes and sizes, in over 300 different business format categories, including individual franchisees and companies that support the industry in marketing, law, technology, and business development. Franchising altogether accounts for \$674 billion in economic output for the U.S. economy and makes up 2.5 percent of GDP.

Code Ninjas has been a member of IFA since 2016. At that time, we had only one company center and had not sold any franchised centers. In March of 2017, we started franchising to expand our brand and we have grown to more than 250 centers in more than 30 states. None of this would have been possible without the franchising business model and the IP protections it relies on.

When Code Ninjas was ready to expand, I chose the franchising model, in part, because of this country's strong intellectual property protections. These protections give me, and other small business franchisors, the confidence that we are not just licensing our products and services, but also their quality. Because of these protections, I know that ninjas in our centers in Florida are receiving the same quality coding education as our ninjas in our Texas flagship location.

When people think of a franchise, they often picture large networks that operate nationally and internationally, like McDonald's, KFC, or Holiday Inn and Marriott. Those are great, high profile examples of franchising. But that's not the whole story. There is a wide range of size, market power, experience, and products and services among franchising companies. In fact, small businesses constitute a large majority of franchisors. These are small businesses like any other – they have a limited footprint, limited financial resources, often fledgling advertising programs, and relatively challenging competitive positions. In between these two extremes is Code Ninjas and other franchisors that have grown beyond the start-up phase and are becoming national competitors. Code Ninjas what the franchising community calls an "emerging franchisor".

Franchising covers a broad spectrum of distribution relationships, but the majority fall into the "business format" category. These involve a license from the franchisor to the franchisee for the development of a business, an operating system for the business, and a trade identity under which the business will operate. In a business format franchise network, the structural emphasis is on maintaining the specifications, standards, and operating procedures that are essential to the establishment and operation of a business that reflects the franchisor's format, system, and quality of service standards. The common denominator in franchises is that they rely on a small business model and use economies of scale to grow. In Code Ninjas' case, we used economies of scale to teach youth STEM education at an accelerated rate, as well as

reduce the upfront costs to open such a facility by leveraging the buying power of our numerous small business franchisees as one.

Because franchisees are individual owners, ensuring brand protection is key to ensuring the customer's experience with the brand is of a consistent quality. The only way to give legal effect to brand protection is through intellectual property protection, specifically trademarks, service marks, trade dress, patents, copyrights, and trade secrets. In other words, franchising should be understood as a system of licensing intellectual property where the franchisees are small businesses that hire, fire and set the hours of their own people - but the brand controls the look and feel of the system so the customer experience is consistent.

Significantly, the use of these protections by franchisees has had a net-positive effect on the U.S. economy, helping to fuel the economy and spur growth both at home and overseas. And we're seeing franchising grow overseas, which brings money back through royalty fees.

In July 1946, recognizing the need to rebuild the economy and the importance that the licensing of intellectual property was to that effort, Congress passed the Federal Lanham (Trademark) Act. The Lanham Act is the primary federal trademark statute in the United States. Because of the actions by Congress, trademarks and service marks can be licensed and protected. Trademarks have long been an indicator of quality and source. Because of the Lanham Act, and its requirements that licensors police the use of its intellectual property licensed to third parties, franchisors have the right and the obligation to determine how their marks are used and do so in a way that protects the consuming public. The essential elements of brand standards and controls was carried into the rules promulgated by the Federal Trade Commission when they began to define and regulate franchising in 1979. Combined with the Lanham Act, the FTC Franchise Rule enabled small independent businesses to grow as part of a shared brand experience with other franchisees in a network.

The value of a franchise is in the franchisor's brand and how well the franchisor is allowed, under the law, to protect its use in delivering its products and services safely to consumers. This is the fundamental success story of the Lanham Act because it enabled franchisors to establish and preserve brand standards and ensured the consistent and sustainable replication of products and services throughout the United States.

Our goal, as a franchisor that considers itself a "franchisee support company", is to provide franchisees the tools they need to be successful. Franchisees come to us as teachers, lawyers, programmers, and sometimes experienced entrepreneurs, but there are always some parts of the process, curriculum, or operations that they would not be able to do easily or effectively without our help. We fill in the blanks that they have in order to give them the best chance at success. This means that we have to have a standardized set of training materials, branded uniforms, sales processes, and even jargon to use with parents so that Code Ninjas isn't distilled into a simple curriculum that can be found online, but instead an amazing experience for our ninjas and their parents as well. In fact, one of our trademarks is the term "Kids have fun, Parents see results" and this is the soul of our brand. It is obvious in all of the materials that we

produce and the policies that we make that this is our DNA as a company. Franchisees and customers alike come to expect this from us in everything we do and say, from the new curriculums that we produce to the posts we make on Facebook. Without it, we are like any other company with a computer and access the internet.

We need our messaging, logos, curriculums, training materials, and even our fully integrated and customized point of sale system to make our end to end experience special. Effective and fair IP protections in the US play a huge part in making all of this work effectively.

This is all to say that intellectual property protections are vital to the franchising model. Without these protections, Code Ninjas wouldn't be as successful as it is. But there are some areas in our IP protections fall short or can be improved.

**First**, registering your Franchise Disclosure Document (FDD) with various states is important for franchises, but the process is laborious, costly, and must be improved. Some states make the process relatively easy. For example, North Carolina, South Carolina, Connecticut, and Maine exempt franchisors from registration requirements so long as the franchise already has a federally registered and approved trademark. But some states have much more cumbersome requirements, and this patchwork has put up roadblocks and unneeded costs to getting started.

In the end, registering with states individually has taken longer than we had hoped, cost us capital that could be more effectively spent on our business, and has slowed us down as we were planning to grow. A national solution to the franchise disclosure process that is fair, simple, and without unneeded costly provisions would give a single authority to work with and a simple set of conditions to comply with in order to operate on a national scale in the US, saving everyone time, effort and money.

**Second**, the ongoing protection of our IP rights can be improved. We have seen a number of companies apply for trademarks that would have confused our brand with theirs. We need a more immediate feedback loop from the government on our registered trademarks so that we can be alerted when terms or marks are attempted to be registered that are like our own. This will make it easier for us to identify copycats. The current process can linger for months before the existing owner is notified, if at all.

**Third**, we need stronger international protections. In the digital realm, it's difficult to keep our brand separate from those in other countries. Even in our first year, we have seen copycats in the UK and elsewhere who were essentially squatting on our brand. These squatters are able to game the system in part because there are no implicit protections for URLs that contain our US registered trademarks, codeninjas.eu for example, which means we have no remedy to address these squatters other than paying them an effective ransom for something that should be ours by registration. As Code Ninjas is filing our trademarks through the Madrid System (WIPO), we are especially concerned about these weak protections in other countries as it pertains to existing trademarks in the US.

**Fourth**, we need to strengthen our protections against misleading advertisements. We fortunately haven't experienced negative reputation issues from misleading advertisements, but we do see our trademarks being used by others as search terms or in their ad space. Our largest competitor, for example, used our trademark "Code Ninjas" in their advertisement in an effort to funnel people interested in Code Ninjas to other companies instead. There aren't strong protections to help us remedy this IP infringement, and this is especially true for social media platforms like Glassdoor, Instagram, and Twitter where there is zero protection outside of what the respective companies' policies dictate. Google does provide some tools to enforce registered trademarks in the actual text of the ads, which is a good start, but they still allow our competitors to show their ads when Google users search the term "Code Ninjas", effectively usurping our brand when our customers are clearly looking to make a purchase from us.

