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### COVID-19 Relief Bill Introduces Copyright Small Claims Court

By Jessica Lynn Falk \*

On December 27, 2020, the bipartisan COVID-19 relief bill, the Consolidated Appropriations Act, 2021, was signed into law. This bipartisan [bill](#) incorporated numerous provisions unrelated to COVID-19 relief, including the Copyright Alternative in Small-Claims Enforcement Act of 2020 (“CASE Act”), versions of which had been before Congress since 2016. The CASE Act has the stated goal of creating a more efficient way for copyright owners to enforce small claims by establishing the Copyright Claims Board as an alternative venue to adjudicate copyright infringement claims valued at no more than \$30,000 in total damages, exclusive of any attorneys’ fees and costs that may be awarded. H.R. 133 § 1501(e)(1)(D). This new Copyright Claims Board will begin operations in 2021, or 2022 at the latest. *Id.* at § 1501(d)(1)-(2).

#### What is the Copyright Claims Board and What Claims May it Adjudicate?

The Copyright Claims Board is an alternative forum, which parties can voluntarily select instead of a federal court to resolve copyright infringement claims. *Id.* at § 1502(a), § 1504(a). The Board will be comprised of three Copyright Claims Officers appointed by the Librarian of Congress to serve six-year terms. *Id.* at § 1502(b)(1), (b)(5)(A). Only attorneys with at least seven years of legal experience, including experience with copyright law will be eligible to serve as Officers. Two Copyright Claims Attorneys, who will be required to have at least three years of experience in copyright law, will assist the Officers. *Id.* at § 1502(b)(2)-(3), § 1503(a)(2).

The Board may only adjudicate (1) claims of infringement of the exclusive rights in a copyrighted work under 17 U.S.C. § 106 brought by the beneficial owner of a registered copyright, (2) claims for declarations of non-infringement under 17 U.S.C. § 106, (3) improper copyright infringement takedown notices under the Digital Millennium Copyright Act (“DMCA”) § 512(f), and (4) related counterclaims and defenses to the claims made under § 106 or § 512(f). *Id.* at § 1504(c), § 1505(a). A claim before the Board must be brought within three years of accrual. *Id.* at § 1504(b)(1).

The Register of Copyrights may promulgate regulations limiting the annual number of proceedings permitted by the same claimant. *Id.* at § 1504(g). In addition, if a party on more than one occasion within a 12-month period pursues a claim or defense in bad faith, then the Board will bar that

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party from initiating a claim before the Board for the next twelve months. *Id.* at § 1506(y)(3).

### How Does the Board Conduct Proceedings?

To initiate a proceeding with the Board, a claimant will be required to file a certified claim that includes a statement of material facts and submit the filing fee. *Id.* at § 1506(e). If the Board determines that the claim complies with the CASE Act, it then will direct the claimant to serve the claim on the other party within ninety days, unless service is waived. *Id.* at § 1506(f)(1)(A), (g). If the claim does not comply, the claimant will have thirty days to amend the claim or it will be dismissed without prejudice. *Id.* at § 1506(f)(1)(B), (f)(3). The same procedures apply to counterclaims. *Id.* at § 1506(f)(2). Once served, the respondent has the right to opt-out of proceedings by written notice to the Board within sixty days of service; otherwise, the respondent is bound by the Board's final determination. *Id.* at § 1506(i). If the respondent opts out during the 60-day period, the proceeding will be dismissed without prejudice. *Id.*

Once the proceeding is active, the Board will set the proceeding schedule and conduct case management. *Id.* at § 1506(k)-(l). The exact form of the proceedings will be determined in the future by the Register of Copyrights. *Id.* at § 1506(a)(1). However, the CASE Act dictates a streamlined process, with limited motion practice and discovery and the rules of evidence do not apply to proceedings before the Board. *Id.* at § 1506(m)-(o). Hearings will take place at the Board's discretion and will be conducted over phone or video. *Id.* at § 1506(c)(1), (p). The Board will follow the precedent of the federal jurisdiction in which the action could have been brought, but the Board's own determinations will have no precedential effect. *Id.* at § 1506(a)(2), § 1507(a)(3). Any determination by the Board will be issued in a written decision, and may include a dissenting opinion. *Id.* at § 1506(s). The Register of Copyrights will establish further streamlined procedures that will be decided by a single Officer for claims that do not exceed \$5,000. *Id.* at § 1506(z).

### What Relief Can the Board Grant?

The Board is vested with the power to grant both monetary and injunctive relief. *Id.* at § 1503(a)(1)(G), § 1504(e). Monetary relief may be either actual damages and profits under § 504(b) of the Copyright Act or statutory damages under the CASE Act. *Id.* at § 1504(e)(1).

In federal copyright cases, courts have the discretion to issue statutory damages up to \$150,000 per infringement, but statutory damages before the Board are significantly lower. If a work is timely registered with the Copyright Office under section 412 of the Copyright Act, the Board may issue a maximum award of \$15,000 per work, but cannot order more than \$30,000 in damages in a single proceeding under either statutory or actual damages. *Id.* at § 1504(e)(1)(A)(ii)(I); § 1504(e)(1)(D). If a work is not timely registered, the Board may issue a maximum award of \$7,500 per work, but only a total of \$15,000 in damages in any one proceeding. *Id.* at § 1504(e)(1)(A)(ii)(II). Also unlike federal proceedings, the Board cannot consider whether the copyright infringement was willful or not. *Id.* at § 1504(e)(1)(A)(ii)(III). Instead, the Board can consider whether the alleged infringer has agreed to cease or mitigate the infringing activity. *Id.* at § 1504(e)(1)(A)(ii)(IV). Parties also will bear their own attorneys' fees and administrative costs, unless the claim was brought in bad faith, in which case fees will be capped at \$5,000 absent extraordinary circumstances (or \$2,500 if the adversely affected party appeared *pro se*). *Id.* at § 1504(e)(3); § 1506(y)(2). The monetary caps on statutory damages and attorneys' fees may be adjusted by the Register of Copyrights after three years. *Id.* at § 15010(a)(2).

### Can Determinations Be Appealed?

The CASE Act provides for limited judicial review. *Id.* at § 1503(g). A party may request that the Board reconsider a determination for a material clear error of law or fact within thirty days of the final determination. *Id.* at § 1506(w). If the request for reconsideration is denied, the party may, within thirty days after the denial, request review by the Register of Copyrights,

which will either deny the request or remand for reconsideration. *Id.* at § 1506(x). District courts can hear challenges to the Board's final determination if filed within ninety days, but can only vacate, modify,

or correct the Board's determination if it involved fraud, failed to address the subject matter at issue, or was a default determination where the default was excusable. *Id.* at § 1508(c)(1).

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