



School of Law
UNIVERSITY OF GEORGIA

Journal of Intellectual Property Law

Volume 29 | Issue 1

Article 6

October 2021

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

Cori Henris

University of Georgia School of Law, tch74287@uga.edu

Follow this and additional works at: <https://digitalcommons.law.uga.edu/jipl>



Part of the [Intellectual Property Law Commons](#)

Recommended Citation

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 (2021).

Available at: <https://digitalcommons.law.uga.edu/jipl/vol29/iss1/6>

This Notes is brought to you for free and open access by Digital Commons @ University of Georgia School of Law. It has been accepted for inclusion in Journal of Intellectual Property Law by an authorized editor of Digital Commons @ University of Georgia School of Law. [Please share how you have benefited from this access](#) For more information, please contact tstriepe@uga.edu.

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

Cover Page Footnote

J.D. Candidate, 2022, University of Georgia School of Law. I dedicate this Note to the small creators out there who continuously get taken advantage of. Hopefully, this Note can shed light on the shortcomings of this new Small Claims Court. I would like to thank Professor Joseph Miller for supervising this Note and assisting me in coming up with this topic.

**OOF! NICE TRY CONGRESS - THE DOWNFALLS
CASE ACT AND WHY WE SHOULD BE LOOKING
TO OUR COUSINS ACROSS THE POND FOR
GUIDENCE IN UPDATING OUR NEW SMALL
CLAIMS INTELLECTUAL PROPERTY COURT**

*Cori Henris**

* J.D. Candidate, 2022, University of Georgia School of Law. I dedicate this Note to the small creators out there who continuously get taken advantage of. Hopefully, this Note can shed light on the shortcomings of this new Small Claims Court. I would like to thank Professor Joseph Miller for supervising this Note and assisting me in coming up with this topic.

TABLE OF CONTENTS

I.	INTRODUCTION	178
II.	BACKGROUND	182
	A. CASE ACT.....	182
	1. Copyright Claims Board, Officers, and Attorneys.....	183
	2. Damages	184
	3. How a claim works in this system.	184
	4. Evidence and possibilities of settlement.	185
	B. THE INTELLECTUAL PROPERTY ENTERPRISE COURT OF THE UNITED KINGDOM	186
	1. Structure then and now.....	186
	2. Bringing a claim into the system.....	189
	3. A claim has been brought successfully. Now what?.....	194
	4. Remedies.	195
III.	ANALYSIS	195
	A. PROS OF THE CASE ACT.....	195
	1. Financial savings through the CASE Act.....	195
	2. The CASE Act may reduce the frequency of opportunistic infringements.....	196
	3. Parties still have a choice, and more people will be able to use it.....	196
	B. CONS OF THE CASE ACT.....	197
	1. The scope of possible cases should be limited to those that most need it.....	197
	2. Abuse of the system is likely to happen.	198
	3. The board's statutory limits allow for high penalties.....	199
	4. A copyright office tribunal established outside of the judicial system will be unconstitutional.	200
	C. PROS OF THE INTELLECTUAL PROPERTY ENTERPRISE COURT.	201
	1. Options available to a claimant and the procedure of the courts.....	201
	2. Reduced time and financial risk.	202
	D. CONS OF THE INTELLECTUAL PROPERTY COURT.....	202
	1. More decisions equal more confusion.....	202
	2. Strictness of the court.	203
	E. WHICH PARTS OF THE UK'S SYSTEM WILL CORRECT THE DOWNFALLS OF THE CASE ACT?	203
	1. Opting out gets an upgrade.....	204
	2. Broader jurisdiction and options for remedies.....	204

2021]	<i>OOF! NICE TRY CONGRESS</i>	177
	3. More consistent decisions.....	205
F.	WHAT IT IS UNABLE TO FIX?	205
	1. Little limitation on the scope of possible cases to those that most need it can lead to abuse.	205
	2. Steep penalties are still a possible issue.	206
	3. Would this be constitutional in America?	206
G.	COULD AN IPEC-STYLED SYSTEM WORK IN AMERICA?	206
IV.	CONCLUSION.....	208

I. INTRODUCTION

It was clear to the Framers of the United States that the protection of idea was of the utmost importance.¹ Article I, Section VIII of the Constitution declares various powers onto Congress.² The most important part of those is “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”³ Because of this Section, it has been necessary for our judicial system to provide a means to protect those rights if they are infringed upon.⁴ Just in 2018 alone, the number of filed copyright claims had reached the highest number it had ever been.⁵ California alone had about 16,817 filings between the years of 1996 to 2018 which made up about 22 percent of the national caseload.⁶

¹ *Just the Facts: Intellectual Property Cases—Patent, Copyright, and Trademark*, U.S. COURTS (Feb. 13, 2020),

<https://www.uscourts.gov/news/2020/02/13/just-facts-intellectual-property-cases-patent-copyright-and-trademark> (“The framers of the U.S. Constitution believed that codifying intellectual property (IP) rights at the federal level was important to economic independence, innovation, and domestic growth. IP rights were established in the U.S. Constitution in Article I, Section 8, which declares that Congress has the power ‘to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.’”).

² U.S. CONST. art. I, § 8.

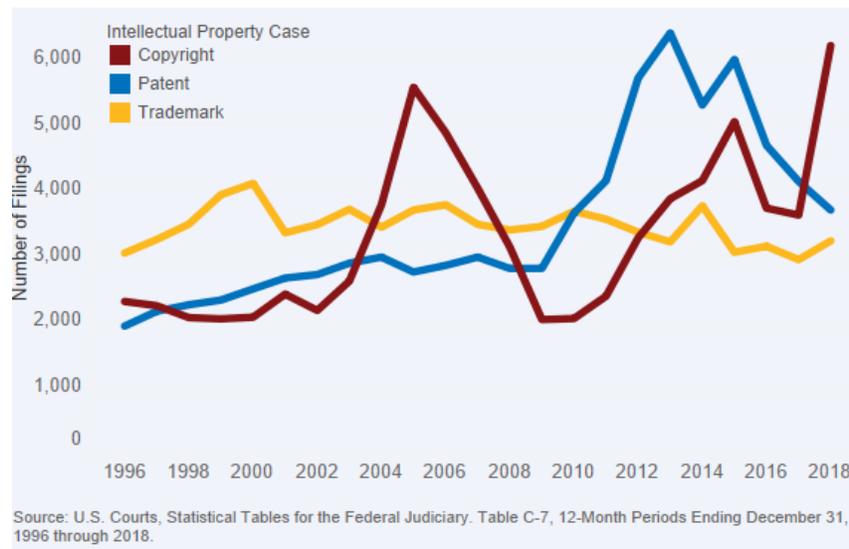
³ *Id.*; see also *Just the Facts: Intellectual Property Cases—Patent, Copyright, and Trademark*, *supra* note 1 (quoting the Constitution to show that the Framers found this to be so important that it needed to be written into the Constitution).

⁴ *Just the Facts: Intellectual Property Cases—Patent, Copyright, and Trademark*, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

Figure 17



And with the number of claims rising each day, one may be thinking “if there are so many more cases being brought without issue, why are we talking about this?” While many people can bring suits, there are many more who could be but cannot.

One would assume that copyright holders would be eager to sue the person or group that is using their idea as their own, right? While they doubtlessly want to do that, it may not actually be an option for them to pursue for various reasons. Many times, these creators are not able to afford a lawsuit and must cut their losses.

