



CARLI

Consortium of
Academic and Research
Libraries in Illinois

Deconstructing the CASE Act

Libraries, Users, and
Copyright Small Claims

About Us

Sara R. Benson

Associate Professor and
Copyright Librarian
University of Illinois at
Urbana-Champaign
Libraries

srbenson@illinois.edu

Timothy Vollmer

Scholarly
Communication +
Copyright Librarian
University of California
Berkeley Library

tvollmer@berkeley.edu

Carla S. Myers

Associate Librarian and
Coordinator of Scholarly
Communications
Miami University
Libraries

myersc2@miamioh.edu



Today

1. An overview of the CASE Act
2. How does the CASE Act impact libraries?
3. Library opt out and educating our communities
4. A glimpse into the CCB proceedings so far
5. Q&A

NOTE: Information vs. legal advice



An Overview of the CASE Act

What is the CASE Act?

- Copyright Alternative in Small-Claims Enforcement (CASE) Act
- Passed in December 2020, establishing a new chapter in U.S. copyright law (17 U.S. Code), Ch. 15
- Establishes a Copyright Claims Board (CCB) within the U.S. Copyright Office with the intent of providing an option to resolve certain copyright disputes outside the Federal courts



People you will Meet at the CCB

Copyright Claims Officers (CCOs)

- Not judges, but individuals with deep expertise in copyright law
- Appointed by the Librarian of Congress in consultation with the Registrar of Copyrights
- Render determinations on the claims, counterclaims, and defenses that may be brought before CCB

Copyright Claims Attorneys (CCAs)

- Attorneys who has not fewer than 3 years of substantial experience in copyright law
 - Will help with CCB administration
- 

Parties in the CCB

- The 'Claimant' - the person filing a claim
- The 'Respondent' - the person a claim is filed against
- The 'Counterclaimant' - a person filing a counterclaim against a claimant on the same issue they filed on



Claims that can be brought before the CCB

- A claim for infringement of an exclusive right
- A party accused of infringement can file a claim seeking a ruling from the CCB that its actions do not infringe copyright
- A claim for misrepresentation in connection with a DMCA 512 notification, or a counter notification seeking to replace removed or disabled material

