

Final Rules Set for New U.S. Copyright Claims Board to Hear Small Claims

March 31, 2022

Coming soon, there's a new, lower cost method for U.S. copyright owners to enforce smaller claims — or for parties accused of infringement who want declarative relief stating they are noninfringing. In December 2020, Congress passed the Copyright Alternative in Small-Claims Enforcement (CASE) Act, 17 U.S.C. § 1502 *et seq.* The CASE Act created "an alternative forum in which parties may voluntarily seek to resolve certain copyright claims regarding any category of copyrighted work." 17 U.S.C. § 1502(a). This forum is called the Copyright Claims Board (CCB). The goal is to provide a faster, lower cost forum for bringing disputes, but the damages available are limited to \$30,000, and defendants may choose to affirmatively opt out of participating before the CCB. Copyright owners will need to undertake a cost/benefit analysis in determining whether to pursue a CCB claim or instead stick with regular federal litigation.

Overview

The CCB will be a streamlined and inexpensive way for parties to resolve certain copyright issues. The procedure will still resemble federal litigation in certain aspects; the parties may be represented by counsel, exchange written discovery, take testimonial evidence (e.g., depositions), and present written and oral arguments on legal and factual issues, although the Copyright Office has said discovery will generally be limited to production of documents, written interrogatories, and written requests for admission. The claims will be heard by a panel of three "Copyright Claims Officers" and resolved in a written decision by a majority of the officers.

On March 25, 2022, the U.S. Copyright Office issued its final rules and regulations enacting the CCB, which will become effective on April 25, 2022. While the actual date when claims may first be submitted has not yet been set, the Copyright Office has committed to doing so by June 25, 2022.

Eligibility and Permitted Claims

Unlike regular federal court litigation, a claimant need not have a copyright registration in order to bring a claim. Instead, either a federal copyright registration on the disputed work *or* a pending application is acceptable in order to file a CCB claim. The claimant cannot recover damages until the registration certificate for the disputed work has been issued by the Copyright Office and submitted to the CCB.



The CCB will hear three types of copyright claims:

1. Infringement of a copyrighted work,
2. A declaration of noninfringement of a copyrighted work, and
3. Misrepresenting that material or activity is infringing or was removed/disabled by mistake or misidentification, under 17 U.S.C. § 512(f).

Parties may file a claim with the CCB within three years after a claim has accrued.

Filing the Claim

With few exceptions, all filings in a CCB proceeding will be submitted through an online filing system called "eCCB." Claimants will initiate the claim through a fillable online form with boxes and prompts for basic information like the type of claim asserted, the copyrighted work at issue, facts supporting the claim, contact information, and so on. Claimants can submit additional information and exhibits (such as a copy of the allegedly infringing material), but it is not necessary.

Compliance Review

Once the claim is submitted, the CCB will conduct a "compliance review" to ensure that the claim meets the basic statutory and regulatory requirements. The CCB will approve the claim, require the claimant to file an amended claim, or dismiss the claim as unsuitable for resolution by the CCB.

Respondent's Option to Opt-Out

One of the more noteworthy aspects of a CCB claim is that the defendant (called a "respondent") will have the chance to "opt-out." If the respondent opts-out, the claim will be dismissed without prejudice and the claimant will need to file a federal lawsuit to pursue the claim. All respondents must choose not to opt-out in order for the proceeding to continue — if any respondent opts-out, the proceeding is dismissed.

Limitation on Damages, Attorneys' Fees

A CCB claimant cannot recover more than \$30,000 in damages "in any single proceeding," not including attorneys' fees and costs. For statutory damages, the CCB will be able to award up to \$15,000 per work. Thus, the CCB will be a unique forum for litigating copyright claims with a lower dollar amount than claims typically brought in federal court.

Attorneys' fees of up to \$5,000 may be recoverable, but only in proceedings where it can be established that a party pursued a defense in bad faith or without a reasonable basis in law or fact. Attorneys' fees of up to \$5,000 can also be imposed against a plaintiff if it can be established that the plaintiff brought the claim in bad faith or for an improper purpose, such as harassment, or without a reasonable basis in fact or law. The



fees available will be limited to \$2,500 if the adversely affected party appeared pro se.

Fees for Filing a CCB Claim

CCB claimants will be required to pay two fees. First is a \$40 filing fee at the time of the initial filing. Second, the claimant will need to pay a \$60 fee once the proceeding "becomes active." A proceeding "becomes active" when the 60-day opt-out period expires and all respondents have not opted out. Given this low filing fee, the CCB will be an attractive forum for pursuing claims that do not have high damages amounts while avoiding some of the significant costs and time requirements of federal court litigation.

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Please contact us if you have questions about whether a CCB claim is right for your situation, defending a CCB claim, or any other aspect of your intellectual property disputes. Lathrop GPM's experienced team of Intellectual Property Litigation attorneys can help, and we would be happy to discuss.