

LEGAL ALERT

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NEW FORUM FOR COPYRIGHT SMALL-CLAIMS DISPUTES BEGINS ACCEPTING COMPLAINTS

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Claimants pursuing certain copyright claims may now access a new, more economical, and potentially more expedient alternative to federal-court litigation. Beginning June 16, 2022, the Copyright Claims Board (CCB) will accept complaints from petitioners seeking to resolve copyright disputes involving claims up to \$30,000.

Congress established the CCB in late 2020 by enacting the Copyright Alternative in Small-Claims Enforcement Act, known as the CASE Act. The CCB is designed to provide claimants with an affordable avenue to pursue relatively low-value copyright claims that are otherwise not cost effective to bring in federal court. For example, an image-licensing business that experiences a high volume of low-value infringement claims could elect to pursue a CCB action, when federal-court costs are prohibitive in light of the overall damages amount. The CCB reduces costs by permitting parties to forego attorney representation; limiting discovery in time, scope, and type, mainly to paper-based discovery; and holding proceedings remotely, thereby avoiding travel to Washington, D.C., for in-person appearances before the CCB. Although CCB regulations do not provide a set dispute-resolution timeline, the streamlined procedures offered by the CCB are expected to shorten the timeframe for adjudication in comparison to federal-court cases, which may take many months or even years to resolve.

Congress authorized the CCB to consider a limited range of claims, including copyright infringement, declarations of non-infringement, and misrepresentation in connection with an alleged-infringement notification under the Digital Millennium Copyright Act (*i.e.*, a wrongful take-down notification for allegedly infringing online content). Successful claimants in a CCB action cannot receive more than \$30,000 in total actual or statutory damages, regardless of the number of claims asserted, and any statutory damages awarded cannot exceed \$15,000 per infringed work. By comparison to cases pursued in federal court, actual damages for copyright claims have no upper limit, and the maximum for statutory damages is \$150,000 per infringed work. Parties to a CCB action can receive an award of attorney's costs and fees upon a showing of bad faith, but any such award is capped at \$5,000.

CCB procedures reduce frictions for claimants by not requiring a registered copyright as a prerequisite to filing a claim, as is generally the case for federal-court litigation. Instead, claimants can pursue a CCB action so long as they have applied to register a copyright for the work or works involved in the dispute; the Copyright Office need not have issued the registration before claimant instigates the action. If the Copyright Office later rejects the registration application, then the CCB will dismiss claimant's action without prejudice. Although

the CCB's procedures are intended to promote access for claimants, those who abuse the system may be liable for respondent's reasonable costs and attorney's fees; repeat offenders could face a ban on participating in CCB proceedings for one year and have pending proceedings dismissed.

When a claimant elects to pursue his or her claim before the CCB, the respondent is not necessarily locked into the claimant's chosen dispute-resolution avenue. Rather, a respondent has 60 days from the date of service of the claim to decide whether to consent to the action before the CCB. If any respondent opts out of the CCB, then the claimant's recourse is to re-file the case in federal court. In theory, the respondent is incentivized to consent to the CCB proceedings because of the comparatively low cost of such actions and caps on damages, but it remains to be seen whether these incentives prove effective.

Once the CCB renders a decision, the parties have limited rights of appeal. A party can request reconsideration by the CCB on narrow grounds, such as mistake or clear factual or legal error. If the CCB denies the reconsideration request, then a party can seek a finding from the Register of Copyrights that the CCB abused its discretion when denying the reconsideration request. (The Register of Copyrights cannot, however, review the substance of the CCB's underlying decision.) Finally, a party can petition a federal district court to find that the CCB issued its decision as result of fraud or other misconduct; that the CCB exceeded its authority; or, in the case of a party's default during the CCB proceeding, that such default was due to excusable neglect. These restricted avenues of appeal provide another, potential cost-saving mechanism to the parties, who are discouraged from re-litigating a decided matter, but such finality bears its own potential risk for parties consenting to a CCB action.

Claimants wishing to file an action with the CCB must first register with the CCB's electronic filing and case-management system, called [eCCB](#), which opens on June 16. Additional resources for CCB [claimants](#) and [respondents](#), as well as [FAQs](#), are available at [ccb.gov](#). Please feel free to consult your Hahn Loeser attorney for guidance on pursuing or defending CBB claims and other developments pertaining to this new program.

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