AIPLA QUARTERLY JOURNAL

Volume 53, Number 3 Page 385 Summer 2025

SMALL CLAIMS, BIG PROBLEMS: A CRITICAL LOOK AT THE COPYRIGHT "SMALL CLAIMS COURT"

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* This Article is adapted from my dissertation submitted in partial fulfillment of the requirements for the Master of Arts in UK, EU, and US Copyright Law at King's College London. I am grateful to the faculty at KCL for their invaluable guidance, and to my colleagues at Fishman Stewart PLLC for their support and camaraderie throughout the writing process. Finally, this Article is dedicated to the memory of my friend and mentor Allen M. Krass—who strongly disliked this topic and preferred I write about "something interesting" instead. All views and errors are my own.

LIST OF FIGURES

I have long wanted to go with you to the law-court and do all the harm I can.

- Philocleon, *The Wasps* by Aristophanes

I. INTRODUCTION

Copyright has a "small claims" problem. This (somewhat pejorative) term refers to copyright infringement claims where the cost of formal legal action exceeds any potential monetary damages.[1] In the United States, federal courts exercise exclusive jurisdiction over copyright civil litigation,[2] and this often creates an insurmountable paywall for individual artists and small businesses hoping to vindicate their rights.[3] Many attorneys decline to take cases where litigation costs outweigh potential recovery, and pro se representation is discouraged, even if unofficially, because it taxes court resources.[4] These conditions harm the copyright ecosystem because a large class of copyright owners are deprived of any meaningful remedy, and infringement goes undeterred.[5]

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1 Sandra M. Aistars, *Ensuring Only Good Claims Come in Small Packages: A Response to Scholarly Concerns About a Proposed Small Copyright Claims Tribunal*, 26 GEO. MASON L. REV. 65, 3 (2018); Paula Samuelson & Kathryn Hashimoto, *Scholarly Concerns About a Proposed Copyright Small Claims Tribunal*, 33 BERKELEY TECH. L.J. 689, 689 (2018); Ben Depoorter, *If You Build It, They Will Come: The Promises and Pitfalls of a Copyright Small Claims Process*, 33 BERKELEY TECH. L.J. 711, 711 (2019); Kathleen Olson, *The Copyright Claims Board and the Individual Creator: Is Real Reform Possible?*, 25 COMMC'N L. & POL'Y 1, 3 (2020); WILLIAM F. PATRY, PATRY ON COPYRIGHT § 28:6 (7th ed. 2025).

2 28 U.S.C. § 1338; 17 U.S.C. § 301.

3 U.S. COPYRIGHT OFFICE, COPYRIGHT SMALL CLAIMS: A REPORT OF THE REGISTER OF COPYRIGHTS 1 nn. 3–6 (2013) [hereinafter A REPORT OF THE REGISTER OF COPYRIGHTS].

4 *Id.* at 9–12 nn. 32–54.

5 Depoorter, *supra* note 1, at 716; Olson, *supra* note 1, at 16. In addition, the resulting paucity of judicial pronouncements may stunt the proper development of copyright law. Anthony Ciolli, *Lowering the Stakes: Toward a Model of Effective Copyright Dispute Resolution*, 110 W. VA. L. REV. 999, 1009 (2008); John Zuercher, *Clarifying Uncertainty: Why We Need a Small Claims Copyright Court*, 21 MARQ. INTELL. PROP. L. REV. 105, 128 (2017).

In 2021, copyright-based industries added $2.9 trillion to the United States economy.[6] With trillions of dollars at stake each year, and the aggregate of small claims being some undetermined portion of (or perhaps in addition to) to that sum,[7] the United States has a strong economic incentive to strengthen the legal institutions that protect and police copyright.

To that end, in 2020, the United States enacted the Copyright Alternative in Small-Claims Enforcement Act (the "CASE Act")[8] to create a voluntary, low-cost alternative to federal court litigation.[9] It created a quasi-court within the Copyright Office to adjudicate claims involving damages up to $30,000.[10] A three-person tribunal called the Copyright Claims Board ("CCB") presides over matters.[11]

The CCB opened for business on June 16, 2022.[12] Running up to launch, stakeholders raised concerns that generally fell into two categories: (1) constitutional conflicts[13] and (2) policy objective shortcomings.[14] This Article focuses on the latter, and considers whether, and how, the CCB is meeting its stated policy goals. In short, it concludes that the CCB is not the cure to the small-claims problem. However, with some legislative tweaking, it may improve enough to justify the cost imposed on taxpayers.

Part II provides background information, including a brief explanation of the issues that prompted legislative action, relevant legislative history, and an overview of the CASE Act. Part III examines stakeholder concerns. Part IV puts those concerns to the test with original empirical research, revealing how the

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6 ROBERT STONER & JÉSSICA DUTRA, COPYRIGHT INDUSTRIES IN THE US ECONOMY 13 (2022).

7 *See id.*

8 17 U.S.C. § 1501.

9 *Id*.

10 *Id*. § 1504(e)(1)(d).

11 *Id*. § 1502(b)(3).

12 *Copyright Office Announces Claims Board is Open for Filing*, U.S. COPYRIGHT OFFICE: NEWSNET ARCHIVES, (June 16, 2022), https://www.copyright.gov/newsnet/2022/969.html [https://perma.cc/BS82-KB25].

13 Samuelson & Hashimoto, *supra* note 1, at 692–97; PATRY, *supra* note 1, § 28; MELVILLE B. NIMMER & DAVID NIMMER, NIMMER ON COPYRIGHT § 16.09 (2023).

14 Olson, *supra* note 1, at 21–22; Aistars, *supra* note 1, at 25–31; Depoorter, *supra* note 1, at 721–27.

system is functioning so far. Part V looks abroad, exploring how other jurisdictions handle small claims and gleans insights that may be applied to the U.S. system.

Part VI proposes practical steps to improve case progression, reduce deficiently pleaded claims, and expand jurisdiction to claims routinely raised. It further proposes statutory revisions to comply with international treaty obligations and ensure operational integrity during political volatility. Part VII concludes the Article.

II. BACKGROUND

This Section provides background information, including a brief explanation of the copyright small-claims problem. It lays out the CASE Act's legislative history and details the notable features codified in the Act. This section sets the stage for a later critical discussion of proposed legislative improvements.

A. THE PROBLEM: COPYRIGHT WITHOUT A REMEDY

Federal district court litigation is time-consuming and expensive. On average, civil cases take 7–30 months from filing to disposition,[15] and copyright infringement cases cost $200,000 to $2 million to litigate.[16] The bulk of that sum accrues during pre-trial discovery.[17] So, things get very expensive quite early on.

Some law firms offer contingency arrangements for both plaintiffs and defendants because the prevailing party may recover attorneys' fees at the court's discretion.[18] However, contingency fee arrangements are impracticable where the potential recovery value is low or there is significant risk that the non-prevailing party is uncollectible. Thus, for claims that have a low or modest potential

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[15] Disposition generally being verdict, settlement, dismissal, or final judicial pronouncement. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, *Table C-5—Median Time from Filing to Disposition of Civil Cases, by Action Taken—During the 12-Month Period Ending June 30, 2022*, STATISTICAL TABLES FOR THE FEDERAL JUDICIARY (June 30, 2022), https://www.uscourts.gov/statistics/table/c-5/statistical-tables-federal-judiciary/2022/06/30 [https://perma.cc/T2N4-A5QS].

[16] A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3, at 25; Alistair McIntyre, Rimini Street v. Oracle *and the Problem of High Transactional Costs in Copyright Litigation*, 35 BERKELEY TECH. L.J. 1123, 1131–32 (2020).

[17] A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3, at 13 (estimating that 50%-90% of total litigation cost is attributable to discovery practice).

[18] 17 U.S.C § 505; Remedies for Small Copyright Claims, 76 Fed. Reg. 66758, 66759 (Oct. 27, 2011).

damages value, litigation in federal district court is often cost-prohibitive and economically irrational.[19] This results in a right without a remedy.[20]

B. PROBLEM-SOLVING: THE CASE ACT'S LEGISLATIVE HISTORY

Rumblings of a copyright small-claims study began around 2006, while Congress pondered issues related to orphan works (which are works where the rights holder cannot be readily identified or located).[21] At that time, the discussion explored whether it might be feasible or desirable for the United States to adopt a system similar to that of Canada, where the Copyright Board of Canada grants licenses to use orphan works, and collects fees to distribute if the rightsholder ever turns up.[22] During the course of the study, it became apparent that existing legal institutions were ill-equipped to address copyright infringement claims that involved low-value works or lesser damages—a problem that was not limited to the domain of orphan works.[23] The House Judiciary Committee requested that the Copyright Office conduct a further study on the issue of these so-called copyright "small claims."[24]

The Copyright Office published its findings in a 2013 Report.[25] The report addressed, among other things, potential constitutional issues,[26] comments from

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19 *See generally* A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3.

20 *Ubi jus, ibi remedium*. It is axiomatic: where there is a right, there must be a remedy. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 14 (3d ed. 1768).

21 *See* U.S. COPYRIGHT OFFICE, REPORT ON ORPHAN WORKS 87–88 (2006) [HEREINAFTER REPORT ON ORPHAN WORKS]; *Remedies for Small Copyright Claims: Hearing before the Subcomm. on Courts, the Internet, and Intell. Prop., Comm. on the Judiciary,* 109th Cong. 2d Sess. (2006) (statement of the U.S. Copyright Office).

22 Canada Copyright Act, R.S.C. 1985, c C-42 § 77.

23 REPORT ON ORPHAN WORKS, *supra* note 21, at 87–88.

24 A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3, at 5.

25 *Id.*

26 Potential constitutional issues included compliance with requirements regarding jury trials, due process, separation of powers principles and the Appointments Clause. U.S. CONST. amends. V, VII, XIV; U.S. CONST. art. II, § 3, cl. 3 These issues were discussed in detail in the 2013 Report and were not considered at that time to be insuperable. A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3, at 3; KEVIN HICKEY, CONG. RSCH. SERV., LSB10367,

stakeholders, and different models and systems from other jurisdictions also grappling with copyright small-claims issues.[27] The report made several key findings, recommended the creation of a small-claims tribunal, and included draft legislation, much of which was eventually codified in the CASE Act.[28]

From there, the CASE Act had a few false starts in Congress.[29] The movement finally gained traction in 2019 after the CASE Act was introduced in the House of Representatives[30] and the Senate.[31] Both houses passed the bills, and the CASE Act was signed into law on December 27, 2020.[32]

THE CASE ACT OF 2019: ESTABLISHING A SMALL CLAIMS PROCESS FOR COPYRIGHT DISPUTES 3 (2019).

27 *See generally* A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3.

28 *Id.*; *see generally* 17 U.S.C. § 1501.

29 In 2016, legislation was introduced in the House of Representatives which was very similar to the 2020 version that was ultimately enacted. CASE Act of 2016, H.R. 5757, 114th Cong. (2016). That bill was referred to committee where it stalled. *Id.* Another, similar bill was introduced in 2016 called the Fairness for American Small Creators Act. Fairness for American Small Creators Act, H.R. 6469, 114th Cong. (2016). It also stalled in committee. *Id.* Yet another bill was introduced in 2017, and it too died in committee. CASE Act of 2017, H.R. 3945, 115th Cong. (2017); Samuelson & Hashimoto, *supra* note 1, at 690–91 n.3 (discussing the additional provisions added to the 2017 version not included in the 2016 version).

30 CASE Act of 2019, H.R. 2426, 116th Cong. (2019).

31 CASE Act of 2019, S. 1273, 116th Cong. (2019).

32 The CASE Act was included in the massive 5,593 page Consolidated Appropriations Act, Pub. L. No. 116–260, Subtitle B, § 221, 134 Stat. 1181 (2021), which included, among other things, the Trademark Modernization Act, Pub. L. No. 116-260, § 226, 134 Stat. 2208 (2020) (streamlining the process for seeking cancellation of unused marks and challenging fraudulent filings), the Protecting Lawful Streaming Act, 18 U.S.C. § 2319C (creating felony penalties for large-scale unauthorized streaming of copyrighted programs) and various COVID-19 relief programs. Though ultimately passed during a time of political upheaval and included in rushed COVID-related legislation, the author gleaned nothing from the legislative records that indicated the CASE Act was a politically contentious bill.

C. PROBLEM SOLVED? CASE ACT IN ACTION[33]

The CASE Act created within the Copyright Office[34] a three-person tribunal, the CCB, to serve as "an alternative forum where parties may voluntarily seek to resolve certain copyright claims."[35] The rest of this Section offers a look at its notable features.

1. Voluntariness

As a concession to constitutional concerns,[36] the CCB was made voluntary for all participants.[37] A claimant may bring a claim in the CCB or in federal district court,[38] and a respondent may opt out of CCB proceedings, in which case, the claimant may still file suit in court.[39] However, there are incentives for respondents to remain in CCB proceedings, including a lower damages cap and limited discovery, which is meant to lessen the expenses involved with dispute resolution.[40] CCB proceedings were designed to obviate the need for attorney involvement, and thereby reduce expenses.[41] Unlike other small claims courts, where parties *must* represent themselves, the CCB allows parties to proceed pro se *or* with attorney representation.[42]

2. Composition

To ensure practical functionality and institutional credibility, Congress imposed statutory requirements for staff qualifications. The CASE Act mandates that the CCB must be staffed by Officers with certain credentials, including extensive legal experience with copyright infringement claims and adjudication,[43]

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33 17 U.S.C. § 1501.

34 *Id.* § 1502(b)(9). The Copyright Office is housed within the Library of Congress, which is the research arm of Congress.

35 *Id.* § 1502(a).

36 HICKEY, *supra* note 26, at § III.

37 17 U.S.C. § 1504(a).

38 *Id.* §§ 1502(a), 1504.

39 *Id.* § 1504(a).

40 *Id.* §§ 1504(a), 1506(m)–(p).

41 *See* A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3, at 124–25.

42 17 U.S.C. § 1506(d).

43 *Id.* § 1502(b)(3).

and at least two full-time Copyright Claims Attorneys, each with at least three years of "substantial experience in copyright law,"[44] and other "administrative support."[45] The CCB is physically located in Washington, DC,[46] but proceedings are conducted primarily online so parties need not travel for hearings.[47]

3. Jurisdiction

The CCB may hear three types of claims: (1) copyright infringement claims, (2) declaration of non-infringement claims, and (3) claims of misrepresentation in notices sent pursuant to the Digital Millennium Copyright Act ("DMCA").[48]

4. Parties

Claims may be filed by any legal or beneficial owner of a copyright, whether foreign or domestic[49], but *only* against domestically domiciled

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[44] *Id.* § 1502(b)(2)–(3).

[45] *Id.* § 1502(b)(8).

[46] *See id.* § 1502(b)(9).

[47] *Id.* § 1506.