Think of the aspiring photographer who posts her photos on a public social media website. She may sell prints of those photos or sell private sessions for people who wish to have their pictures taken. Luckily, it is relatively inexpensive to file for a copyright on one's work and this particular artist was proactive in filing for one on all her work with the United States Copyright Office to ensure that her work is protected.⁸ Now envision that her photos are being used by

⁷ *Id.* at fig.1 (using this figure to show the rise in copyright cases over the years).

⁸ *First Steps in a Copyright Infringement Case*, JUSTIA, <https://www.justia.com/intellectual-property/copyright/infringement/first-steps-in-a-copyright-infringement-case/> (last updated June 2019) (“If you do not register your work, you still technically have a copyright, but you cannot bring a lawsuit in federal court to enforce it.”); see also David K. Hou, *Ten Things You (Probably) Didn't Know About Copyrights*, BOYLAND CODE (Jan. 10, 2018), <https://boylancode.com/ten-things-probably-didnt-know-copyrights/> (explaining that filing for a copyright is relatively inexpensive); *Copyright Office Fees*, U.S. COPYRIGHT OFFICE, <https://www.copyright.gov/circs/circ04.pdf> (last visited Sept. 19, 2020) (explaining how a

someone else without her permission. That person taking her photos is now making a profit from something that is not their work. “[P]hotographs are one of the most commonly infringed types of copyrighted works online, and 70% of photographers have seen their copyrighted work infringed.”⁹ Most of these photograph infringement cases have a value that is less than \$3,000 and thus, not worth the trouble of litigation.¹⁰

It is likely that this hypothetical photographer has little necessary time, money, or experience to get redress for the harm that the infringement did to her branding and goals in general. “If, as the Professional Photographers of America have told us, photographers generally earn about \$30,000 a year,” then it is almost impossible for her to even consider pursuing a federal copyrights infringement claim.¹¹ There are additional provisions in our current system that are meant to provide the modest copyright owner with the means to push for such a claim but even these provide little help.

Unlike most areas of the law, copyright law permits a court to award a reasonable attorney's fee to a successful plaintiff (or defendant). Moreover, a copyright owner may elect to receive an award of statutory damages of up to \$30,000 per infringed work—and up to \$150,000 per work in cases of willful infringement—in lieu of actual damages and profits.¹²

Even so, these incentives are not always enough to make it worth it to a small creator.

One of the main disincentives for creators, such as the professional photographer of America, to pursue claims is the fact that “[c]opyright law is

copyright is filed and any fees that are part of the process); *How Much Does A Copyright Cost*, ADLI <https://www.adlilaw.com/how-much-does-a-copyright-cost/#:~:text=The%20initial%20filing%20of%20a,certificates%20of%20registration%20as%20well> (last visited Sept. 19, 2020) (“The initial filing of a copyright application will cost between \$50 and \$65 depending on the type of form, unless you file online which will then only cost you \$35.”).

⁹ Kathleen K. Olson, *The Copyright Claims Board and the Individual Creator: Is Real Reform Possible?*, 25 COMM. L. & POL'Y 1, 1-2 (2020).

¹⁰ *Id.* at 2.

¹¹ United States House of Representatives 109th Congress, 2nd Session, *Statement of the United States Copyright Office before the Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary*, U.S. COPYRIGHT OFF. (Mar. 29, 2006), <https://www.copyright.gov/docs/regstat032906.html#:~:text=Section%201338%20of%20Title%2028,positive%20feature%20of%20our%20system> (including a statement from the United States Copyright Office).

¹² *Id.* at n.7; *see also* 17 U.S.C. § 504(c) (“Attorney's fees and statutory damages are available to plaintiffs only in cases where the copyright in the work was registered prior to the commencement of the infringement or within three months after first publication of the work. 17 U.S.C. §412.”).

federal law.”¹³ All parties wishing to bring any sort of copyright infringement claim must file that claim with the federal district courts, which have total jurisdiction over such cases.¹⁴ While there are positives about this, such as the consistency and quality of decision-making and the ability to collect damages, the cost of such litigation is outrageous.¹⁵ And while state courts typically offer some sort of small claims track, as of today, there is nothing similar to be found in the federal court system.¹⁶

At this point, one may be wondering, “well how much could it cost to begin a claim?” I am glad you asked. “Typically, a party can expect to spend several thousand dollars per month in court costs to defend against copyright infringement claims.”¹⁷ This cost can even reach heights of approximately \$300,000, including appeals.¹⁸ Thus, these creators have rights but no means to protect them.¹⁹ This high cost will include things like “communication between the parties, legal research, necessary court filings, meetings with opposing counsel or judges, and preparation for and attendance in court hearings.”²⁰ Not to mention, the added loss in work time searching to find a lawyer willing to take on a claim that will not yield high profits presents a different issue. Even if the creator can do all the leg work getting a claim filed, that does not guarantee that they will win or that their work will be protected from future infringements.²¹ There is a need for an answer to this issue within our society, given that we live in the age of social media where taking another’s work is just a screenshot away.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*; see also Richard Stim, *Copyright Infringement: How Are Damage Amounts Determined?*, NOLO <https://www.nolo.com/legal-encyclopedia/copyright-infringement-how-damages-determined.html> (last visited Sept. 19, 2020)

(discussing the three different types of damages that may be awarded in a copyright infringement case: actual damages, profits, and statutory damages); 17 U.S.C. § 504; *Remedies for Infringement: Damages and Profits*, LEGAL INFO. INST. <https://www.law.cornell.edu/uscode/text/17/504> (last visited Dec. 10, 2020) (explaining that damages can be calculated by “the copyright owner’s actual damages and any additional profits of the infringer, as provided by subsection (b); or statutory damages, as provided by subsection (c).”).

¹⁶ United States House of Representatives 109th Congress, 2nd Session, *supra* note 11.

¹⁷ Keli Johnson Swan, *The true cost of defending against copyright infringement litigation*, LEXOLOGY (Aug. 19, 2015), <https://www.lexology.com/library/detail.aspx?g=590fad1a-356d-4c04-bc7a-8d3e375c93a2>.

¹⁸ Crystal Everson, *What the Copyright Alternative in Small-Claims Enforcement Act Means for Small Businesses*, LEGALZOOM (Sept. 19, 2020), <https://web.archive.org/web/20200919164052/https://www.legalzoom.com/articles/what-the-copyright-alternative-in-small-claims-enforcement-act-means-for-small-businesses>.

¹⁹ *Id.*

²⁰ Swan, *supra* note 17.

²¹ *Id.* (stating that the cost of future compliance is often overlooked by parties bringing copyright infringement suits, which can make the cost of these types of cases rise even higher).

The Copyright Alternative in Small-Claims Enforcement Act of 2019 (CASE Act) was proposed and signed by President Donald Trump to provide a means for these small creators to fight against infringement.²² It passed in the U.S. House of Representatives on October 22, 2019 and continued to sit in the Senate until December of 2020.²³ This Act is a step in the right direction and may provide redress for some small creators.

Opponents of the Act make many comments about why the CASE Act is insufficient, but they fail to provide concrete examples of what Congress should do to resolve those issues.²⁴ The United Kingdom's multi-tier form of intellectual property court, called the Intellectual Property Enterprise Court, could provide the answer to the many downfalls of the CASE Act.²⁵

While no system is perfect, the United Kingdom has prospered in this area of law whereas the United States barely even reached comparable success. This Note will look at the pros and cons of the CASE Act and why America should look to the United Kingdom as an example of what system Congress should want to implement. I propose that if the United States updated the CASE Act to resemble that of the United Kingdom's multi-tier system, it will allow for more cases to be brought and provide for the protections necessary for small creators to safeguard their work.