Filing a Claim

Electronic filing and case management system for the CCB: <https://ccb.gov/>

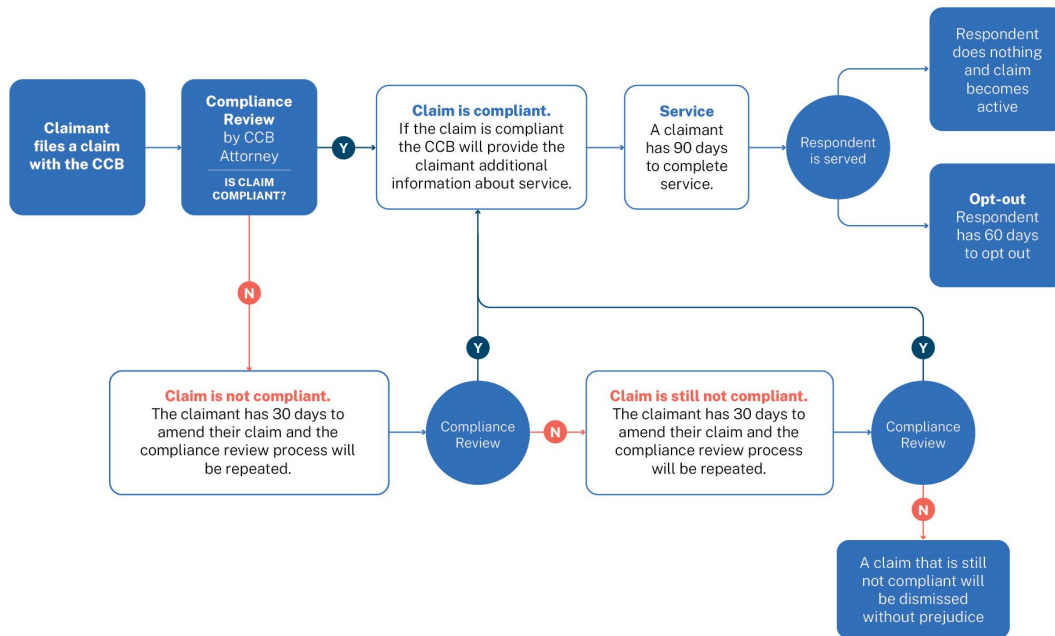


Photo Credit: U.S. Copyright Office: <https://ccb.gov/claimant/index.html#when>

Fees

- The filing fee is divided into two payments, with the first payment of \$60 due when the claim is filed
- The second payment of \$40 (\$100 total) and is due if the proceeding moves forward
 - If the respondent opts out of the CCB proceeding, the second payment does not need to be made

Serving Notice

- The first notice comes from the claimant has 90 days to serve notice of the claim on the respondent, performed in compliance with State law for serving a summons in the State where service is made
- Notices served on on business entities (e.g., corporations, partnerships, unincorporated associations), may need to go to their a designated service agent
- Claimants can as a respondent to waive service, meaning they agree to receive the claim without having been served according to the formal rules.
 - Benefit? It gives respondents an extra 30 days to respond to a claim after the proceeding has become active.
- Proof of service must then be filed with the CCB
- A separate notice will also be sent to the respondent by the CCB about the pending proceeding against them and will include information about their right and the pros and cons of doing so

Voluntary Participation

- Participation in CCB proceedings is voluntary!
- When a respondent is notified of a claim against them, they have 60 days to opt-out of the proceedings.
 - If a respondent chooses to opt-out, the claimant may then choose to file a copyright lawsuit against the respondent in Federal court.
 - If they fail to opt-out of the CCB proceeding before the deadline, respondents lose their opportunity to have the dispute decided by a court and the proceeding then moves forward in the CCB, with or without their participation, and the respondent will be bound by the CCbs determination

Proceedings

- Generally, claims will be heard by all three CCOs
- Both parties may be represented by an attorney or qualified law student, or may represent themselves
- Discovery, where all parties share evidence they have relevant to the proceeding, and can include written questions and document requests
- Both parties can submit written statements, documents and testimony as evidence supporting their claim, counterclaim, or defense
- When appropriate, the CCB will decide claims based only on the testimony, documents, and statements submitted after discovery.
- The CCB can conduct hearing via videoconference, when they feel it is needed, to receive oral presentations or testimony on issues of fact or law
- When a claimant asks for money damages that are not over \$5,000, “Smaller Claims” procedures can be used, where a claim is decided by a single CCO

Determinations

After hearing evidence, the CCB will issue their determination, reached by a majority of the Board. It will include:

- an explanation of the factual and legal basis of their determination; any agreed terms regarding the cessation of infringing activity under section 1504(e)(2)
- terms of any settlement the parties agreed to under subsection (r)(1); and
- a clear statement of all damages and other relief awarded.

Relief that can be Awarded

- Actual damages and profits (e.g., lost sales), up to \$30,000 per proceeding; or
- Statutory damages as set by the law, that cannot exceed \$15,000 for each work infringed, up to \$30,000 per proceeding (no matter how many works are involved in the proceeding).
 - Here, timeliness of registration can impact damages \$7,500 per work and \$15,000 per proceeding.
- Note in the determination to stop infringing activities, if a party has agreed to do so.
- Attorneys' fees and costs

Review of Determinations

- Parties have 30 days to submit a written request for the CCB to reconsider or modify its determination after it is issued if they feel a clear error of law material fact, or a technical mistake was made
- If the CCB denies a party's request for reconsideration, parties have 30 days to request review of the final determination by the Register of Copyrights if they feel CCB incorrectly denied reconsideration.
- A party can seek a federal district court order canceling, modifying, or correcting a determination of the CCB only in very narrow circumstances

**How does the CASE Act impact
libraries (and users we serve)?**

Who can be brought before the CCB?