**Fifth**, we need to clarify the joint employer standard and give franchisees the predictability they need to hire new employees, train existing ones, and unlock the full economic potential of their communities. For example, I am concerned that if I provide certain training materials to my franchisees – which are important materials for brand consistency and that add real value to their small businesses – provisions of those materials could be construed as creating a joint employer relationship. The legal risk of providing these materials is bad for both the franchisor and the franchisee, not to mention the employees. Fortunately, last fall, the House passed the "Save Local Business Act," which is a commonsense bill with bipartisan support that protects business relationships and promotes economic growth. IFA and its membership strongly recommend that Congress enact this legislative solution.

**Sixth**, too many franchise small business owners are preyed upon by 'patent trolls.' These patent trolls send vague and deceptive demand letters alleging infringement and demand unjustified payments from small business owners. Code Ninjas hasn't yet needed to fight these patent trolls, but no small businesses are immune from them.

To address these concerns and others felt by the franchising industry, the regulatory and legal landscape needs to be reformed to:

- Require demand letters to include truthful, basic information;
- Require patent owners to explain in detail exactly how infringement occurs when they file a complaint, including an explanation of the claim, the product involved, and how the patent is infringed;
- Allow the patent owner and manufacturer's case to proceed first;
- Clarify FTC exiting enforcement authority on demand letters;
- Eliminate the confusing patchwork of state IP laws in favor of 'one right, everywhere';
- Consider English rule if frivolous claims are made;
- Fee diversion; and
- Revamp the PTO to provide less expensive alternatives to litigation, ensuring a fair oversight mechanism for questionable patents, rather than deferring to lawyers.



Thank you for your time and for hearing my perspective on the importance of IP protections, and I hope the Committee will continue to work with the International Franchise Association to support small franchise entrepreneurs and ensure that the franchise business model remains viable for the thousands of Americans who want to start their own small business.



**Statement for the Record of the Songwriters Guild of America, Inc.**

**Before the House Small Business Committee Hearing on “Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses”**

5/14/2018

Chairman Chabot, Ranking Member Velazquez and Members of the Committee, the Songwriters Guild of America (SGA) thank you for this opportunity to submit a statement for the record on the importance of intellectual property protection, particularly strong copyright laws, to small businesses. Independent songwriters—just like grocery store owners, electricians and florists—are small business people who rely on the clear and effective enforcement of U.S. law in order to succeed. Unfortunately, just as grocery store owners couldn't prosper if prospective customers were allowed to exploit legal loopholes to loot their shelves, the songwriting profession will cease to exist if the U.S. continues to inadequately enforce copyright laws on the internet and to limit the ability of music creators to otherwise independently protect their rights.

My name is Rick Carnes and I am the President of the Songwriters Guild of America. SGA is the nation's oldest and largest organization run exclusively by and for songwriters, with over 5,000 members throughout the United States. I am a working songwriter and have lived in Nashville since 1978. I have been fortunate enough to enjoy a moderately successful career, including co-writing number one songs for Reba McEntire (“I Can't Even Get the Blues”), and Garth Brooks (“Longneck Bottle”), along with songs for Steve Wariner, Alabama, Pam Tillis, Conway Twitty and Dean Martin among others. Yet despite this success, I am reminded constantly of the perilous existence that all of us who have chosen songwriting as a small business profession labor under on a daily basis.

**How Songwriters Use Copyright—101**

A strong copyright system is absolutely essential to the long-term health of the songwriting profession. In fact, it was the decision more than two centuries ago to enshrine copyright protection in the Constitution that has allowed the U.S. to become, and so far to remain, the world's commercial and artistic leader in the creative industries. But every generation or so, the Government has had to address whether or not those protections are actually continuing to work effectively for creators. For instance, in the mid-19th century British and Irish music was not yet covered under US copyright, so protected American songwriters were counter-intuitively

forced to compete with free music from abroad. During those difficult times, one of our first and greatest American songwriters, Mr. Stephen Foster, died bankrupt on the Bowery in New York City with 38 cents and two song titles in his pocket.

As a result of such unintended commercial inequities and tragic cultural losses, the U.S. now respects foreign copyrights, and our own songs are, in turn, recognized by international treaty as valid in other countries. It was the enactment of such effective global copyright protections which led to astonishing cultural and financial success for American creators and small businesses on a level playing field. That lesson must not be forgotten.

The 21st Century's digital age has brought forth new challenges, and exposed serious flaws in what has today become an antiquated copyright system badly in need of revision to protect us against piracy and to guarantee fair remuneration for the marketplace use of our music. It is up to us to make sure that our laws keep pace, or we will most certainly fall behind as a nation and a culture.

#### **Most Songwriters Are Self-Employed Small Businessmen and Women**

You have to remember that unlike recording artists, songwriters don't make money from live shows or merchandise sales because we generally don't perform. We just sit in a room alone with a guitar or a piano, a coffee-stained blank page, and a burning desire to tell a story through music. We don't sell tickets or t-shirts. What we do is create the copyrights that serve as the driving force behind the global music industry. So it doesn't necessarily "all start with a song," as we are often told. It all starts with *the songwriter*, the small business person that creates those songs, and who is the bedrock of the music community and always will be.

So how do songwriters survive in the digital age? The answer is, just as it was for Stephen Foster back before the full development of U.S. copyright law, "quite precariously."

Songwriters primarily make our money from three sources: rare audio-visual uses of our works such as in films and commercials, airplay performance money when the song is performed on radio or TV if we are lucky enough to write a hit, and more commonly, physical and digital distribution of our songs through sales and streams of audio recordings. It is this latter stream that has for decades been under siege by pirates, and which has recently driven the profession of songwriting to the brink of economic ruin.

#### **The Old Songwriting Business Model Has Been Broken By Piracy**

It is well established that songwriters often share their copyrights with a publisher, whose job it is to administrate licensing and collection activities, to promote the songs to record companies and other prospective users, and to protect those songs against infringers. The publisher and songwriter share the resulting earnings under the terms of their agreement, with most independent creators receiving on average about two-thirds to three-quarters of such income.

Unfortunately, music publishers are not signing and protecting songwriters and new works in anywhere near the numbers they once did. It has become simply too risky to advance money

for songs in a market that doesn't protect those songs from massive Internet theft. And so a very significant portion of the once-vibrant US songwriter community has simply disappeared, victimized by its inability to promote and protect even the most popular musical works.

Of course, the SGA supports the development of content delivery networks that give consumers better, safer access to music online at fair rates of remuneration for creators. But absent greater help from the Government in protecting songwriters through higher royalty rates, elimination of unnecessary safe harbors for giant, multi-national digital music distributors, and enforcement of anti-piracy laws, our last, best hope is self-help. Towards those ends, SGA is pleased to see that *some* of these issues are being addressed by Congress through the Music Modernization Act (MMA) package that recently passed in the House. We hope that the Senate moves expeditiously to pass this crucial legislation, perhaps with certain additional improvements and clarifications in music creator protections still being considered, that would finally bring music copyright law in line with the 21st century. But there is one other practical and crucially important legislative fix that we need, immediately if possible.

