



The CASE Act

A New Way for Artists to Protect and Enforce their Copyrights

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The CASE Act

“The Copyright Alternative in Small-Claims Enforcement Act”

- 17 U.S.C. § 1501 et seq.
- Creates a new forum – the “Copyright Claims Board”
- For copyright disputes under \$30,000
- Simplified filing requirements
- Voluntary – for both sides (Defendant can “opt out”)
- No lawyer required
- Lower filing fees
- Fully “remote”
- First cases expected in early 2022

Asserting the claim

Federal Court

- **Complaint**
 - Governed by legal pleading requirements
 - Subject to dismissal
- Registration required to file
 - can mean waiting months
 - “special handling” (\$800)
 - Registration determines availability of statutory damages
- Filing fees

CCB

- **Statement of Facts**
 - Reviewed by CCB Attorney
 - “Three strikes”
- Registration not required to file
 - *Application* required for filing
 - No *decision* by CCB before registration
 - CCB-specific expedited registration
 - Proposed rule: \$50
- Lower filing fees

Answer/Motion to Dismiss

Federal Court

- Legal pleading requirements
- Defenses can be waived
- Substantive defenses
 - Fair use
 - Implied license
 - De minimus use
- Counterclaims
- Three year “look back” for damages or “discovery rule” in some appellate circuits

CCB

- Limited grounds for dismissal
 - Failure to join necessary party
 - Lack of essential evidence
 - Exceeds scope of CCB jurisdiction
- All substantive defenses still available, but not in a motion to dismiss
- Counterclaims limited
- Three year statute of limitations from accrual of claim; filing with CCB tolls the statute of limitations for filing in federal court if the Defendant opts out

Discovery

Federal Court

- Written requests
 - Document collection/review
- Depositions
- Subpoenas
- Motion Practice
- Experts
 - Creativity
 - Originality
 - Damages

CCB

- Written requests
- No depositions
- No subpoenas
- No “formal” motion practice
- No experts except for “good cause”

Trial

Federal Court

- Jury trial
 - Trials are expensive
 - Juries are unpredictable
- Federal Rules of Evidence

CCB

- No jury trial
- At least 2 judges will hear case
- “Hearing” by oral or written submission
- Oral hearings completely remote
- No formal rules of evidence

Damages

Federal Court

- Actual damages and/or Defendant's profits
- Can bring all claims against same defendant, irrespective of whether they are related to same course of infringement
- Statutory damages
 - \$750-\$30,000
 - Up to \$150,000 for "willful" infringement

CCB

- Total damages capped at \$30,000
- Can bring more than one claim in same proceeding, but they must be part of same course of conduct
- Actual damages and/or Defendant's profits
- Statutory damages
 - Up to \$15,000 per timely registered work
 - Up to \$7,500 per work for works not registered timely, up to \$15,000 total per proceeding
 - No "willfulness"
- Special procedures to be added for claims of less than \$5,000

Other relief

Federal Court

- Injunctive relief
- Attorney's fees (at court's discretion)

CCB

- No injunctive relief
 - (except by agreement)
 - Defendant's willingness to cease conduct considered as a damages factor
- Attorney's fees (if any) and costs awarded for bad-faith conduct
 - Up to \$5,000
 - Up to \$2,500 if *pro se*

Post-trial

Federal Court

- Appeal to Circuit Court of Appeals
 - Long wait
 - Expensive

CCB

- CCB can reconsider for “clear error”
- Review by Federal District Court on very limited bases (such as fraud, misconduct or default)

Benefits for Defendants

- Lower cost
- Ability to bring claims for a declaration of non-infringement and for misrepresentation in connection with take down notices
- Limited discovery
- Cap on damages
- No injunctive relief
- Don't need a lawyer

Rulemaking

- Form/content of initial notices
- Discovery
- Handling of confidential information
- Default judgment
- “Smaller claims”
- Fees
- Limiting the number of cases filed by same claimant to deter abuse
- Agents for service of process
- Law student representation

QUESTIONS?



THANK YOU

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