



Alerts

Congress Provides New Copyright Office Forum To Resolve Small Claims For Copyright Infringement

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Hinshaw Alert

On December 27, 2020, the Copyright Alternative in Small-Claims Enforcement Act (CASE Act) was signed into law as part of the COVID-19 stimulus relief and government-funding bill. The CASE Act revises the Copyright Act, 17 U.S.C. § 101 *et seq.*, and establishes a Copyright Claims Board (CCB) within the U.S. Copyright Office to adjudicate copyright disputes of \$30,000 or less in total damages.

The CCB is intended to provide a more streamlined and cost-effective forum for copyright owners to stop those using a copyrighted work without permission and recover damages. While the accused infringer can opt-out of the proceedings, the prospect of a more cost-effective and streamlined proceeding may be appealing enough to entice the accused infringer to proceed before the Board. The U.S. Copyright Office has set December 27, 2021, as the tentative date for the CCB to be operational.

The CCB will consist of three claims officers who will conduct proceedings and issue decisions to resolve copyright disputes. CCB proceedings are voluntary. Any of the parties may opt-out and instead proceed in U.S. District Court. Parties who proceed before the CCB waive their right to a jury trial.

Claims are limited to claims of infringement or non-infringement, misrepresentation relating to Digital Millennium Copyright Act (DMCA) takedown notices, and agreements relating to claims of infringement. Claims must be filed within three years after the claim accrues. Claims may not be brought against federal or state government entities. In addition to damages, parties may seek injunctive relief. The CCB lacks jurisdiction to decide willful infringement. A maximum of \$5,000 in attorney's fees in cases of bad faith may be awarded, unless a party presents extraordinary circumstances.

To proceed before the CCB, copyright claimants must have filed a copyright application with the U.S. Copyright Office. No decision can be rendered until a copyright registration issues.

The CASE Act attempts to prevent "copyright trolls" from abusing the forum by empowering the CCB to preclude any party who pursues a claim or defense in bad faith from initiating another claim before the CCB for twelve months. In addition, the Register of Copyrights may limit the number of proceedings a claimant may initiate in any given year.

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Service Areas

Copyright

Intellectual Property



After the CCB issues its written decision, the appeal process is limited to a written request for reconsideration or a petition to the Register of Copyrights to review the CCB decision under an abuse of discretion standard of review.

While we await the launch of the CCB, copyright owners should consider this as a possible forum to resolve disputes when:

1. one or two copyrighted works are at issue and there are a limited number of acts of infringement;
2. the primary relief sought is injunctive relief;
3. the accused infringer is a small company or an individual with limited resources and availability to pay a large judgment;
4. the copyright owner is prepared to fund their own legal fees in exchange for a more streamlined resolution;
5. the issues are narrow, not novel, and conducive to a presentation on paper (as opposed to live testimony) and a simple decision by the appointed officers; and
6. the copyright owner is willing to accept the limited appeal rights of the decision of the CCB.