



In CASE You Missed It: Significant New Dispute-Resolution Process for Copyright Claims

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Changes to the Copyright Act were included in the recently passed “Consolidated Appropriations Act, 2021” – Congress’s must-sign omnibus spending bill of December 2020. While most media coverage of the omnibus bill was focused on the threat of a government shutdown and the President’s reticence to sign the bill into law, the legislation also included a major addition to the Copyright Act.

Specifically, Congress’s omnibus bill included the “Copyright Alternative in Small-Claims Enforcement Act of 2019” (CASE Act), which creates a Copyright Claims Board (“Board”) to hear disputes over small copyright claims, including claims under the Digital Millennium Copyright Act (DMCA) and infringement claims. Residing within the Copyright Office, the voluntary Board dispute-resolution process is intended as a streamlined alternative to federal court litigation, which can often be cost-prohibitive. The creation of the Board is likely to benefit individuals and businesses with rights in copyrighted works but who may not have the resources to mount a costly copyright claim in federal court. The CASE Act aims for the Board to start its operations by the end of 2021.

Cases coming before the Board will be decided by a three-judge panel, comprised of Copyright Claims Officers who are appointed attorneys with subject-matter expertise. Like an infringement suit brought in federal court under the Copyright Act, to initiate a claim, the copyrighted work in the claim must be registered with the Copyright Office. Also, similar to the Copyright Act, both statutory and actual damages are available to claimants, but the statutory damages are capped at \$15,000 for registered works (\$7,500 for works not timely registered) and no damage award can exceed \$30,000. The Board is also granted discretion to award attorneys’ fees in cases of bad faith conduct or where frivolous claims are filed. The Board may also grant relief that requires the respondent to cease certain activities, but unlike a judicial injunction, this relief

is dependent on an agreement by the respondent to comply with the Board's order. Decisions of the Board are also appealable in federal court, though the review is limited.

Notably, participation in the Board process is voluntary, as the CASE Act allows a respondent to opt-out after a claim is filed, which would result in the claimant having to file his or her claim in federal court to resolve the dispute. Critics have stated that this opt-out mechanism will weaken the effectiveness of the Board as the opt-out could incentivize infringers to opt out if they conclude that the rights holder does not have the resources to proceed with litigation.

Ultimately, however, as many businesses and individuals have valuable copyrighted works (but not always the legal budgets to mount a full-scale litigation), the addition of the Copyright Claims Board process is a positive change that will encourage rights owners to protect their valuable works. As with any new forum for dispute resolution, only time will tell if it serves its purpose and provides an effective process that adequately protects the interests of rights holders in a more financially efficient way.

For more information about the CASE Act or other copyright issues, please contact [Carl Eppler](#), or any attorney in Frost Brown Todd's [Copyright](#) Practice Group.

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