[48] *Id.* § 1504. This subject matter jurisdictional limitation extends to all claims, counterclaims, and defenses. *Id.* The DMCA provides a notice and takedown procedure for unlawful reproduction or distribution of copyrighted works on the internet. *Id.* § 512. Copyright owners who believe their works are infringed may submit a notice to the online service provider ("OSP"), which will remove the content at issue. *Id.* If the removal is done in an "expeditious" manner, the OSP is safe from legal liability. *Id.* The OSP must provide notice to the individual or entity that posted the content with the opportunity to provide a counter-notice and protest the takedown and then deliver the counter-notice to the claimant. *Id.* The claimant has 10–14 days to file a lawsuit, in which case the content will remain down during the pendency of the case, or otherwise, the OSP may restore the content. *Id.*

[49] *Id.* § 1506(g)(9). There are some exceptions to this general rule. For example, claims may not be filed against a federal or state government and claims against OSPs must comply with additional notice requirements. *Id.* §§ 1504(d), 1506(f). Further, libraries and archives may preemptively opt out of all CCB proceedings. *Id.* § 1506(a).

respondents.[50] However, by bringing a claim, a foreign claimant consents to CCB jurisdiction for counterclaims.[51]

5. Remedies and Registration

Prior to filing a CCB claim, a claimant must have an issued registration or a pending application for the disputed work.[52] This prerequisite applies to *all* claims, foreign and domestic.[53] The CCB may award statutory damages of up to $15,000 for timely registered works (those where a registration is issued prior to initiating a claim), $7,500 for "untimely" registered works (those works for which an application is pending, but not yet matured to registration, when the claim is filed), and up to $30,000 per proceeding involving multiple works.[54] The CCB may grant injunctive relief only with the parties' consent.[55] Attorneys' fee awards are capped at $2,500-$5,000 and are only available in cases of bad-faith conduct during proceedings.[56]

In contrast, for litigation in federal court, registration is a prerequisite to filing suit for copyright infringement of United States works.[57] For *all* works,

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50 *Id.* § 1504(d).

51 *Id.*

52 *Id.* § 1505; 37 C.F.R. § 221.1.

53 *See* 37 C.F.R. § 221.1.

54 17 U.S.C. § 1504(e).

55 *Id.*

56 *Id.*; 37 C.F.R. § 232.3. Bad-faith conduct includes misrepresentations and filings known to be outside of the CCB's jurisdiction. Klobe v. Pectushealing, No. 22–CCB–0246 (Copyright Claims Bd. Nov. 17, 2022) (knowingly alleged patent infringement); Irelands, LLC v. Oa Publ'g London, No. 22–CCB–0234 (Copyright Claims Bd. Nov. 8, 2022) (knowingly submitted claim against foreign respondent with inaccurate domestic address); Johnson v. Chicagoscene88, No. 23–CCB–0004 (Copyright Claims Bd. May 10, 2023) (submitting fraudulent information of authorized representative's status as a supervised law student).

57 Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC, 586 U.S. 296, 309 (2019) (interpreting § 411(a) as requiring the Register of Copyrights to grant or refuse registration before a claim of copyright infringement may be made for a work). There are limited exceptions to this general prerequisite, e.g., infringements involving live broadcasts, certain works that "especially susceptible to prepublication infringement," and foreign works. 17 U.S.C. §§ 408(f), 411.

timely registration is a requirement to obtain statutory damages, which range from $750-$30,000 per work infringed and up to $150,000 per work in cases of willful infringement, but may be reduced to $200 in cases of innocent infringement.[58] Federal court has no damages cap, may grant injunctive relief,[59] and may use its discretion to award attorneys' fees to the prevailing party.[60] Thus, the CCB's limited damages may appeal to respondents who are risk averse, particularly when the claimant is known to be litigious or well-resourced.

Finally, while a claim may be filed with the CCB based on a pending application, the Copyright Office must ultimately issue a registration before the CCB will issue its own final determination on the merits.[61] The Copyright Office's refusal to register a work is fatal to a corresponding CCB claim.[62] Such is not the case in federal court, where a case may still be filed pertaining to works where the Copyright Office has refused registration.[63]

6. Lifecycle of a Claim

Claims are filed online, and the filing fee is $100.[64] By contrast, the fee to file a complaint in federal district court is around $350,[65] and the cost in legal fees

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58 17 U.S.C. § 504(c). "Innocent infringement" refers to instances where the "infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright." *Id.* § 504(c)(2).

59 *Id.* §§ 501–02.

60 *Id.* § 505.

61 *Id.* § 1505.

62 *Id.* § 1505(b)(3).

63 *Id.* § 411(a). Whether in federal court, or the CCB, applicants to register their works with the Copyright Office may apply for special handling to expedite examination of their application. *Id.* § 1505; U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 623.8 (3d ed. 2021). Generally, the fee for special handling is $800 per application. In CCB cases, this fee is reduced to $50. Copyright Alternative in Small-Claims Enforcement (CASE) Act Regulations: Expedited Registration and FOIA, 86 Fed. Reg. 46, 46122 (Aug. 18, 2021) (to be codified at 37 C.F.R. §§ 201, 203, 221).

64 This is broken up into two installments. The first fee of $40 must be paid at the time the claim is made, and the other $60 must be paid to progress the claim after the opt-out period expires. 37 C.F.R. § 201.3(g).

65 28 U.S.C. § 1914.

to prepare a complaint may be in the tens of thousands of dollars.[66] Cases may also be referred to the CCB from a federal district court on the parties' consent.[67] At the time of filing,[68] a claimant may designate the case for the Smaller Claims Track for claims under $5,000.[69] Such cases are presided over by a single Officer, and submission of expert testimony is prohibited.[70]

Once a claim is submitted and the initial fee is paid, the claim is referred to a Copyright Claims Attorney for compliance review.[71] Unsuitable and deficient claims are issued a notice to amend.[72] Typical grounds for this include failure to allege a necessary element, claims against foreign domiciled respondents, and claims that exceed the CCB's jurisdiction, e.g., claims of patent infringement.[73]

Once a claim is found compliant,[74] the CCB directs the claimant to effect service on the respondent(s) and file the proof of service or waiver of service with the CCB.[75] The CCB also sends a second notice directly to the respondent(s) at the contact information provided by the claimant.[76]

Service or waiver of service starts the clock on a respondent's 60-day opt-out period.[77] Failure to opt out waives any right the respondent may have to a jury trial, and the parties will be bound by the CCB's determination.[78]

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66 Remedies for Small Copyright Claims, 76 Fed. Reg. 66, 66760 (Oct. 27, 2011); AM. INTELL. PROP. L. ASSOC., AIPLA REPORT OF THE ECONOMIC SURVEY 2011 35 (2011).

67 17 U.S.C. § 1509(b); 37 C.F.R. § 235.1 (streamlining processes and lifting fee requirements).

68 The smaller-claims designation may be made freely at any time before service of the initial notice of proceedings, and otherwise with consent of the parties and leave of the CCB. 37 C.F.R. § 226.2.

69 17 U.S.C. § 1506(z).

70 37 C.F.R. § 226.4.

71 17 U.S.C. § 1506(f).

72 *Id.* § 1506(f)(1)(B).

73 *Id.* §§ 1504(d)(4), 1506(f).

74 *Id.* § 1506(f) (requiring compliance with "this chapter and applicable regulations").

75 *Id.* § 1506(g).

76 *Id.* § 1506(h).

77 *Id.* § 1506(i).

78 *Id.* § 1506(g).

After the opt-out period expires, the case becomes "active." From there, the CCB issues a scheduling order providing deadlines for responses, counterclaims, conferences, discovery, written submissions, and hearings, which generally follow the diagram in Figure 1.[79]

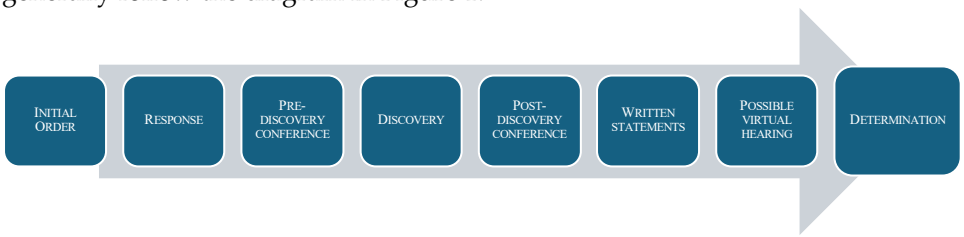

Figure 1. Life Cycle of a Claim.

Discovery is limited. The Federal Rules of Civil Procedure and Evidence do not apply;[80] standard sets of interrogatories and document requests are required,[81] depositions are generally not allowed, and expert testimony is disfavored.[82] After discovery closes, written statements and supporting evidence are submitted by all parties using a direct-response-reply format.[83] The CCB may, in its discretion, hold a hearing and receive oral testimony.[84]

When a case reaches the end, the CCB issues a written final determination on the merits.[85] Final determinations are made on majority rule, and a dissenting statement may be appended if appropriate.[86] However, there are several ways a

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79 *Id.* § 1506.

80 *Id.* § 1506(o); NIMMER & NIMMER, *supra* note 13, § 16.05.

81 *Id.*

82 *Id.*; U.S. COPYRIGHT OFFICE, *Discovery*, *in* COPYRIGHT CLAIMS BOARD HANDBOOK (2025).

83 U.S. COPYRIGHT OFFICE, *Presenting Your Case*, *in* COPYRIGHT CLAIMS BOARD HANDBOOK (2025).

84 17 U.S.C. § 1506(p).

85 *Id.* § 1506(t).

86 *Id.* The statute does not expressly permit concurring statements or partial dissents. It is unclear why this is. Perhaps to prevent an accumulation of dicta. On speculation, it may be that a common area of partial dissent relates to damages amounts. By preserving the institutional black box of adjudicative reasoning, parties might be hindered from aggregating statistics on any one panel member's tendencies in awarding damages at the upper or lower ends of the statutory award range. This might impair gamesmanship particularly

case might find its way out of the CCB before that point. The CCB may dismiss a case without prejudice for issues such as failing to amend a non-compliant claim or provide notice of service.[87] In circumstances where a party fails to prosecute or defend a claim, the CCB may issue a default determination,[88] but the claimant or counterclaimant must prove up damages.[89]

In addition, the CCB may dismiss any claim if it finds its resources are overtaxed or that the claim would "exceed… [its] subject matter competence."[90] The statute does not provide examples of what types of claims might exceed the subject matter competence of the highly qualified Officers, but likely examples might be claims which require voluminous discovery and expert testimony, or involve highly specialized or technical types of works, e.g., software code, sampling sound recordings, or certain AI-generated works.[91]

7. Appeal and Review

A CCB determination may be reviewed and appealed on narrow grounds. A request for reconsideration may be filed with the CCB, but success requires a demonstrable clear error of law or material fact, or a technical mistake.[92] The CCB will issue a denial or an amended final determination.[93] A denial is appealable to

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where Small Claims are assigned to individual panel members. Though, it is the author's opinion that this may be a happy, but unintended outcome, where the primary objective was to keep a simple process simple.

87 *Id.* § 1506(q); 37 C.F.R. § 222.17.

88 17 U.S.C. § 1506(u)–(v).

89 *Id.* § 1506(u).

90 *Id.* § 1506(f)(3)(C).

91 U.S. COPYRIGHT OFFICE, COPYRIGHT AND ARTIFICIAL INTELLIGENCE: PART 2 – COPYRIGHTABILITY (Jan. 29, 2025), https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf [https://perma.cc/KL2K-7P76] (AI-generated works and unauthorized derivatives of same, where human attributed and protectable portion is difficult to discern or establish); Katherine M. Leo, *Blurred Lines: Musical Expertise in the History of American Copyright Litigation* (Ph.D. dissertation, Ohio State Univ. 2016); Viacom Int'l Inc. v. YouTube, Inc., 253 F.R.D. 256, 262 (S.D.N.Y. 2008) (producing 12 terabytes of content in discovery).

92 17 U.S.C. § 1506(w); 37 C.F.R. § 230.2. The term "technical mistake" is undefined by the statute and rules, and thus, it may be unclear what meets this threshold.

93 17 U.S.C. § 1506(x).

the Register of Copyrights, where it is reviewed for abuse of discretion.[94] A final determination, amended determination, or review by the Register of Copyrights may be appealed to federal district court.[95] The court may modify, vacate, or correct the determination only in limited circumstances, such as excusable neglect resulting in default, or the issuance of a determination due to fraud or corruption.[96]

8. Enforcement

Should a party fail to comply with a CCB determination, an enforcement order may be sought in federal district court, in which case the court "shall grant" such an order and assess reasonable expenses to secure the order, including attorneys' fees.[97] Application may be made to "the United States District Court for the District of Columbia or any other appropriate district court of the United States."[98]

9. Legal Effects

CCB determinations, including default determinations, may not be relitigated in any forum.[99] However, this preclusive effect applies solely to those claims between the parties in that particular CCB proceeding.[100] This general rule does not apply to issues related to ownership of the work.[101] CCB determinations have no precedential effect and may not be relied on in any other proceeding in any tribunal, including other CCB proceedings.[102]

CCB claims are subject to the same three-year statute of limitations as copyright infringement claims filed in federal district court.[103] However, filing in the CCB tolls the limitations period.[104] Where a CCB case is pending or active, a

94 *Id.*

95 *Id.* § 1508(a).

96 *Id.* § 1508(c)(1)(A–C).

97 *Id.* § 1508(a).

98 *Id.*

99 *Id.* § 1507(a).

100 *Id.* § 1507(a)(1).

101 *Id.* § 1507(a)(2).

102 *Id.* § 1507(a)(3).

103 *Id.* § 1504(b).

104 *Id.*

district court must issue a stay of proceedings for parallel claims.[105] Thus, parties and practitioners may want to consider parallel filings in federal court to ensure that *all* potential claims are preserved if the CCB claims are ultimately dismissed.

10. Substantive Law

The CCB applies the substantive law of the jurisdiction where the action could have been filed in district court.[106] If it could have been brought in multiple jurisdictions, then the CCB applies the law of the jurisdiction that it determines has the most significant ties to the parties and conduct at issue.[107] Despite the CCB's general prohibition on formal motion practice,[108] this arguably leaves open the door for involved arguments over venue, especially where a circuit split is active and the issue is outcome determinative.[109]

11. Case Caps

To curb abusive practices and manage docket strain, the CCB promulgated rules limiting the number of cases that may be filed by claimants and attorneys.[110] Parties, including a corporate claimant's parents, subsidiaries, and affiliates, are not permitted to bring more than 30 proceedings in a 12-month period.[111] Sole practitioners and individual attorneys are capped at 40 proceedings in the same span, and law firms are capped at 80 proceedings.[112] Violation of these caps constitutes grounds for dismissal without prejudice of a claimant's pending

105 *Id.* § 1509(a).

106 *Id.* § 1506(a).

107 *Id.*

108 *Id.* § 1506(m).

109 Jeffrey Bils, Comment, *David's Sling: How to Give Copyright Owners a Practical Way to Pursue Small Claims*, 62 UCLA L. REV. 464, 508 (2015).

110 17 U.S.C. § 1504(g); 37 C.F.R. § 233.2; H.R. REP. No. 116–252, at 31 (2019); *see* 87 Fed. Reg. 30060, 30065 (May 17, 2022) (discussing proposed 37 C.F.R. § 233.2(a) (prescribing rules pertaining to maximum number of CCB proceedings filed by a party)).

111 37 C.F.R. § 233.2(a)(1).

112 *Id.* § 233.2(a)(2). Counted in the calculation are claims that are found non-compliant, voluntarily dismissed, and opted out. *Id.* Not counted are amendments to claims, counterclaims, and district court referrals. *Id.*

claims.[113] Further, acts taken solely to circumvent the caps may be taken as bad-faith conduct.[114]

III. STAKEHOLDER CONCERNS

This Section examines stakeholder concerns raised over the CASE Act and distills these concerns into a few discrete categories derived from common underlying premises. It briefly dissects the concerns to frame the empirical research methods utilized to investigate their validity and scope.

