



To: Copyright Office
From: Professor Eric Goldman, Associate Dean for Research & Co-Director of the High Tech Law Institute, Santa Clara University School of Law, Santa Clara, California*
Date: November 28, 2021
Re: Comments on Copyright Claims Board Rulemaking (37 CFR Parts 201, 220, 222, 223, and 224) [Docket No. 2021–6]

I encourage the Copyright Office to anticipate how bad-faith actors may misuse the Copyright Claims Board (CCB) for illegitimate purposes and to harden its systems accordingly. These comments highlight two areas of concern: service of process and trolling.

Service of process

The CCB incorporates existing service rules that apply to judicial proceedings (17 USC 1506(g)(4) & (5)), but those service rules can be gamed in non-CCB contexts.¹ Gaming is especially a concern when a claimant sues anonymous or pseudonymous defendants, an issue that will come up frequently in the CCB. For example, in *Hassell v. Bird*,² it was never clear that the pseudonymous defendant got properly served. When claimants engage in the theater of serving *someone*, how sure are we that service reached the actual wrongdoer?

If the claimant misidentifies the defendant or the defendant’s address, then claimants can obtain a bogus CCB default judgment and weaponize it for a wide range of purposes. To redress this risk, the CCB needs to validate that the right defendant was identified and that service was made to that person. The Copyright Office’s proposed rules don’t address what steps it will take to rigorously scrutinize service. That leaves open a significant hole that claimants can abuse.

Furthermore, if a claimant gets caught abusing service, will they suffer any consequences other than dismissal of their complaint/vacation of their judgment? In theory, the service abuse could be turned over to law enforcement, but prosecutions over abusive litigation techniques are extraordinarily rare. Without any consequences for misbehavior, of course bad actors will abuse the rules. If the CCB wants its adversarial process to be regarded as having integrity, it should invest some resources in identifying—and punishing—service abuse.

Anti-trolling efforts

The notices that accompany service will help educate defendants about the CCB and their rights. However, those notices do not redress any CCB-related activity that takes place before defendants get that notice. It’s inevitable that trolling copyright owners will send demand notices

* I’m submitting these comments on my own behalf, not on behalf of any organization or third party.

¹ See, e.g., Revised Amicus Brief of Eugene Volokh in Support of Appellant, *Hassell v. Bird*, S235968 (Cal. Sup. Ct. filed May 22, 2017), <https://www.courts.ca.gov/documents/21-s235968-ac-eugene-volokh-052217.pdf>.

² *Hassell v. Bird*, 5 Cal.5th 522 (Cal. 2018).

threatening to take the defendant to the CCB, and they will also send demand notices after filing a CCB complaint but before service of process has been approved. Defendants will write settlement checks in response to illegitimate demands out of ignorance and fear.

The CCB doesn't regulate any of this pre-service conduct, but it should:

- invest in enforcement efforts to identify abusive pre-service demands,
- punish offenders by denying them access to the CCB (they can still go to court, they just don't get CCB privileges),
- educate trolling victims of their rights and provide assistance to help them redress their victimization, and
- undertake robust public educational efforts (more than have been currently undertaken) to increase overall awareness of the CCB and the possibility pre-service CCB-related threats may be trolling. If the Copyright Office can't afford a nationwide PR campaign, it should seek additional financial support from Congress to reflect the true cost of the CCB's launch.

The CASE Act authorized the Copyright Office to establish a maximum number of proceedings that a claimant may initiate (17 USC 1504(g)). A volume cap is essential to curb abusive high-volume trolling. The Copyright Office should implement a low cap, at least temporarily, until it becomes clearer how claimants (including trolls) are using the CCB.

Thank you for considering my comments.

A handwritten signature in dark ink, appearing to read "Eric Goldman", with a stylized, flowing script.

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