- Claimants may serve notices to alleged copyright infringers
- BUT, important caveats for groups of institutions and users that cannot be asked to appear before the CCB



Photo by [Tingey Injury Law Firm](#) on [Unsplash](#)

Federal and state governmental entities excluded

- 17 U.S.C. § 1504(d)
- No CCB claims against federal or state government bodies
- So, no claims against state universities or colleges, and libraries that sit within
- But exemption doesn't extend to private colleges and universities, and also not to municipal or city governments (nor libraries)



Libraries & archives preemptive opt-out

- 17 U.S.C. § 1506(aa)
- Libraries and archives can preemptively opt out of having CCB claims brought against them
- Libraries as defined in 17 U.S.C. § 108
- No fee, no renewal needed, but must submit information to Copyright Office
- *How to do it later in presentation*



Photo by [Shunya Koide](#) on [Unsplash](#)

Library & archives *employees*

- Copyright Office initially interpreted CASE Act to not cover ***employees*** of libraries and archives, even though the preemptive ability to opt out for library and archives as ***institutions***
- NPRM comments provided legal, policy arguments in favor of covering library workers
- Success! Now, when a library or archives opt out, it also covers the employees acting within the scope of their employment

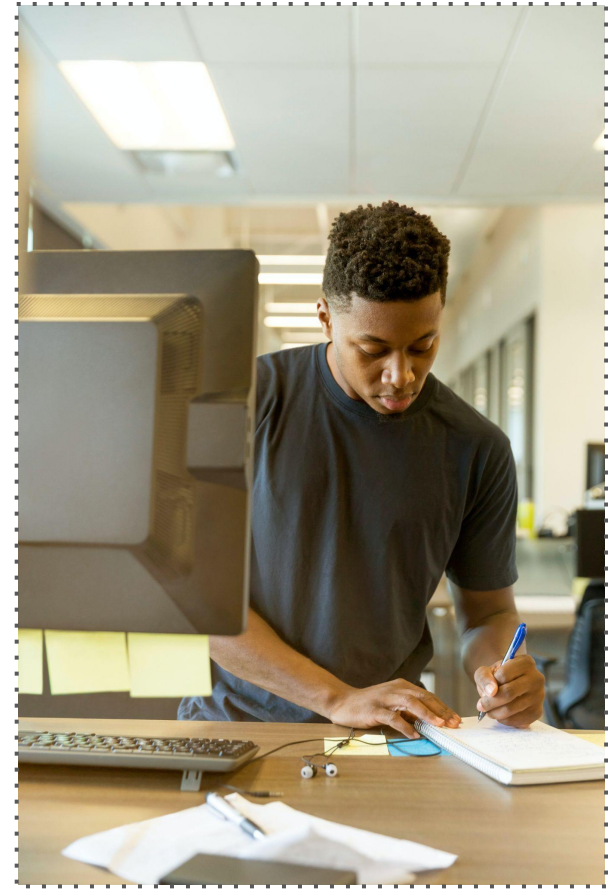


Photo by [LinkedIn Sales Solutions](#) on [Unsplash](#)

What about library users, students, teachers?

- Federal and State entities exempted altogether
- Libraries and archives can preemptively opt out (covering employees)
- Q: Public college student including copyrighted images in their thesis?
- Q: Private university faculty or instructor uploading copyrighted content to a course website?



Photo by [Christina @ wocintechchat.com](https://www.wocintechchat.com) on [Unsplash](https://unsplash.com)

What's the danger?

- Will CCB “chill” education, research, knowledge production?
- Important protections built in
- CASE Act has ***lowered the bar for litigious rightsholders*** to go after uses of copyrighted works that are specifically protected under limitations and exceptions to the law!

Fair Use in a Day in the Life of a College Student



Fair use is a vitally important right for everybody, everywhere. A typical day in the life of a student shows the ways she constantly relies on fair use.

