

To: Copyright Office

From: Professor Eric Goldman, Santa Clara University School of Law  
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[Institutional affiliations are for identification only]

Date: January 20, 2022

Re: Comments on Copyright Claims Board Rulemaking (37 CFR Parts 201, 232, and 234)  
[Docket No. 2021–9]

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The CASE Act provides sanctions for litigants who engage in bad faith conduct, but it does not expressly address the consequences for lawyers who represent those litigants or who otherwise do not adhere to appropriate standards of professional conduct.

To address this, the Copyright Office should explicitly enumerate the professional conduct standards of anyone representing clients before the CCB. In particular, the representatives should be required to conduct proper investigations of the facts and law before filing a claim, similar to the duties specified in FRCP 11.

In addition, the Copyright Office should specify the consequences for representatives who repeatedly engage in improper conduct before the CCB. This has become a problem for the Trademark Office (see [PTO Docket No. PTO-T-2021-0055](#)). It will also plague the CCB given that some law firms have adopted business models based on a high volume of low-merit copyright infringement enforcements. At minimum, the Copyright Office should articulate its standards for restricting representatives from practicing before the CCB and the procedures for making those determinations.

Finally, the Copyright Office should budget for the resources necessary to identify representatives who engage in improper conduct before the CCB and bring disciplinary proceedings against them.