

The CASE Act

It's Here! Almost.



The CASE Act

- Creates a “small claims court” for copyright claims.
 - *Three-member board of appointed copyright experts.*
- Only certain claims allowed.
- Cap on damages.
- Streamlined discovery and hearing process.
- Voluntary participation by both sides (“opt out”).

Current Status

Not yet taking claims

Most rules finalized

Website is up and running



Janet v. Acme Corp.

- Janet is local professional photographer.
- Posted her photo of Mt. Hood at sunrise on website.
- Acme Corp. copied photo and is using on its own website.
- Acme Corp. ignoring all cease and desist demands.

What Claims Are Allowed?

What can Janet claim?

- Copyright infringement
- False counternotice to DMCA takedown

What can Acme claim or counter-claim?

- Declaratory Relief of non-infringement
- False DMCA takedown

How Much Can Janet Get?

- \$30,000 maximum, exclusive of costs and fees.
- \$15,000 max statutory damages per work.
 - *Can still get \$7,500 even if not timely registered*
- Fees and costs only in extraordinary cases.
 - *Capped at \$5,000, \$2,500 in costs for pro se.*
- No injunctive relief without party agreement.

Who Can Represent The Parties?

- Designed for pro se representation.
- Businesses: in-house attorneys and authorized employees.
- Law students
 - *Must be supervised by law school or pro bono organization, be done pro bono, and qualified.*

Filing A Claim

- Everything filed through eCCB e-filing system.
- Statement of facts.
- © application required to file, registration required to proceed.
 - *Expedited registration available from Copyright Office.*
- Certified under penalty of perjury.
- Filing fee - \$40/\$60 split.

Review and Initial Notice

- CCB will review claim for rules compliance.
 - *Three chances to get it right.*
- If compliant, CCB issues “Initial Notice” (summons) to be served on Respondent.

Service

- Must be served on Acme Corp. within 90 days
 - *Acme can designate subsidiary as registered agent.*
 - *Acme can designate one agent for all of its entities.*
 - *Acme can list its agent in CCB directory.*
- Allowed methods of service
 - Personal service, mail (where allowed), waiver of service form, certified mail on designated agent

Acme's Response

- **60 days** to respond.
- Can opt out of CCB
 - *Claim is dismissed without prejudice (and no going back).*
- File statement using CCB form
 - *Can raise allowed counterclaims and affirmative defenses.*
- If Acme fails to respond, CCB can issue a default determination (discretionary).

Pre-Hearing Process

- Initial scheduling conference to discuss settlement and discovery.
- All hearings and conferences are virtual.
- Scheduling Order issued with key dates.

Discovery and Motion Practice

- Only written discovery allowed by default.
 - *Interrogatories, RFA's, Document Requests*
- No experts except in “exceptional cases.”
- Other discovery not typically available.
- Protective orders can be issued.
- No formal motions allowed.

The Hearing

- Hearings must be remote.
- Can decide based on written submissions.
- No formal rules of evidence.
- Applies federal law (most applicable district if split).

The Decision

- Majority decision by Board members.
 - *Can be decided by one member for “Smaller Claims” of <\$5,000.*
- Written decision with explanation of facts and law.
- Can include agreed-upon terms (including injunction).
- Becomes public but not precedent.
 - *No effect on un-litigated claims; not citable as precedent; no precedent as to ownership.*

Appealing A Decision

- Request for reconsideration to CCB for “clear error.”
- Request for review by Register for denial of request for reconsideration.
- Appeal to District Court for limited reasons:
 - *Fraud, corruption, misconduct.*
 - *Exceeded authority or did not resolve claim.*
 - *Default was due to “excusable neglect.”*

Enforcing Determination

- Application to District Court (D.C. or other) to convert to judgment.
- 1 year time limit.
- Can recover fees and costs to secure order.

Anti-Abuse Procedures

- CCB can award fees and costs for bad faith conduct.
 - *Can go beyond the \$5,000 cap in extraordinary case.*
- If more than one bad faith case in a year, CCB can bar claimant for up to one year and dismiss all pending claims with prejudice.

Additional Resources

- <https://ccb.gov> – CCB website.
- <https://ccb.gov/rulemakings/> - current rules.
- <https://www.copyright.gov/about/small-claims/faq.html>

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Ryan Mauck

rmauck@maucklaw.com

541.203.6794

www.maucklaw.com

www.aspectlg.com

Oregon Volunteer

Lawyers for the Arts

www.oregonvla.org