How Allison Relies on Fair Use on Campus



checking email

Allison forwards to her brother an e-mail from her cousin that includes five attached pictures from last weekend's football game and tailgate.¹



in class

In Allison's English class, the professor mentions places James Baldwin frequented in Paris. Allison looks them up online and views photos of these locations and landmarks.²



finishing a paper

Allison scans materials from the library for her paper on James Baldwin. In her paper she includes quotes from Baldwin's essays and from criticisms by Baldwin scholars.³



online

Allison forgot to scan or note one of her sources, so she looks up the quote in Google Books. The search gives her the name of the book and page number seconds later and she is able to turn her paper in on time.⁴



relaxing over lunch

Waiting in line, Allison watches a clip from John Oliver's *Last Week Tonight* that a friend posted on Facebook. She shares the clip on her own Facebook page.⁵



watching shows

While eating, Allison watches an episode of *Game of Thrones*, which was "slung" to her cell phone from her DVR.⁶

Full infographic by ARL [here](#), [CC BY](#)

Library opt out and educating our communities

A few things to note:

- As mentioned, libraries & archives can preemptively opt out on behalf of the organization and employees (783 entries to date)
- CASE Act claims could be filed simultaneously with registration, so these claims could happen quickly
- CASE Act claims not as strict relating to statutory damages (damage amounts are not as small as “small claims” appear)



Opt Out

- Coordinate with Office of General Counsel, Library Deans, and appropriate contacts for libraries and archives to Opt Out
 - A certification signed, under penalty of perjury, by any person with the authority to take legally binding actions on behalf of the library or archives in connection with litigation. The certification affirms that the library or archives qualifies for the limitations on exclusive rights set forth in section 108 of Title 17.
 - Determine who has “the authority to take legally binding actions on behalf of the library or archives in connection with litigation.”
 - Have them sign, under penalty of perjury



How libraries opt out

- Must be done by someone with legal authority
- Must include all libraries to be covered under the institutional opt-out
 - Library name
 - Library address
 - Library website
 - Point of contact
- libraries-archives@ccb.gov



COPYRIGHT
CLAIMS BOARD

Library and Archives Opt-Out Form

The Copyright Alternative in Small-Claims Enforcement (“CASE”) Act of 2020 allows a library or archives that does not wish to participate in proceedings before the Copyright Claims Board (“CCB”) to preemptively opt out of such proceedings.

A library or archives that wishes to opt out of future CCB proceedings must complete all required fields in this form, including the submitter’s information on this page and the information regarding any library or archives being opted out in this form’s appendix, and submit a completed form to libraries-archives@ccb.gov. A library or archives that wishes to revise this information or to rescind this election should contact the CCB at libraries-archives@ccb.gov.

Under penalty of perjury under the laws of the United States of America, the undersigned, hereby declares that they have the authority to take legally binding actions on behalf of any library or archives listed in this form’s appendix in connection with litigation and that any listed library or archives qualifies for the limitations on exclusive rights under 17 U.S.C. § 108. The undersigned also understands that if a federal court determines that a library or archives that was added to the CCB libraries and archives opt out list subsequently does not qualify for the limitations on exclusive rights under 17 U.S.C. § 108, that library or archives must inform the CCB of the court’s determination, and submit a copy of the relevant order or opinion, if any, within fourteen days after the determination is issued.

SUBMITTER’S INFORMATION

Printed Name ▼	Email ▼
Title ▼	Phone number ▼
Signature ▼	Date ▼

How will claimants know libraries are off limits?

- Publicly accessible list
- Claimants urged to consult library and archives opt-out list before attempting to initiate a claim
- CCB attorneys will also consult list in their initial review of claim filing