#### **The CASE Act**

The single greatest issue of importance to the songwriter community, yet which remains fully unaddressed under the Copyright Act, is the following: in order to enforce our rights against infringers, songwriters literally need to "make a Federal case out of it," at an average cost of about \$350,000 to bring a lawsuit in federal court. Since only a precious few songs ever earn that much money in their entire existence, songwriters are left with no practical way to combat the theft of our works. We have a right with no remedy in the most classic sense. We simply cannot afford access to enforcement in a world of rampant infringement.

If my neighbor borrows my 60 dollar lawnmower and wrecks it, I can take him to small claims court and make him pay for the damage. But if he steals my entire life's work and posts it online for free, he can just thumb his nose at me and laugh—reposting it as many times as I can ask the infringer's network that it be taken down. Towards that end, SGA has worked for more than a decade—both with the U.S. Copyright Office and Congress—to craft legislation establishing a small claims venue in which to address such copyright infringement problems.

The bipartisan Copyright Alternative in Small-Claims Enforcement Act of 2017, introduced in October 2017, provides just such a venue and would make the American copyright system more accountable, responsive, affordable, and efficient. Individual creators would benefit from the small-claims process, as it would allow them to resolve copyright infringement disputes and other related claims remotely, while representing themselves. Furthermore, since both the filing fees and statutory damages in such cases would be far lower than in federal court, the small-claims court would actually be attractive and beneficial to both plaintiffs and potential defendants, who would also have the right to opt out of the small claims process without prejudice if they would prefer to do so.

It is for these reasons that SGA respectfully requests that members of the House Small Business Committee co-sponsor the CASE Act—long overdue legislation that would provide the small-business owners who devote their lives to creating music with a remedy to protect their

works. I thank you for allowing me to share my concerns and suggestions on behalf of SGA, and I look forward to answering any questions that you may have.

Testimony  
Dr. Joan Fallon  
Founder and CEO  
Curemark  
Statement Before the House Committee on Small Business

Intellectual Property 101: How Small Business Owners Can Utilize  
Intellectual Property Protections in Their Businesses

Washington, DC

May 16, 2018  
11:00 AM  
Room 2360  
Rayburn House Office Building

Hon Steve Chabot. Chairman  
Hon Nydia M. Velazquez. Ranking Member



Good morning. I want to thank you Chairman Chabot, ranking Member Velazquez and Members of the Committee for this opportunity to speak with you today about the juxtaposition of intellectual property and small and startup businesses. One of the hallmarks of these businesses is that they often have aspirations to be larger ones, with economic and social impact that are the backbone of job creation, economic independence, and prosperity.

Great ideas are ones that solve problems. Protecting those ideas so they can mature for the benefit of others is key, when we consider the growth, and scalability of small and startup businesses. The protection of ideas, designs, and innovation takes many forms, including patents, trademarks, and copyrights. The existence of patents and intellectual property was a vision held by our forefathers and they created those IP rights under our constitution.

I am the founder and CEO of a company called Curemark in Rye, NY. Curemark is currently working on an enzyme replacement drug for autism. The company was founded in 2007, but I personally have been working on the science since 1998. As a company we have conducted two FDA phase three clinical trials across the US at 33 clinical sites. We plan to meet with FDA later this year to discuss our findings and to file a New Drug Application.

Curemark, like almost all other startups has transitioned through a process of discovery, validation, and scale. We would not exist as a company, we would not have the opportunity to work on this drug treatment if it were not for our intellectual property protection. Our IP forms the basis of our company. It has allowed us to protect our findings, raise money, demonstrate efficacy, and put forth the novel science which hopefully will benefit millions of American children. Curemark and its wholly owned subsidiary has made discoveries and filed corresponding patent applications resulting in 120 issued US and Foreign Patents, along with an additional 80 Patents Currently Pending.

Curemark, since inception, recognized not only the need to patent its discoveries but to develop and execute on a well-rounded IP strategy. The extraordinary length of time pharmaceuticals require to develop, become validated through benchtop testing and human clinical trials, obtain regulatory approvals, and bring to a drug market requires the creation of an environment for relentless discovery and innovation. US and Foreign Patent Terms, FDA and Foreign Regulatory Protections including patent Term Extensions, and new related discoveries resulting in patents are critical elements of our IP strategy.

My initial Autism research resulted in the discovery of low levels of specific enzymes in Autistic Children. The resulting biomarker patent that ensued was fundamental in the founding of Curemark and certainly helped with subsequent funding. Throughout the development of our first indication and subsequent clinical trials we have made a myriad of discoveries related to the treatment of Autism and Autism Spectrum Disorders, along with various other neurological diseases such as ADHD, Parkinson's, Schizophrenia and Addiction.

Galenagen, our wholly owned subsidiary research corporation has created additional discoveries related to treatments for E. Coli, Staphylococcus Aureus infections and wound healing. Galenagen currently has 47 issued US and Foreign Patents, with an additional 30 patents pending.

Patents grow value at all stages in a company's lifecycle. They are especially critical for risk mitigation in startups that originate in every field of endeavor. Patents inherently validate discoveries and afford Early Investors' confidence in funding a startup company, especially when extensive due diligence for small investments would otherwise not be economically viable. Patents afford a sustainable competitive advantage, allow for licensing and joint ventures, and are often critical in obtaining funding at all stages of a company's growth.



The issuance of a patent is in my opinion one of the most egalitarian processes that exists in our country. Patents are granted without regard for race, age, gender, socioeconomics, education, geography, or even living status (Yes, even a deceased person can be granted a patent if the heirs apply for one).

In the early days of our republic women in did not share in equal rights with men to own property, to vote or to a separate economy. Despite this inability for women to own, commercialize or to receive value from their patents they still could be granted one, thus rewarding their innovation and creativity equally despite the presence of COVERTURE. A patent therefore promoted in theory equal economic status to an idea or invention regardless of gender. <sup>1</sup>

Today, there remains a significant dearth of women patent holders. Recent statistics from the *Institute for Women's Policy Research* shows that 18.8% of all patents list at least one woman as an inventor but only 7.7% list a woman as the primary inventor.<sup>2</sup>

The National Bureau of Economic Research makes the case that if the patenting gap were closed just between men and women it would result in an increase in GDP of 2.7%. A 2.7% increase in per capita GDP could dramatically change our trade deficit, quality of life and the overall world economy.<sup>3</sup>

While we so often attribute this patenting gap to a lack of women in STEM, Hunt et.al argue that this fact only explains a portion of this gap. Using data from

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<sup>1</sup> Fallon, Joan. *Is the Lack of Women Patent Holders Hurting the US Economy?* 2017 MoneyInc. <http://moneyinc.com/lack-women-patent-holders-hurting-us-economy/>

<sup>2</sup> Milli, Jessica et.al.2016 *The Gender Patenting Gap* Institute for Women's Policy Research. [https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/C441%20\(2\).pdf](https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/C441%20(2).pdf)

<sup>3</sup> Hunt, Jennifer, Jean-Philippe Garant, Hannah Herman, and David J. Munroe. 2012. *Why Don't Women Patent?* National Bureau of Economic Research. <<http://www.nber.org/papers/w17888.pdf>>.

the 2003 National Survey of College Graduates (NSCG), collected under the auspices of the National Science Foundation, they examine both the numbers of patents granted to men and women and the number of licensed or sold patents (commercialized) by gender and degree.<sup>4</sup>

They conclude that women are much less likely to be granted a patent than men, and are somewhat less likely to commercialize or license the patents they are granted. Because women with a degree in STEM (they use S&E in lieu of STEM) patent little more than other women, increasing the share of women in S&E would not greatly increase patenting. They also conclude that increasing the number of women with S&E would account for only 7% of the gender gap in commercialized patents. They further conclude and herein lies the key – that the greatest disparity, 78%, is due to the patenting gap among holders of S&E degrees.