II. BACKGROUND

A. CASE ACT

On May 1, 2019, “Rep. Doug Collins (R-GA) and Rep. Hakeem Jeffries (D-NY) introduced the latest version of the Copyright Alternative in Small Claims Enforcement Act (CASE Act).”²⁶ The CASE Act was passed by the House of Representatives on October 22, 2019, as a way to provide for another outlet for

²² Copyright Alternative in Small-Claims Enforcement Act of 2019, 17 U.S.C. § 1501.

²³ *Id.*

²⁴ See Anthony Marcum, *Potential Pitfalls of the CASE Act*, RSTREET (July 16, 2019), <https://www.rstreet.org/2019/07/16/potential-pitfalls-of-the-case-act/> (discussing pitfalls of the CASE Act prior to it being adopted into law but providing no solution); see also Katharine Trendacosta, *Congress Continues to Ignore the Dangerous Flaws of the CASE Act*, ELECTRONIC FRONTIER FOUNDATION (Sept. 11, 2019), (explaining that The CASE Act “feels like a simple and easy solution to a thorny problem in copyright law . . .” but then provides no real solution).

²⁵ See *Intellectual Property Enterprise Court*, GOV.UK, <https://www.gov.uk/courts-tribunals/intellectual-property-enterprise-court> (last visited Sept. 17, 2020) (explaining what the Intellectual Enterprise Court does).

²⁶ Kerry Maeve Sheehan, *COPYRIGHT LAW HAS A SMALL CLAIMS PROBLEM. THE CASE ACT WON'T SOLVE IT*, AUTHORS ALLIANCE (June 4, 2019), <https://www.authorsalliance.org/2019/06/04/copyright-law-has-a-small-claims-problem-the-case-act-wont-solve-it%E2%BB%BF/>.

those who have been wronged, with regards to their intellectual property, to seek redress.²⁷ Earlier versions of this Act had been proposed in 2016 and 2017 but they never gained much traction.²⁸ The House passed this Act without issue, but in November of 2019, there was a hold on this Act by Senator Wyden (D-OR) which further prevented it from going to a vote in the Senate.²⁹ Even so, Congress passed the Act on December 21, 2020 and then President Trump signed it into law on December 27, 2020.³⁰

The CASE Act is a promising start. For this Note, we will take a deeper look at how this act has done well through the lens of comments made about it.

1. *Copyright Claims Board, Officers, and Attorneys.*

Claims brought to the small claims court will be heard by a Copyright Claims Board made up of three full-time Copyright Claims Officers, attorneys that have at least seven years of legal experience and are appointed by the Librarian of Congress.³¹ The appointments will not be made until after the Library of Congress has consulted with the Register of Copyrights.³²

Two of the Copyright Claims Officers shall have—

“(I) substantial experience in the evaluation, litigation, or adjudication of copyright infringement claims; and “(II) between those two Officers, have represented or presided over a diversity of copyright interests, including those of both owners and users of copyrighted works. . . . The Copyright Claims Officer not described in clause (ii) shall have substantial familiarity with copyright law and experience in the field of alternative dispute resolution, including the resolution of litigation matters through that method of resolution.³³

The Board will be able to hear copyright infringement claims, actions for a declaration of noninfringement, claims that a party knowingly sent false

²⁷ Copyright Alternative in Small-Claims Enforcement Act of 2019, *supra* note 22.

²⁸ *Id.*

²⁹ *Id.*; see also Claudia Rosenbaum, *CASE Act Stalled in Senate Due to Single Holdout, Says Copyright Alliance*, BILLBOARD (Dec. 13, 2019),

https://www.billboard.com/amp/articles/business/legal-and-management/8546320/case-act-stalled-senate-ron-wyden?__twitter_impression=true (stating that the reason this bill needed to be voted on by the Senate is because a hold was placed on it by one of the members).

³⁰ *CASE Act Implementation*, COPYRIGHT ALLIANCE, <https://copyrightalliance.org/trending-topics/copyright-small-claims/> (last visited Sept. 13, 2021).

³¹ Copyright Alternative in Small-Claims Enforcement Act of 2019, 17 U.S.C. § 1502.

³² *Id.* § 1502(b)(1).

³³ *Id.* § 1503; see also Olson, *supra* note 9 (discussing how the Copyright Claims Board would work).

takedown notices, and related counterclaims.³⁴ If it becomes apparent that one of the officers cannot do their job, the Librarian of Congress has the power to sanction and remove them.³⁵

To assist the Board, the Register of Copyrights will always have at least two full-time Copyrights Claims Attorneys on hand.³⁶ Each of these attorneys must have at least three years of “substantial experience in copyright law.”³⁷

2. Damages

Like the way damages are currently calculated in the federal courts, the Board will be authorized to determine cases and give monetary awards based on actual, profits, or statutory damages.³⁸ These damages are capped at \$30,000 with an artist or creator eligible to claim up to \$15,000 per work.³⁹ Under the CASE Act, even if the creator had not previously copyrighted their work, they can still bring a claim.⁴⁰ The Act provides that, in the case where the art or item has not been registered with the Copyright Office, “statutory damages may not exceed \$7,500 per work infringed, or a total of \$15,000 in any one proceeding.”⁴¹ Because monetary damages will not remedy everything that the infringer has and may still be doing, the court does have the power to approve any agreements to cease activities if the parties choose so.⁴²

3. How a claim works in this system.

All participation in board proceedings will be on a voluntary opt-out basis for defendants.⁴³ While an attorney is not meant to be essential for bringing a claim in this court, if the parties do decide to get representation, it will more than likely be an out-of-pocket expense. The only reason for appointing attorney’s fees in these cases could be if there is some evidence of bad faith misconduct on the other party’s part.⁴⁴

You may be wondering how someone would bring a claim under this possible small claims court. Well, the first thing for the person to look at is the statute of

³⁴ *Id.* § 1503.

³⁵ *Id.* § 1502(b)(7).

³⁶ *Id.* § 1502(b)(2).

³⁷ *Id.* § 1502(b)(3)(B).

³⁸ *Id.* § 1503–1504.

³⁹ *Id.* § 1504(e)(1).

⁴⁰ *Id.* § 1504(e)(1)(A)(ii)(II).

⁴¹ *Id.*

⁴² Susan Neuberger Weller & Lei Xu, *Congress Considers Creation of a “Copyright Claims Board” as an Alternative to Handle Small Copyright Claims*, MINTZ (Jan. 8, 2020), <https://www.mintz.com/insights-center/viewpoints/2251/2020-01-congress-considers-creation-copyright-claims-board>.

⁴³ 17 U.S.C. § 1504(a); *see also* Weller & Xu, *supra* note 42 (discussing the opt-out system).