Library or Archive Name	Library or Archive Address	Library or Archive Website	Required Point of Contact	Optional Point of Contact
125th Street Library	224 East 125th Street New York, NY 10035	NYPL.org	General Counsel, 212-930-0552, 476 5th Ave, New York, NY 10018, LegalOffice@nypl.org	
53rd Street Library	18 West 53rd Street New York, NY 10019	NYPL.org	General Counsel, 212-930-0552, 476 5th Ave, New York, NY 10018, LegalOffice@nypl.org	
58th Street Library	127 East 58th Street New York, NY 10022	NYPL.org	General Counsel, 212-930-0552, 476 5th Ave, New York, NY 10018, LegalOffice@nypl.org	
67th Street Library	328 East 67th Street New York, NY 10065	NYPL.org	General Counsel, 212-930-0552, 476 5th Ave, New York, NY 10018, LegalOffice@nypl.org	
96th Street Library	112 East 96th Street New York, NY 10128	NYPL.org	General Counsel, 212-930-0552, 476 5th Ave, New York, NY 10018, LegalOffice@nypl.org	
Abilene Christian University Brown Library	760 Campus Court, Abilene, TX 79699	https://www.acu.edu/library	James Wiser 325.674.2476 760 Campus Court Abilene, TX 79699 james.wiser@acu.edu	Mark McCallon 325.674.2348 760 Campus Court Abilene, TX 79699 mccallonm@acu.edu
Abplanalp Library,	716 Stevens Avenue, Portland, ME 04103	library.une.edu	Elizabeth Dyer, MLIS, MSED, AHIP	Ronald Schneider, Esq. BernsteinShur

Educate the Community

- Although libraries/archives can preemptively opt out just once and not have to opt out again, ANYONE can opt out of CASE Act procedures.
- Let patrons, academics, students know that they, too, can opt out and why they might want to.

CASE Act Toolkit



Share



Tweet




Email

About this toolkit

The content of this toolkit is informed by the work of Rachael Samberg, scholarly communication officer and program director, Office of Scholarly Communication Services, University of California, Berkeley. It was developed in consultation with ARL copyright counsel Jonathan Band. Nothing in these materials constitutes legal advice. As recommended throughout the toolkit, please work with your university counsel to understand how the laws and regulations described below apply to your institution.

What is the CASE Act?

In 2020, Congress passed the “ Copyright Alternative in Small-Claims Enforcement Act,” or “CASE Act.” The Act creates a Copyright Claims Board (CCB), a non-judicial tribunal housed at the Copyright Office, to decide copyright infringement cases; the CCB can award monetary relief of up to \$30,000 per proceeding. Notably, if a copyright owner files a claim in the CCB, the recipient of that claim (the “respondent”) can choose to “opt out” of the CCB; if a respondent opts out, then the copyright owner would need to re-file the action in federal court if the copyright owner wishes to continue to pursue the matter.

<https://www.arl.org/case-act-toolkit/>

Why Opt Out?

- It is more timely/expensive to file in federal court (so CCB claimants may not follow up with a federal lawsuit)
- Generally, a federal lawsuit cannot begin until registration is complete (it will take longer)
- In federal court, if registration was not timely, they may be unable to get larger, statutory damages (less incentive to sue)
- In federal court, the case would be heard by JUDGES, not CCB “experts”



Time is ticking...

- Educate the community not to ignore official notices from the CCB process (claims)
- Recipients of claims have 60 days to opt out



Photo by [Nathan Dumlao](#) on [Unsplash](#)

Consider creating a libguide/website

- To educate your community, consider creating an informative libguide or website about the CCB process
- For instance, see:
<https://www.lib.berkeley.edu/research/scholarly-communication/copyright>
- There is also a helpful **CASE Act Toolkit** from ARL, available at:
<https://www.arl.org/case-act-toolkit/>

Berkeley Library
UNIVERSITY OF CALIFORNIA

Q

≡

Copyright basics

Fair use

Instruction

Publishing issues

Managing copyright

Licensing

Dissertations

Text data mining

Small claims

Library permissions

FAQ

Small claims

In 2020, Congress passed a law called the “Copyright Alternative in Small-Claims Enforcement Act of 2020,” known as the “CASE Act.” The CASE Act mandated the formation of the Copyright Claims Board (CCB), a tribunal operating through the U.S. Copyright Office instead of the federal judicial branch, for the purpose of deciding “small claims” copyright infringement actions via a quicker, less expensive process — that is, without all of the procedural requirements of a normal federal court case. Damages are capped at \$30,000 for CCB cases.