Further the research shows that there is a racial and socioeconomic patenting disparity as well, where children in the top 1% of income distribution are 10 times more likely to be inventors than children with below median income parents. We also know that children exposed to innovation are more likely to be inventors, and where they live influences that exposure.<sup>5</sup>

A 2013 Brookings institute report stated that the 100 largest metro areas represents 65% of the us population but they represent 80% of the inventors granted patents since 1976. growing to 82% since 2005. While metro locations appear to drive patenting, the need for innovation and patents exists in rural and manufacturing communities. The report shows that the patenting effect is actually larger than the

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<sup>4</sup> ibid

<sup>5</sup>Lindquist, M, J. Sol, and M.Van Praag (2015) Why Do Entrepreneurial Parents Have Entrepreneurial Children? *Journal of Labor Economics* 33(2), 269-296

attainment of a bachelor's degree attainment. So, education level alone is not the driver of innovation.<sup>6</sup>

The US Chamber of Commerce Global Intellectual Property Center newest report entitled: *Employing Innovation Across America*, found that in "IP-intensive industries, workers make, on average, higher wages than their private sector counterparts. Additionally, IP drives each state's manufacturing exports, leads to increased R&D investment, and stimulates and protects innovation".<sup>7</sup>

In conclusion, I would like to state that intellectual property belongs to all Americans. Innovation is a foundational principle of our great nation, and every state and local jurisdiction in this country plays a role. Genius is equally distributed throughout this country, providing equal access to the patent process can foster innovation.

I believe that the federal government is key in fostering this innovation.

A nationwide awareness campaign at the local level with every state participating can begin the conversation. Setting up federal OFFICES OF INNOVATION in every state thus making the patent process accessible to everyone will go a long way in outreach.

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<sup>6</sup> Rothwell, Jonathan, Lobo, José, Strumsky, Deborah and Muro, Mark. 2013. *Patenting Prosperity: Invention and Economic Performance in the United States and its Metropolitan Areas*. Brookings Institute. <https://www.brookings.edu/wp-content/uploads/2016/06/patenting-prosperity-rothwell.pdf>

<sup>7</sup> Noyes, Brian. 2015. *Employing Innovation Across America-Being Competitive in the Global Marketplace*. Global Innovation Policy Center. US Chamber of Commerce. <http://www.theglobalipcenter.com/employing-innovation-across-america-being-competitive-in-the-global-marketplace/>

We need to encourage innovation in our young people nationwide regardless of whether they have an idea for a new block chain technology, a new type of screwdriver, a new method for growing corn, or a car that runs on water. Innovation is race, color socioeconomic, geography and gender blind. It needs to be fostered in our young people taught in our schools, and beyond. The USPTO, the SBA and the US Congress form a powerful platform from which patents can become a part everyone's awareness, and together we can change the face of our nation through our innovation.

Thank you again for giving me the chance to speak with you. I look forward to your questions.



**Statement for the Record of the Authors Guild Before the House Small Business  
Committee Hearing on “Intellectual Property 101: How Small Business Owners Can  
Utilize Intellectual Property Protections in Their Businesses”**

5/15/2018

The Authors Guild respectfully submits this official statement for the record on today’s hearing, “Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses.” The Authors Guild is the nation’s oldest and largest professional society of published authors, representing more than 10,000 book authors and freelance writers.

Although our members represent a broad range of American authorship, they are all small business people who rely on effective copyright enforcement, especially online, to make a living. Being small business people, they cannot afford to litigate against infringers, and the result is that their work is pirated with impunity. Barring a serious reexamination of our nation’s copyright laws, the future of American writing is in peril.

Authors and Copyright

Effective copyright protection is the linchpin of professional authorship; it enables authors to make a living writing. World renowned American writers—Mark Twain, Harper Lee, and John Steinbeck, to name a few—wrote uniquely American stories that are still a fabric of our society today. They did so, in part, because of a desire to put their talents to use, but also because they knew their subsequent work would be protected under the Constitution. They knew that their words, their intellectual property would belong to them, and that they and their heirs would be able to control how their property was used throughout the term of the copyright.

That culture is now at risk. The value of copyrights is being quickly depreciated, a crisis that hits new and so-called midlist writers hardest. There are many reasons for this decreased value – indeed the decrease in respect for the small creator -- but the aggregate effect of free-wheeling copyright infringement online plays an outsize role. The entire publishing industry loses \$80 to \$100 million to piracy annually, according to a 2012 estimate by the Association of American Publishers. Meanwhile, a recent Authors Guild survey shows that approximately 67% of our authors earn less than the poverty level from their writing, with median writing-related income at \$8,000, down 24% since 2009.

In his 2013 *New York Times* op-ed entitled “The Slow Death of the American Author,” Scott Turow, a former president of the Authors Guild and a best-selling author, wrote about a 2012 trip to Moscow where he met with a group of Russian authors. Turow described the “sad fate of writing as a livelihood” in Russia, where e-publishing is savaged by instantaneous piracy. “As a result,” Turow wrote, “in the country of Tolstoy and Chekhov, few Russians, let alone Westerners, can name a contemporary Russian author...”

The lesson is, as Turow writes: “Soviet-style repression is not necessary to diminish authors’ output and influence.” “Just devalue their copyrights.”

#### CASE Act

While the Authors Guild believes there are many ways in which U.S. copyright law can be improved, we also understand that it is a complex, contentious topic with disparate interests that must be balanced. One piece of common-sense, bipartisan legislation that we believe can garner sufficient congressional support is the Copyright Alternative in Small-Claims Enforcement (better known as the “CASE”) Act of 2017.

This proposed legislation would establish an accessible and efficient forum to resolve “small” copyright claims, allowing creators and small businesses to bring actions demanding less than \$15,000 in damages (per claim), without having to hire a lawyer or travel, as proceedings will be conducted electronically. Giving small creators a remedy to protect their intellectual property rights without having to file expensive and complicated federal lawsuits is something the Authors Guild and other creator groups have been actively working towards since 2006. Indeed, the draft bill is based on proposed legislation in a 2013 U.S. Copyright Office report, entitled “Copyright Small Claims”, which was the culmination of a two-year study based in [large?] part on public input.

The problems that the CASE Act addresses have long vexed authors, especially those without the resources to protect their copyrights in the federal court. The costs of obtaining counsel and bringing a federal case— which are estimated to be at least \$350,000 according to a 2011 report by the American Intellectual Property Law Association -- effectively preclude most individual copyright owners (even those whose works have clearly been infringed) from being able to protect their rights and deter continuing violations of their copyrights. This is particularly the case for infringements where the damages and potential recovery are relatively low. In such cases, the prospect of a small recovery dissuades some copyright holders from filing a suit that costs more to file than the potential recovery. This means that many individual authors have rights without a remedy—in other words, no real rights at all.