A. OVERVIEW

Stakeholders raised constitutional concerns over the CASE Act, *inter alia*, potential due process violations and legislative aggrandizement in violation of separation of powers principles.[115] Those concerns are outside the scope of this Article, and any necessary treatment of those issues is limited to footnotes. Other concerns relate to the CASE Act's stated policy goals and skepticism regarding the CCB's ability to achieve those goals. These concerns generally fall into two categories: (1) that parties will simply have a new forum in which to engage in litigation-style gamesmanship and abusive practices,[116] and (2) that the CCB will be unable to provide full and fair decisions in an expedient manner.[117] These issues are the primary focus of this Article and are discussed in more detail below.

B. ATTRACTING THE "RIGHT SORT" OF PARTIES

Stakeholders expressed concern that the CCB would not attract the "right sort" of parties.[118] Because the CCB is voluntary, respondents may opt out, leaving claimants at square-zero: having to litigate in federal district court, but also out the effort and expense of filing first with the CCB and giving up any element of surprise in the process.[119] Some anticipated mass opt-outs, as the barriers

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113 *Id.* § 233.2(b).

114 *Id.*

115 Samuelson & Hashimoto, *supra* note 1, at 691.

116 *Id.* at 704; Depoorter, *supra* note 1, at 731–32.

117 PATRY, *supra* note 1, § 28.

118 Samuelson & Hashimoto, *supra* note 1, at 704; Depoorter, *supra* note 1, at 731–32.

119 17 U.S.C. § 1504(a); *see supra* Section II.C.11.

preventing claimants from filing in federal district court remain unaddressed.[120] It was thought that respondents would foresee this and have little incentive to remain in CCB proceedings when they could instead oblige a claimant to file a lawsuit in federal district court.[121] There, claimants, confronted with those same cost-prohibitive issues, would be unlikely to pursue the claim, and the respondent would never face formal legal action.[122]

Another concern was that the CCB would attract the "wrong sort" of claimants. More specifically, the worry was that "copyright trolls"[123] would use the CCB to collect unjust sums.[124] This concern was largely predicated on the following assumptions: (1) that parties would demand maximum statutory damages, (2) respondents would fail to affirmatively opt out of proceedings and face default judgment, and (3) the CCB would rubber stamp damages demands.[125] To be sure, such a string of events would transform the CCB from a quasi-judicial body to an adjudicative ATM. However, these concerns did not consider provisions that were later drafted into the enacted legislation.[126] For example, the CCB's authority to sanction bad faith conduct and the mandate that federal district courts must award costs and fees related to the enforcement of CCB determinations.[127]

Another concern was that wealthy corporate plaintiffs would not utilize the CCB where recovery of potential damages would be limited.[128] Thus, "little guy" defendants would still be hauled into the high-cost forum of federal district court, where they would be outgunned.[129] Any claims filed by deep-pocketed

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120 Depoorter, *supra* note 1, at 713–14.

121 *Id.*; Bils, *supra* note 109, at 495.

122 Depoorter, *supra* note 1, at 714.

123 Matthew Sag, *Copyright Trolling, An Empirical Study*, 100 IOWA L. REV. 1105, 1114 (2015) (describing a copyright troll as a party that "asserts rights it does not have, makes poorly substantiated claims or seeks disproportionate remedies").

124 Samuelson & Hashimoto, *supra* note 1, at 704; PATRY, *supra* note 1, § 28:11.

125 Samuelson & Hashimoto, *supra* note 1, at 704.

126 *Id.* at 690.

127 *Id.* at 704.

128 *Id.*; Olson, *supra* note 1, at 19.

129 Olson, *supra* note 1, at 20.

parties would likely be to avoid the threat of public relations scandals that flow from aggressive action against small parties in federal court.[130]

A further concern was that claimants would routinely seek damages from individuals who could be fined for everyday activities that may give rise to copyright infringement claims—termed "casual infringers."[131] Such uses may be "innocent infringement" or even fall under the non-infringement umbrella of fair use,[132] and such users are often uninformed or unsophisticated when it comes to copyright law and permitted use.[133] A cost-effective means of enforcement would create a sudden sea change if previously tolerated uses were suddenly prosecuted.[134] This would, in turn, create an undesirable chilling effect and hamper creativity and free expression.[135]

C. FULFILLING THE MISSION

Another set of concerns relates to the effectiveness of the CCB to make decisions in a timely fashion. First, there was concern that insufficient resources were allocated to handle a deluge of cases if the floodgates opened.[136] The CCB is a single panel of three officers with a limited support staff and presently sees, on average, approximately 1-2 claims filed per working day.[137] The CCB's ability to churn through high volumes of cases was in doubt.[138]

Another concern was the CCB's ability to make fair and unbiased decisions.[139] The speculation was that the CCB, eager to prove its worth in helping copyright owners overcome existing issues related to enforcement of rights, would exhibit a bias against respondents.[140] In a similar vein, there was concern about

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130 *See id*. at 20–21.

131 *Id.*; Bils, *supra* note 109, at 502–04.

132 17 U.S.C. § 107 (Fair use permits certain uses of copyrighted works without permission when the use serves purposes like criticism, commentary, education, or news reporting.).

133 Olson, *supra* note 1, at 20.

134 *Id.* at 21.

135 *Id.* at 22.

136 PATRY, *supra* note 1, § 28:26.

137 *See* COPYRIGHT CLAIMS BD., CCB STATISTICS AND FAQS APRIL 2025 (2025).

138 Samuelson & Hashimoto, *supra* note 1, at 707–708.

139 *Id.* at 708.

140 *Id.*

regulatory capture.[141] This stems, in part, from the constitutional concerns of housing the CCB within the Copyright Office.[142] As with any administrative body, regulatory capture is a constant danger, and the effects of bias within the CCB may be intensified considering the limited scope of judicial review.[143]

Further, although the CCB is a specialty tribunal staffed by highly qualified attorneys presumably amply able to adjudicate copyright claims, there was concern that some types of claims would be inappropriately brought and determined by the CCB.[144] For example, claims that would require extensive discovery and fact-finding, e.g., secondary liability, nonliteral infringement, novel legal issues, fair use, etc.[145] The CCB has discretion to dismiss such cases with prejudice and relegate the claim to litigation in federal court.[146] However, few safeguards exist to ensure the principled exercise of that discretion.[147]

IV. EMPIRICAL RESEARCH

Many of the concerns raised by scholars, discussed above, relate to practical aspects.[148] Whether the CCB is serving its stated purpose, and how it might improve, are questions compelling at least some quantitative study. To have an effective policy discussion, it is helpful to understand the nature and scope of the issues surrounding the CCB's performance, and data points are helpful tools in facilitating discussion. This way, we have a better understanding of which issues impact a significant percentage of participants, and which are perhaps a tempest in a teacup.

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141 Ben Kessler, *Refuting the Three Major Arguments Against the Copyright Alternative in Small-Claims*, 19 VA. SPORTS & ENT. L.J. 215, 222–25 (2020); Adam Vischio, Note, *The Case for the CCB: A Defense of the Constitutionality of the Copyright Claims Board*, 46 COLUM. J.L. & ARTS 85, 104 (2022).

142 Samuelson & Hashimoto, *supra* note 1, at 697; NIMMER & NIMMER, *supra* note 16, § 16.09. For further reading on the CASE Act's many potential constitutional defects, see PATRY, *supra* note 1, § 28 (reviewing constitutional defects in a detailed and impassioned manner).

143 *See supra* Section II.C.7; Vischio, *supra* note 141, at 32.

144 Depoorter, *supra* note 1, at 730; Samuelson & Hashimoto, *supra* note 1, at 697–700.

145 *See supra* Section II.C.6.

146 17 U.S.C. § 1506(f)(3)(C).

147 *See supra* Section II.C.7.

148 Samuelson & Hashimoto, *supra* note 1, at 707–08.

Accordingly, the author conducted independent original research to collect, aggregate, and analyze data publicly available online via the CCB's website.[149] Data collection was conducted between February and June 2023; the review and analysis were conducted between June and August 2023. The results shown and discussed in the following Sections should be understood in this context: as a snapshot study of the CCB's inaugural cases. Any consideration of more recent, third-party data is appropriately noted. The remainder of this Section explains the study's design and key findings.

A. STUDY DESIGN

The population includes the first 250 cases filed with the CCB in 2022, being roughly the first five months' worth of business.[150] The online eCCB system was used to access the proceedings and documents.[151] Numerous fields were

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[149] The study was originally designed to give only a cursory look at CCB process and results. Research was conducted with limited resources, and strict time constraints to meet deadlines set by the author's degree program. The full dataset is available on request but, for the sake of brevity, is not appended here. It should be noted that other datasets are available to the public, including the dataset supporting the research for another article presenting CCB statistics. Katie Fortney & David Hansen, *Assessing the Copyright Claims Board after Two Years*, 70 J. COPYRIGHT SOC. 452, 452 (2024); *see* Katie Fortney, *Aggregate Data about Claims Filed with the Copyright Claims Board*, BIBLIO BALONEY (July 12, 2024), https://bibliobaloney.github.io [https://perma.cc/U3CH-ZBEA]. However, as the authors of that dataset note, those results are automatically collected by script, and not necessarily subject to human review. The data for this Article was collected manually and reviewed manually for accuracy. Any errors in the methods of collection, collation, or interpretation are attributable to the author—with the author's special thanks to the limitations and quirks of Excel which undoubtedly contributed enthusiastically to any such errors.

[150] *See* COPYRIGHT CLAIMS BD., CCB STATISTICS AND FAQS APRIL 2024, 1 (2024) (offering additional statistics from the first several months). This population was selected to provide an adequate sample size that also was manageable considering limitations on time and resources. The table of all coded fields is available on request.

[151] A few documents were not available for public viewing, and in rare cases, there appeared to be gaps in the docket.. This may be due to some error in the document management and numbering system. Or perhaps other explanations exist, e.g., the document was omitted as a duplicate filing, an improperly redacted document, or simply because the incorrect document or version of the document was uploaded in error. Unlike the federal court e-

coded to consider the type and complexity of cases, including the number and types of works at issue, whether the claimant was represented, each case's disposition, and pendency duration. To consider the type of parties filing claims with the CCB, claimants and respondents were coded as individuals, small firms,[152] or Fortune 1000 companies or known subsidiaries; also, whether the claimants were foreign or domestic. To detect abusive practices, repeat filers were identified, and damages requested were coded.

During the study, themes arose that were not initially considered as relevant data points. There were various moral rights violations in the first fifty cases studied. Accordingly, for the remaining 200 cases in the population, this data point was coded as well.

B. KEY FINDINGS

The CCB began taking filings on June 16, 2022, and by the end of that year, 280 cases had been filed.[153] From the study on the first 250 cases, a few highlights emerged:

- Most cases were brought by United States-domiciled claimants, between individuals and small businesses. Participation by Fortune 1000 entities was marginal. Relatively little trolling behavior was observed.[154]

- Most cases alleged copyright infringement. Around 30% of cases involved online infringement of photographs, and the rest of the cases involved all

filing system (and that of many state courts) there is no explanatory docket entry addressing the issue. Although there are any number of innocuous explanations for this phenomenon, it does raise issues of transparency, user-friendliness, and technological competency.

152 The term "small firm" included any entity that was not an individual or a Fortune 1000 company. This methodology was selected for convenience, as it simplified any additional research involved since the CCB does not require disclosure of a claimant's firm size or revenue. For cases with multiple claimants, the field is coded to reflect that all claimants share the same size, or otherwise, the largest sized claimant is reflected.

153 *See* COPYRIGHT CLAIMS BD., *supra* note 150, at 1.

154 *See infra* Section IV.B.

kinds of works. Over 25% of cases involved allegations regarding moral rights.[155]

- Most cases were dismissed early on for failure to properly plead a claim or for failure to provide proof of service. Few cases made it to the "active" phase, and only one merits determination was issued in the first operative year.[156]

These findings are discussed in detail below.

1. Many Davids, Few Goliaths

Most cases were brought by individuals against other individuals or small businesses. Individuals comprised roughly 75% of the claimants in the population.

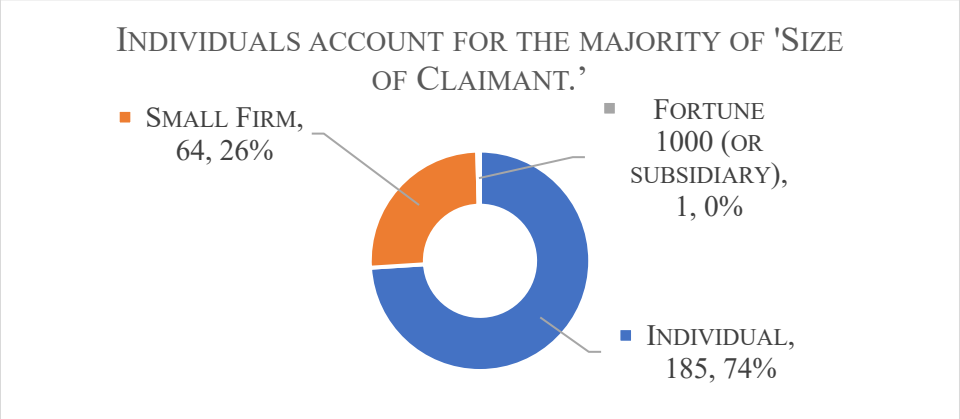

Figure 2. Most Claimants are Individuals.

The remainder were overwhelmingly small businesses; only one case involved a Fortune 1000 claimant.[157]

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155 This statistic was adjusted to reflect the percentage of those 200 sampled for raising moral rights issues. *See infra* Section IV.B.4.

156 *See supra* note 149 on full data set available on request; *infra* Section IV.B.9.

157 That case is discussed in detail in the next section. *See infra* Section IV.B.3; Paramount Pictures Corp. v. JMC POP UPS LLC, No. 22-CCB-0112 (Copyright Claims Bd. Oct. 23, 2023).

This tracks with statistics on litigant size in federal district court cases of copyright infringement.[158] Thus, the CCB appears to attract individuals and small businesses that lack resources for federal court litigation. Perhaps larger firms are more risk-averse and are waiting until the CCB becomes better established and outcomes more predictable before utilizing the new forum. Though the author believes the more likely explanation is the comparatively superior resources of large entities, which allow them to leverage settlements without the need for formal action.[159]

Notably, Fortune 1000 entities were not heavily represented as respondents either, making up only 6% of the field. Thus, the CCB is a battleground for many Davids but very few Goliaths.[160]

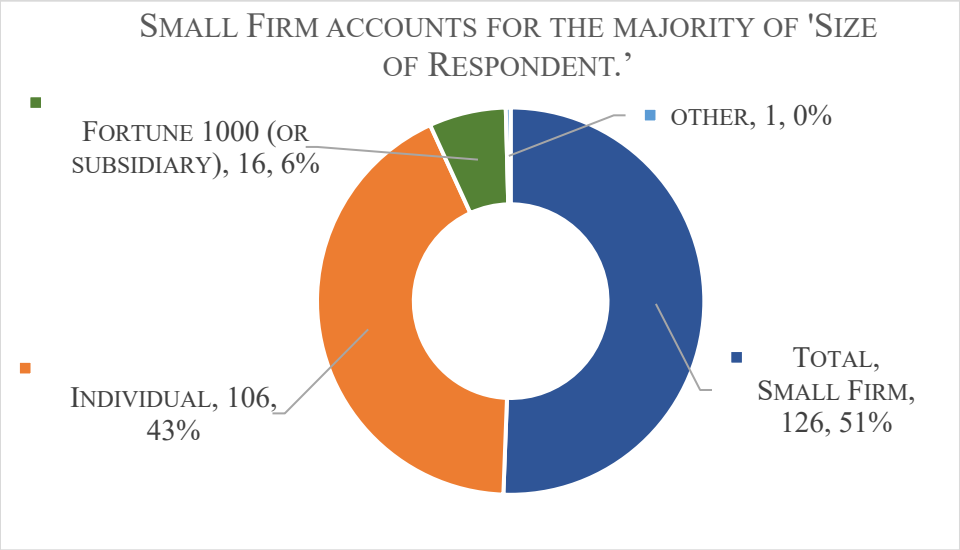

Figure 3. Most Respondents are Small Firms.

