



**INFORMATION ON THE  
COPYRIGHT ALTERNATIVE  
IN SMALL-CLAIMS  
ENFORCEMENT ("CASE") ACT**

# **CASE ACT TOOL KIT**

**REPORT BY CALIFORNIA  
LAWYERS FOR THE ARTS**



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## INTRODUCTION

The Copyright Alternative in Small-Claims Enforcement Act of 2019 (“CASE Act”) establishes a new forum for copyright small claims. Passed in 2020, the CASE Act marks a potentially significant shift in how copyright claims are disputed and resolved.

This toolkit was created to compile information regarding the CASE Act. Specifically, the aim of this toolkit is to provide readers information about the Act, its mechanisms, and list resources for further exploration.

This toolkit is not intended to be, nor serve as, legal advice. Individuals interested in pursuing copyright or any legal claims should seek a qualified attorney in their respective jurisdiction. For any inquiries regarding this toolkit, please contact California Lawyers for the Arts via email at [support@calawyersforthearts.org](mailto:support@calawyersforthearts.org).

Special thanks to Dhruva Krishna for compiling this toolkit as part of his law fellowship with CLA. We also extend our gratitude to Eileen Bramlet, Senior Vice President, Communications at the Copyright Alliance for arranging the cooperation of the Alliance and to Terrica Carrington, Vice President of Policy and Copyright Counsel, for her careful editorial review of the toolkit.

## ABOUT CLA

California Lawyers for the Arts [CLA] is a non-profit organization founded in 1974 to provide legal services to artists and members of the creative arts community. In 1987, Bay Area Lawyers for the Arts [BALA] joined forces with Volunteer Lawyers for the Arts-Los Angeles [VLA] to form California Lawyers for the Arts as a statewide organization. CLA is part of an informal network of “Volunteer Lawyers for the Arts” programs that serve artists through state-based organizations throughout the United States. CLA is a multi-faceted arts service organization that provides legal support, alternative dispute resolution services, educational programs and advocacy for the arts and justice reform.

## WHAT IS THE CASE ACT?

The CASE Act creates an alternative forum housed within the Copyright Office to hear and resolve copyright small claims disputes, generally those under \$30,000. More specifically, the CASE Act creates the Copyright Claims Board (“CCB”) to hear these claims. The CCB is given authority to hear, dismiss, manage, and resolve cases in a variety of ways.

The CASE Act was passed on December 21, 2020 and signed into law on December 27, 2020. Copyright advocates have stated that for content creators, it is one of the most significant changes to the United States copyright system in decades.

## WHY WAS THE CASE ACT PASSED?

The CASE ACT was passed to address serious concerns over copyright small-claims enforcement. An extensive two year study by the Copyright Office, summarized in a 2013 report, revealed significant issues with copyright owners asserting small claims. The study revealed that small claims enforcement was often impractical given the extensive cost, time, and expertise needed to address these claims in federal courts. For example, the median cost of litigating a copyright claim under \$1 million through appeal was close to \$400,000, with cases taking at least a year and a half to reach trial.

Given the low recovery in small claims cases, these obstacles hindered many copyright owners from asserting their rights. To that end, the CASE Act aims to create a more accessible, efficient, and practical forum for copyright claims.

To note, several other countries have similar copyright small claims forums, including the United Kingdom, China, and Canada.

## WHEN DOES THE CASE ACT GO INTO EFFECT?

The CASE Act will go into effect on December 27, 2021 at the earliest. However, there are provisions that allow for a six-month extension given COVID-19 related delays. As a result, the latest date by which the CCB should be operating is June 2022.

## WHAT CLAIMS CAN BE HEARD?

Generally, three claims can be brought under the CASE Act. First, copyright owners can bring copyright infringement claims against those using their works. Second, users of copyrighted materials can request a declaration of non-infringement from the CCB. Third, users who have received DMCA takedown notices can challenge the notices if they believe they contain some form of misrepresentation. Alternatively, owners who have sent DMCA takedown notices can also challenge counter-notices if they believe they contain some form of misrepresentation.

Any defenses and counterclaims, such as fair use, may also be asserted for each of these claims. Parties may bring multiple claims in the same proceeding as long as they relate to the same infringing activity or continuous course of infringing activities.

There are several notable exceptions. Any claims or counterclaims that have been adjudicated, or are pending adjudication, by a court cannot be heard unless the court has granted a stay to permit the claim to be heard by the CCB. Additionally, there can be no claims by or against governmental entities. Lastly, claims generally may not be asserted against persons or entities residing outside the United States; however a counterclaim may be asserted against such a person or entity if they initiated the proceeding before the CCB.