⁴⁴ 17 U.S.C. § 1506(y).

limitations. The claims being brought would be subject to a three-year statute of limitations.⁴⁵ If the statute of limitations has not run out, the claimant must first file the claim accurately with the Copyright Claims Board.⁴⁶ The claim must include “a statement of material facts in support of the claim” as well as the filing fee.⁴⁷

After being filed, a Copyright Claims Attorney will review the claim to ensure it complies with all the requirements.⁴⁸ If it does not, the claimant would have the chance to remedy any issues found.⁴⁹ The Copyright Claims Board can also dismiss a claim without prejudice if they find that it is not suited for the Board.⁵⁰ The same process is true for any counterclaims filed.⁵¹ Once the claim has commenced, the proceedings are held at the offices of the Copyright Claims Board and it does not require in-person appearances by the parties.⁵² Instead, the claims are conducted through “means of written submissions, hearings, and conferences carried out through internet-based applications and other telecommunications facilities.”⁵³ But, if a party needs an in-person proceeding, alternative arrangements may be made.⁵⁴

4. *Evidence and possibilities of settlement.*

The parties can present evidence to make their case; however, the types of evidence that the Copyright Claims Board considers is limited. The following types of evidence may be used: relevant documentary or non-testimonial evidence, and testimonial evidence in written form “. . . limited to statements of the parties and nonexpert witnesses”.⁵⁵ Settlements are encouraged, and the parties may ask the Copyright Claims Officer to hold a conference to facilitate settlement discussions.⁵⁶ The parties can also submit agreements to settle or dismiss any of the claims and counterclaims to the Board at any point in the proceeding.⁵⁷

⁴⁵ *Id.* § 1504(b).

⁴⁶ *Id.* § 1504(c).

⁴⁷ *Id.* § 1506(e).

⁴⁸ *Id.* § 1506(f).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* § 1506(c).

⁵³ *Id.*; see also Judy Perry Martinez, *The case for the CASE Act*, THE HILL (Oct. 21, 2019, 3:30 PM), <https://thehill.com/blogs/congress-blog/judicial/466742-the-case-for-the-case-act> (explaining the way a claim in the new small-claims court would work, as well as mentioning that the cases could be heard over the phone or through video chatting options).

⁵⁴ 17 U.S.C. § 1506(c).

⁵⁵ *Id.* § 1506(o).

⁵⁶ *Id.* § 1506(r).

⁵⁷ *Id.*

As mentioned before, deciding to bring the claim to the Board means that the final determination prevents any further litigation or relitigating in court or by the Board at a later time.⁵⁸ As with many rules in the legal world, there is an exception to this rule.

A party may, not later than 30 days after the date on which the Copyright Claims Board issues a final determination in a proceeding under this chapter, submit a written request for reconsideration of, or an amendment to, such determination if the party identifies a clear error of law or fact material to the outcome, or a technical mistake. After providing the other parties an opportunity to address such request, the Copyright Claims Board shall either deny the request or issue an amended final determination.⁵⁹

B. THE INTELLECTUAL PROPERTY ENTERPRISE COURT OF THE UNITED KINGDOM

The Intellectual Property Enterprise Court is a specialized court in the United Kingdom that has been given jurisdiction to hear a variety of intellectual property cases if they fall within the permitted guidelines.⁶⁰ But the current version of the court was not the original.⁶¹

1. *Structure then and now.*

The Patents County Court (PCC) came into effect in 1990 based on Section 287(1) of the Copyright, Designs and Patents Act of 1988 as a response to the cost of litigation in the High Court being too extreme.⁶² This court was intended

⁵⁸ *Id.* § 1506 (w).

⁵⁹ *Id.*

⁶⁰ *Intellectual Property Enterprise Court*, *supra* note 25.

⁶¹ See Copyright Alternative in Small-Claims Enforcement Act of 2016, H.R.5757, 114th Cong. (2015-2016) (providing an example of a prior proposal); Copyright Alternative in Small-Claims Enforcement Act of 2017, H.R.3945, 115th Cong. (2017-2018) (providing an example of a prior proposal).

⁶² *History, CT'S. AND TRIBUNALS JUDICIARY*, <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/high-court/courts-of-the-chancery-division/intellectual-property-enterprise-court/history/> (last visited Nov 1, 2020); see also *Copyright, Designs and Patents Act 1988*, LEGISLATION.GOV.UK, <https://www.legislation.gov.uk/ukpga/1988/48/section/287/1993-11-05> (last visited Nov. 1, 2020) (“The Lord Chancellor may by order . . . designate any county court as a patents county court and confer on it jurisdiction . . . to hear and determine such descriptions of proceedings—(a) relating to patents or designs, or (b) ancillary to, or arising out of the same subject matter as, proceedings relating to patents or designs . . .”); Barker Brettell, *The Patents County Court – an overview*, BARKER BRETTELL (Nov. 12, 2012),

to hear the simpler cases, meaning cases with less evidence and more modest legal issues, as well as provide an alternate place for cases to be brought.⁶³ More complex cases can still be heard at the High Court, Patents Court.⁶⁴

The Court underwent several reforms over the years.⁶⁵ After 13 years of being in place, “the PCC was reconstituted as . . . the Intellectual Property Enterprise Court (IPEC)”.⁶⁶ Adding “intellectual property” into the name was meant to show “its broad intellectual property jurisdiction”.⁶⁷ The overall structure and procedural posture of the IPEC mimics the PCC except for minor tweaks.⁶⁸

Unlike the CASE Act’s small claims court, which would only hear copyright claims, the IPEC can hear a variety of intellectual property claims.⁶⁹ This court has the jurisdiction to hear the following types of cases: registered design, patents, registered trademarks, copyrights, and other intellectual property rights.⁷⁰ It can also hear non-intellectual property claims, such as contractual claims, but only if they are accompanied by an intellectual property claim.⁷¹

The system is broken into two separate tracks: the multi-track and the small claims track.⁷² The main distinction between these two tracks is the amount of money involved in the case.⁷³ The multi-track allows litigants to bring a claim with potential compensation reaching up to £500,000 (\$677,259.15); however, this cap on damages may be waived by the parties upon agreement.⁷⁴ A losing party may be forced to pay for the other party’s legal fees, up to \$50,000, if the court sees fit.⁷⁵ “The Presiding Judge of the IPEC is a specialist circuit judge. Nominated barristers and solicitors, all experienced in intellectual property law, sit as deputy IPEC judges.”⁷⁶

<https://www.barkerbrettell.co.uk/the-patents-county-court-an-overview/> (“The Patents County Court (PCC) was set up in 1990 in response to concerns that the UK High Court was too costly and complex for some litigants . . . As a result, it was felt that litigants such as SMEs had insufficient access to justice when enforcing IP rights.”).

⁶³ *History*, *supra* note 62.

⁶⁴ *Id.*

⁶⁵ Brettell, *supra* note 62.

⁶⁶ *History*, *supra* note 62.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Intellectual Property Enterprise Court*, *supra* note 25.

⁷⁰ *Id.*

⁷¹ *The Intellectual Property Enterprise Court Guide*, HM CTS. & TRIBUNALS SERV. (July 2019), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/823201/intellectual-property-enterprise-guide.pdf.

⁷² *Id.* at 3; *see also Intellectual Property Enterprise Court*, *supra* note 25 (explaining that the main difference between the separate tracks of this court is the allotted amount of damages).