158 Christopher Cotropia & James Gibson, *Copyright's Topography: An Empirical Study of Copyright Litigation*, 92 TEX. L. REV. 1981, 1992 (2014).

159 *See id.*

160 These data points did not appear to be explicitly tracked, but nonetheless, no contrary data was discernable in Fortney's Aggregated Data. *See generally* Fortney & Hansen, *supra* note 149.

2. Few Foreign Claimants

Although claims may be brought by any party regardless of domicile, only around 13% of cases showed a foreign domicile address. It seems unlikely that foreign-domiciled parties lack infringement claims against domestic parties, or that copyright infringement is primarily an American-on-American occurrence.

A more likely explanation is that foreign claimants are unaware of the option to file claims at the CCB. The Copyright Office and the CCB have made marketing efforts online, and copyright industry interest groups have similarly made announcements and provided educational resources about the CCB.[161] However, there have been no large press conferences coming from major media outlets or government bodies to get the word out abroad. Even domestic awareness seems to be low, as even many American intellectual property attorneys seem to be unaware of the CCB's existence.[162]

3. Some Copyright Trolls

Concerns that the CCB would become the legal equivalent of the Trollshaws appear largely unsupported by the data. A few parties known for such conduct have made appearances with mixed results.

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[161] *Copyright Claims Board to Begin Accepting Claims Later This Month*, COPYRIGHT OFFICE: NEWSNET ARCHIVE (June 2, 2022), https://copyright.gov/newsnet/2022/966.html [https://perma.cc/EA5V-LEFM]; *Copyright Office Announces Claims Board is Open for Filing*, COPYRIGHT OFFICE: NEWSNET ARCHIVE (June 16, 2022), https://copyright.gov/newsnet/2022/969.html [https://perma.cc/5E7D-SDNU]; *Copyright "Small Claims" Quasi-Court Opens. Here's Why Many Defendants Will Opt Out.*, ELECTRONIC FRONTIER FOUNDATION (June 17, 2022), https://www.eff.org/deeplinks/2022/06/copyright-small-claims-quasi-court-opens-heres-why-many-defendants-will-opt-out [https://perma.cc/FBG2-QHN5]; *see generally* COPYRIGHT CLAIMS BD., https://ccb.gov/ [https://perma.cc/E3BN-XDPF] [hereinafter CCB Website].

[162] This has been the author's observation while presenting and attending at conferences. K.C. Webb, *Virtual MIPLA Presentation: Copyright Claims Board*, MICH. INTELL. PROP. L. ASS'N (Feb. 7, 2023); *Intellectual Property Law Spring Seminar 2023*, INST. OF CONTINUING LEGAL EDUC., (Mar. 2, 2023); *48th Annual Intellectual Property Law Institute*, INST. OF CONTINUING LEGAL EDUC., (July 2023).

One so-called "copyright troll" was the victor in the only substantive decision rendered by the CCB within the data set.[163] The claimant, David Oppenheimer, is a serial litigator.[164] He alleged copyright infringement of a photograph depicting a city skyline.[165] The CCB awarded $1,000 and noted that one of the Officers would have awarded the minimum amount of $750.[166]

The case was referred from the federal district court, and discovery had already been completed.[167] Since parties generally bear their own costs and fees in CCB proceedings, Oppenheimer waived his ability to recover these expenses by consenting to remove the case to the CCB.[168] Perhaps this was a weather balloon to see what type of outcome he might expect from the CCB, and if it might make sense to adjust his litigation model to increase revenue. If so, a modest monetary award may not offset the cost of obtaining the decision. Even if it did, case caps would limit scalability. To date, Oppenheimer not appeared in any further CCB proceedings.[169]

Another set of cases was filed by Joe Hand Promotions, Inc. ("JHP"), which is the exclusive licensee for broadcasting various sporting events (e.g., boxing matches, mixed martial arts fights, etc.).[170] JHP often enforces its rights

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163 Oppenheimer v. Prutton, No. 22-CCB-0045 (Copyright Claims Bd. Feb. 28, 2023).

164 Oppenheimer v. Williams, No. 2:20-cv-4219-DCN, 2021 WL 4086197, at *1 (D.S.C. Sept. 8, 2021) (noting that Oppenheimer is "a professional photographer and, it seems, professional litigant").

165 Oppenheimer v. Prutton, No. 22-CCB-0045 (Copyright Claims Bd. Feb. 28, 2023).

166 *Id.*

167 *Id.*

168 17 U.S.C. §§ 505, 1504(e); 37 C.F.R. § 232.3.

169 *See also* Fortney & Hansen, *supra* note 149, at 465 (noting little, if any, trolling trends in the two-year CCB data set).

170 *Pay Per View Boxing*, JOE HAND PROMOTIONS, INC., https://www.joehandpromotions.com/pay-per-view-boxing/ [https://perma.cc/DQT4-V2ZC].

against pubs and restaurants that show "the big fight" without obtaining a license,[171] and has been criticized for its aggressive enforcement tactics.[172]

When it became clear that JHP was a serial CCB filer, limited additional research was conducted of JHP's first thirty cases.[173] Twelve cases fell within the dataset, and another eighteen fell outside. Of the fifteen closed cases, eight reached settlements,[174] one was dismissed when all respondents opted out,[175] and one was dismissed for failure to provide proof of service.[176]

In four cases, the respondents did not appear or participate in proceedings, and the CCB ordered JHP to submit statements and evidence to

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171 Steve Vondran, *Joe Hand Promotion Unauthorized Fight Broadcast Settlement Insights*, JD SUPRA LLC (Aug. 26, 2024), https://www.jdsupra.com/legalnews/joe-hand-promotion-unauthorized-fight-7189990/ [https://perma.cc/WHX3-WPTK].

172 *Id.*

173 37 C.F.R. § 233.2.

174 Joe Hand Promotions, Inc. v. Dollar Hits Temple, Inc., No. 22-CCB-0064, (Copyright Claims Bd. May 12, 2023); Joe Hand Promotions, Inc. v. Jesses Pizza LLC, No. 22-CCB-0066, (Copyright Claims Bd. Feb. 9, 2023); Joe Hand Promotions, Inc. v. Mahabir, No. 22-CCB-0227, (Copyright Claims Bd. Feb. 17, 2023); Joe Hand Promotions, Inc. v. Bushwhackers Bar & Grill LLC, No. 22-CCB-0229, (Copyright Claims Bd. Apr. 13, 2023); Joe Hand Promotions, Inc. v. Koozie's Daiquiri & Sports Bar, LLC, No. 23-CCB-0017, (Copyright Claims Bd. May 11, 2023); Joe Hand Promotions, Inc. v. Ramirez-Jimenez LTD, No. 23-CCB-0018, (Copyright Claims Bd. May 9, 2023); [Joe Hand Promotions, Inc. v. The Talent Club, Inc, No. 23-CCB-0019, (Copyright Claims Bd. July 3, 2023); Joe Hand Promotions, Inc. v. Culebra Cigar Co. LLC, No. 23-CCB-0053, (Copyright Claims Bd. Aug. 7, 2023); Joe Hand Promotions, Inc. v. El Pueblo Mex #2, Inc., No. 23-CCB-0101, (Copyright Claims Bd. Aug. 18, 2023).

175 Joe Hand Promotions, Inc. v. LHN, LLC, No. 23-CCB-0016, (Copyright Claims Bd. May 22, 2023).

176 Joe Hand Promotions, Inc. v. The End Zone Bar & Grill, Inc., No. 23-CCB-0076, (Copyright Claims Bd. June 30, 2023).

support a default judgment.[177] JHP did so in one case.[178] In its direct statement, JHP requested damages of $11,000 (four times the usual license fee) and another $3,105 in costs[179] and attorneys' fees.[180]

The CCB found the evidence insufficient to support default and ordered JHP to submit additional evidence[181] including the establishment's fire code occupancy.[182] JHP instead withdrew the case, along with three other cases under similar orders.[183]

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177 Joe Hand Promotions, Inc. v. Wolves Enterprise LLC, No. 22-CCB-0062, (Copyright Claims Bd. June 30, 2023); Joe Hand Promotions, Inc. v. Cabo Tacos & Beer Inc., No. 22-CCB-0065, (Copyright Claims Bd. June 16, 2023); Joe Hand Promotions, Inc. v. Fusion Grps., Inc, No. 22-CCB-0067, (Copyright Claims Bd. June 28, 2023); Joe Hand Promotions, Inc. v. Tango Bravo Charlie, Inc., No. 22-CCB-0146 (Copyright Claims Bd. Mar. 15, 2023).

178 Joe Hand Promotions, Inc. v. Fusion Grps., Inc, No. 22-CCB-0067 (Copyright Claims Bd. June 28, 2023).

179 The request for costs included the amount paid for process service—which is generally *not* awarded in copyright infringement cases in federal district court. *TCYK, LLC v. Does, No. 2:13-CV-536, 2015 WL 763268, at *4–5 (S.D. Ohio Feb. 23, 2015).

180 Joe Hand Promotions, Inc. v. Fusion Grps., Inc, No. 22-CCB-0067 (Copyright Claims Bd. June 28, 2023).

181 Joe Hand Promotions, Inc. v. Fusion Grps., Inc, No. 22-CCB-0067 (Copyright Claims Bd. June 28, 2023).

182 *Id.*

183 Joe Hand Promotions, Inc. v. Wolves Enterprise LLC, No. 22-CCB-0062 (Copyright Claims Bd. June 30, 2023); Joe Hand Promotions, Inc. v. Cabo Tacos & Beer Inc., No. 22-CCB-0065 (Copyright Claims Bd. June 16, 2023); Joe Hand Promotions, Inc. v. Fusion Grps., Inc, No. 22-CCB-0067 (Copyright Claims Bd. June 28, 2023); Joe Hand Promotions, Inc. v. Tango Bravo Charlie, Inc., No. 22-CCB-0146 (Copyright Claims Bd. Mar. 15, 2023). It was not clear whether the CCB was interested in the occupancy permit for purposes of determining what licensing fee may have applied under JHP's standard rates, or whether this was to determine a potential exemption under 17 U.S.C. § 110. 17 U.S.C. § 110 (among other things, creating an exemption from liability for establishments serving food and drinks which communicate nondramatic works, such as boxing matches, to patrons, under certain circumstances including a limitation on gross square footage of space).

In another case, JHP obtained a default determination award of $3,000 after spending around $2,825 in attorneys' fees and costs.[184] At those metrics, one wonders whether the game was truly worth the candle. Perhaps, with time, JHP can perfect its boilerplate pleadings, and improve its efficiency to a point where this model will make more economic sense.[185] Though if JHP keeps prosecuting claims, and the damages awards become standardized, it may be able to extract settlement amounts more readily[186], presenting a potential cost savings for JHP, respondents, and taxpayers. But, because the case caps prevent scalability, CCB proceedings will likely remain a side-hustle for JHP and similarly situated claimants.[187]

Further, JHP's success may encourage similar filings by other entities that routinely settle disputes for amounts that fall within the range of potential damages available through CCB proceedings. Where an infringer is likely to default or be insolvent, these claimants reduce their own risk by opting for CCB proceedings where the filing fees are lower.[188]

Other well-known serial litigants, such as Strike 3 Holdings and Malibu Media,[189] have yet to make any appearance at the CCB and are unlikely to do so. These companies produce and own rights to thousands of pornographic films, and file hundreds of lawsuits each year for illegal downloads against John Doe

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184 Joe Hand Promotions, Inc. v. Arif Skyline Café LLC, No. 22-CCB-0098 (Copyright Claims Bd. Sept. 22, 2023).

185 *See* 37 C.F.R. § 233.2.

186 Robert Greenspoon, *Is the United States Finally Ready for a Patent Small Claims Court?*, 10 MINN. J.L. SCI. & TECH. 549, 552–53 (2009) (discussing the benefits of such data in the context of a patent small-claims court).

187 *See supra* Section IV.B.11. Similar conclusions are reached in the two-year study. Fortney & Hansen, *supra* note 149, at 467 (detailing further awards on default and settlement to JHP); *see* Fortney, *supra* note 149.

188 *See supra* Section IV.B.6.

189 Strike 3 Holdings and Malibu Media routinely sue for copyright infringement of pornographic media. Malibu Media at one point, in 2014, was the most prolific copyright troll, filing 1,776 cases and accounting for over 40% of all copyright cases filed in the United States that year. Morgan Pietz, *Copyright Court: A New Approach to Recapturing Revenue Lost to Infringement: How Existing Court Rules, Tactics from the 'Trolls,' and Innovative Lawyering Can Immediately Create A Copyright Small Claims Procedure That Solves BitTorrent and Photo Piracy*, 64 J. COPYRIGHT SOC'Y USA 1, 8 (2017).

defendants.[190] They then obtain a subpoena to compel the internet service provider to name the subscriber associated with the offending internet protocol address, serve a complaint on an individual residing at the subscriber's address that they believe most likely to have committed the alleged infringement, and threaten to amend the complaint to name the "John Doe."[191] The defendant will often settle quickly, even if only to avoid having his name publicly associated with salacious allegations.[192] These entities have no motive to file with the CCB, where a defendant's identity would become part of the public record. Rather, keeping the defendant's identity sealed is an essential part of the grift.[193]

So, while there is some evidence of trolling at the CCB, it does not appear to be at the scale suffered in federal courts. Further, there are practical reasons why certain trolls will avoid the CCB.

Similarly, there is little evidence of corporate deep-pocketed claimants using CCB proceedings against "little guy" respondents. One case of note fell within the dataset. That case was brought by Paramount Pictures Corporation ("Paramount") against the small firm JMC POP UPS LLC ("JMC") for allegedly infringing the copyright in the motion pictures "Coming to America" and "Coming to America 2."[194]

JMC created several pop-up restaurant events where patrons could purchase food items that were featured in the films and other merchandise bearing "protected elements" from the films.[195] Paramount complained that JMC's conduct would mislead the public into believing that the pop-up events were sponsored by or affiliated with Paramount.[196] In response, JMC argued that the allegations were directed toward trademark infringement and thus, outside the CCB's jurisdiction.[197] Ultimately, the case settled.[198]

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190 *Id.* at 26; Strike 3 Holdings, LLC v. Doe, No. 19CV5818ATJLC, 2019 WL 5459693, at *1 (S.D.N.Y. Oct. 9, 2019).

