

Publication

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Client Alert: Important Copyright Protections in New COVID-19 Relief Package

The COVID-19 relief package enacted on December 27, 2020, added two important new protections for copyright owners and content providers—namely, the Copyright Alternative in Small-Claims Enforcement (CASE) Act and the Protecting Lawful Streaming Act.

The Streaming Act authorizes significant prison sentences and steep fines for commercial, for-profit streaming piracy services. The Act applies to services that were designed for streaming without the authority of the copyright owner, have no significant purpose besides unauthorized streaming, or are intentionally marketed to promote unauthorized streaming. Although it does not apply to individuals who use pirate streaming services, normal practices by online service providers, good faith business disputes or non-commercial activities, it provides an important new tool for thwarting the estimated \$30 billion in annual losses due to criminal streaming services.

The CASE Act will likely have a broader impact. It creates a quasi-judicial Copyright Claims Board as an alternative forum in which parties may voluntarily resolve certain copyright claims, allowing copyright owners a new venue for remedying copyright infringement without requiring federal court litigation. The Board is empowered to resolve claims of infringement, misrepresentation in connection with a notification of infringement or counter

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notification under 17 U.S.C. § 512(f), and certain related counterclaims and equitable defenses. Importantly, claims or counterclaims of infringement may not be asserted unless a registration certificate has been issued for the work or the owner has applied for registration with the Copyright Office.

Under the CASE Act, the Board can award actual or statutory damages for claims of infringement. However, the statutory damages cannot exceed \$15,000 per work infringed, and the total monetary recovery for any claims in a single proceeding, whether from infringement claims or otherwise, may not exceed \$30,000. A respondent in the proceeding is able to opt out of the proceeding within 60 days of the date of service. Once the respondent does so, the proceeding will be dismissed with prejudice, leaving the parties to resolve their claims in federal court, the exclusive jurisdiction for such claims. To avoid abuse of this new forum, if the Board finds that a party has pursued a claim, counterclaim, or defense for a harassing or improper purpose on more than one occasion in a 12-month period, the Board can bar the party from initiating claims for a 12-month period.

While the CASE Act is intended to serve artists and online workers in their small claims, it will likely also be useful for large content providers to address smaller yet problematic or recurring infringements of their content. In addition, content providers will need to set up systems to monitor proceedings and determine steps for deciding whether to opt out of such proceedings. The most important tool in the settlement of these claims will likely be the ability to opt out of the proceedings and choose to resolve the claims in federal court. Of course, before deciding to consent to the Board proceedings, a content provider should consult the CASE Act to determine which defenses and counterclaims are available.



Should you have any questions concerning your business's copyright matters and the applicability of the CASE or Streaming Acts, do not hesitate to contact Abigail Flores, Antony McShane or your Neal Gerber Eisenberg attorney.

Furthermore, information on the Trademark Modernization Act, which is also incorporated in the COVID-19 relief package, is posted here. Please contact your Neal Gerber Eisenberg attorney regarding any questions.

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