This page is for UC Berkeley faculty, staff, students, and scholars who might one day find themselves in receipt of a notice that a CCB action has been filed against them. The University of California also has a [systemwide information page](#) for UC-affiliated scholars, students, and employees.

Please note that the U.S. Copyright Office is still creating the rules that implement this new law, so the information on this page will evolve. And as with all information on this Office of Scholarly Communication Services website, **our office cannot provide you with legal advice.** However, we can help you understand how the law works. If you have further questions, contact us at schol-comm@berkeley.edu.

If you receive a claim notice

What will a notice look like?

24/7 chat

A glimpse into the CCB proceedings so far

CCB proceedings

- CCB launched June 16, 2022
- 100 filings so far (projected ~600 annually)
- ~90 for infringement
- Case dockets available for public viewing at <https://dockets.ccb.gov/search/cases>

COPYRIGHT CLAIMS BOARD

Case search

Case search

[Columns](#)[Export](#)[Share](#)[View closed dockets](#)

Name	Docket #	Parties
Kray v. Helderman, et al	22-CCB-0103	Jordan S Garrett, Luke Taylor, Matthew Hel
Pop Chart Lab, Inc. v. Shenzhenshi Yijiangnan Dianzishangwu Youxiangongsi	22-CCB-0102	Shenzhenshi Yijiangnan Dianzishangwu Yo
Kramer v. Tobias	22-CCB-0101	Robert Tobias, Robert Kramer
Joe Hand Promotions, Inc. v. The Village Restaurant LLC d/b/a Indian Village Restaurant & Lounge, et al	22-CCB-0100	Joe Havelly, Joe Hand Promotions, Inc., Lor Restaurant LLC d/b/a Indian Village Restau Roger A. Singleton
Durant v. Soho Taco Gourmet Taco Catering LLC	22-CCB-0099	Soho Taco Gourmet Taco Catering LLC, Jo
Joe Hand Promotions, Inc. v. Arif Skyline Cafe LLC, et al	22-CCB-0098	Joe Hand Promotions, Inc., Hellen A. Kassa

Who's filing, and for what?

- Types of works claimed as infringing: 13 literary, 15 motion picture, 6 musical, 46 pictorial/graphic, 10 sound recording
- 27 of claimants are represented by a law firm
- Wide range of respondents, but mostly digital media businesses, tech companies, food establishments
- No obvious trend of individuals, or teachers, students, etc.

COPYRIGHT CLAIMS BOARD

Case

Case search

[Columns](#)[Export](#)[Share](#)[View closed dockets](#)

Name	Docket #	Parties
Kray v. Helderman, et al	22-CCB-0103	Jordan S Garrett, Luke Taylor, Matthew
Pop Chart Lab, Inc. v. Shenzhenshi Yijiangnan Dianzishangwu Youxiangongsi	22-CCB-0102	Shenzhenshi Yijiangnan Dianzishangwu
Kramer v. Tobias	22-CCB-0101	Robert Tobias, Robert Kramer
Joe Hand Promotions, Inc. v. The Village Restaurant LLC d/b/a Indian Village Restaurant & Lounge, et al	22-CCB-0100	Joe Havely, Joe Hand Promotions, Inc. Restaurant LLC d/b/a Indian Village Restaurant Roger A. Singleton
Durant v. Soho Taco Gourmet Taco Catering LLC	22-CCB-0099	Soho Taco Gourmet Taco Catering LLC
Joe Hand Promotions, Inc. v. Arif Skyline Cafe LLC, et al	22-CCB-0098	Joe Hand Promotions, Inc., Hellen A. K

Questions and Answers!

Compact Copyright: Quick Answers to Common Questions

Sara R. Benson

ISBN: 978-0-8389-3756-3

▶ FIND THIS BOOK AT alastore.ala.org



COPYRIGHT — AND — COURSE RESERVES



**Legal Issues and Best Practices
for Academic Libraries**

Carla S. Myers

Copyright and Course Reserves

Legal Issues and Best Practices for Academic Libraries

by Carla S. Myers

October 2022

<https://www.abc-clio.com/products/a5675p/>