

CLIENT ALERT

U.S. Copyright Office Moves Forward with CASE Act Implementation; Seeks Public Comment

Apr. 14, 2021

Since Crowell & Moring’s initial alert on the Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2020, [here](#), the U.S. Copyright Office (Office) has taken a significant step toward implementation of this novel legislation. Specifically, on March 26, 2021, the Office published a notification of inquiry seeking public comment regarding regulations implementing the CASE Act. Initial written comments must be received no later than April 26 at 11:59 p.m. eastern time, while written reply comments must be received by May 10 at that same time. Clients interested in submitting comments on the CASE Act can do so [here](#).

As we noted in our March 15 alert, the CASE Act creates a new, inexpensive claims resolution process that may provide copyright holders with previously unavailable recovery opportunities. The Act seeks to address cost-based non-adjudication of copyright small claims by creating a “Copyright Claims Board” (CCB), which will effectively operate as a small claims court within the Copyright Office in the Library of Congress. The Act requires the CCB to commence operations no later than December 27, 2021, one year after enactment, and authorizes the Register of Copyrights (Register) to implement regulations governing CCB procedure.

As an initial matter, Congress has observed that, “[w]hile principles of federal civil procedure are relevant to the CASE Act, the Act is not intended to simply mimic federal practice.”^[1] As a result, the request for public comment seeks recommendations on the Federal Rules of Civil Procedure and Federal Rules of Evidence that should be adopted by the CCB in full—versus those parts that should be modified to increase simplicity and efficiency. The request is particularly mindful of the need to tailor CCB documents and procedures to *pro se* litigants, since a major aim of the CASE process is to encourage claim resolution without the aid of formal legal counsel.

Specifically, the request for public comment is concerned with a number of informational fields, including but not limited to:

1. Content of the initial notices to accused infringers and ensuring that unsophisticated recipients of these notices understand their deadlines, obligations, and right to opt out. The Office is contemplating the inclusion of web links and other educational information about copyright infringement, available defenses, and the CASE system. An important concern appears to be ensuring that recipients understand that the notice is a legitimate document authorized by the Federal Government, since the CCB is largely unknown.
2. Mechanisms for opting out of CCB resolution in favor of Article III adjudication. The Board is seeking to determine, for instance, whether a respondent’s written opt-out notice could be returned electronically. The clarity and ease of opting out has long marked an area of concern about the CASE Act and its claims resolution process, so the Office’s emphasis on this issue comes as no surprise.
3. Factors or issues that should be considered in relation to a respondent’s default and issuance of a default judgment. CASE Act commentators have long feared that the Act will simply transform un-litigated small claims into un-litigated default judgments, rather than increasing small-claim adjudication in conformance with its purpose. This is something the Office seeks to prevent.

4. Limits on discovery tools like interrogatories or requests for admission issued without leave. The Office seeks an appropriate balance between parties' interest in full information and the CASE system's goals of cost reduction and efficiency. Discovery in the federal courts is the "primary reason for the length of federal court litigation" and is associated with "often substantial costs and potential for abuse by exploitative litigants."^[2]
5. Proposals to permit single-Officer proceedings for smaller claims to reduce costs, *i.e.* claims involving \$5,000 or less (exclusive of attorneys' fees and costs). In general, CCB proceedings are conducted by a panel of three Copyright Claims Officers who must issue written decisions by a majority, setting forth their factual findings and legal conclusions.
6. Requirements for seeking Register review of a CCB denial of reconsideration—an appeal process component limited to review for abuse of discretion. The Office seeks input on provisions that might address the substance of a request for review, such as the inclusion of reasons the party believes the CCB abused its discretion, post-review procedures, and the amount of a reasonable filing fee. Restrictions on the availability of appeal from CCB decisions remain and it does not appear that anticipated regulations will resolve related concerns.
7. Measures to prevent abuse of the CASE system. The Office has the power to limit the permitted number of proceedings each year by the same litigant and seeks public input on issues that should be considered in establishing this constraint. The Office also seeks input on issues that should be considered relating to parties' certification requirements (when certifying that statements to the CCB are accurate and truthful) and bad-faith conduct.

The CASE Act's claims resolution process, and implementation thereof, represents a rapidly evolving legal area. Clients should remain apprised of potential opportunities to utilize the CASE system as well as risks of being subject to claims before the CCB. Crowell & Moring LLP will continue to monitor these developments.

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1. H.R. Rep. No. 116-252, at 23.
 2. U.S. COPYRIGHT OFFICE, COPYRIGHT SMALL CLAIMS: A REPORT OF THE REGISTER OF COPYRIGHTS 13 (2013).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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