191 Pietz, *supra* note 189, at 15.

192 *Id.*

193 Matthew Sag, *Copyright Trolling, An Empirical Study*, 100 IOWA L. REV. 1105, 1126 (2015) (discussing prevalence of "John Doe" lawsuits).

194 Paramount Pictures Corp. v. JMC POP UPS LLC, No. 22-CCB-0112 (Copyright Claims Bd. Oct. 23, 2023).

195 *Id.*

196 *Id.*

197 *Id.*

198 *Id.*

This case stands out for a couple reasons. As, JMC noted, a number of Paramount's allegations related to elements that were not protected by copyright, such as stock scenes, titles, and useful articles.[199] There may have been some merit to the claims related to infringement of the fictional characters in the films,[200] but as JMC pointed out in its response, the alleged injury sounds in trademark infringement.[201] The alleged harm relates to consumer confusion rather than any usurpation of the market for derivative works.[202] Given Paramount's resources and long-established position in copyright industries, it is unlikely that this is a result of sloppy pleading.[203] It is more likely that Paramount was using the CCB as a quick, cheap venue to settle a trademark or trade dress infringement claim by fitting the square peg of a Lanham Act[204] claim into the round hole of copyright infringement. A claimant like Paramount might use a CCB claim as a crude tool to telegraph other potential claims that lay outside the CCB's jurisdiction and use this leverage to compel a respondent's CCB participation to reach a comprehensive, global resolution. But, unless the respondent is savvy enough to ensure that a settlement resolves *all* claims at issue, it may end up relitigating the issues under different legal theories in numerous venues.

At first glance, this may appear to be a perversion of the CCB's intended function of resolving copyright disputes. Alternatively, it could be viewed as an efficient way to resolve disputes that extend beyond copyright matters. As seasoned litigators, the CCB Officers should be adept at reading the litigation tea leaves of posturing and determining when a party's conduct has crossed the line from efficient enforcement to an abuse of process. However, these types of cases

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199 *Id.*

200 NIMMER & NIMMER, *supra* note 13, § 2.12 (2023) (discussing cases finding sufficient "distinctive delineation" of fictional characters to provide copyright protection).

201 Paramount Pictures Corp. v. JMC POP UPS LLC, No. 22-CCB-0112 (Copyright Claims Bd. Oct. 23, 2023).

202 *Id.*

203 *See Paramount Reports Q2 2024 Earnings Results*, PARAMOUNT (Aug. 8, 2024), chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ir.paramount.com/static-files/e1d635aa-b744-4965-96d0-1b7fbc0faf1f [https://perma.cc/U9JE-9ERZ].

204 *See* 15 U.S.C. § 1051 *et seq.* (providing causes of action for trademark infringement, dilution, unfair competition, and false advertising).

were rare, even outside of the dataset, and were resolved by settlement. Thus, it remains to be seen whether and how the CCB would exercise such powers.

4. *Many of the "Right Sort" of Claims*

Most cases were claims of copyright infringement.[205]

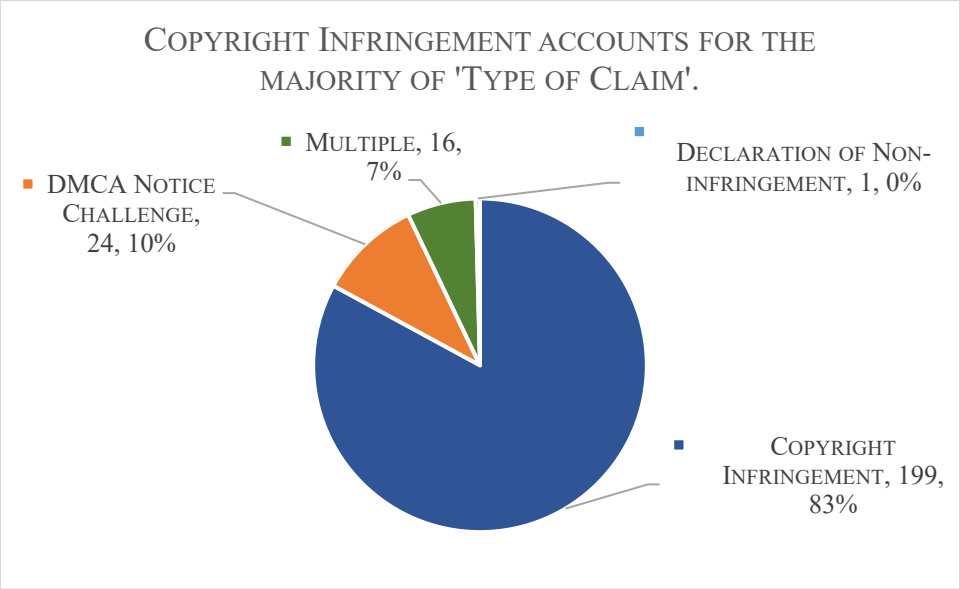

Figure 4. Most Claims are Copyright Infringement.

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As shown in Figure 5, the CCB saw claims for all types of work. Photographs, accounting for about 30% of cases, made up most of the subject matter.[206] Thus, it seems the CCB is being utilized in at least one manner envisioned by Congress: redress for small business photographers who are priced

[205] *See* Fig 4. This information is confirmed by other datasets reaching similar figures. Fortney, *supra* note 149.

[206] This is confirmed by other datasets that reached similar figures. *See* COPYRIGHT CLAIMS BD., *supra* note 150, at 1. Unfortunately, Fortney's dataset does not provide this granular level of detail.

out of federal court.[207] Nearly tying for second place, with around 16%-17% each, are claims involving audio-visual works and commercial artwork.[208]

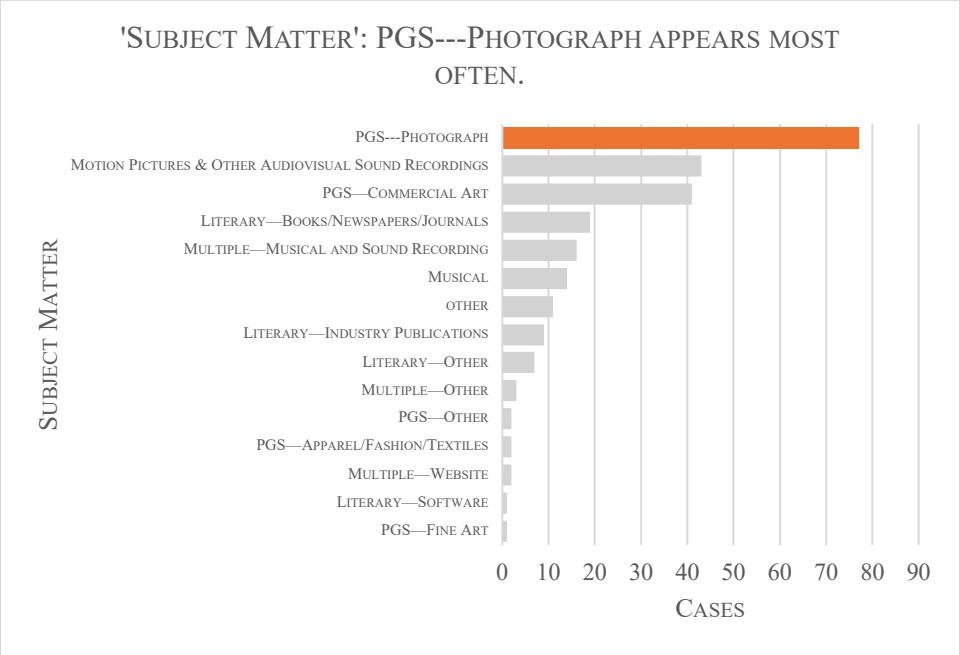

Figure 5. Most Disputed Works are Photographs.

207 A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3, at 11.

208 *See also* COPYRIGHT CLAIMS BD., *supra* note 137, at 1 (for current statistics). Neither the Copyright Office, nor Fortney's datasets coded for "commercial artwork," which for the purposes of this study refers to artwork used primarily for commercial purposes, for example, sales via online platforms and virtual marketplaces of downloadable digital files. *See generally* Fortney & Hansen, *supra* note 149; *see, e.g.*, Wright v. Potter, No. 22-CCB-0020 (Copyright Claims Bd. 2022).

5. Many Cases Allege Moral Rights Violations

Over 25% of cases made allegations related to moral rights.[209] Some alleged defamatory or reputational injury, and others described emotional harm suffered from unauthorized use or mutilation of the claimant's work.[210]

For example, one case involved the alleged copyright infringement by a musician who had photographed and drawn images of a sculpture, which he then used as cover art and merchandise related to his album.[211] The claimant, who had made the original sculpture, stated, "As a visual artist [this] is a despicable act, as a musical artist, on his end to [blatantly] copy my original sculpture that was highly publicized internationally via various art press sources and to refer to it as his 'original' drawing. I have no way to explain the hurt and disgust this, as an artist, makes me feel."[212]

In another example, the claimant alleged that her name was omitted from the publication of an academic paper by her co-authors.[213] She stated:

> I am a young researcher. Every publication is very significant for my career growth, reputation, and job salary. Because of this unethical work, I cannot claim I am the manuscript's author, although I have made a significant contribution. Without my work, the manuscript could not have anything to write on. This is one of the works that I have done to be proud of. However, by plagiarism and by falsely [claiming] my work to these authors' work, they secured funds, whereas I cannot.[214]

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209 Pursuant to Article 6bis, moral rights refer to an author's "right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation." Berne Convention for the Protection of Literary and Artistic Works art. 6bis, opened for signature July 24, 1971, 25 U.S.T. 2170, 828 U.N.T.S. 221, amended Sept. 28, 1979.

210 *See, e.g.*, Pelias v. Neighbors, No. 22-CCB-0209 (Copyright Claims Bd. Feb. 3, 2023); Hasan v. Tejidor, No. 22-CCB-0249 (Copyright Claims Bd. Jan. 12, 2023).

211 *Hasan*, No. 22-CCB-0249.

212 *Id.*

213 *Id.*

214 *Id.*

Ultimately, this claim was dismissed without prejudice after the claimant failed to correct several defects.[215] The CCB noted that among the defects, the gravamen of the claim was not within the CCB's jurisdiction.[216] It stated:

> [Y]our allegations appear to be almost entirely related to a dispute over credit or acknowledgement or potentially related to ownership of the work at issue. Such a claim cannot be heard by the Board.[217]

Given that over 25% of cases included such types of allegations, it appears that United States law lacks adequate moral rights protections, and violations clearly intersect with small claims to some extent.

6. Most Cases are Based on Registrations

The CASE Act provides for statutory damages up to $7,500 per work on a claim supported by an application.[218] One might think this is attractive for potential claimants who lack a timely registration, and thus, the opportunity to obtain statutory damages in federal court.[219] However, most claims (around 73%) were based on issued registrations.

This could be explained by the public's general lack of awareness of the CCB's existence and the corresponding standing to file a claim based on a pending application.[220] Thus, the data may reflect that "early adopters" of the CCB are mostly claimants involved in creative industries who have been aware of the copyright small-claims problem and, as a result, have followed the formation of the CCB as a potential source of relief. Such parties also may be more generally aware of the potential benefits of copyright registration, and thus, more likely to seek timely registration all along. Another potential explanation is that some claims may be so "small" in value that they do not justify the expenses of registration and subsequent adjudication via the CCB. Roughly 40% of cases filed

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215 *Id.*

216 *Id.*

217 *Id*.

218 17 U.S.C. § 1504.

219 Anthony Ciolli, *Lowering the Stakes: Toward a Model of Effective Copyright Dispute Resolution*, 110 W. VA. L. REV. 999, 1007 (2008); PATRY, *supra* note 1, § 28:26.

220 17 U.S.C. § 1505; 37 C.F.R. § 221.1.

requested relief via the Smaller Claims Track. This may indicate a significant interest in extremely modest value works.

7. Very Few Cases Survive Early Dismissal

The overwhelming majority of claims were dismissed for failure to amend deficient claims (44% of closed cases) and for failing to provide proof of service (26% of closed cases).[221] The CCB follows a three-strike rule.[222] Claimants are given two chances to amend before the CCB will boot a persistently non-compliant claim.[223]

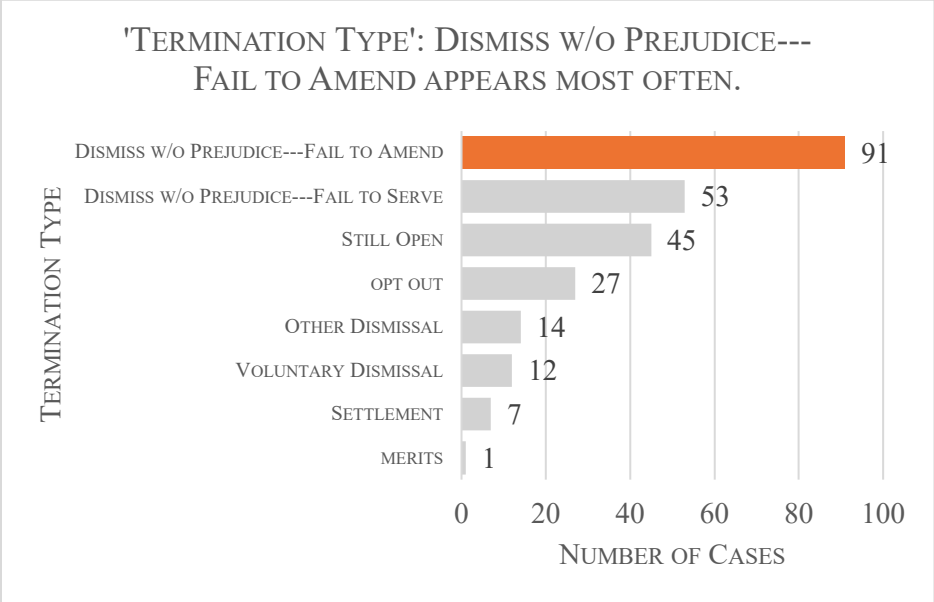

Figure 6. Most Cases are Dismissed for Deficient Claims.

Regarding deficient claims, the issues range in variety. Some are bizarre or manic filings unrelated to copyright.[224] For example, one claim alleged copyright infringement by the Illinois Department of Health and Family Services

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221 Fortney & Hansen, *supra* note 149, at 459.

222 17 U.S.C. § 1506(f)(1)(B).

223 *Id.*

224 Shabazz v. Diggs, 22-CCB-0049 (Copyright Claims Bd. Sept. 7, 2022); Shabazz v. Bruce, 22-CCB-0039 (Copyright Claims Bd. Nov. 21, 2022).

for unauthorized use of the claimant's name on a letter to him regarding outstanding child support.[225] This may be common behavior in other small claims venues, which are creatures of state courts, but it is generally not as common in federal civil claims.[226] Undoubtedly, this has to do with pro se representation. Around 30% of all claimants are represented by attorneys. However, of the 91 cases that were terminated by failure to amend to state a proper claim, only six cases involved attorney-claimant representation. This high dismissal rate, lopsided against pro se claimants, indicates that the CCB is not a forum where attorney representation is completely unnecessary.[227]

Regarding failure to provide proof of service, the conclusions are less obvious. These cases were nearly evenly split between pro se and attorney-represented claimants. It may be that proper service is difficult and complicated even for experienced legal professionals.[228] For pro se claimants, it is even more so. Alternatively, this may imply that claims are being resolved by the parties either before or immediately after service is made, which may offset concerns that <4% of closed cases were disposed of as "settled" matters.