## IS THE CASE ACT MANDATORY?

No. The CASE Act is not mandatory. Claimants, or those filing the initial claims, have the option of filing with the CCB or in federal district court even if the claim could technically qualify as a “small claim.”

The CASE Act provides an opt-out provision for respondents. Within 60 days of receiving notice and being served a claim, the respondent can opt out via written notice to the CCB. If the respondent opts out, the proceeding is dismissed without prejudice. However, and as many critics lament, this is explicitly an opt-out procedure. If the respondent does not opt out within 60 days, the proceeding is deemed active, the respondent will be unable to have the dispute heard in federal court, and will be bound by any final determination in the CCB proceeding.

## WHAT IS THE COPYRIGHT CLAIMS BOARD (CCB)?

The CCB was created to hear copyright small claims under the CASE Act. The CCB will have three Copyright Claims Officers, who will serve as the primary decision-makers. These officers will be appointed by the Librarian of Congress upon recommendation by the Register of Copyrights. Officers must be attorneys with at least seven years of legal experience and substantial experience with copyright law. One officer must have alternative dispute resolution (“ADR”) experience. The other two officers must have substantial experience in the evaluation, litigation, or adjudication of copyright infringement claims. These officers will generally be appointed for six years, however the first three officers are appointed for staggered terms of four, five, and six years.

*Additionally, Copyright Claims Officers will be assisted by Copyright Claims Attorneys. These attorneys will be hired by the Register of Copyrights to assist in administering the CCB, specifically with reviewing claims (see below). These individuals must have at least three years of substantial experience in copyright law.*

## WILL I NEED TO BE IN WASHINGTON D.C.?

No. The CASE Act does not require claimants to travel to or have their proceedings in Washington D.C. Proceedings will be conducted remotely and electronically.

## WILL I NEED A LAWYER?

No. The CASE Act does not require claimants to have an attorney. The process is designed to be both streamlined and simplified to allow claimants to proceed pro se, i.e. represent themselves, in both filing and throughout the hearings. The statute encourages the use of pro bono clinics and law student volunteers to help claimants.

## HOW DO I SUBMIT A CLAIM?

The exact procedures to submit a claim to the CCB are still being determined by the Copyright Office.

However, the statute provides information about the requirements to adequately submit a claim. First, claimants will need to pay a filing fee. The filing fee is required to be at least \$100, but must not exceed the cost of filing a federal court claim (currently \$402.00). It is unclear if the Copyright Office will require a single, lump sum payment or staggered amounts that include a filing fee and a separate fee once the proceedings are active. Second, claimants must include a statement of material facts to support the claim. Third, the claim must be certified by a CCB attorney, as described below. The Register of Copyrights is statutorily authorized to establish additional regulations.

A United States District Court may also refer parties to the CCB to have their claims heard as part of an alternative dispute resolution (ADR) program.

