

CLIENT ALERT

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NEW STIMULUS BILL CREATES SMALL CLAIMS COPYRIGHT COURT

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On December 27, 2020, President Trump signed the highly anticipated COVID-19 stimulus relief and government-funding bill. The second stimulus package is omnibus legislation spanning over 5,500 pages, and includes several provisions that will influence the intellectual property legal landscape. In this article, we will take a brief look at the Copyright Alternative in Small-Claims Enforcement Act (the "CASE Act").

The CASE Act revises the Copyright Act, 17 U.S.C. §§ 101 et seq., and creates a cost-effective alternative venue for copyright owners to enforce their rights without having to file lawsuits in federal court. Specifically, the CASE Act establishes a Copyright Claims Board within the U.S. Copyright Office that may adjudicate small claims of copyright infringement using streamlined procedures and award-limited remedies, including no more than \$30,000 in total damages. A summary of the CASE Act provisions is provided below:

Creation of the Copyright Claims Board

The CASE Act establishes a Copyright Claims Board (the "CCB" or the "Board"), an alternative forum to federal courts, wherein parties may voluntarily adjudicate small copyright infringement claims. The Board will be comprised of a panel of three claims officers, rather than a judge, who will conduct proceedings and issue decisions with factual findings and legal conclusions to resolve copyright disputes. These officers will have the power to conduct hearings, manage discovery, and award monetary damages as well as other relief. Unlike copyright lawsuits in federal court, participation in CCB proceedings is discretionary, and parties may opt-out and instead choose to proceed in the traditional federal court forum.

However, proceedings before the Board come with one major catch. Parties that decide to resolve their disputes before the Board will waive their right to a jury trial and traditional motion practice.

Copyright Claims Board Procedures and Remedies

General Remedies and Provisions

In stark contrast to federal court, where parties may seek sizeable monetary relief through actual or statutory damages, the CASE Act limits the Board's options for monetary damages. Specifically, the Board may not award more than \$15,000 in statutory damages per copyright-protected work. Additionally, the Board cannot award more than \$30,000 in total actual or statutory damages. The Board lacks jurisdiction to consider claims alleging willful infringement, as well. Likewise, the Board may only award a maximum of \$5,000 in attorney's fees in cases of bad faith, unless a party presents extraordinary circumstances.

Despite the difference between the CBB and federal court, copyright registration remains a pre-requisite to bringing a copyright dispute before the Board. The parties asserting infringement claims must have at least filed a copyright application with the U.S. Copyright Office, and the Board cannot render a decision unless and until the Copyright Office issues a copyright registration.

Remedies to Combat Copyright Trolls

The CASE Act also grants the Board unique authority to prevent aggressive litigators and opportunists—also known as "copyright

trolls"—from abusing the small claims tribunal. Specifically, the CASE Act empowers the Board to preclude any party who pursues a claim or defense in bad faith from initiating a claim before the Board for twelve months. As an added layer of protection against copyright trolls and frivolous claims, the CASE Act also grants the Register of Copyrights the power to limit the number of proceedings a claimant may initiate in any given year.

Choice of Law and Non-Binding Decisions

While the Register of Copyrights may issue regulations governing many Board procedures, the CASE Act affirmatively prescribes choice-of-law principles. Board proceedings are subject to the federal jurisdiction in which the action could have been brought if filed in federal court. Additionally, Board decisions carry no precedential value and may not be relied upon in other legal or Board proceedings.

Limited Appellate Process

Parties may seek limited review of Board decisions. After the Board issues its written decision in a matter, a party may submit to the Board a written request for reconsideration or petition the Register of Copyrights to review the Board decision under an abuse of discretion standard of review. A party can appeal a Board decision to a federal court only if: (1) the Board's determination was the result of fraud, misrepresentation, or other misconduct; (2) the Board exceeded its authority or failed to render a final determination; or (3) the Board's determination was based on a default or failure to prosecute due to excusable neglect.

Conclusion

In summary, the ultimate purpose of the CASE Act is to give copyright owners a practical and affordable means to enforce their intellectual property rights (e.g., their copyrights) through the creation of a small claims board at the U.S. Copyright Office. Because the CASE Act grants the Register of Copyrights broad authority to carve out the procedural regulations of the Board, it remains to be seen if copyright owners will make use of the small claim tribunal instead of the federal court forum and exactly how copyright claims will proceed through Board proceedings. Nevertheless, it is clear that the CASE Act creates a more affordable mechanism for copyright owners to enforce their rights, and therefore, will likely result in an increased number of copyright claims.

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