The Authors Guild looks forward to working with both houses of Congress to see that a Copyright Small Claims Court is finally established. We strongly urge the Members of the House Small Business Committee consider cosponsoring this important legislation.

May 15, 2018

**INTELLECTUAL PROPERTY 101: HOW SMALL BUSINESS OWNERS CAN  
UTILIZE INTELLECTUAL PROPERTY PROTECTIONS IN THEIR BUSINESSES**

**Comments Submitted to**

**The Honorable Steve Chabot**  
Chairman, House Committee on Small Business  
Washington, DC 20515

OFFERED BY A COALITION OF VISUAL ARTISTS

American Photographic Artists  
American Society for Collective Rights Licensing  
American Society of Media Photographers  
Digital Media Licensing Association  
Graphic Artists Guild  
National Press Photographers Association  
North American Nature Photography Association  
Professional Photographers of America  
PLUS Coalition  
Shaftel & Schmelzer

Dear Mr. Chairman,

The undersigned entities represent individual creators, their licensors, licensees and other concerned businesses, including photographers, illustrators, video journalists, graphic artists, and other visual creators, who depend for their livelihood on the existence of an effective copyright system. We are quintessential “Mom and Pop” businesses, who as owners are responsible for running all facets of a small business. Our businesses are dependent on the licensing fees derived from works made available in the marketplace. We welcome the opportunity to share with the House Small Business Committee our views for the hearing entitled “Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses.” We will briefly address two issues. First, the daunting challenges faced when seeking to remedy copyright infringement through the federal court system; and second, our support for H.R. 3945, “The Copyright Alternative in Small-Claims Enforcement Act of 2017” (the “CASE Act”) which is pending before the House Judiciary Committee. We respectfully request that this statement be made part of the formal hearing record.

### **The Creative Business**

Creative professionals represent a huge swath of the economy. According to the most recent Bureau of Labor Statistics reports, more than 472,500 creative professionals produce work that supports and enables countless other businesses in their communities. According to the Bureau of Labor Statistics, as of May 2015, approximately 204,850 graphic designers, 30,240 multimedia artists and animators, 90,150 artists and related workers, including illustrators, painters, sculptors, as well as 34,690 art directors, were employed in the United States.<sup>1</sup> As of 2016 statistics, the Bureau of Labor Statistics reported 147,300 photography jobs in the US.<sup>2</sup> The commercial and portrait photography business produces a total annual revenue of \$10 billion.<sup>3</sup>

### **The Problem**

Because many copyright infringements involve the loss of a few thousand dollars or less, and such claims may only be brought in federal court, most lawyers will not take these cases because they do not merit the time and expense involved. While the value of the infringement may not seem like much, it can mean the difference between staying in business, paying medical insurance premiums, or coming up with the monthly rent. It is not surprising that many potential victims of copyright infringement currently feel disenfranchised from the ability to meaningfully enforce their intellectual property rights.

Although these types of enforcement challenges have plagued individual copyright owners for years, the uncontrolled, unauthorized reproduction and distribution resulting from the exponential misappropriation on the Internet has been devastating. Visual artists endlessly see their creative efforts distributed without authorization, credit or compensation while being virtually powerless to intervene. Within seconds of its creation an image may be downloaded and re-posted going “viral” in short order. It is easy for a digital image to be stripped of its metadata, negating the ability to legally license the work. Regrettably, more than one generation has come to feel entitled to free and unfettered use of photographs and graphics.

### **The Legislative Solution**

Several years ago, the Copyright Office conducted a review of smaller value copyright claims and issued a comprehensive report that recommended a legislative solution to create an alternative venue for copyright small claims cases within the Copyright Office.

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<sup>1</sup> *Visual Arts Overview*, The Vault (2018), <http://www.vault.com/industries-professions/industries/visual-arts.aspx>.

<sup>2</sup> Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*, Photographers, <https://www.bls.gov/ooh/media-and-communication/photographers.htm> (last visited May 12, 2018).

<sup>3</sup> *Photography - US Market Research Report*, IBISWorld (July 2017), <https://www.ibisworld.com/industry-trends/market-research-reports/professional-scientific-technical-services/professional-scientific-technical-services/photography.html>.



H.R. 3945, the “Copyright Alternative in Small-Claims Enforcement Act of 2017” (“the CASE Act”) was introduced last year by Reps. Hakeem Jeffries (D-NY) and Tom Marino (R-PA). It has broad bipartisan support, cosponsored by Reps. Jerrold Nadler, the ranking democrat on the House Judiciary Committee, Lamar Smith (R-TX), Doug Collins (R-GA), Judy Chu (D-CA), Ted Lieu (D-CA), Steve Cohen (D-TN), David Cicilline (D-RI), Kevin Cramer (R-ND), Ted Deutch (D-FL) and Grace Napolitano (D-CA).

The CASE Act offers small business people a fair, cost-effective and streamlined process that provides meaningful relief for relatively modest copyright infringement claims. It creates a completely voluntary system and preserves the ability of parties to pursue litigation in federal court, applies only to claims that do not exceed \$30,000, and provides a less formal, streamlined process where legal representation is optional. Moreover, the legislation is fair to respondents who appear before the small claims Board. For instance; it allows respondents, to unconditionally opt-out of the small claims process, permits respondents to raise all defenses available in federal court including fair use, caps potential damages, and prohibits attorney fees awards except in cases of bad faith.

#### **Conclusion**

In summary, the CASE Act addresses and corrects a longstanding unfairness in copyright law—an inequity that often renders small businesses powerless to enforce the rights they are accorded under the law. Mr. Chairman, we urge you and your colleagues to support this critical legislation.

Respectfully submitted by,

American Photographic Artists  
 American Society for Collective Rights Licensing  
 American Society of Media Photographers  
 Digital Media Licensing Association  
 Graphic Artists Guild  
 National Press Photographers Association  
 North American Nature Photography Association  
 Professional Photographers of America  
 PLUS Coalition  
 Shaftel & Schmelzer



**Testimony of Rachel King, CEO  
GlycoMimetics, Inc.  
To the United States House of Representatives  
Committee on Small Business  
Hearing on “Intellectual Property 101: How Small Business Owners  
Can Utilize Intellectual Property Protections in Their Businesses”  
March 16, 2018**

Chairman Chabot, Ranking Member Velazquez, members of the Committee on Small Business, thank you for the opportunity to present my views on “Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses.” This topic is as important as it is timely, and I want to commend the Committee for taking the time to examine it. Strong and enforceable patent rights are a critical element in any startup, especially in biotechnology. Without strong patent rights, the financing to take the revolutionary discoveries from the lab to market would be unavailable. The weakening of those patent rights threatens new investment in the innovation sector of our economy and with it the jobs and industries of the future.

By way of personal introduction, I am Rachel King, CEO of GlycoMimetics, Inc., a small Maryland-based company. GlycoMimetics is a publicly traded, clinical-stage biotechnology company that utilizes novel and proprietary glycobiology technology to develop treatments for diseases, especially those with high unmet needs. Since the company’s inception in 2003, GlycoMimetics has developed a robust, diversified product pipeline. The company’s mission is to continue to advance its pipeline, providing hope for patients with sickle cell, cancer, and other serious diseases.