These issues were anticipated by scholars early on.[229] The concern was that pro se litigants, unburdened with training in law and exegesis, would have difficulty composing adequate and complete claims and responses.[230] Proposed solutions included (1) access to counsel, (2) compliance review by CCB staff, (3) automation and standardization of filing documents, and (4) pre-discovery conferences to encourage early resolution.[231] All of these features are already in place in some form or another.[232] Clearly, more is required.

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225 Applewhite v. IL Dept. of Health & Family Services Div. of Child Support Servs., 22-CCB-0170 (Copyright Claims Bd. Nov. 21, 2022).

226 C. Adam Coffey et al., *I'll See You in Court Again: Psychopathology and Hyperlitigious Litigants*, 45 J. AM. ACAD. PSYCHIATRY LAW 62, 62–71 (2017); Drew A. Swank, *The Pro Se Phenomenon*, 19 BYU J. PUB. L. 373, 376–77 (2005); W.M O'Barr & J.M Conley, *Litigant Satisfaction Versus Legal Adequacy in Small Claims Narratives*, 19 LAW & SOC'Y REVIEW 661, 701 (1985).

227 Fortney, *supra* note 149; *see supra* Figure 6.

228 *Id.* at 458.

229 Aistars, *supra* note 1, at 25; Samuelson & Hashimoto, *supra* note 1, at 699–700.

230 *Id.*

231 *Id.*

232 *See* CASE Act Study, 90 Fed. Reg. 11627, 11626–27 (proposed Mar. 10, 2025).

8. Relatively Few Opt Outs

One major point of debate was the voluntariness of participating in CCB proceedings. Some were concerned that participation would be low because respondents would call the bluff of claimants and opt out of CCB proceedings, wagering instead on the claimant's inability or reluctance to proceed in federal district court.[233] As a counterpoint, supporters believed that rapid resolution, a lower damages cap, and restricted fee shifting would provide sufficient incentives for respondents to remain in CCB proceedings.[234]

In practice, few cases made it past the procedural hurdles of submitting a compliant claim and proof of service. Of the remaining 61 closed cases, 27 were dismissed after the respondent(s) opted out.[235] Further research was not conducted to determine what percentage of those cases, if any, were filed in federal district court. This may become an important data point as potential participants weigh their options. However, at these early stages, it is difficult to see this percentage of opt-outs as affirming the worst (around 44% of closed cases).[236] Rather, it may be a moving target and likely go down as claimants catch on and strategically file follow-up litigation in federal court to deter opt-outs. Though the case caps currently in place may prevent claimants from gaining momentum in generating this follow-up data.

9. <u>One</u> Merits Determination in Over One Year

After more than one year of operation, the CCB issued *one* merits determination.[237] This is hardly a sign of success for a forum that was designed to offer a streamlined process.

The determination was in favor of a widely acknowledged copyright troll, David Oppenheimer, and was referred from federal district court after discovery

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233 Depoorter, *supra* note 1, at 726.

234 Bils, *supra* note 109, at 507.

235 Lower numbers were found in other data sets. Fortney, *supra* note 149, at 460 (12%). See similar statistics in COPYRIGHT CLAIMS BOARD, KEY STATISTICS 2 (2024) and COPYRIGHT CLAIMS BOARD, KEY STATISTICS 2 (2025).

236 Fortney, *supra* note 149, at 455.

237 Oppenheimer v. Prutton, No. 22-CCB-0045 (Copyright Claims Bd. Feb. 28, 2023). This data collected the first 250 cases filed, but of all the cases filed by August 2023, when the analysis of this data was completed, the CCB had issued only one merits determination. Fortney notes that after two years, there are only five merits determinations. Fortney, *supra* note 149, at 463 n.52, 470.

was complete.[238] Though the respondent raised defenses related to Oppenheimer's status as a serial litigator,[239] the CCB refused to consider this "unclean hands" defense and awarded a money judgment of $1,000.[240] The determination noted that one of the CCB Officers would have awarded the minimum amount of $750.[241]

While this determination was celebrated in some circles as proof of concept, there are more negative takeaways on balance. First, it was the *only* merits determination to come from the CCB in its first operational year+.[242] Second, it is a win for a labelled copyright troll, which gave some validity to the concerns that the CCB would be another forum for abusive practices or bias toward claimants.[243] Third, because the CCB could not consider willfulness, the respondent arguably fared worse than he might have in federal district court, where a successful "innocent infringement" defense may have reduced the damages award to $200.[244]

After one year of being fully operational, the fact that the CCB had issued only one merits determination, on a case where the factual record was already developed, is disheartening.

10. Second Year, Same Issues

The CCB's second operation year did not show much improvement:

- **4** additional merits determinations;[245]
- **13%** of claims progressed to the active phase;[246]
- **22** default judgments;[247] and

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238 Oppenheimer v. Prutton, No. 22-CCB-0045 (Copyright Claims Bd. Feb. 28, 2023).

239 *Id.*

240 *Id.*

241 *Id.*

242 *Id.*

243 Samuelson & Hashimoto, *supra* note 1, at 703–04.

244 17 U.S.C. § 504(c).

245 *See* Fortney, *supra* note 149, at 463 n.52, 470 (identifying the five merits determinations in the 2-year study).

246 *Id.* at 469 (aggregating).

247 *Id.*

- **137** claims dismissed for failure to provide valid proof of service.[248]

Because so many claims are dismissed before they are active, or shortly thereafter, it is difficult to meaningfully examine other stakeholder concerns, e.g., whether the CCB's simplified discovery and pleading rules might result in participants' inability to fully plead and prove their cases, whether there are any discernible tendencies of bias or regulatory capture.[249] Further, with only a handful of nonprecedential merits determinations issued,[250] it is absurd to conclude that the CCB has contributed to the development of copyright jurisprudence. Nor is there any data showing that the CCB's existence has deterred infringement. Rather, would-be infringers may find it encouraging to know that cases rarely make it to the "active" stage. That is, assuming any would-be infringers knew of the CCB's existence, they might likely consider it to be a toothless tiger.

11. Unknown Cost to Parties and Taxpayers

While the CCB filing fees are lower than what is required in federal district court, there is not much evidence to conclude that well-pleaded claims, or responses, are any less costly than what is expended in similar litigation.[251] With case caps in place, it is difficult for practitioners to become knowledgeable and efficient enough to lower the overall costs to represented parties.[252] Nor is there much evidence that law school and pro bono clinics are heavily involved at this

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248 Fortney, *supra* note 149, at 460 (aggregating). Fortney discussed the "slow" progression of the few cases that do make it all the way to final determination. *Id.* at 470. However, this author hesitates to agree with Fortney's characterization that this pace is detrimental to small-claims parties. One might conclude, perhaps correctly, that a long case pendency equates to higher total costs. In doing so, one should not overlook the possibility that a "slower" paced process provides the parties with more time to pay for the costs and fees of prosecuting and defending claims. Many "small" claimants with "small" budgets may appreciate the relief a "slower" pacing provides in terms of available cash flow to fund their CCB costs.

249 *See supra* Part III.

250 Fortney, *supra* note 149, at 463 n.52.

251 *See id.* at 470.

252 37 C.F.R. § 233.2.

stage.[253] The under-involvement of legal practitioners likely explains the high volume of deficient claims, and in turn, exacerbates inefficient expenditure of resources.

The CCB's operation has not decreased the number of copyright filings in federal district court.[254] While this may indicate that the claims filed with the CCB would otherwise not have been adjudicated, given the high early dismissal rate, they largely remain unadjudicated.[255] Rather, while the goal of the CASE Act was to create a cost-effective venue for small claims, in practice, the CCB is more of a mirage than a promised land for many claimants.[256] Even generously considering the number of cases where failure to provide proof of service may indicate early settlement, the prognosis is grim.

Finally, we do not yet know what the total bill to taxpayers will be for this endeavor. The modest filing fees may break even with the CCB's expenses involved with the early dismissal of most cases.[257] However, there remains the matter of value. The CASE Act anticipates that the cost of running the CCB will exceed the amount of revenue garnered by the modest filing fees assessed.[258] For whatever amount the taxpayers are contributing to fund the balance, it is difficult to conclude that they are getting much value for their tax dollars.

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253 *See Pro Bono Assistance*, COPYRIGHT CLAIMS BOARD, https://ccb.gov/pro-bono-assistance/ [https://perma.cc/Q9LT-L54T].

254 ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, *Table C-5—United States District Courts—Intellectual Property Rights Cases Filed Through June 2022*, STATISTICAL TABLES FOR THE FEDERAL JUDICIARY (Sept. 25, 2023), https://www.uscourts.gov/sites/default/files/data_tables/jff_4.7_0930.2022.pdf [https://perma.cc/4R2B-YUB8].

255 *See supra* Sections IV.B.9–10.

256 *Id.*

257 *But see* Fortney, *supra* note 149 (discussing comparing aggregated filing fee data and CCB budget).

258 17 U.S.C. § 1511. Around $3 million USD in taxpayer funds are spent on the CCB annually. Library of Congress, *Fiscal Year 2022 Congressional Budget Justification* 124 (Sept. 25, 2023), https://www.loc.gov/static/portals/about/reports-and-budgets/documents/budgets/fy2022.pdf [https://perma.cc/G65R-QGS8]. *See also* Fortney & Hansen, *supra* note 149, at 470 (discussing CCB budgeting).

V. OTHER JURISDICTIONS

Other jurisdictions were considered as aspirational models for the CASE Act.[259] Among those considered, the United Kingdom's approach was considered an outstanding success.[260] China's internet courts have also grabbed attention as a potential model for improvement on the United States system.[261] Each model is considered in turn below, and distinct features are noted and discussed.

A. UNITED KINGDOM

Following a call for reform, in 2012 the United Kingdom created the Small Claims Track within its specialty court, designed to hear intellectual property disputes.[262] The Intellectual Property Enterprise Court ("IPEC-SCT") was created for certain intellectual property-related disputes under £10,000.[263] Copyright disputes are among the most commonly heard cases, and among those, most claims are brought by individuals over the unauthorized use of photographs.[264] Filing fees are scaled by the amount of damages requested from £60-£1,310.[265]

There is no evidence of large-scale repeat filers or large numbers of default judgments,[266] and the median requested damages is a modest sum of £2,500.[267] This is largely attributed to two factors. First is the relatively low amount of potential damages—up to £10,000, compared to the $750-$30,000 range of damages available in CCB proceedings.[268] Second is the highly restricted fee shifting available in IPEC-SCT proceedings, where attorneys' fees are capped at £260 and rejection of settlement offers may be considered in determining whether to award

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259 A REPORT OF THE REGISTER OF COPYRIGHTS, *supra* note 3, at 62; *see also* 17 U.S.C. § 1501.

260 Christian Helmers et al., *Who Needs a Copyright Small Claims Court? Evidence from the U.K.'s IP Enterprise Court*, BERKELEY TECH. L.J. COMMENTARIES 1, 8–9 (2018).

261 Aistars, *supra* note 1, at 26–28.

262 Helmers et al., *supra* note 260, at 10.

263 *Id.*

264 *Id.* at 4.

265 ANGELA FOX, THE INTELLECTUAL PROPERTY ENTERPRISE COURT 171 (3d ed. 2021).

266 Helmers et al., *supra* note 260, at 5. The default rate is 9%.

267 *Id.*

268 *Id.* at 2.

costs.[269] While fee shifting in CCB proceedings is available only in rare circumstances of bad faith conduct, they are considerably higher at $2,500-$5,000,[270] but still not as high as uncapped fee shifting that may be obtained in federal district court.[271] Regarding outcomes, 56% of cases settle, and 20% result in merits decisions.[272]

B. CHINA

China received much praise over the past few years for its advancements in administering speedy justice for certain civil claims.[273] China created so-called "internet courts" beginning in 2017 in Hangzhou, and then expanded to Guangzhou and Beijing in the following years.[274] These courts hear various internet-related disputes, including contract issues of online goods and services, product liability issues related to online shopping, domain name disputes, and online copyright infringement claims.[275] Proceedings are conducted entirely online and are resolved in 41 days on average.[276]

The Hangzhou internet court is boasted to have resolved 20,000 cases in its first two years of operation.[277] However, it is not clear how many of these cases involve copyright disputes per se, or how many judges, mediators, and other staff are employed to churn through so many cases so quickly. Artificial intelligence systems draft judgments, which may be revised and modified by the judges.[278] For cases with standard facts, this may be a big help in saving time and resources. However, for more complicated cases, such as those involving substantial

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269 FOX, *supra* note 265, at 171; Pablo Star Media Ltd. v. Bowen, [2017] EWHC (IPEC) 2541 (Eng.).

270 17 U.S.C. § 1504; 37 C.F.R. § 232.3.

271 17 U.S.C. § 505.

272 Helmers et al., *supra* note 260, at 5.

273 Chen Xi, *Asynchronous Online Courts: The Future of Courts?*, 24 OR. REV. INT'L L. 39, 58–62 (2023).

274 *Id.* at 47, 58, 63.

275 *Id.* at 59.

276 *Id.* at 62.

277 Changqing Shi et al., *The Smart Court – A New Pathway to Justice in China?*, 12 INT'L J. FOR CT. ADMIN. 4, 11 (2021).

278 J. Sang., *Internet Court on Solving Online Consumer Contract Disputes: Case of China*, 2 DIGITAL LAW JOURNAL 23, 40 (2021).

similarity between works—particularly as to qualitative similarities—or fair use defenses, it is questionable whether the cost of developing an AI system to assist CCB Officers would be worth the expense.

Service is made on a defendant via the phone number provided by the plaintiff.[279] Permitting this type of service would almost certainly speed up CCB proceedings but may run afoul of due process.[280]

Another notable feature is the early involvement of mediators.[281] After a case is filed, it is immediately submitted for online mediation proceedings.[282] Only after mediation is complete, and if a settlement is not reached, then the case is reviewed for completeness and a response in defense is required.[283] Again, it is not clear the extent of resources required to provide this level of involvement, or whether all such cases demand or deserve such early intervention. However, early mediation may be beneficial for CCB participants who have viable claims and defenses but struggle to plead them properly. Early mediation could also benefit respondents with assistance to resolve a claim before a detailed response is required.[284]

VI. PROPOSAL

This Section presents several potential reforms to the CASE Act and its related rules to combat the most frequent problems parties experience with CCB proceedings: (1) chronically deficient claims, and (2) want of valid process service. This Section then presents proposals to address the issues resulting from dereliction of treaty obligations and provide for operational security during political upheaval.

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279 *Id.* at 36.

280 PATRY, *supra* note 1, § 28:10. (citing U.S. CONST. amend. V and discussing several potential pitfalls related to the CASE Act's lack of constitutionally sound procedures, particularly where personal jurisdiction is not established).

281 Sang, *supra* note 278, at 34.

282 *Id.* at 34–36.

283 *Id.* at 35–36.

