
New Legislation: CASE Act and Protecting Lawful Streaming Act

By Michael J. Antonucci

H.R. 133 — 116th Congress (2020)

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On December 27, 2020, President Donald Trump signed the Consolidated Appropriations Act, 2021 (H.R. 133), better known as the Omnibus Spending and COVID-19 Relief bill, into law. The Act incorporated trademark and copyright protection provisions, including the Copyright Alternative in Small-Claims Enforcement Act of 2020 (the “CASE Act”) and the Protecting Lawful Streaming Act of 2020, both of which are designed to increase protections for copyright owners. These provisions are briefly summarized below.

1. The Case Act

The CASE Act creates a “small claims court” within the U.S. Copyright Office to adjudicate certain copyright disputes. The purpose of this Act is to provide copyright owners another avenue for relief by establishing an alternative forum to federal court. Before the passage of the CASE Act, federal courts had exclusive jurisdiction over copyright disputes. However, bringing an infringement action in federal court and navigating the complexities of federal litigation proved to be prohibitively expensive for many copyright owners. The CASE Act establishes a voluntary, affordable, and streamlined procedure for bringing copyright claims that do not exceed \$30,000 in damages.

1. Copyright Claims Board and Available Remedies

The CASE Act establishes a Copyright Claims Board (the “Board”) within the Copyright Office consisting of three Copyright Claims Officers, each of whom must be an attorney with at least seven years of experience and two of whom must have substantial experience in evaluating, litigating, or adjudicating copyright infringement claims. These Claims Officers will act as mediators and adjudicate proceedings brought before the Board by copyright owners, essentially acting as a small claims court and dispensing with the need for federal court actions.

The three-person panel of Claims Officers is authorized to manage discovery, conduct hearings, and award monetary relief, provided that the Board may not award more than \$15,000 in statutory damages per work or \$30,000 in total damages (statutory or otherwise) in any single proceeding. If a work is not timely registered, the monetary cap is reduced to \$7,500 in statutory damages per work or a total of \$15,000 in any one proceeding. When awarding damages, the Board may not consider whether the infringement was committed willfully and, thus, cannot increase statutory damages based on willful infringement as is allowed in federal court proceedings. Further, the Board is also prohibited from awarding attorney’s fees except in cases of bad faith conduct, in which case such fees may not exceed \$5,000 unless there are extraordinary circumstances, such as a demonstrated pattern or practice of bad-faith conduct. In addition to monetary damages, the Board may also issue other forms of relief such as notices to cease infringement.

- Board Decisions

When making a determination, the Board must issue a written decision explaining the factual and legal basis of such determination. However, the CASE Act provides that such decisions are not precedential and may not be cited or relied upon in any other legal proceeding. Rather, the Board’s decision is only preclusive with respect to the parties to the proceeding and the claims that were adjudicated therein.

- Appeal Process

The CASE Act provides a limited appeal process. After the Board issues a written decision, a party may submit a written request for reconsideration if such party identifies clear error of law or fact material to the outcome or a technical mistake. If the Board denies a party’s request for reconsideration, the party may request that the Register of Copyrights review the Board’s decision. Such review will be limited to a consideration of whether the Board abused its discretion in denying the request for reconsideration. If

the Register denies the requested relief, the aggrieved party may seek an order from a U.S. district court vacating, modifying, or correcting the determination of the Board only if one or more of the following occurred: (i) the determination was issued as a result of fraud, corruption, misrepresentation or other misconduct; (ii) the Board exceeded its authority or failed to render a final determination concerning the subject matter at issue; or (iii) in the case of a default determination or determination based on a failure to prosecute, such default or failure was due to excusable neglect.

- **Voluntary Process and Opting Out**

Participation in a Board proceeding is strictly voluntary, and a party may opt out and choose to resolve the claim in federal court. Once a claim is filed before the Board, respondents have sixty days after receiving notice to reject the process and opt out, in which case the proceeding will be dismissed without prejudice and the claimant's only alternative is to bring the claim in federal court. If a respondent does not opt out within 60 days, such respondent loses the opportunity to have the dispute decided by a federal court and waives its right to a jury trial.

- **Criticism of the Act**

Although the goal of the CASE Act is to strengthen protections for copyright owners, it is not without its detractors. Some critics are concerned that the Act will lead to an increase in frivolous infringement claims and copyright trolling. Others believe that it will have a chilling effect on online speech and that it will hurt everyday internet users and small players by making them more vulnerable to litigation, while allowing large, well-resourced corporations the ability to opt out and force less-moneyed claimants to either litigate in federal court or drop the claim.

- **Protecting Lawful Streaming Act (18 U.S.C. § 2319C)**

The Protecting Lawful Streaming Act is a separate criminal act designed to increase criminal penalties for unauthorized streaming of copyright-protected works. The Protecting Lawful Streaming Act amends Title 18 of the U.S. Code to make it a felony to unlawfully stream copyright-protected content online for purposes of commercial advantage or private gain. Before the passage of this Act, unlawful reproduction and distribution of copyright-protected materials could be charged as a felony, but unauthorized live streaming of copyrighted content could only be charged as a misdemeanor. The Act aims to close this loophole.

The Act does not target individual streamers but rather digital transmissions services, which it defines as services that have the primary purpose of publicly performing works by digital transmission (*i.e.*, streaming). The Act allows the Department of Justice to bring felony charges against a digital transmission services that: (i) is primarily designed or provided for the purpose of streaming copyrighted works without the authority of the copyright owner or the law; (ii) has no commercially significant purpose or use other than to stream copyrighted works without the authority of the copyright owner or the law; or (iii) is intentionally marketed or directed to promote its use in streaming copyrighted works without the authority of the copyright owner or the law.

Any person who violates the provisions of this Act faces a fine and up to three years in prison. The maximum prison sentence increases to five years if the offence is committed in connection with one or more works being prepared for commercial public performance, or the offender knew or should have known that the work was being prepared for public performance. Finally, repeat offenders can face up to ten years in prison.

- **Conclusion**

In sum, the passage of the CASE Act and the Protecting Lawful Streaming Act is a positive development for copyright owners. These Acts increase copyright protections by providing more accessible avenues of relief for copyright infringement as well as increased penalties for unlawful streaming.