In order to advance this mission, our company has had to go through many stages of financing, from our early days when we were backed by venture capital funds, until more recently when we have accessed funds as a public company. As the company has grown and as our pipeline has advanced, our financing needs have grown as well, reflecting the fact that drug development is a very expensive undertaking. We raised over \$60 million in venture funds as a private company, and in addition signed a partnership with a major pharmaceutical company that could bring in over \$300 million to our company. In addition and most recently, we have raised nearly \$250 million in the public market during the past year – all with the objective of continuing to generate funds to enable us to advance our pipeline of drug candidates. Our ability to secure all of this financing over more than a decade has been critical to building our company and it has been possible only because of the strength of our patent portfolio.

Prior to joining GlycoMimetics, I was an Executive in Residence at New Enterprise Associates, one of the nation’s leading venture capital firms. Prior to that, I spent 10 years with Genetic Therapy, Inc., through the company’s early stage, initial public offering, and

eventual sale to Novartis. After the sale, I was named CEO and ran the company as a wholly owned subsidiary. I received my B.A degree from Dartmouth College and my MBA from Harvard Business School.

I also currently serve on the Board of Directors for the Biotechnology Innovation Organization, the biotech industry's leading national trade association. BIO is the world's largest trade association representing biotechnology companies, academic institutions, state biotechnology centers and related organizations across the United States and in more than 30 other nations. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial and environmental biotechnology products.

My testimony today is based on my experiences as an investor in and CEO of small biotech companies.

#### **Background on the Role of Patents in the Biotech Business Model**

Very few sectors of the nation's economy are as dependent on predictable, enforceable patent rights as is the biotechnology industry. Robust patents that cannot be easily circumvented or invalidated, and that can be predictably enforced against infringers, enable biotechnology companies to secure the enormous financial resources needed to advance biotechnology products to the marketplace, and to engage in the partnering and technology transfer that is necessary to translate basic scientific discoveries into real-world solutions for disease, pollution, and hunger.

Research and development within the biotechnology industry comes at a very high cost, and every idea that is funded comes with a much greater risk of failure than success. Investment thus is predicated on an expected return in the form of patent-protected products or services that ultimately reach the market. The typical biotech company does not have a product on the market yet, nor a steady source of revenue, and spends tens of millions of dollars on R&D annually. The biotechnology industry, as a whole, is responsible for well more than 20 billion dollars of annual research investment, and provides employment to millions of individuals nationwide. Virtually all this investment is through private sector funding.<sup>1</sup>

Private emerging companies working on innovative therapeutics are highly dependent on access to capital. More than 95% of these companies are in the R&D stage without an FDA approved product. Private investment in this cutting-edge research and development in the

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<sup>1</sup> Moving Research from the Bench to the Bedside: Hearings Before the Subcomm. on Health of the House Comm. on Energy and Commerce, 108th Cong., 1st Sess. 47 (2003) (testimony of Phylliss Gardner, M.D.) (<http://archives.energycommerce.house.gov/reparchives/108/Hearings/07102003hearing990/Gardner1579.htm>) ("The biotechnology industry is the most research and development-intensive and capital-focused industry in the world," noting that 98 percent of research and development investment comes from the private sector).

United States in the last decade totaled \$130 billion.<sup>2</sup> Developing a single therapy requires an average investment ranging from \$1.2 billion to over \$2 billion, and the clinical testing period alone consumes more than eight years on average.<sup>3</sup>

Such investments are not only expensive; they are risky. For every successful biopharmaceutical product, thousands of candidates are designed, screened, and rejected after significant investments have been made. The chances that a biopharmaceutical medicine will advance from the laboratory bench to the hospital bedside are approximately one in 5,000.<sup>4</sup> Only a small minority of candidate drugs even advance to human clinical trials, and most of those will never ultimately reach the market. For example, at the time human clinical testing begins, the odds that a biopharmaceutical compound will eventually receive FDA approval are less than one-third.<sup>5</sup>

Because such risks and costs cannot usually be borne by any one entity alone, biotech drug development depends heavily on licensing, partnering, and access to capital. Patents allow biotech inventions of great societal value to be passed or shared among parties best suited to unlock their potential at any given stage of development and commercialization – each contributing its part, each sharing the risk of failure, each increasing the odds that a product eventually reaches patients. Such sharing of risks, costs, and talents has been critical to the success so far of my own company, GlycoMimetics. Without strong and reliable patents, we would not have been able to secure the investment or partnerships that have kept our doors open for so many years as we seek to prove the safety and efficacy of our leading therapeutic candidates.

If patents can be invalidated under overly broad criteria, or if the ability to enforce them becomes limited due to an exceedingly high bar to filing a lawsuit or excessive delays or complications in prosecuting a case through the courts, third parties would be less likely to invest in or license the technology, and major sources of R&D funding would move elsewhere. The result – patients waiting for the next new cure or treatment will have to wait longer or may not ever get it at all.

Unfortunately, changes to our patent laws, through legislation, agency actions, and court decisions, have severely weakened our patent system. Although the U.S. patent system

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<sup>2</sup> David Thomas and Chad Wessel, Emerging Therapeutic Company Investment and Deal Trends. Biotechnology Innovation Organization 5 (2018), available at [http://go.bio.org/rs/490-EHZ-999/images/BIO%20Emerging%20Therapeutics%20Company%20Investment%20and%20Deal%20Trends%20Report%202008-2017.pdf?mkt\\_tok=eyJpIjoiTjJjNE5UUXhZamd5WIRReSIsInQiOiI5aFhQSiIdINEZxYklnRmF2VUtBckJlaidHMVdiSFwvZnI3d2wzSFhwZjNINmF0cGRPTWJraXZUViF1dmR5SzBKVUUQyb2IwTkVjXC9SMkxick1UaXpmXC9PZCvbiUxOVE2S2RGVnRaWEZuZmp0eHRFczRvNmIUbG1TY2J4dkNBTHdITCj9](http://go.bio.org/rs/490-EHZ-999/images/BIO%20Emerging%20Therapeutics%20Company%20Investment%20and%20Deal%20Trends%20Report%202008-2017.pdf?mkt_tok=eyJpIjoiTjJjNE5UUXhZamd5WIRReSIsInQiOiI5aFhQSiIdINEZxYklnRmF2VUtBckJlaidHMVdiSFwvZnI3d2wzSFhwZjNINmF0cGRPTWJraXZUViF1dmR5SzBKVUUQyb2IwTkVjXC9SMkxick1UaXpmXC9PZCvbiUxOVE2S2RGVnRaWEZuZmp0eHRFczRvNmIUbG1TY2J4dkNBTHdITCj9)

<sup>3</sup> Joseph A. Di Masi and Henry G. Grabowski, The Cost of Biopharmaceutical R & D: Is Biotech Different? Manage. Decis. Econ. 28: 469-479 (2007) (hereafter: "Di Masi and Grabowski").

<sup>4</sup> Secretary of Health and Human Services Tommy G. Thompson, Remarks at the Milken Institute's Global Conference (Apr. 26, 2004), available at [www.hhs.gov/news/speech/2004/040426.html](http://www.hhs.gov/news/speech/2004/040426.html)

<sup>5</sup> DiMasi and Grabowski, at 472-3.

was once considered the gold standard for the rest of the world, in the latest global survey conducted by the U.S. Chamber of Commerce, our patent system was rated only 12<sup>th</sup> in the world, behind Singapore, France, and South Korea, among other countries.<sup>6</sup>

The report pointed to two main factors in calculating our diminished standing: the patent opposition system which makes it easy to invalidate a patent after it has been granted, and judicially imposed limits on the types of innovations that are now eligible for patent protection.