284 Aistars, *supra* note 1, at 26; Samuelson & Hashimoto, *supra* note 1, at 699–700.

A. REMOVE PRACTITIONER CASE CAPS TO IMPROVE PLEADINGS & REDUCE DEFICIENT CLAIMS.

The primary shortfall of the CCB is the inability of pro se claimants to plead a proper claim. Unrepresented parties lack the sophistication and understanding to properly allege requisite elements. Nearly half of the claims filed are dismissed for failure to state a claim—even with liberal construction, free educational materials, guided fillable forms, an online helpdesk, and explicit orders to amend. [285]

Given the review of pleadings during data collection, much of the issue is that copyright law is difficult to understand. The United States Register of Copyrights, Marybeth Peters, once said, "[C]opyright law reads like the tax code, and there are sections that are incomprehensible to most people and difficult for me."[286] This is further compounded by the vast body of case law interpreting the statute.[287] A complete legislative overhaul is politically unlikely and may not yield any better results for unrepresented parties who lack legal training.

One possible solution is initiating mediation immediately after the claim is filed, as China's internet courts do.[288] However, this may strain the CCB's limited resources and is unlikely without clear evidence to show that this would be an efficient or effective use of resources.

A more promising answer is fostering the development of cost-effective legal representation by removing practitioner case caps. The case caps are meant to prevent abusive practices and support docket management.[289] However, there are ways around these case caps for both claimants and practitioners. For example, copyrights and infringement claims can be assigned to entities that have not reached the cap.[290] Entities could be formed for the sole purpose of doing so.

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285 *See supra* Part IV.

286 Rob Pegoraro, *Debating the Future of Music*, WASH. POST (Sept. 18, 2007), https://web.archive.org/web/20130220203915/http://voices.washingtonpost.com/fasterforward/2007/09/debating_the_future_of_music.html [https://perma.cc/2WLU-6V8A].

287 Olson, *supra* note 1, at 7.

288 *See infra* Section V.B.

289 37 C.F.R. § 233.1.

290 This aggregates a corporate entity's claims with those of its "parents, subsidiaries, and affiliates." *Id.* § 233.2. However, for LLCs this would be difficult to track, since until 2024, several states provided for complete member anonymity. *See* 31 U.S.C. §§ 5331–33 (compelling LLCs to report beneficial owners to FinCEN to enhance transparency). Even so, such

Attorneys and law firms might skirt the case cap rules by assisting only in the preparation of filings for pro se submission, without making any formal appearance before the CCB. However, attorneys may be unlikely to take such risks to circumvent rules, and risk sanctions that may impair their ability to practice generally or raise malpractice insurance premiums.[291] While current rules permit the CCB to find bad faith conduct for these types of maneuvers, and sanction parties and practitioners,[292] there are no institutional mechanisms in place to detect such conduct. Rather, the general inability to recover attorneys' fees in CCB proceedings is incentive enough to deter unnecessary motion practice.[293] Because legal costs are passed on to an attorney's client, there are business incentives and ethical obligations to keep fees to a minimum. This is in stark contrast to potentially unrestricted fee shifting in federal district court, where attorney involvement plays a part in such abusive practices.[294] Practitioner case caps merely inhibit the development of efficient representation models, and do not justify limiting participants' choice of counsel.

Additionally, given what appears to be a practice of telegraphing other claims, permitting the development of cost-effective attorney representation is a better policy goal than encouraging pro se representation. While the effects of CCB proceedings are binding between the parties in each particular case and are nonprecedential,[295] there is no prohibition on the introduction of evidence produced in CCB proceedings in other actions. So, for example, a pro se respondent might make an admission or introduce evidence to defend against a copyright infringement claim in CCB proceedings without understanding that this

information may be scattered among the different state agencies where those LLCs are organized. Without a publicly accessible, centralized database, this sort of information may be hard to discover and potentially unreliable.

291 37 C.F.R. § 233.2; *see* MODEL CODE OF PRO. RESP. r. 10 (AM. BAR ASS'N 2020); s*ee, e.g.*, *In re* Scott, 4 Cal. State Bar Ct. Rptr. 446, 10 (Cal. State Bar Ct. 2002) (suspension for a lawyer who filed four related lawsuits, one after another, to harass and be vindictive toward those the lawyer considered responsible for judgment and sanctions in the initial suit); Sorensen v. State Bar of Cal., 804 P.2d 44, 49–50 (1991) (suspension for a lawyer who responded to a small claims action with a municipal court action out of spite and utilized financially taxing means of redress out of proportion to the sum at stake).

292 37 C.F.R. § 233.2.

293 17 U.S.C. § 1504(e).

294 *See supra* Section III.B (discussing copyright trolling litigation); McIntyre, *supra* note 16, at 1123 (discussing attorneys' fees in copyright litigation).

295 17 U.S.C. § 1507.

evidence may give rise to a claim under some other theory, such as trademark law. This may not be an issue where claimants and respondents are equally matched in sophistication or representation, but for unequal pairings the result may be prejudicial and lead to more costly litigation. In some cases, it may lead to a loss of rights where an unsophisticated party constructively discovers a potential claim, fails to understand that a claim has accrued and does not take timely action.

In sum, it cannot be shown that practitioner case caps curb abusive practices or slow the volume of CCB filings. They are, however, detrimental to practitioners' ability to develop efficient representation models, and they unnecessarily limit parties' options for representation. Other methods of curbing abusive practices exist and should be explored. In the meantime, practitioner case caps should be removed.

B. Implement Alternative Mechanisms to Curb Abusive Practices.

One way to detect and curb abusive behavior is to require chain of title evidence to detect transactions meant to skirt party case caps. Such evidence would reveal transactions intended to avoid the case caps and allow the CCB to exercise its sanction powers effectively.

A second way to curb abusive practices is to amend the CASE Act to provide a $200 lower limit on statutory damages commensurate with the discretion of federal courts.[296] The CASE Act does not explicitly provide a lower limit on statutory damages, but the tribunal has adopted the statutory $750 lower limit imposed on federal district courts.[297] It may not be desirable to have the CCB consider "innocent infringement" defenses, because putting on proofs regarding intent may require expensive depositions and cross-examination. Nonetheless, a lower floor would acknowledge that some CCB cases will fall below $750 in value and incentivize respondents to remain in the CCB even where an "innocent infringement" defense may be viable in federal district court and the respondent is unconcerned with litigation funding.[298]

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[296] *See id.* § 504(c)(2); Olson, *supra* note 1, at 21 (noting that CCB proceedings carry risk for innocent infringers).

[297] Oppenheimer v. Prutton, No. 22-CCB-0045 (Copyright Claims Bd. Feb. 28, 2023) (citing 17 U.S.C. § 504(c)(1)).

[298] *See* 17 U.S.C. § 504(c)(2); Olson, *supra* note 1, at 21 (noting that CCB proceedings carry risk for innocent infringers); Pietz, *supra* note 189, at 34–35 (discussing $200 floor on statutory damages in copyright small-claims venue).

Simply lowering the ceiling on statutory damages may not have much impact because the CCB already requires damages be proven up even in default cases,[299] and tends to award statutory damages resembling actual damages. Rather, as seen with IPEC-SCT proceedings, the key may be lowering the floor on damages, rather than lowering the ceiling, and allowing the CCB latitude to reduce damages as IPEC-SCT tends to do.[300]

C. PERMIT CONSENT TO JURISDICTION & ALTERNATIVE FORMS OF SERVICE VIA DMCA PROCESSES.

Another prominent issue involves service. Claims are routinely dismissed for failure to file valid proof of service. These figures may be inflated if some portion of these cases are simply settling early. Nonetheless, improved service methods should still be considered.

One possible solution is to permit more relaxed means of service. It is unlikely that service via text message, as the internet courts of China utilize, would meet due process requirements in the United States.[301] However, for claims originating via platforms such as Etsy, YouTube, and the like, often DMCA notices are a precursor to formal legal action.[302] Counterstatements require a respondent's consent to jurisdiction of a federal district court and service of process via online service providers.[303] Amending legislation should be considered to make the CCB an alternative forum of express consent for respondents, along with consent to online service. While this may not cure all due process concerns, it would alleviate some of the issues CCB participants currently experience early in the process.

In addition, this would open the door for service on foreign respondents, though legislative amendments would be required to extend the CCB's jurisdiction correspondingly. The CASE Act allows for claims to be made against domestic domiciled respondents only.[304] Where there is a dispute between a

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299 17 U.S.C. § 1506(u) (requiring damages proofs).

300 Cori Henris, *OOF! Nice Try Congress – The Downfalls CASE Act and Why we Should be Looking to our Cousins Across the Pond for Guidance in Updating our new Small Claims Intellectual Property Court*, 29 J. INTELL. PROP. L. 175, 200 (2021) (discussing "dangerously high" statutory limit in CCB proceedings).

301 *See* PATRY, *supra* note 1, § 28:10.

302 *31 DMCA Statistics, Trends, and Insights for 2025*, DMCA AUTH., https://dmcaauthority.com/dmca-statistics-trends/ [https://perma.cc/U7PH-D5JH].

303 17 U.S.C. § 512(g)(3)(D).

304 *Id*. § 1504(d).

domestic domiciled complainant and a foreign-domiciled accused, to utilize the CCB, the complainant must rely on the foreign accused to file a claim of non-infringement and/or DMCA misrepresentation (and pay the required fees) with the CCB.[305] It is hard to imagine many cases where an accused would be so proactive. Still, they might find it preferable to being hauled into a federal district court pursuant to the DMCA process,[306] particularly for foreign-domiciled parties who strategically default and gamble on the difficulties of enforcing a United States judgment abroad. Even so, it is unlikely there would be much political appetite for this, as it would place United States taxpayers in a position of subsidizing copyright disputes between foreign parties and the CCB in a position of policing copyright on a global scale.

D. AMEND LEGISLATION TO COMPLY WITH TREATY OBLIGATIONS.

Legislative measures should be considered to bring United States laws into compliance with treaty obligations on moral rights and the prohibition on formalities.

1. Expand VARA and the CCB's Jurisdiction to Address Moral Rights.

The United States is obligated to provide attribution and integrity rights to authors under Article 6*bis* of the Berne Convention, and to performers under Article 5(1) of the WIPO Performances and Phonograms Treaty (1996) ("WPPT").[307] Over 25% of sampled claims alleged injuries related to defamation and reputational damage, attribution, and integrity of works. This calls into question the ability of existing legal institutions to address such harms.

For background, the United States did not join the Berne Convention until 1988, in part because of the treaty obligations to provide legislation on moral rights.[308] After joining, to comply with Art. 6*bis*, Congress passed the Visual Artists Rights Act of 1990 ("VARA"), which created a cause of action for authors of a

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305 *See id*. § 512.

306 *Id*.

307 Berne Convention for the Protection of Literary and Artistic Works art. 5, opened for signature July 24, 1971, 25 U.S.T. 2170, 828 U.N.T.S. 221, amended Sept. 28, 1979. The United States signed, but has not ratified, the Beijing Treaty on Audiovisual Performances, of which Article 5 grants attribution and integrity rights to performers.

308 *See* Justin Hughes, *American Moral Rights and Fixing the Dastar "Gap,"* 2007 UTAH L. REV. 659, 660 (2007).

limited category of "visual arts" works to provide rights of attribution and integrity under certain circumstances.[309] Further, upon joining Berne, the United States' position on moral rights shifted from considering moral rights to be fundamentally incompatible with United States copyright law, to concluding that United States common law was congruent with Art. 6*bis*.[310] Specifically, it was thought that the laws of unfair competition, defamation, exclusive rights to create derivative works, and state laws filled in the gaps.[311]

However, the gaps remain. For example, Art. 6*bis* applies to "literary and artistic works" which include "every production in the scientific and artistic domain, whatever may be the mode or form of its expression."[312] Art. 5 WPPT applies to "live aural performances or performances fixed in phonograms."[313] Despite these broad treaty provisions, VARA applies only to the narrow categories of works subject to the laundry list of exclusions—namely, works such as photographs for exhibitions, paintings, drawings, and prints or sculptures existing in at least 200 signed and numbered copies.[314] The treaty provisions are not "so limited in scope or subject matter."[315] Moreover, there is no textual basis to read into VARA any protections for sound recordings as required by Art. 5 WPPT or literary works as required by Art. 6*bis*.[316]

Further, whatever protection the patchwork of other laws might have granted to authors has been judicially eroded. In *Dastar*,[317] the United States Supreme Court unanimously held that the federal trademark statute, the Lanham Act, did not require attribution for public domain materials and effectively foreclosed the Lanham Act as a vehicle for authors to vindicate their moral

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309 17 U.S.C. § 106A.

310 Hughes, *supra* note 308, at 713.

311 S. REP. NO. 100-352, at 9–10 (1988).

312 Berne Convention for the Protection of Literary and Artistic Works art. 1, 6bis, opened for signature July 24, 1971, 25 U.S.T. 2170, 828 U.N.T.S. 221, amended Sept. 28, 1979.

313 WIPO, *WIPO Performances and Phonograms Treaty*, art. 5 [hereinafter WPPT], April 12,1997, Ex. Rept. 105–25.

314 17 U.S.C. §§ 101, 106A.

315 William Belanger, *U.S. Compliance with the Berne Convention*, 3 GEO. MASON INDEP. L. REV. 373, 399 (1995).

316 17 U.S.C. § 106A.

317 Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23 (2003).

rights.[318] Defamation laws are limited by constitutional free speech concerns, which require a higher standard of proof in some cases.[319] Copyright protection of derivative works is thin, covering only the elements which are original to the derivative author, and is further subject to fair use, which can be a rather broad exception.[320] State-granted moral rights are limited to each state's jurisdictional reach; they may be pre-empted by VARA,[321] and therefore, do not provide much reliable protection.

Within the dataset, the volume of cases raising moral rights provides an opportunity, perhaps even a calling, to reconsider whether the existing United States laws are sufficiently robust enough to protect authors' moral rights, particularly where those rights intersect with small claims.[322]

After all, VARA suits must be brought in federal district court,[323] and the same economic barriers that preclude copyright infringement small claims also hinder parties from vindicating moral rights claims.[324] High litigation costs are common and usually borne by the claimant; large jury verdicts are a rare, relatively modern phenomenon, which are subject to appellate review and remittitur; actual damages are difficult to prove; injunctive relief is often too little, too late.[325] Moreover, successful VARA claims require proofs related to "prejudice

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318 U.S. COPYRIGHT OFFICE, AUTHORS, ATTRIBUTION, AND INTEGRITY: EXAMINING MORAL RIGHTS IN THE UNITED STATES 44–45 (2019).

319 N.Y. Times Co. v. Sullivan, 376 U.S. 254 (1964) (discussing "actual malice").

320 Cariou v. Prince, 714 F.3d 694 (2d Cir. 2013) (affirming Prince's use of Cariou's photographs could be transformative fair use).

321 3 NIMMER & NIMMER, *supra* note 13, § 8D.06.

322 *See* WPPT, *supra* note 313, art. 5(1). Also applicable to this discussion is the United States obligation under Art. 5(1) of the WIPO Performances and Phonograms Treaty (1996), which encompasses moral rights of performers. In addition, the United States has signed but not ratified the Beijing Treaty on Audiovisual Performances, of which Art. 5 grants attribution and integrity fights to performers.

323 28 U.S.C. § 1338(a).

324 17 U.S.C. § 106A. VARA's remedies include injunctive relief, actual damages, statutory damages (ranging from $750 to $30,000, which could be increased to $150,000 per work in cases of willful destruction), disgorgement of profits and attorney fees.