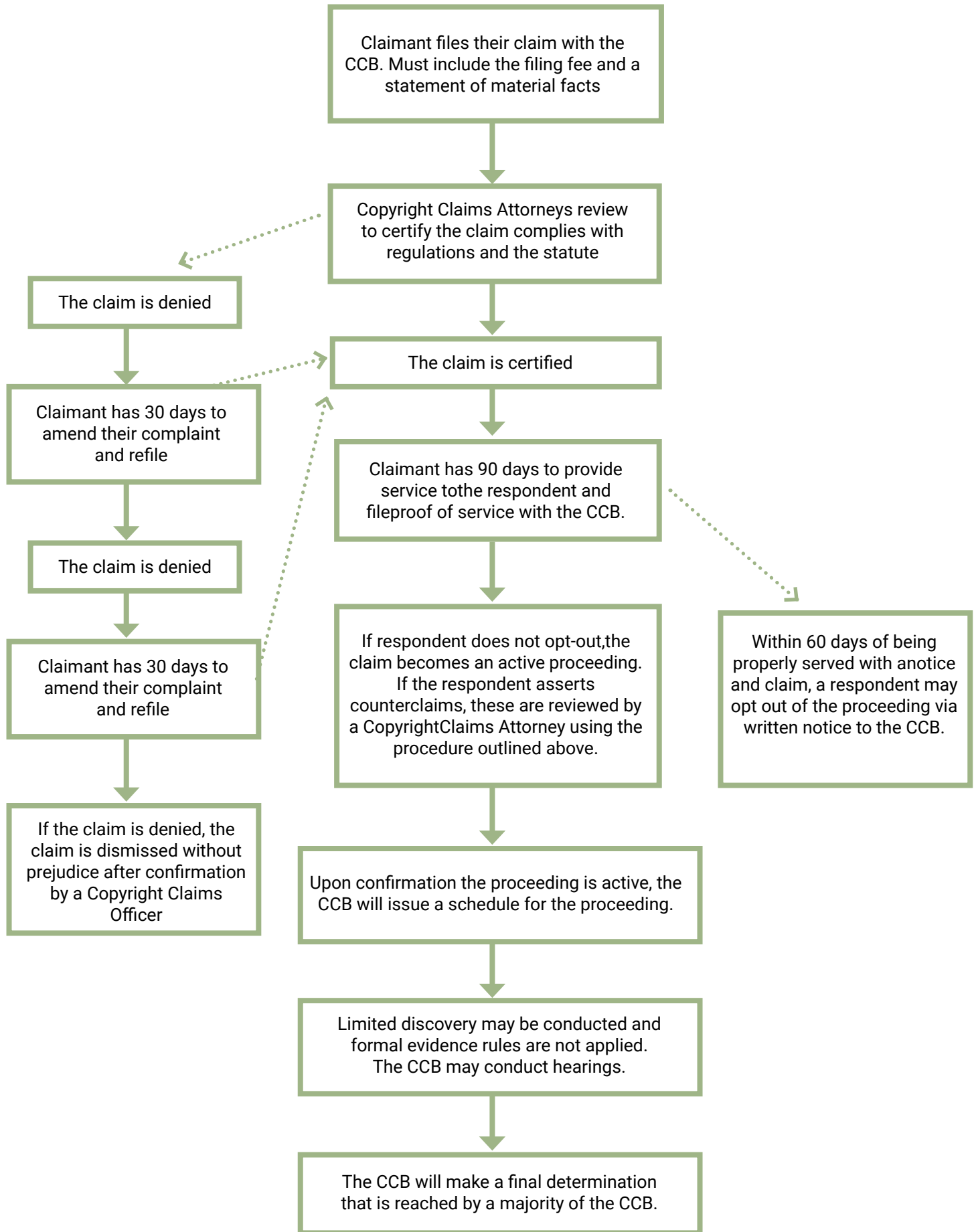
## HOW IS MY CLAIM REVIEWED?

Once a claim is submitted, it is reviewed by Copyright Claims Officers and Copyright Claims Attorneys. First, the claim is reviewed by a Copyright Claims Attorney. The attorney ensures that the claim complies with the statute and all applicable regulations. If the claim does not comply, the claimant will be provided two opportunities to amend their deficient claim. For each opportunity, the claimant is given a 30-day window to file an amended claim. If the claimant fails to state a sufficient claim after the second window, the claim will be dismissed without prejudice after confirmation by a Copyright Claims Officer. If the claim is found to comply, the claimant is notified and is instructed to provide notice to the respondent(s). After the claimant files and provides service to the respondent, the respondent will also be able to assert their own counterclaims. These counterclaims are also reviewed by the Copyright Claims Attorneys for sufficiency under the same procedures.

Assuming no parties opt out and the proper service requirements are met, the proceeding will become active. The CCB will then issue a schedule for the proceeding. The proceeding may consist of multiple events, similar to federal court. The Copyright Claims Officers are authorized to hold conferences to address discovery and case management issues. The CCB may also hold hearings, at which at least two Copyright Claims Officers must be present.

Ultimately, the CCB will make its findings based upon a preponderance of the evidence. Any determinations must be reached by a majority of the CCB, be in writing, set forth any terms reached by the parties to cease infringing activity, any terms of settlement, and include a statement of damages. Officers may also provide a dissent.

The statute provides that claims under \$5,000 will be subject to different procedures. As of this writing, these procedures have not yet been established.





## IS THE CCB BOUND BY JUDICIAL PRECEDENT?

Yes. CCB Officers will be bound by judicial precedent in making their final determinations. If there is conflicting judicial precedent, the CCB will follow the law of the jurisdiction where the action could have been brought in federal court. The CCB may also consult with the Register of Copyrights on general issues of law, but cannot do so regarding the facts of any pending matter or applying the law to facts.

## CAN I APPEAL THE FINAL DETERMINATION?

Yes, there is a limited right to appeal decisions. A party may request that the CCB reconsider their decision within 30 days of a final determination. This reconsideration should identify a clear error of law, error of fact(s) material to the outcome, or a technical mistake. The CCB may deny the request or issue a final amended determination. If the CCB denies the request, a party may request within 30 days of the denial that the Register of Copyrights review the decision. This review is limited to the question of whether the CCB abused its discretion in denying reconsideration.

The Register can deny the review or remand the proceeding to the CCB for reconsideration. Subsequent final determinations are not subject to further appeal, except to a district court as outlined below.