⁷³ *The Intellectual Property Enterprise Court Guide*, *supra* note 71, at 3.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

Like the proposed CASE Act, the multi-track system does not require representation. Even so, because these cases can get complicated, litigants can benefit from adequate representation.⁷⁷ “Solicitors and patent and trade mark attorneys are all entitled to represent clients in the IPEC.”⁷⁸ If a litigant cannot afford to hire an attorney, they are welcome to seek out possible pro bono opportunities available to them.⁷⁹ Also, the parties are free to settle and explore alternative dispute resolutions if they wish to do so before the trial.⁸⁰

Lastly, decisions made by this court if the litigants do go to trial are appealable.⁸¹ When a litigant wants to appeal the decision, the appeal will go to the Court of Appeals; however, no party has an absolute right to appeal.⁸² In order to appeal, the litigant must seek out permission, usually from the judge who made the decision.⁸³ If that judge denies the appeal, the litigant can still seek out permission from the Court of Appeals itself.⁸⁴

When deciding whether a case should be brought in the small claims track, there are three areas that the claimant needs to consider. These include (1) the type of intellectual property case this involves; (2) the total amount in dispute; and (3) the remedies sought.⁸⁵ The small claims track is designed to hear cases with an amount in dispute of about £10,000 (\$13,545.18).⁸⁶ Cases with an amount in dispute higher than this are typically not fit for the small claims track, with exceptions.⁸⁷ The court typically will not impose other fees on the losing party but it can in limited circumstances.⁸⁸ When the court does wish to impose other costs, it can only be based on a specific list of possible reasons listed in the small claims track guide.⁸⁹

⁷⁷ *Id.* at 5.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 20.

⁸¹ *Id.* at 24.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Guide to the Intellectual Property Enterprise Court Small Claims Track*, HM CTS. & TRIBUNALS SERV. (Feb. 2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/679030/ipec-sct-published-guide-february-2018.pdf.

⁸⁶ *Id.* at 5.

⁸⁷ *Id.*

⁸⁸ *Id.* at 11.

⁸⁹ *Id.* (“In the IPEC small claims track there are only very limited circumstances in which the court will order one party to contribute to the costs of another. . . . These include: fixed sums in relation to issuing the claim; court fees (including the hearing fee); expenses which a party or witness has reasonably incurred travelling to or from a hearing or staying away from home for the purpose of attending the hearing; loss of earnings or loss of leave evidenced by a party or witness caused by attending a court hearing, limited to £90 per day for each person. . . ; in proceedings which include a claim for an injunction, a sum for legal advice and assistance relating to that claim, not exceeding £260 . . . ; such further costs as the court may decide at

Because of its simplified procedures, the small claims track is designed to function without representation.⁹⁰ If a party does want representation “[a] party may be represented by a solicitor, barrister, patent attorney or trade mark attorney.”⁹¹

Unlike the multi-track system, the small claims track is only meant for the following: “copyright, UK and EU registered trade marks, passing off, [and] UK and EU unregistered design rights.”⁹² All other types of intellectual property claims are not suitable for this track, but it still may be suitable for the multi-track system or another part of the court system.⁹³

Like the multi-track system, a litigant in the small claims track can appeal the decisions made in their case if they receive permission from the district judge who made the decision.⁹⁴ “If that district judge refuses permission, or if a party did not ask for permission at the hearing but wants to do so later, [the litigant] should apply for permission to appeal to an enterprise judge” within the limit given in the small claims track guide.⁹⁵

If the parties wish to seek other forms of resolution, they “may use the Small Claims Mediation Service which is a [free] service provided by HM Courts [and] Tribunals Service. It may only be accessed after a claim has been issued.”⁹⁶ The parties can settle the claims up until a judgment is rendered in the final hearing.⁹⁷ If both parties agree to a settlement and the claimant files the settlement with the court prior to that final hearing, they may also get their money back for the cost of the hearing.⁹⁸

2. *Bringing a claim into the system.*

Before filing their claim, the litigant must think through two questions: (1) Is this a case that should be brought in the IPEC or the High court; and (2) If it is brought in the IPEC, is it fit for the multi-track or the small claims track?⁹⁹

There are various factors to juggle when deciding if a case is fit for the IPEC. The first is the financial resources of the parties involved in the case.¹⁰⁰ Parties may have limited monetary resources making it unlikely to proceed in the High

the conclusion of the hearing should be paid by a party who has behaved unreasonably. A party’s rejection of an offer of settlement will not of itself constitute unreasonable behaviour but the court may take it into consideration.”).

⁹⁰ *Id.* at 6.

⁹¹ *Id.*

⁹² *Id.* at 4.

⁹³ *Id.*

⁹⁴ *Id.* at 12.

⁹⁵ *Id.*

⁹⁶ *Id.* at 10.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *The Intellectual Property Enterprise Court Guide*, *supra* note 71, at 8-9.

¹⁰⁰ *Id.* at 8.

Court.¹⁰¹ They may need the protections that the IPEC can offer.¹⁰² “If this can be shown, it is likely to be treated as a strong (though not overriding) reason to have the case heard in the IPEC.”¹⁰³ This is especially true when the financial resources of the parties are vastly different.¹⁰⁴ If the parties want the case to be heard by the IPEC, it is up to the parties to ensure that the case would not take longer than about two to three days to be heard.¹⁰⁵

Another factor mentioned in The Intellectual Property Enterprise Court Guide is the overall complexity of the claim.¹⁰⁶ If the claim is so complex that it would take more than two to three days to litigate, then it is unfit to be heard in this system.¹⁰⁷ The litigant who foresees complex issues or defenses being raised must prune the case down as much as possible to fit within that given time frame.¹⁰⁸ If they do not, the case may be moved to another part of the High Court by default.¹⁰⁹

Next, The Intellectual Property Enterprise Court Guide tells the litigants to evaluate the nature of the evidence they wish to put on in the claim.¹¹⁰ “If it is anticipated that a large number of witnesses will be required on either or both sides, all to be cross-examined, there may be a significant risk that the limit of a 2 or 3 day trial will be exceeded.”¹¹¹ Once again this could cause the case to be too complex for the case to be heard in this system.

The last factor to consider for the first question is the value of the claim. “Aside from the £500,000 limit on damages or account of profits, the value of the claim, though relevant, is generally not a major factor in the evaluation of whether a case is suitable for the IPEC.”¹¹² Accurately assessing the estimate of the claim is typically a difficult task, and thus, if the value is incorrect later in the claim, that alone should not push the claim out of this system.¹¹³

After looking at all of the factors listed, the parties still may decide together to have the claim transferred from one division of the IPEC to another.¹¹⁴ On the other hand, if a defendant is sued in another court and wishes to have the case transferred to the IPEC, the defendant can apply to do that on their own

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 8.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

accord.¹¹⁵ The same is true for a claimant.¹¹⁶ “This should be raised in correspondence first.”¹¹⁷ Even if the parties come together and agree to have the case transferred, a judge from the court where the case is currently being heard would need to approve the decision.¹¹⁸ “If there is no agreement” and the parties are acting on their own, “an application to transfer must be made.”¹¹⁹ The parties would need to submit this no later than at the case management conference which is essentially a preliminary hearing.¹²⁰

If the parties have come to a joint decision that they wish to have the claim heard in this system, it can possibly still be heard there, although it would normally not be appropriate.¹²¹ As mentioned earlier, the parties are free to waive the limit on compensation if they want to. So long as the case is simple enough to meet the time requirements of the court, the case can, and typically will, be accommodated in this system.¹²²

So now if the parties have decided in some capacity to have the case heard by the IPEC, they must determine which track to bring it in.¹²³ A simple way to determine this is to look at what type of intellectual property issue is going to be litigated. Unlike the multi-track system, the small claims track does not hear cases that involve “patents, registered designs, semiconductor topography rights or plant varieties.”¹²⁴ If the case is dealing with these topics, then the case can only be brought in the multi-track system.¹²⁵ “Broadly speaking, if the case does not concern any of those rights and the compensation sought does not exceed £10,000, the claim will be heard in the small claims track.”¹²⁶ This is not a bright line rule, however, because the judge in a small claims track is still able to order awards above that amount if needed.¹²⁷ Because of this, other factors should still be considered as well.