On the subject of patent opposition, the GIPC report notes,

The patent opposition system in the U.S. continues to involve a great deal of cost and lack of predictability for patent owners compared with other post-grant opposition systems. As discussed in the previous edition of the Index, the most commonly used post-grant opposition mechanism in the U.S. is the Inter Partes Review (IPR), which occurs before the specialized Patent Trial and Appeals Board (PTAB) within the USPTO. Despite the best intentions of the IPR system (established in 2011 under the America Invents Act) to ease opposition proceedings, the system has led to a disproportionately high rate of trials and rejections, and as a result, appeals and additional proceedings. A third-party analysis of PTAB data in 2017 suggests that only about 5–15% of cases end with all claims being considered patentable. While it is unclear whether this reflects challenges within the IPR process or wider challenges in examination and prosecution, it is clear that innovators face significant uncertainty about the process and outcomes, leading to additional litigation, costs, and risks.<sup>7</sup>

Limits on patent eligible subject matter have also placed the U.S. at a competitive disadvantage with our global trading partners. A recent analysis found that between August 1, 2014 and September 27, 2017, “1,694 patent applications claiming the same or similar inventions were granted by the [European Patent Office], in China, or both” but ruled ineligible for patent protection in the U.S. These included life saving diagnostic methods and treatments for such diseases as gynecologic, prostate, and breast cancer, diabetes, and liver disease.<sup>8</sup>

For these reasons, currently-pending patent litigation reform legislation is highly relevant to the biotech business model. A small or mid-sized biotech company that today decides to begin development of, for example, an Alzheimer’s treatment must look a decade or more into the future. Long-term financial commitments will be required; several hundreds of millions of dollars will need to be raised; and development partnerships will need to be secured in a situation where the cost of capital is high, and the odds of ultimate success are small. Because investment-intensive businesses can tolerate only so much risk, even

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<sup>6</sup> Global Innovation Policy Center, *Create: U.S. Chamber International IP Index*, 6<sup>th</sup> ed. 35 (2018).

<sup>7</sup> *Id.* At 157.

<sup>8</sup> Kevin Madigan and Adam Mossoff, *Turning Gold to Lead: How Patent Eligibility Doctrine is Undermining U.S. Leadership in Innovation*, 24 *Geo. Mason L. Rev.* 939, 956-58 (2017)

moderate additional uncertainty can cause business decisions to tip against developing a high-risk, but potentially highly-beneficial, product.

This is not an academic consideration. Every biotech executive has stories to tell about promising experimental compounds that had very favorable medicinal properties, but were never developed because their patent protection was too uncertain. The injection of additional systemic uncertainty by, for example, making the enforceability of patents against infringers more uncertain can negatively affect which new cures and treatments may become available a decade from now.

The average American today can realistically hope to live into her or his eighth decade. At retirement, one out of five Americans can expect to develop Alzheimer's disease during her or his remaining years. The risk of developing cancer is even greater. While much has been said about inefficiencies in the patent system that drive up business costs in some sectors today, we must keep in mind that that same patent system encourages risk-taking and long-term investment in potential solutions for the biggest problems facing our world and the generations to come: disease, hunger, and pollution. Great care must be taken to ensure that we do not forget the patent system's longer-term benefits to society. It is critical that the future path of our patent system is one that preserves and maintains the incentives for innovation that have made the United States the global leader in medical, agricultural, and environmental biotechnology.

#### **Views on Patent System Reforms**

As a CEO of a small business, I am sensitive to the concerns that have been raised by some small business owners about the negative impact on their businesses from the meritless assertion of overly broad and questionable patents by so-called "patent trolls." Small businesses have fewer human and financial resources to deal with such legal maneuverings, and they distract management from its focus on advancing the company's R&D or operations.

But Congress also must recognize that small businesses often must defend their inventions and their companies against very real threats posed by larger corporate infringers. When they are forced to do so, it is critical that the litigation system and patent opposition system at the United States Patent and Trademark Office operate in a cost efficient, timely, balanced, and predictable manner. Otherwise, investors and partners will simply dry up while a cloud of uncertainty hangs over the small company's patent portfolio.

In this regard, it has become clear that the PTO's Inter Partes Review (IPR) system of administrative patent challenges are having a game-changing effect on the reliability of patents as a basis of investment in the biotechnology industry. Patents that are involved in district court litigation are now routinely subjected to concurrent administrative litigation in the PTO, where they are being invalidated at rates so high that the basic procedural fairness

of these proceedings is increasingly being questioned. IPRs review patents under a different standard than Federal Courts, so a patent may be judged both valid in Federal Court and invalid in an IPR.<sup>9</sup> This creates a great risk of duplicative proceedings and inconsistent outcomes, as alleged infringers seek to gain advantages or leverage over patent owners that would not exist under district court litigation alone. For example, the way claims are interpreted, and other procedural protections are less favorable to patent owners in the PTO administrative setting.

A patent may also be subject to multiple challenges, so even if the patentee successfully defends a patent in Federal Court, and in repeated IPRs, it may still be challenged in the future. There is no finality, and innovators are unable to gain quiet title to their inventions. In addition, third parties with no commercial interest in the patent or field to which the patent pertains have figured out that they can extort settlements or otherwise gain financially from bringing, or even threatening to bring, patent challenges against critical patents owned or licensed by biotech companies. Biotech companies can be particularly vulnerable to such extortion because – in contrast to most high-tech companies – biotech companies often rely on just a handful of highly valuable patents to protect their products and massive investment therein. This already is being seen by several biotech companies, who have been approached by third parties threatening to file IPRs unless the company makes a substantial financial payment to them. Hedge funds have found that IPRs are such a threat to patent rights, that the mere filing on a challenge is enough to depress a company's stock price, in one case by over \$150 million. This creates an opportunity to “short” the stocks and turn a profit.

I don't believe that Congress intended for the IPR system to be used in this abusive manner. The original purpose of IPRs was to provide an alternative to litigation that would be cheaper, faster, and yield clear final ruling on the validity of a patent. Instead, innovators must now defend their patents in two forums, against duplicative challenges, with no finality, and at potentially greater cost. Parties with no standing in federal court and no interest in the patent other than extortion or market manipulation are able to challenge a patent in an IPR, leading to further abuse.

BIO supports bipartisan legislation that would, among other things, reform the IPR system. The STRONGER Patents Act, H.R. 5340, introduced by Representatives Steve Stivers and Bill Foster, would address many of the deficiencies in the IPR process. It also incorporates the TROL Act, which would protect patent holders from predatory demand letters, and it would ensure that fees paid to the Patent and Trademark Office would not be diverted to other government functions.

BIO also commends the members of this Committee for reporting favorably H.R. 2655, the Small Business Innovation Protection Act of 2017, introduced by Representatives Dwight Evans and Brian Fitzpatrick, which would provide assistance for small businesses attempting to navigate the unfamiliar and complicated path to patent protection.

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<sup>9</sup> Novartis AG v. Noven Pharmaceuticals, Inc., (Fed. Cir. Apr. 4, 2017) (Prost, WALLACH, Stoll).