Additionally, a party may utilize the district court in enforcing and appealing a determination. If a party has failed to pay damages or comply with relief, a party may seek an order from a district court confirming the relief in the final determination. This order may also include attorneys fees for the aggrieved party. Parties can also utilize the district court to challenge final determinations or denials of reconsideration. However, these challenges must demonstrate that: a determination was the result of fraud, corruption, misrepresentation or other misconduct; the CCB exceeded its authority or failed to render a determination concerning the subject matter at issue; or if the determination was based on default or failure to prosecute, this inaction was due to excusable neglect.

## WHAT IS THE EFFECT OF THE PROCEEDING?

Generally, a final determination by the CCB will preclude relitigation of the same claims and counterclaims before a court, tribunal, or the CCB. However, there are exceptions.

First, any claims or counterclaims not asserted or determined by the CCB will not have preclusive effect. Second, the determination of ownership of a copyrighted work by the CCB to resolve a matter may not be relied upon by, and will not have any preclusive effect in subsequent proceedings before any court, tribunal, or the CCB. Third, the CCB proceedings and determinations will not be legal precedent in any subsequent action in a court, tribunal, or the CCB itself. Additionally, if a party has timely opted-out or was dismissed from the proceeding before a final determination was issued, the proceeding will have no binding or preclusive effect on that party.

## DOES THE CASE ACT LIMIT MY REMEDIES?

Yes. The CCB will only be able to award up to \$30,000 in total damages in any one proceeding, regardless of the number of works at issue. For infringement claims, actual or statutory damages may be awarded. For actual damages, parties may seek up to \$30,000 for a single work, subject to the total \$30,000 cap. For statutory damages, the CCB will be able to award up to \$15,000 per work. If the work is not timely registered, the statutory damages will be limited to \$7,500 per work, and up to \$15,000 in sum for all works at issue that were not timely registered.

The CCB may grant reasonable costs and attorneys' fees for bad faith conduct. Bad faith conduct includes harassment and pursuing claims for improper purpose or without a basis in law, such as failing to prosecute or to meet specific deadlines. These damages are limited to \$5,000 for parties represented by attorneys and \$2,500 for pro se claimants.

The CCB is unable to grant injunctions. However, the CCB may include in its final determinations an agreement for parties to cease activities, if parties consent.

## ARE CCB PROCEEDINGS STREAMLINED?

Yes. A key aspect of CCB proceedings is an emphasis on accessibility and efficiency. To that end, discovery is much more limited, with in-person appearances not being necessary. Formal motion practices are not required, although the CCB may request party submissions. Additionally, confidential information may be covered by protective orders, issued by the CCB. Expert witnesses are not allowed unless the CCB agrees that good cause exists. Additionally, CCB proceedings are not subject to formal rules of evidence. The CCB may consider relevant documentary, non-testimonial, and testimonial evidence. Generally, testimonial evidence will be limited to the parties and submitted under penalty of perjury.

## CAN THE CCB DISMISS MY CASE?

Yes. Claims and counterclaims may be dismissed, for reasons including: failure to join a necessary party; lack of an essential witness, evidence, or expert testimony; and in instances in which determining an issue of law or fact could exceed the CCB's ability to reasonably administer proceedings or exceed the CCB's subject matter competence. Additionally, parties may voluntarily dismiss their claims by written request before the opposing party files a response.

Parties may also utilize the CCB to affirm or promote settlement. During active proceedings, parties may jointly request a conference with a Copyright Claims Officer to facilitate settlement discussions. Additionally, parties may submit settlement agreements to the CCB to dismiss the case or to include in their final determination.

A party's inaction also has effects. A claimant's failure to complete service or prosecute may also cause the CCB to dismiss the proceeding. A respondent's failure to appear or cease participation in the proceeding can lead to an adverse default determination, which will be decided on the merits of the case. However, defaults are meant to be used rarely.

## DOES THE CCB PROTECT UNREGISTERED WORKS?

The CASE Act does not require registration prior to bringing a claim. Parties may bring a claim to the CCB if they already have registration from the Copyright Office for the work(s). Parties can also file an application with the Copyright Office to register the work(s) at issue simultaneously with filing a claim with the CCB.

To note, this is a different requirement from federal court proceedings. Federal courts require registration or a refusal of registration before a case is brought. As a result, federal court claims cannot be brought just on application. However, if the application is refused, the CCB will dismiss the case.

## DOES THE CASE ACT CHANGE COPYRIGHT LAW?

No. The CASE Act does not change copyright law. The CASE Act only creates a new forum for small-claims enforcement and resolution. To that end, CCB decisions are bound by judicial precedent. In turn, any final determinations by the CCB are not binding judicial precedent for courts, tribunals, or the CCB itself.