The complexity of the case is also relevant when deciding which track to bring the claim in. If the issue that will be litigated is going to be extensive and cause the case to last longer than one day, then it is unfit for the small claims track.¹²⁸ This is true even if the amount in controversy fits well within this court’s

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 8.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 8-9.

¹²² *Id.* at 9.

¹²³ *Id.* at 8.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

limitations.¹²⁹ Simple and less complicated claims are best suited for the small claims track.¹³⁰ It is important to remember that a defendant in either of the two tracks can always ask for the claim to be transferred to the other if the defendant applies for that to happen.¹³¹

At this point, the claimant decided if the claim is appropriate for the IPEC and which level of the system to use. Now the claimant needs to get their claim into the appropriate court.

To officially initiate the claim, the claimant must fill out the appropriate form.¹³² This form is called the N1 form and after it is filled out, it should be sent directly to the correct court.¹³³ To make it easier for claimants, this form is available online, but it can also be delivered in person to the court or by mail.¹³⁴

The other party needs to be served so that it is on notice of the new claim.¹³⁵ This service should also contain a response packet for the defendant(s).¹³⁶ “A response pack consists of the documents that a defendant will need to read and complete to make its initial response to the claim. It contains the following: (a) a form for defending the claim (b) a form for admitting the claim and (c) a form for acknowledging service.”¹³⁷ Once the response packet is filled out, a copy will be supplied to the claimant by the court.¹³⁸ If the claimant wishes to file a reply defense to the claim, they have 28 days from the service of the defense to do

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* (“A defendant sued in either track may apply to have the case transferred. Before doing so, the defendant should seek the agreement of the claimant as to which track is appropriate. Where the court is called upon to decide whether the case should be heard in the multi-track or the small claims track, in addition to the matters already discussed the size of the party seeking to have the case heard in the small claims track is often a significant factor. The court is more likely to allocate a case to the small claims track where an individual or a small company with limited financial means would benefit from the less formal procedure in the small claims track and/or the greater protection from exposure to an adverse costs order, provided the opposing side would still have sufficient opportunity to present their case.”).

¹³² *Id.* at 10.

¹³³ *Id.*

¹³⁴ *Id.* at 11.

¹³⁵ *Id.*

¹³⁶ *Id.* (“CPR Part 6 and the associated practice direction deal with how to make sure that documents are correctly served. A typical means of service on a company is by first class post to the company’s principal or last known place of business, although CPR Part 6 rule 3 sets out a number of alternative methods. These include email provided that the party being served, or their solicitor, has previously [indicated] in writing that they are willing to be served by email.”); see also *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 7 (explaining that the opposing party will be served so that they are notified of the claim and that service will also contain a response packet for that party).

¹³⁷ *The Intellectual Property Enterprise Court Guide*, *supra* note 71, at 11.

¹³⁸ *Id.*

so.¹³⁹ “If the claimant has been served with a Defence and Counterclaim[,] it must respond with a Reply and Defence to Counterclaim.”¹⁴⁰

The contents of the statement for the case are different for each type of intellectual property claim. The IPEC guides provide guidelines for what should be contained in the documents for each track.¹⁴¹

Once the defendant has been served, they must choose how to respond to the claimant and if they have any relevant counterclaims to file.¹⁴² They have 14 days to serve their defense of the claim if they decide not to file an Acknowledgment of Service.¹⁴³ “More usually a defendant will file an Acknowledgment of Service with the court.”¹⁴⁴ This claim comes in the initial service and is contained in the response packet.¹⁴⁵ Filling this out will extend the time they have to serve their defense.¹⁴⁶ This would also be the form that the defendant should fill out if they want to challenge the court’s jurisdictional power.¹⁴⁷ This should typically be turned in within 14 days of service as well.¹⁴⁸ If the defendant files a counterclaim and the claimant responds with defenses, the party at issue may file an optional reply if they wish to.¹⁴⁹ They would have two weeks to do this.¹⁵⁰

If necessary, a default judgment can be made against one of the parties. “If a defendant fails to file either an Acknowledgment of Service or a Defence within two weeks of service on it of the Particulars of Claim the claimant may make an application for judgment in default.”¹⁵¹ This can also happen if the defendant does timely file an Acknowledgment of Service but does not later file any defense within the allotted time.¹⁵²

The claimant must apply for an award of default judgment, and this will put the defendant on notice that they may lose the case.¹⁵³ The defendant would then have five days to respond.¹⁵⁴ “It is important to satisfy the court (a) that the claim

¹³⁹ *Id.* at 12.

¹⁴⁰ *Id.* at 14.

¹⁴¹ *Id.* at 13-15.

¹⁴² *Id.* at 11; see also *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 7-8 (explaining the process for an opposing party once they are served).

¹⁴³ *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 11-12.

¹⁴⁴ *Id.* at 13.

¹⁴⁵ *Id.* at 11.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 8.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *The Intellectual Property Enterprise Court Guide*, *supra* note 71, at 18; see also *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 8-9 (explaining what happens if a party fails to respond).

¹⁵² *The Intellectual Property Enterprise Court Guide*, *supra* note 71, at 18.

¹⁵³ *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 8-9.

¹⁵⁴ *Id.* at 17.

form and Particulars of Claim were properly served and the date on which this was done and (b) the date and means of service of the application notice for judgment in default.”¹⁵⁵ If the default is granted, the defendant will be served an order so that they are aware of the decision.¹⁵⁶

That is not where the case ends, though. If the defendant wishes to fight that decision, they have a right to apply to have the order set aside.¹⁵⁷ The defendant would need to fill out an application notice, but setting aside the judgment will not automatically happen.¹⁵⁸ “Broadly speaking, the court will have to be satisfied that the defendant has an arguable defence and that the defendant ought to be given the opportunity to advance their defence.”¹⁵⁹ The defendant should file this as soon as possible if they wish for the court to look at it seriously.¹⁶⁰

3. *A claim has been brought successfully. Now what?*

All cases are heard by a full-time specialist judge, which aids in more consistent decision making.¹⁶¹ Before a trial begins, the parties must fill out a timetable for how they foresee the trial going.¹⁶² The judge then approves that timetable.¹⁶³ If the judge does approve it, then the timetable will likely be enforced strictly against the parties to ensure that the time limits are met.¹⁶⁴ If the parties wish to forgo an in-person trial and have a “trial on paper”, they may request for this in place of an actual hearing.¹⁶⁵ In that case, the parties simply file their argument and then the judge rules on what they are provided by the parties.¹⁶⁶

Parties in the case can present relevant evidence to support their case. “Evidence will usually be given by witnesses present at the trial.”¹⁶⁷ At the request of the parties, the judge may also approve video evidence and expert

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *The Intellectual Property Enterprise Court Guide*, *supra* note 71, at 18.

¹⁵⁸ *See Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 17 (explaining that a party will need to ask the court if they want a default judgement to be granted).