Congress should avoid making changes to the general patent litigation system that would raise the cost of or delay patent enforcement, as doing so would particularly impact small businesses most negatively. For example, efforts to vastly increase the amount of detailed information that must be included in every complaint for patent infringement, or proposals to delay discovery against accused infringers, would make it more difficult for small businesses to protect their inventions in a timely and cost-effective manner.

I also am concerned about several proposals that would grant the authority for a court to join third parties with a financial interest in the plaintiff or patent at issue – such as investors, licensors, or commercial partners – to the litigation as unwilling co-plaintiffs to pay the other side’s costs unless they renounce all interest in the patents at issue. The net result of such joinder provisions would be to create many additional encumbrances, especially for small businesses, that would make partnering, collaborations, and the enforcement of patents needlessly more expensive and more complicated. Business partners, patent owners, financing companies, and others who engage only in arm’s length business with the patentee should not be subjected to potential liability or be forced to renounce their rights just to avoid being dragged into litigation between two other parties. While there have been efforts to limit the applicability of some of the above litigation changes to cases not involving real commercial competitors, the language is often imprecise and fails to recognize that not all patent litigation in biotechnology would fall into any such exceptions. In fact, the vast majority of American biotechnology companies are far from having a product on the market, yet depend critically on the enforceability of their patents to attract funding, to enter into development partnerships, and to advance their technology. A solution must be found for such businesses as well, businesses that are actively trying to develop, and seeking investment to further develop, patent-protected inventions.

#### Conclusion

I want to thank the Committee for the opportunity to testify today and explain a view of the patent system from the perspective of a small, innovative, investment-intensive biotech business. The Framers of the Constitution understood that strong, enforceable patent rights are necessary “To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”<sup>10</sup> We have historically led the world in innovation because of our patent system. If we hope to secure our leadership position in the future, Congress must act to protect the rights of innovators. This is especially the case with small businesses and startups. I urge the Members of this Committee to reform our patent system and protect our place in the world as the home of innovation.

Thank you.

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<sup>10</sup> U.S. Const., Art. I, Sec. 8, Cl. 8.





Statement of

**Keith Kupferschmid**  
**Chief Executive Officer**  
**Copyright Alliance**

before the

**HOUSE COMMITTEE ON SMALL BUSINESS**

hearing on

**Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses**

The Copyright Alliance submits this statement for the record concerning the Committee's May 16, 2018 hearing titled, *Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protections in Their Businesses*.

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

There are few factors as integral to the success of the American economy as small businesses and intellectual property. While small businesses consistently create more jobs in the aggregate than larger firms across the United States and employ nearly half of the private sector workforce,<sup>1</sup> IP-intensive industries account for 38.2%—or \$6.6 trillion—of the national GDP, and create millions of new jobs every year, copyright industries alone contributing 5.6 million jobs in 2014.<sup>2</sup>

As the Committee is well aware, small businesses are prevalent throughout every industry in America, and the copyright-reliant industries that the Copyright Alliance represents are no exception. In fact, it

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<sup>1</sup> See OFFICE OF ADVOCACY, U.S. SMALL BUS. ADMIN., UNITED STATES SMALL BUSINESS PROFILE 1 (2016), [https://www.sba.gov/sites/default/files/advocacy/United\\_States.pdf](https://www.sba.gov/sites/default/files/advocacy/United_States.pdf); see also OFFICE OF ADVOCACY, U.S. SMALL BUS. ADMIN., SMALL BUSINESS BULLETIN (June 2015), [https://www.sba.gov/sites/default/files/Small\\_business\\_bulletin\\_June\\_2015.pdf](https://www.sba.gov/sites/default/files/Small_business_bulletin_June_2015.pdf).

<sup>2</sup> U.S. PATENT & TRADEMARK OFFICE, INTELLECTUAL PROPERTY AND THE U.S. ECONOMY: 2016 UPDATE ii (Sept. 2016), <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>.

is not uncommon for creators like photographers, graphic designers, software developers, musicians, record companies, movies studios, etc. to operate as sole proprietors or small employers. In that respect, the interests of many of our members—including our individual creator members, and the small organizational members whose copyright interests we represent—reflect not just their roles as creators within the copyright space, but also their roles as proprietors of small businesses. The Copyright Alliance caters to those needs through our various advocacy efforts as well as educational initiatives aimed at helping professional creators and small businesses understand the value of copyright and learn how to protect and make the most of their rights.

One way that our advocacy efforts reflect that intersection is through our continued support of H.R. 3945, the Copyright Alternative in Small-Claims Enforcement (CASE) Act, which would create a voluntary alternative to federal court for resolving certain copyright disputes. Since copyright is under the exclusive jurisdiction of federal courts and federal copyright litigation can cost upwards of \$300,000 to litigate, it is often too costly for professional creators and small businesses to afford to enforce their rights under the law. In essence, these creators have a right without a remedy. The CASE Act aims to address that fault by creating an inexpensive, streamlined, and voluntary process where copyright owners and users alike can resolve copyright disputes. In addition, damages would be capped at \$15,000—a 90% reduction as compared to damages available in federal court—the process is simply enough that parties can proceed without the assistance of an attorney, and parties can simply opt out if they do not wish to use the small claims process.

We believe that the CASE Act would be of interest to the Committee because it stands to benefit *all* small businesses, not just those with proprietary copyright interests. For small businesses with copyright interests, the CASE Act would provide them access to remedies that are cost prohibitive under the status quo—remedies that without which, many businesses are stifled from the start. For small businesses that use copyrighted content and that may find themselves on the other end of copyright litigation, the CASE Act provides them an alternative forum with a significant reduction in potential liability.

Copyright law education is another one of our primary efforts, and our website—[copyrightalliance.org](http://copyrightalliance.org)—is a valuable educational resource for helping professional creators and small business understand the complexities of copyright law. Our [Copyright Law Explained](#) and educational [videos](#) provide easy to understand explanations of matters like copyright registration, licensing, copyright infringement and fair use. In addition, we feature answers to common questions in our [FAQ](#) section—including questions answered directly by Rob Kasunic, Associate Register of Copyrights and Director of Registration Policy & Practice at the Copyright Office—and our blog-style [Ask the Alliance](#) series.

We are also partner with other organizations across the country to help educate professional creators and small businesses on copyright. For example, last month, in celebration of World Intellectual Property Day, we partnered with Volunteer Lawyers for the Arts organizations that provide legal, business, and accounting advice and education to creators to host educational events focused on copyright in cities like Nashville, New Orleans, Washington, D.C., St. Louis, Sacramento, Los Angeles, San Francisco, Chicago, New York, St. Paul, and Austin. In the coming months and years, we hope to continue growing our network by partnering with other government and non-governmental organizations to bring copyright education to more cities, professional creators, and small businesses across the country.

In addition to advocacy and education, we also help promote professional creators and small businesses by featuring them on our [homepage](#) as well as in our Q&A-style blog series, *[Creator Spotlight](#)*, which gives them the opportunity to share their experiences as creators firsthand, including experiences navigating the business side of their respective industries, dealing with infringement, and learning about how copyright supports and protects their work.

We thank the Committee for holding this hearing and recognizing the important role that intellectual property plays in supporting the small businesses that fuel our economy. We look forward to the opportunity to work more closely with the committee to advance the needs professional creators and small businesses. Please let us know if we can provide additional information.



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