

CASE ACT FAQ

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What is the CASE Act? On December 27, 2020, President Trump signed a COVID-19 relief bill into law. This omnibus bill included the Copyright Alternative in Small-Claims Enforcement Act of 2020 (the “CASE Act”). The CASE Act amends the Copyright Act and instructs the Copyright Office to establish a Copyright Claims Board (“CCB”) to serve as an alternative forum to federal courts for resolving certain copyright disputes.

What types of claims can the CCB hear? The CCB can hear claims and counterclaims related to (i) copyright infringement, (ii) declarations of non-infringement and (iii) notice and takedown disputes under §512(f) of the DMCA.

Just how small are these “small claims?” The maximum that a party may seek and recover in a single claim in the CCB is \$30,000 (exclusive of attorneys’ fees/costs). The Act also provides for the Copyright Office to establish regulations for “smaller claims” proceedings for claims for no more than \$5,000.

Tell me more about the possible relief. Two types of remedies are possible in CCB proceedings: 1) damages and 2) requirements to cease activity. For copyright infringement claims, the CCB can award *either* actual damages and profits *OR* statutory damages. In either case, the CCB is to consider whether the infringing party has agreed to cease or mitigate the infringing activity. Notably, willfulness is not to be considered. For works timely registered, statutory damages are capped at \$15,000 per work (\$30,000 per proceeding); otherwise, statutory damages are capped at \$7,500 per work (\$15,000 per proceeding). Damages for other claims are capped at \$30,000 (not including fees/costs).

A CCB determination can also include a requirement that a party cease its infringing conduct, remove, destroy, or disable access to infringing materials or stand down from a §512 notice *if the party so agrees*.

Are attorneys’ fees available? The parties are to bear their own attorneys’ fees and costs unless absent bad faith conduct. Even then, fees/costs will be capped at \$5,000 absent extraordinary circumstances. (Repeated bad faith conduct can get a party banned from bringing claims for a year.)

Does a claimant’s work need to be registered with the Copyright Office to take advantage of the CASE act? Yes and no. A claimant may file based on a pending application, but a decision will not be rendered until the registration issues. The Act contemplates the Copyright Office establishing regulations that allow for expedited processing of applications for works that are at issue before the CCB.

Are CCB proceedings mandatory? Participation in a CCB proceeding is *voluntary* and would-be respondents will have the opportunity to *opt-out*. If a putative respondent opts-out, the claimant may pursue its claim in court.

How can CCB determinations be appealed? A party can request reconsideration in the event of clear error of law or fact material to the outcome, or a technical mistake. If that request is denied, it may request a review of the final determination by the Register of Copyrights. The Register's review will be limited to whether the CCB abused its discretion in denying reconsideration. If the Register does not provide the requested relief, the party may bring a challenge to a district court: (a) if the determination was the result of fraud, corruption, misrepresentation, or other misconduct; (b) if the CCB exceeded its authority or failed to render a final determination; or (c) if the determination was based on a default or failure to prosecute due to excusable neglect.

After exhausting the foregoing challenges (or after the window to do so expires), the decision of the CCB will become final and the parties will be precluded from re-litigating the same claims before any court, tribunal or the CCB again. *However*, the same parties *will be* allowed to litigate similar issues of fact or law in court or any tribunal even if they were connected to the claims raised in the CCB proceeding, as long as they were not actually raised.

Are determinations of the CCB precedential? Can materials used in CCB proceedings be used in subsequent cases?

No and no. Determinations by the CCB should not be cited or relied upon as legal precedent or any other action or proceeding before any court, tribunal or even the CCB (except to enforce the determination). Notably, a determination of ownership of a copyrighted work in a CCB case may not be relied upon or have preclusive effect in any other action or proceeding before the CCB, court or other tribunal. Moreover, submissions or statements made in connection with CCB proceedings may NOT be cited, relied upon, or form the basis of any future actions or proceedings in court, tribunals or the CCB.

Where will CCB proceedings take place? Proceedings before the CCB will not require in-person appearances. Rather, they will be conducted via written submissions and remote hearings and conferences.

Who will make up the CCB? The CCB will be comprised of three full-time Copyright Claims Officers who are recommended by the Register of Copyrights and appointed by the Library of Congress for staggered renewable six-year terms.

Is there a time limit for bringing a CCB Claim? A proceeding before the CCB must be commenced within three years of the claim's accrual. Initiating a proceeding before the CCB will toll the statute of limitations for commencing an action on the same claim in district court while the claim is pending.

What law applies in CCB proceedings? The CCB will follow the law of the federal jurisdiction in which the action would have been brought if filed in a district court of the US. (If there's more than one possibility, then the CCB shall determine which jurisdiction has greatest connections to parties/activities.)

Are lawyers necessary? Lawyers are optional.

When will the CCB be operational? By mid-2022.