¹⁵⁹ *The Intellectual Property Enterprise Court Guide*, *supra* note 71, at 18.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*; *see also* James O’Flinn, *The Intellectual Property Enterprise Court Explained*, KEYSTONE LAW (Feb. 3, 2015) <https://www.keystonelaw.com/keynotes/the-intellectual-property-enterprise-court-explained> (explaining that cases in this court are heard by a specialized judge).

¹⁶² *Id.* at 19.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 23.

testimony if necessary.¹⁶⁸ If expert testimony is needed in the small-claims track, the case likely needs to be transferred to the multi-track level.¹⁶⁹

After a decision is made by the judge in either track, a party may wish to appeal the decision as mentioned in the previous sections on each track in the system.¹⁷⁰

4. Remedies.

Parties will typically want to be financially compensated for any losses that they have suffered because of the infringement; however, this is not the only type of remedy that a party can ask for.¹⁷¹ “The remedies available to the claimant . . . include preliminary and final injunctions, damages, accounts of profits, delivery-up and disclosure.”¹⁷² This way, the winning party has multiple options for how they wish the infringement to be dealt with by the court. This is especially important where the monetary damage done to the party is small, but the infringing party needs to be stopped for good.

III. ANALYSIS

A. PROS OF THE CASE ACT

The CASE Act is a great start for those small creators. This Section will break down a few of the best aspects of the CASE Act and discuss how they help those who would normally be ineligible to bring a claim.

1. Financial savings through the CASE Act.

First and foremost, the money that the small creator can save with this small claims court is incredibly beneficial. The fact that lawyers are not necessary to pursue a claim in this court means the claimants can cut out thousands of dollars that they would normally be spending on a claim if brought in federal district court.¹⁷³ Even if a party does feel like they need assistance, the Act allows them

¹⁶⁸ *Id.*; see also *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 9 (“No expert may give evidence at the final hearing of an IPEC small claims track claim, whether written or oral, without the permission of the court. If experts are necessary, the claim is likely to be re-allocated to the IPEC multi track or, rarely, the Patents Court.”).

¹⁶⁹ *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 9.

¹⁷⁰ See discussion *infra* Section II.b.1 (explaining how the IPEC handles appeals).

¹⁷¹ O’Flinn, *supra* note 161.

¹⁷² *Id.*

¹⁷³ See *How Much Do Lawyers Cost: Fees Broken Down By State*, CONTRACTSCOUNSEL (Aug. 17, 2021), <https://www.contractsounsel.com/b/how-much-do-lawyers-cost> (“Throughout the United States, typical attorney fees usually range from about \$100 an hour to \$400 an hour. These hourly rates will increase with experience and practice area specialization.”).

to be represented by a law student pro bono.¹⁷⁴ With the increase in clinics and other school-lead law student experiences, the chances that a claimant could find assistance for little to no money is much higher than it used to be. You cannot beat that. Also, the filing fee for a claim is likely to be much lower. Lastly, the fact that small creators do not have to travel to a different area just to file a claim and pursue that claim in federal court is a huge win.¹⁷⁵ As mentioned, the claims will mostly be heard over some sort of remote service.¹⁷⁶ That means that the claimant does not have to take even more time off from work, which will leave them with even fewer profits and creations to sell, just to have their case heard.

2. *The CASE Act may reduce the frequency of opportunistic infringements.*

Because the CASE Act has made it much more cost-effective for someone to bring a meritorious claim, this may reduce the frequency of “opportunistic infringements.”¹⁷⁷ Many of the infringements made today are a result of the infringer knowing that the copyright holder will not have the means to bring a claim and thus, infringers win automatically by not being sued.¹⁷⁸ “The presence of a small claims system fills that void, eroding the prevailing comfort among ‘opportunistic infringers’ that enforcement will be unlikely.”¹⁷⁹

The high cost of claims in the federal court system not only affects the plaintiffs but also the defendants, who will also be able to fight off those plaintiffs who are using the opportunity to their advantage.¹⁸⁰ Some plaintiffs bring less than meritorious cases knowing that the defendant will not be able to pay to uphold a winning defense.¹⁸¹ These types of defendants are more likely to settle just to end the claim in a reasonable time.¹⁸² The CASE Act system would allow defendants to fight claims and put on defenses without extremely high costs just like the plaintiffs.¹⁸³

3. *Parties still have a choice, and more people will be able to use it.*

¹⁷⁴ *Id.*; see also Keith Kupferschmid, *Why Is No One Talking About this Provision of the CASE Act? It's Because It Benefits Users of Copyrighted Works*, COPYRIGHT ALLIANCE (Aug. 27, 2019), https://copyrightalliance.org/ca_post/why-is-no-one-talking-about-this-provision-of-the-case-act-its-because-it-benefits-users-of-copyrighted-works/ (discussing the pros and cons of the CASE Act).

¹⁷⁵ See Copyright Alternative in Small-Claims Enforcement Act of 2019, 17 U.S.C. § 1506(c) (explaining that claims in this system can be heard in person, as a paper argument, or through internet-based applications).

¹⁷⁶ Martinez, *supra* note 53.

¹⁷⁷ 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, 721 (2018).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

The voluntary part of this Act will mean that the parties will still be able to choose which path is best for them.¹⁸⁴ If both parties wish to proceed with having the Copyright Claims Board hear their case, then they can. If not, then parties may proceed to the federal court system to have their case decided by a judge there.

The last positive aspect for this form of a small-claims court would be that even if the creator had not previously copyrighted their work, they could still file a claim. While parties will not be able to recover the same amount that another party with a copyrighted work will be able to, they can still attempt to recover some of their losses if this Act were to pass.¹⁸⁵

B. CONS OF THE CASE ACT

A few groups have come forward to express their concerns with the CASE Act. These groups include the Electronic Frontier Foundation (EFF), Public Knowledge, and the Authors Alliance.¹⁸⁶ All three claim that this Act is just not strong enough. This Section will look at what the CASE Act got wrong.

1. *The scope of possible cases should be limited to those that most need it.*

The Authors Alliance is a strong advocate for writer's rights, with their main goal being to ensure that writers understand their rights and stand as an advocate for these people who serve a public good.¹⁸⁷ This group argues that a big problem with the CASE Act is that its jurisdiction is far too broad.¹⁸⁸ Because the Board

¹⁸⁴ Kupferschmid, *supra* note 174.

¹⁸⁵ See Sheehan, *supra* note 26 (explaining that a party can still bring a copyright claim under the CASE Act if they have not registered their product or idea before).

¹⁸⁶ See Mitch Stoltz & Corynee McSherry, *Congress Shouldn't Turn the Copyright Office Into A Copyright Court*, ELECTRONIC FRONTIER FOUND. (Nov. 29, 2017), <https://www.eff.org/deeplinks/2017/11/creating-copyright-court-copyright-office-wrong-move> (discussing why the EFF takes issue with the new proposed small claims court and why the CASE Act, as proposed in 2017, is not the correct solution); Shiva Stella, *Public Knowledge Opposes Copyright Bill Creating Unaccountable "Small-Claims" Court*, PUB. KNOWLEDGE (May 1, 2019),

<https://www.publicknowledge.org/press-release/public-knowledge-opposes-copyright-bill-creating-unaccountable-small-claims-court> ("This system, as drafted, is both flatly untenable, and unlikely to solve the problems it claims to address.") (quoting Meredith Rose, Policy Counsel at Public Knowledge); Sheehan, *supra* note 26 (explaining why there is a need for a way for small creators to have their claims heard but that the CASE Act is not the solution).