The Copyright Office has stated that the CASE Act may lead to the creation of expedited registration processes with lower fees for works at issue in CASE Act proceedings. This is an ongoing conversation that may lead to changes in the registration process.

## WILL CCB DETERMINATIONS BE PUBLIC?

Yes. The CCB will make its final determinations available on a publicly accessible website. However, confidential information will be appropriately redacted.

## ARE THERE EXCEPTIONS TO THE CASE ACT?

Yes. The CASE Act provides an explicit exception for libraries and archives. These entities will be able to opt out of all current and future CCB proceedings without having to individually respond to each claim. However, the Copyright Office is still creating regulations that specifically discuss how libraries and archives can take advantage of this procedure, its scope, and possible restrictions.

Other corporate entities have also sought blanket protections via the general opt-out procedure. These advocates have stated that, given the expense of responding to individuals, the CCB should allow entities to elect a blanket opt-out and establish an opt-out directory. However, the senators that introduced the bill have explicitly stated that such a procedure was not intended and the exceptions were purposefully limited solely to libraries and archives, and the Office has stated its understanding that it cannot impose a blanket opt out for these entities.

## WILL THIS INCREASE FRIVOLOUS CLAIMS?

This is a contentious and controversial question among copyright advocates. CASE Act advocates state that the legislation has protections against frivolous copyright claims and copyright trolling. For example, in addition to the process being entirely voluntary, the CCB is authorized to ban bad faith parties from the CCB for a year, dismiss all of the bad faith party's pending claims, and impose reasonable costs and attorney's fees.

However, critics of the CASE Act have stated these protections are insufficient. They argue that the CASE Act can expose many individuals and businesses to liability, with only large industry players having the resources to afford these claims. Other concerns include the constitutionality of the legislation, how the CCB would handle more complex issues, concerns over logistics, and if the CCB would be able to handle its expected caseload.

## RESOURCES

### INFORMATION ON THE CASE ACT

CASE ACT, H.R. 2426, 116th Congress (2020), <https://www.congress.gov/bill/116thcongress/house-bill/2426/text>.

Copyright Alternative in Small-Claims Enforcement (“CASE”) Act Regulations, U.S. Copyright Office (Mar. 5, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-03-26/pdf/2021-06322.pdf>.

Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2019, Senate Report (Sept. 12, 2019), <https://www.congress.gov/116/crpt/srpt105/CRPT-116srpt105.pdf>.

Copyright Claims Board Frequently Asked Questions, U.S. Copyright Office, <https://www.copyright.gov/about/small-claims/faq.html>.

Copyright Office Proposes Small Claims Expedited Registration Procedures and FOIA Conforming Amendment, U.S. Copyright Office, <https://www.copyright.gov/rulemaking/case-act-implementation/expeditedregistration/>.

Copyright Small Claims and the Copyright Claims Board, U.S. Copyright Office, <https://www.copyright.gov/about/small-claims/>.

## RESOURCES

### INFORMATION ON THE CASE ACT (Cont.)

Cynthia Ahmed, Copyright Alternative in Small-Claims Enforcement (CASE) Act, Harvard Journal of Law and Technology (Apr. 23, 2021), <http://jolt.law.harvard.edu/digest/copyright-alternative-in-small-claims-enforcementcase-act>.

### ADVOCACY AND OTHER INFORMATION

Copyright Alternative in Small-Claims Enforcement Act Regulations - Comments, Regulations.gov (March 26, 2021), <https://www.regulations.gov/document/COLC-2021-0001-0001/comment> (submitted comments on proposed CASE Act regulations).

Jason Kelley, The CASE Act Is Just the Beginning of the Next Copyright Battle, Electronic Frontier Foundation (Dec. 22, 2020), <https://www.eff.org/deeplinks/2020/12/case-act-hidden-coronavirus-relief-bill-justbeginning-next-copyright-battle> (a strong critique of the CASE Act by EFF).

Kathleen K. Olson, The Copyright Claims Board And The Individual Creator: Is Real Reform Possible?, 25. Comm. L. & Pol'y 1 (2020), <https://plus.lexis.com/api/permalink/0b06486f-c631-4331-b1c9-e8467b11c855/?context=1530671> (describing the CCB and similar courts in other countries).

Terrica Carrington and Keith Kupferschmid, CASE Act signed into Law: What This Means, Copyright Alliance (Jan. 7, 2021), <https://copyrightalliance.org/case-actsigned-into-law/> (comments from the Copyright Alliance discussing the act's passage)