



Copyright Law Alert: New Copyright Claims Board Authorized by CASE Act

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The Copyright Alternative in Small-Claims Enforcement Act of 2020 (“CASE Act”) was signed into law on December 27, 2020 as part of the recently approved Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong., Div. Q , Title II, Sec. 212 (2020), [available here](#).

This Act sets up an administrative Copyright Claims Board (“CCB”) within the U.S. Copyright Office that can adjudicate lower-value copyright infringement claims, including claims under the Digital Millennium Copyright Act. Copyright holders can still elect to bring lower-value infringement charges in federal court, but they now also have the option to seek justice at the CCB.

Infringement actions in the CCB will be heard by a panel of two or more copyright law experts (that is, U.S. Copyright Office employees assisted by copyright attorneys appointed by the Librarian of Congress), which can award actual damages, or statutory damages of up to \$15,000 per work and \$30,000 per claim, if the work in question had been registered with the U.S. Copyright Office prior to the alleged infringement (following the current rule in the federal courts).

If not, the statutory awards are limited to half that, provided that the plaintiff files an application to register the work in question and that registration is not denied. Of course, the CCB also has the power to order infringers to cease their infringing actions.

Be warned that there is an opt-out procedure. Accused infringers have 60 days to decide whether to accept the jurisdiction of the CCB. If they opt-out, the infringement claim would be dismissed without prejudice and will have to be heard in federal court instead. CCB decisions are also appealable to the federal court system.

The CCB does not have jurisdiction over all alleged infringers. In particular, the CCB has no



jurisdiction over federal or state governments, foreign parties (unless they initiate actions), or parties who have already been, or currently are, involved in copyright infringement litigation in federal court regarding the work in question.

Special procedures will be implemented for claims worth less than \$5,000.

Proponents of the CASE Act argue that the CCB will empower small creators to enforce their rights at little cost, although they may have to proceed in federal court if the opt-out provision is invoked. Opponents warn that this new process may be open to abuse and be used to stifle de minimus or “fair use” of creative works, despite the opt-out provision and certain other provisions to punish abusive filers (e.g., barring them from filing new actions for up to 12 months). Time will tell who is right, and we will certainly report on further developments as the CCB is set up and develops a body of small claims copyright law. In the meantime, please feel free to contact us if you have any questions about how the passage of the CASE Act may impact your rights.

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