TO: Indiana Public Libraries

FROM: Indiana State Library

RE: **CASE Act**

DATE: 8/25/2022

The following memo provides information about the Copyright Alternative in Small-Claims Enforcement Act (CASE Act) which was passed and signed into law in December 2020. The CASE Act established a small claims court process within the U.S. Copyright office. A copyright claims board (CCB) was established to hear copyright claims with damages totaling $30,000 or less. The CCB is a 3-member tribunal staffed with attorneys who have significant copyright experience. The CCB began presiding over small claims copyright cases in June of this year.

Q. What does this mean for libraries?

A. It can be expensive to litigate a copyright claim in federal court. The CCB provides a lower cost

 alternative to resolve claims. Claims are capped at $30,000 which provides some protection from the

 possibility of a higher damage award if the claim is heard in federal court. Also, the process has been

 designed to facilitate self-representation, which saves the parties the cost of legal fees. The process is

 designed to be quicker and more streamlined than a regular court proceeding. Most of the case will be

 decided based on written submission. There may or may not be a hearing. Discovery is limited and the

 proceedings are virtual so no travel is required.

Q. What kinds of copyright claims are heard by the CCB?

A. The CCB hears 3 types of small claims copyright cases. They can preside over copyright infringement

 claims, requests seeking a declaration of non-infringement, claims related to takedown notices and the

 Digital Millennium Copyright Act (DMCA), and other related claims and defenses.

Q. Are libraries required to go before the CCB when someone sues them on a copyright claim?

A. No, libraries and archives may pre-emptively opt out from CCB jurisdiction altogether which would

 require any and all copyright claimants to proceed with suit in federal court. Libraries may alternatively

 just opt out from CCB jurisdiction on individual cases which would mean the claimant in that particular

 case would have to sue the library in federal court but other potential later claimants could still sue

 under the CCB. If a library opts out, the exemption would apply to any employees involved in the

 claim as well as the library as an entity. It is free to file the exemption at ccb.org. If a library wants to opt

 out of a CCB proceeding, the library must take action within 60 days of notice that the claim was filed.

Q. Are there situations where it may be beneficial to the library to have the case heard in federal court?

A. If the issues are complex, require expert witnesses, third parties, or depositions, then it might be better

 for the case to be heard in federal court as the CCB does not typically allow depositions or expert

 witnesses. Additionally, the CCB does not have the authority to force third parties to testify or

 produce documents. There may also be strategic legal reasons for forcing the claimant to file in federal

 court.

Q. If a library is sued in federal court, can the library have the case moved to the CCB?

A. There does not appear to be a mechanism for a defendant/respondent in a federal court case to opt to

 have a copyright case transferred to the CCB.

Q. Do we still need an attorney to represent us in a CCB proceeding?

A. No. The CCB has been designed to enable litigants to represent themselves. However, you may

 appear represented by counsel if you so choose.

Q. Are CCB determinations enforceable? Do they carry the weight of a regular court opinion?

A. A CCB determination is binding as to the parties involved but does not serve as precedence for any

 other case.

Q. What if I disagree with the CCB determination? Is there an appeals process?

A. The losing party may request reconsideration by the CCB but if that is denied, the losing party may

 seek review by the Register of Copyrights. However, a review by the Register of Copyrights will only

 be related to whether the CCB abused its discretion in denying reconsideration. In limited

 circumstances, the decision can be appealed to a federal court, but only under the following

 circumstances:

1. If the determination was issued as a result of fraud, corruption, misrepresentation, or other misconduct;
2. If the CCB exceeded its authority or failed to render a final decision in the matter; or
3. In the case of a default determination or determination based on failure to prosecute, if it is established that the default or failure was due to excusable neglect.

Q. How can I find out more information about the process?

A. If you find yourself sued in a CCB proceeding, or if you just have general questions, you can consult

 the [CCB handbook](https://ccb.gov/handbook/?loclr=blogcop). You can also email: AskTheBoard@ccb.gov with your procedural questions.