325 *Cf.* Castillo v. G&M Realty L.P., 950 F.3d 155 (2d Cir. 2020) (affirming $6.75 million jury verdict); Carter v. Helmsley-Spear, Inc., 71 F.3d 77 (2d Cir. 1995) (reversing as work-for-hire and vacating jury award). *See also* Martin v. City of Indianapolis, 192 F.3d 608 (7th Cir. 1999) (requiring expert testimony);

to honor and reputation"[326] and "recognized stature,"[327] which are typically established by pricey expert testimony.[328] The combination of uncertain outcomes, high litigation costs, and limited remedies discourages parties, and attorneys, from bringing VARA claims.

Although the CASE Act could be amended to permit small claims under VARA, this would be only half a cure. It may provide relief to otherwise disenfranchised authors, but only authors of those types of "visual arts" works defined by VARA.[329] The claims in the dataset allege moral rights harms for *all kinds* of works. Nearly all these harms would not fall under the statutory definition of "visual arts" or would be specifically excluded from the statute's protections, as shown in Figure 7.

Cohen v. G & M Realty L.P., 320 F. Supp. 3d 421 (E.D.N.Y. 2018) (VARA claim failed for failure to prove market value of whitewashed murals).

326 17 U.S.C. § 106A (involving distortion, mutilation, or modification of a work).

327 *Id.* (involving destruction of a work).

328 *Martin*, 192 F.3d at 608 (requiring expert testimony).

329 17 U.S.C. § 106A.

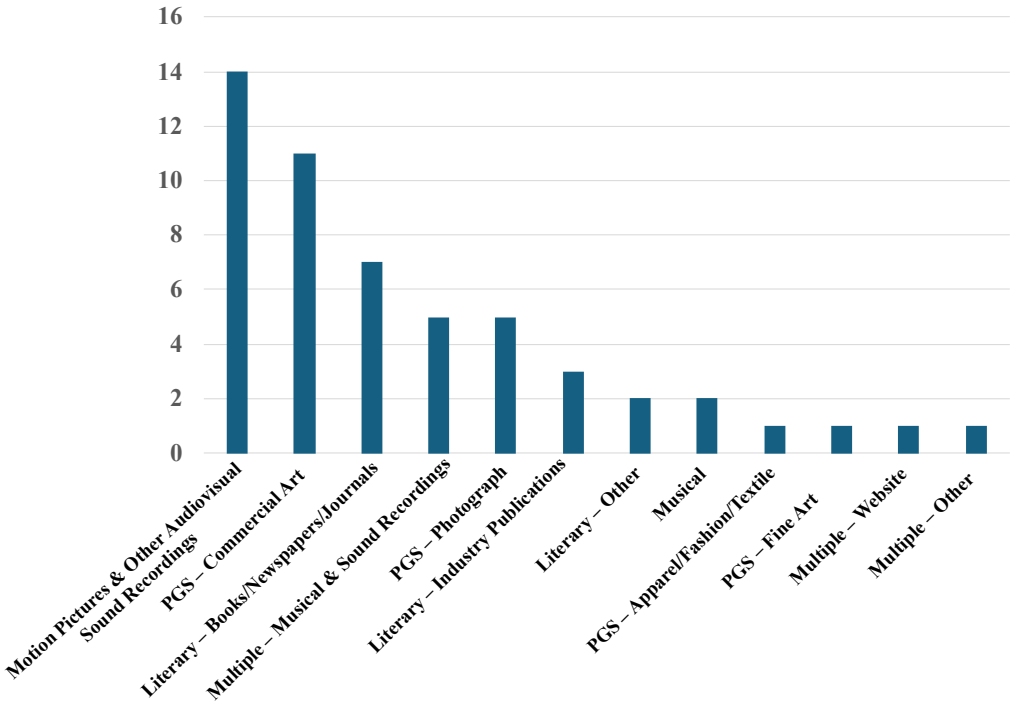

Figure 7. Cases Raising Moral Rights Issues by Category of Work.

Claims such as defamation, unfair competition, conversion, unjust enrichment, and the like, were thought to fill gaps between what is provided under VARA and what is required under international treaty.[330] There are small-claims venues for such claims in state courts.[331] So, where such claims intersect with copyright claims, as an issue of moral rights, a plaintiff must either forego prosecuting the copyright claims or be subject to removal to federal district court.[332] Again, this puts a potential plaintiff in a position where the expense of litigation is cost-prohibitive. Thus, it is unworkable to rely on existing small claims venues to vindicate moral rights claims.

There is clearly an appetite to vindicate moral rights in a small claims setting. However, as discussed above, VARA falls short of treaty obligations, and expansion of CCB jurisdiction to include VARA claims would not cure those defects. Further, simply amending VARA to comply with treaty obligations would yield the same paywall issues. Thus, comprehensive amendments should be enacted to (1) expand VARA to all types of works and (2) augment CCB jurisdiction to include those expanded VARA claims.

The CCB's restrictions on expert testimony would ideally reduce evidentiary dependency on "reputational damages" as required by current case law in federal district court.[333] However, absent powers to grant injunctive relief, it is questionable how well the CCB would be able to provide for relief in claims of attribution as the type requested in the case of the young researcher described above.[334] Nonetheless, merely opening the CCB's doors to such claims may give claimants leverage in settling matters extralegally or as part of a global settlement.

2. Remove the CASE Act's Registration Prerequisites for Foreign Works.

The CASE Act's registration and application prerequisites to filing a claim run afoul of Berne's Article 5(2) prohibition on formalities.[335] When the United

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330 *See* Deborah Ross, *The United States Joins the Berne Convention: New Obligations for Authors' Moral Rights?*, 68 N.C. L. REV. 363, 371 (1990).

331 28 U.S.C. § 1332.

332 *Id*. §§ 1441–1453; FED. R. CIV. P. 81(c); § 1367 (supplemental jurisdiction).

333 37 C.F.R. § 226.4(h); *Martin*, 192 F.3d at 608 (requiring expert testimony).

334 Hasan v. Tejidor, No. 22-CCB-0249 (Copyright Claims Bd. Jan. 12, 2023).

335 Berne Convention for the Protection of Literary and Artistic Works art. 5(2), opened for signature July 24, 1971, 25 U.S.T. 2170, 828 U.N.T.S. 221, amended Sept. 28, 1979.

States joined Berne, it considered the issue of formalities, and in particular, the registration prerequisite to filing a lawsuit.[336] Taking a minimalist approach to statutory revisions, amendments were made to permit lawsuits based on foreign works without any registration prerequisite,[337] but the prerequisite remained for United States works, and timely registration as a requirement for all works to recover statutory damages.[338]

The Congressional rationale was that the benefits of registration, e.g., legal presumptions and statutory damages, corresponded with remedies—not rights—and registration as a prerequisite to suit was procedural since a lawsuit could be maintained based on a denied registration.[339] Rather, "[c]opyright owners can enjoy and exercise their rights within the meaning of Article 5(2) of Berne whether registration is granted or denied."[340]

Because there was significant doubt about this interpretation,[341] Congress ultimately removed the registration prerequisite to suit for foreign works.[342] The legislative record contains considerable skepticism of the "metaphysical" difference between the existence of copyright and the exercise of a right.[343] Because the consequences that flow from failure to timely register a work may be so severe as to even preclude enforcement altogether in many cases, registration was considered a formality on which the "enjoyment and exercise" of rights was subject, and therefore, contravened Art. 5(2).[344]

The record contains further skepticism of the registration prerequisite as not being well aligned with policy goals.[345] Other sufficient incentives exist for copyright claimants to timely register works, such as eligibility to recover statutory damages and attorneys' fees, legal presumptions of validity and ownership, and certain "intangible factors" such as the "belief that a registration certificate constitutes a government agency's stamp of approval on the fruit of the

336 H.R. REP. NO. 100-609, at § IIIC1 (1988).

337 *Id.*

338 *Id.*

339 *Id.*

340 *Id.*

341 S. REP. NO. 100-352, at 13–25 (1988).

342 Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853, 2859 (1988).

343 S. REP. NO. 100-352, at 17.

344 *Id.* at 16.

345 *Id.* at 19–25.

author's creative efforts."[346] Because the Library of Congress could make acquisitions by means other than demanding deposit copies, and there was minimal concern that the "floodgates of litigation" would open, there was scant reason to retain the registration prerequisite even with respect to domestic works.[347]

In addition, the legislation that removed the registration prerequisite for foreign works also doubled the amount of statutory damages.[348] Now, the CASE Act halves the remedies for untimely registered works at the CCB.[349] It effectively places small claims of foreign works in their pre-Berne position, requiring application for registration as a prerequisite to filing a claim, and issuance of a registration to obtain pre-Berne amounts of statutory damages.[350]

One may argue that the CASE Act's prerequisite of an issued or pending registration does not implicate Art. 5(2) because CCB proceedings are voluntary, and claimants[351] may still sue on unregistered foreign works in federal district court.[352] However, the practical impediments to bringing a lawsuit in federal court are universal to claimants, and there is no reason to conclude that fewer copyright small claims exist for foreign works. Thus, claimants of foreign works are left with Hobson's choice: comply with registration formalities to vindicate a small claim at the CCB or litigate in federal district court, where there is no registration prerequisite, but where the cost outweighs recovery. Under these conditions, the

346 *Id.* at 20.

347 *Id.* at 21 (estimating less than 2000 cases per year increase from lawsuits on unregistered works); Bils, *supra* note 109, at 505–06 (discussing practical impediments to preregistration in small claims).

348 Pamela Samuelson & Tara Wheatland, *Statutory Damages in Copyright Law: A Remedy in Need of Reform*, 51 WM. & MARY L. REV. 439, 455 (2009). The amount was increased again by 50% in 1999; while the increases generally kept pace with inflation, the CASE Act was passed at a time when inflation was already 55.35% of 1999, and on the precipice of historically high rates in 2021-2022 (4.7% and 8.0% respectively); *US Inflation Calculator*, https://www.usinflationcalculator.com/inflation/current-inflation-rates/ [https://perma.cc/PX3H-L6KT].

349 17 U.S.C. § 1504(e).

350 102 Stat. at 2859; S. REP. NO. 100-352, at 17.

351 Note the difference between "foreign domiciled claimants" and "foreign works." A United States claimant may bring a claim based on a foreign work, and a foreign claimant on a United States work.

352 17 U.S.C. § 1504(a).

"keys to the courthouse" approach of the CASE Act implicates—and runs afoul of—Art. 5(2)[353]

Thus, the CASE Act's registration requirements for foreign works should be removed. While enhanced remedies at the CCB may remain for timely made registrations under the same reasoning as permitting statutory damages for timely registered works in civil litigation, the keys to the CCB should not be held hostage by requiring formalities. The reasons recorded in the legislative record at the time the United States acceded to Berne were sound and apply in full force to the CASE Act and CCB proceedings.[354]

E. PROVIDE STATUTORY SUCCESSION.

In 2025, President Trump suddenly dismissed the Librarian of Congress, and then the Register of Copyrights, Shira Perlmutter.[355] At the time of writing, the subsequent legal action over the Register's termination is ongoing,[356] and the Office continues to operate under considerable uncertainty, with no clear statutory successor and little public communication about who, if anyone, has formal authority to act as Register.[357] During this period, the Office has issued unsigned copyright registration certificates,[358] raising questions about the legitimacy and continuity of its administrative actions.

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353 Berne Convention for the Protection of Literary and Artistic Works art. 5(2), opened for signature July 24, 1971, 25 U.S.T. 2170, 828 U.N.T.S. 221, amended Sept. 28, 1979.

354 S. REP. NO. 100-352, at 17.

355 Katherine Tully-McManus, *Trump Fires Top US Copyright Official*, POLITICO (May 10, 2025), https://www.politico.com/news/2025/05/10/trump-u-s-copyright-official-00340306 [https://perma.cc/VJS3-G65J].

356 *See, e.g.*, Perlmutter v. Blanche (1:25-cv-01659), COURTLISTENER, https://www.courtlistener.com/docket/70345542/perlmutter-v-blanche/, [https://perma.cc/C73Z-PF7R].

357 As of 8-4-25, Perlmutter still identified on copyright.gov. *Leadership*, U.S. COPYRIGHT OFFICE, https://www.copyright.gov/about/leadership/ [https://perma.cc/5JEC-SKF4].

358 *See, e.g.*, Linda J. Zirkelbach, *I Just Received My Copyright Certificate of Registration with No Signature-Now What?*, VENABLE (June 5, 2025), [https://www.venable.com/insights/publications/2025/06/i-just-received-my-copyright-certificate-of [https://perma.cc/RS38-8CAZ].

Although the Office has continued functioning, this leadership vacuum nearly halted operations of the CCB, whose authority depends heavily on the stability and oversight of the Register.

The CASE Act requires that CCB Offers be appointed on rotating terms.[359] During July 2025, the tenure of one of the CCB Officers was concluded.[360] However, with no Librarian of Congress to validly appoint his replacement, he was temporarily "reappointed" to serve until his replacement found and new appointment made.[361] It is unclear whether this "reappointment" suffers the same legal defects that prevented a new Officer from taking an appointment, or what impact this may have on CCB determinations issuing during this interregnum.

This episode underscores the precariousness of a critical federal agency that lacks both institutional insulation and a statutory line of succession. To be clear, the institutional limbo extended beyond the CCB. However, the threat of a full operational shutdown, threw the issue into sharp focus: a single leadership vacancy could paralyze a congressionally mandated tribunal.

Congress should take steps to ensure that the Office, and particularly the CCB, can withstand the vicissitudes of political disruption. Establishing a clear, codified framework for succession would safeguard against administrative paralysis and bolster the Office's legitimacy in the eyes of both the public and international stakeholders. Without such reforms, future instability could further undermine the Office's authority and effectiveness.

VII. CONCLUSION

The CASE Act and the CCB fall short of their policy objectives. The primary deficiency is the inability of pro se claimants to adequately state a claim. The best way to address this is to remove the practitioner case caps to foster the development of cost-effective and efficient attorney representation. The case caps were intended to curb abusive practices and promote efficient docket management, but they are not an effective method to achieve those goals, and they have the further undesirable effect of deterring attorney representation.[362] There are other, more effective ways to detect and deter abusive practices, including a lower floor on statutory damages, as demonstrated by IPEC-SCT. Additionally,

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359 17 U.S.C. § 1502(b)(1) (Copyright Claims Officer appointed by the Librarian of Congress).

360 *About the Copyright Claims Board*, COPYRIGHT CLAIMS BOARD, https://ccb.gov/about/ [https://perma.cc/Z4AM-T3M8].

361 *Id.*

362 *See supra* Sections VI.A–D.

legislative amendments should be enacted to permit parties to consent to CCB jurisdiction and alternative methods of service.

Further, the CASE Act and CCB procedures fail to comply with the United States' obligations under international treaties. Legislative action should be taken to enact more robust laws on moral rights, and the CCB's jurisdiction should be expanded to hear such cases. There is clearly a demand for such claims to be heard in a small-claims venue, and the laws in place now fall short of what is required under treaty obligations. Further, the CASE Act's registration requirement for foreign works should be removed, as it is a de facto formality barring the availability of any remedy for small claims of foreign works.

Lastly, the CCB and the CASE Act should be amended to provide for statutory succession to ensure that operations proceed insulated from the vicissitudes of political turmoil.