Before the
United States Copyright Office
Washington, DC

In re Copyright Alternative in Small-Claims Enforcement Act of 2020 ("CASE") Act Study	Docket No. 2025-2

COMMENTS OF
THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

In response to the notice of inquiry and request for comments published by the U.S. Copyright Office ("the Office") in the Federal Register at 90 Fed. Reg. 11625 (Mar. 10, 2025), the Computer & Communications Industry Association ("CCIA")[1] submits the following comments responding to selected topics on the Copyright Alternative in Small-Claims Enforcement Act of 2020 ("CASE") Act Study and issues pertaining to the Copyright Claims Board ("CCB"). CCIA has submitted comments to the Office on these issues and appreciates the opportunity to provide additional input on the CCB and its implications.[2]

The framework has largely provided individual rightholders inexpensive relief from infringement while not enabling trolls or other abusive litigants to circumvent the existing safeguards provided by the federal judiciary. However, expanding the CCB's jurisdiction would undermine the delicate balance that has kept this initiative constitutional—especially with ongoing developments around emerging issues like AI and digital replicas. These comments do suggest one minor modification to a rule, as explained in response to Question 10(a).

[1] CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. A list of CCIA members is available at https://www.ccianet.org/members.

[2] CCIA-IA Comments on Copyright Alternative in Small-Claims Enforcement ("CASE") Act Regulations, Docket No. 2021-1 (Mar. 2021), https://ccianet.org/library/ccia-ia-comments-on-case-act-regulations/.

1(d). Should the CASE Act's service requirements be modified? Are there other ways to increase the ease and efficiency of perfecting service while adequately preserving respondents' due process rights?

These requirements should not be modified. The complexity is what mitigates constitutional concerns by ensuring due process. Unfortunately it is not possible to procedurally simplify.

1(e). Is the opt-out system working as intended and, if not, how should it be modified?

The opt-out system is working as intended and must be maintained so that the CCB's operation does not violate the U.S. Constitution. As the Office noted in its 2013 report on a small claims proceeding, some kind of consent to a small claims proceeding is likely necessary to survive subsequent legal challenges, since individuals must affirmatively waive constitutionally guaranteed rights of trial by jury and appellate relief.[3]

7. Whether adjustments to the CCB's authority are necessary or advisable, including with respect to: (A) eligible claims, such as claims under section 1202 of title 17, United States Code (which addresses the integrity of copyright management information); (B) eligible types of works; and (C) applicable damages limitations.

7(a). Are there additional claims that arise under title 17 that would be appropriate for the CCB to resolve?

The scope of the CCB's authority is appropriately limited to heartland copyright and DMCA misrepresentation cases given the forum's streamlined processes, its highly simplified rules of evidence, and its virtual nature. Even with this limited scope, claimants appear to find it difficult if not impossible to formulate compliant, cognizable claims — even with expert guidance from CCB attorneys.

Because the CCB is composed entirely of copyright specialists, any claims beyond those currently in scope should remain outside its authority. Expanding the CCB's authority to

[3] U.S. Copyright Office, *Copyright Small Claims: A Report of the Register of Copyrights* (Sept. 2013), https://www.copyright.gov/docs/smallclaims/usco-smallcopyrightclaims.pdf, at 28 n.172 (citing *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986)).

include, for example, highly technical paracopyright claims under sections 1201 and 1202 would be unwise and would likely lead to an increase in non-adjudicable claims.

8. What additional mechanisms, if any, should the CCB adopt to assist claimants in ascertaining the identity and location of unknown online infringers? Should the CCB be granted subpoena power to assist parties in identifying or locating potential respondents?

There should not be any additional mechanisms to assist claimants in finding unknown online infringers, and there especially should not be subpoena power. Only Article III courts get subpoena power, which is why the CCB does not have this extraordinary power. CCB claimants can already take advantage of the DMCA's pre-litigation subpoena provision, 17 U.S.C. § 512(h), to identify alleged infringers.

10(a). The CASE Act contains a rule that treats filing certain CCB claims as equivalent to filing a court action, for the purpose of contesting a counter-notice under 512(g)(2)(C). Is this rule working as intended and, if not, how should it be modified?

This provision should be modified. Most claims that have been filed are so defective that the Board never even permits them to be served. As of this drafting, there are nearly one thousand results in the eCCB where the Board issued an Order to Amend Noncompliant Claim or Counterclaim.[4] Often claimants do not refile, or they refile but the claims remain defective. This rule should be modified so that filing a CCB claim in and of itself is not sufficient for contesting a counter-notice under § 512(g)(2)(C). When that rule was proposed, it was predicated on these claims being justiciable. Filing a CCB claim should not be sufficient to prevent reinstatement of content when the claim is so defective that it cannot be adjudicated.

Given the number of claims that are defective when filed and that remain defective even after amendments are made, allowing the mere filing of a claim to automatically prevent

[4] Search can be found at: https://dockets.ccb.gov/search/documents?search=&docTypeGroup=type%3A146&docTypeGroup=type%3A52

reinstatement is not the right approach. Experience has proven it to be an ill-advised default rule that interferes with the DMCA's intended safeguards for free expression. Instead, a counter-notice should be contestable under § 512(g)(2)(C) only if the CCB complainant receives a notice of compliance and permission to serve.

Respectfully submitted,

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