

Copyright Small Claims Court: A New (Limited) Way to Enforce Copyrights

WRITTEN BY

Glenn G. Pudelka | Laura Campbell

Good news for copyright holders – there is now a less costly alternative to enforcing certain copyrights in the form of a copyright-only small claims court.

In December 2020, Congress passed the Copyright Alternative in Small-Claims Enforcement Act of 2020 (CASE Act). This legislation established the Copyright Claims Board (CCB), a three-member tribunal that provides an option to resolve certain copyright disputes with a maximum of \$30,000 in potential damages.

The CCB only hears cases involving claims of infringement, declaratory judgments of non-infringement, and claims of misrepresentation in notices sent under the Digital Millennium Copyright Act. Counterclaims are limited to only those that are in response to the claims within the CCB's jurisdiction and contract claims related to copyrighted works arising out of the same transaction or occurrence.

The CCB's largest advantages for plaintiffs are the **reduced timeline and costs** of bringing a claim. Parties need only provide limited, basic documents and information, and there are no formal motions, which reduces a case timeline significantly. It costs a total of \$106 to file a claim and designate an agent for service. The cost of a final determination is an additional \$300. With payment of an additional \$50 fee, a case can be expedited. After an Expedition Request is made and a case is marked active (meaning the defendant has been served and has not opted out), cases are reviewed **within 10 days**. Additionally, all proceedings before the CCB are **virtual**.

It is important to note certain limits of the CCB. Participation in the CCB process is **voluntary**; each party has the opportunity to opt-out in favor of suing in court. A defendant has sixty days, typically, to opt-out of CCB participation once a complaint is filed. A plaintiff can also withdraw a claim. If a withdrawal occurs before the defendant files a response, the dismissal does not prejudice the claim from being brought again. After the defendant files a response, the CCB must make a final determination on the matter and dismiss a claim with prejudice, unless the CCB decides otherwise, in the interest of justice.

In any 12-month period, a pro se plaintiff cannot bring more than 30 proceedings, while a law firm cannot file more than 80 proceedings on behalf of clients, and a sole practitioner cannot bring more than 40 proceedings on behalf of clients.

The monetary damages are either statutory damages (in specific dollar ranges set by the law) **capped at \$15,000 per work, or actual damages and the infringer's profits** based on the factual evidence. Federal courts in contrast do not cap actual damages and statutory damages can be up to \$150,000 per work.

Additionally, CCB decisions in one case do not bind the CCB in later cases involving the same or different parties. CCB decisions also are **not precedential** for federal court decisions. Finally, if a party receives a decision it is not happy with, the CCB's decision can be reviewed by three different entities. First, the CCB can review their own decision for clear errors of law or technical mistakes. Second, a request can be made to the Register of Copyrights to review a denial of reconsideration by the CCB. Third, a party can seek review in federal court of the CCB's decision.

Currently, **over 100 cases have been filed** with the CCB with a range of visual and auditory works at issue. None of the filed cases have yet proceeded beyond the issuance of a Scheduling Order. A great number of cases have received notices to amend noncompliant complaints, which is not surprising given the presumption that many litigants taking advantage of this process are not using lawyers. A plaintiff is then allowed 30 days to amend the complaint and bring it into compliance with the standards set forth in the CASE Act.

The current members of the CCB tribunal are David Carson, Monica McCabe and Brad Newberg, who each bring a wealth of experience and expertise in copyright law and dispute resolution. Mr. Carson has practiced copyright law his entire legal career, both in private practice and most recently as the head of the Copyright Policy Team in the Office of Policy and International Affairs at the USPTO. Ms. McCabe was the head of the intellectual property department at her prior private practice firm and acted as a mediator for intellectual property matters for the International Trademark Association, the Southern District of New York, and the New York State Supreme Court Commercial Division. Finally, Mr. Newberg was in private practice as a copyright and trademark litigator for over 20 years.

While the CCB is designed to **fast-track and streamline** copyright enforcement, and provide copyright holders with **easier and more affordable** options to enforce and protect their works, it remains to be seen whether it gains traction as a viable and effective alternative.

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