¹⁸⁷ Martin Adams, *Mission*, AUTHORS ALLIANCE, <https://www.authorsalliance.org/about/#mission> (last visited Nov. 1, 2020).

¹⁸⁸ Sheehan, *supra* note 26 ("The copyright holders who most need, and would most benefit, from a small claims process are those independent authors and creators who can't afford to press their claims in federal court. Unfortunately, instead of limiting the small claims process

will be able to hear a wide variety of cases from just about anyone, the possibility of copyright trolls taking advantage of the court's broad discretion is high.¹⁸⁹

We've already seen how copyright trolls and big content companies have sometimes abused the federal court system to raise questionable infringement accusations and threaten those accused with high statutory damages. By not limiting enforcement through the small claims process to individual creators, the CASE Act makes it even easier for these entities to get quick default judgments and disproportionately high damages awards.¹⁹⁰

Without any sort of protection, this could lead to the cluttering of the dockets. If that is the case, the longer wait times would defeat one of the main reasons for this new system – that being judicial economy.¹⁹¹

Similarly, because the Board would have broad power to hear all types of copyright claims, the chance that it will be unequipped to hear the most fact-specific and intricate case is also high. With how complicated and unsettled some areas of copyright law are, the limited discovery and litigation process will mean that the Board is only able to hear short and straightforward cases.¹⁹² The more complicated cases will really belong in the federal system where there are more extensive resources available to the parties.¹⁹³ The CASE Act allows the Board to dismiss cases if it feels the need to because of these types of reasons, but there is a lack of guidance for when they should dismiss.¹⁹⁴ This could lead to inconsistent decisions for these complicated cases.¹⁹⁵

2. *Abuse of the system is likely to happen.*

One of the major concerns brought up by those who oppose this Act is that it is likely to be taken advantage of by those who understand it better.¹⁹⁶ The opt-out system is the reason for this concern. The party who does not understand

... the CASE Act opens the door widely, welcoming in large corporations, corporate assignees, and entities that buy up others' copyright claims and profit from litigation.”)

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Meredith Filak Rose, *The CASE Act: Small Claims, Big Risks*, PUB. KNOWLEDGE (Nov. 7, 2017),

<https://www.publicknowledge.org/blog/the-case-act-small-claims-big-risks/> (explaining that the opt-out system creates an unequal power dynamic).

what is happening will likely lose and will be in no better position, or worse a position than they would have been prior.¹⁹⁷

The opt-out system essentially allows both parties to choose whether they wish to continue in the Small Claims track or not. When the claimant files the case, the opposing side will be served with a notice.¹⁹⁸ At that point, the opposing party has a few options. They can respond and say that they want to use the federal system instead or they can do nothing, and the Small Claims Board will be assigned the case.¹⁹⁹

While this sounds good in theory, it can be detrimental to the defendant that has little to no understanding of the legal system. “Under the CASE Act, if someone accused of infringement fails to opt-out of the small claims process within 60 days of receiving notice of the claim, the small claims tribunal can enter a default judgment in favor of the claimant and award [them] damages.”²⁰⁰ This default judgment is then enforceable in the federal court.²⁰¹ These quick default judgments may lead more sophisticated users to “trolling” those who are unaware of the system just to churn out high reward cases.²⁰²

On the other side, because a small creator bringing a claim may be going up against bigger and more knowledgeable defendants, they may be forced to litigate in federal court anyway.²⁰³ Sophisticated defendants may opt-out just to force the claimant back into the federal system.²⁰⁴ This forces the plaintiff to incur all the expenses that they were trying to avoid or drop their claim.²⁰⁵

3. *The board's statutory limits allow for high penalties.*

Public Knowledge points out that all 50 states currently have some small claims track that a claimant could use; however, the damages are usually limited to about \$6,000.²⁰⁶ The amount that someone could get in the new CASE Act Small Claims track would be five times that amount, \$30,000.²⁰⁷ This is in part because the board is not limited to actual damages, “i.e. the money the artist would have received if the infringer had just paid the license in the first place,

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Sheehan, *supra* note 26.

²⁰¹ *Id.*

²⁰² *Id.*; see also Mitchell Stein, *The Case Act: Good Intentions but Bad Policy*, IP WATCHDOG (Nov. 4, 2019),

<https://www.ipwatchdog.com/2019/11/04/case-act-good-intentions-bad-policy/id=115539/> (explaining that big companies and trolls will use this new system under the CASE Act to their advantage).

²⁰³ Depoorter, *supra* note 177, at 726.

²⁰⁴ *Id.*

²⁰⁵ Rose, *supra* note 196.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

plus attorney's fees."²⁰⁸ Instead, the Board can base their judgments on statutory damages.²⁰⁹ This enables the Board to actually punish parties accused of infringement.²¹⁰

While this is good for the claimant, this can be dangerous because of the high statutory limit.²¹¹ "The general principle behind [statutory damages] is to deter defendants by allowing plaintiffs to recover large sums even when it would be difficult to prove actual damages under traditional proof standards."²¹² If the purpose of the small claims track is to be a lower-cost resolution system then there should be no need to have a deterrent-oriented damage awarding process.²¹³ Public Knowledge feels that claimants should have a cost-effective place for their claims, but it should only be based on their actual damages.²¹⁴

4. *A copyright office tribunal established outside of the judicial system will be unconstitutional.*

Some opponents of the CASE Act have pointed out that this may be a violation of the Constitution, more specifically Article III. Article III states that:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.²¹⁵

When determining whether an act violates Article III, the Supreme Court has previously made the distinction between public rights and private rights.²¹⁶

The previous cases gave Congress significant leeway when it comes to assigning public rights but not with private ones.²¹⁷ Unfortunately, this is not a well-defined distinction.²¹⁸ Justice Clarence Thomas explains that "public-rights

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ U.S. CONST. art. III (establishing what power Congress has with regards to courts); *Article III of the US Constitution, Judicial Department*, JUSTIA, <https://law.justia.com/constitution/us/article-3/> (last visited Nov. 1, 2020).

²¹⁶ *Legislative Courts*, JUSTIA, <https://law.justia.com/constitution/us/article-3/06-legislative-courts.html> (last visited Aug. 26, 2021).

²¹⁷ *Id.*

²¹⁸ *Id.*

doctrine applies to matters arising between the government and others, which from their nature do not require judicial determination and yet are susceptible of it.”²¹⁹ Arguably, the CASE Act is taking the adjudication of private rights away from typical Article III courts, making it unconstitutional in nature.²²⁰

Under the same umbrella of issues, there is also a question of whether the opt-out process satisfies the due process requirements of the Constitution.²²¹ Because failing to respond can lead to a default judgment that is later enforceable in the federal system, overturning cases will be difficult.²²² This is because of any possible limitations faced by small creators in the appeals process by the CASE Act.²²³

So, where do we go from here? Originally the CASE Act sounded like a great solution to a big problem; however, it now sounds like a big mess. The United Kingdom may hold the answers to cleaning it up.

C. PROS OF THE INTELLECTUAL PROPERTY ENTERPRISE COURT

1. *Options available to a claimant and the procedure of the courts.*

Because the court is broken into two tracks, it allows more claims to be heard for parties who could typically not afford to bring their claims in the High Court. It also gives a wide range of monetary compensation so that those who have high and low-value claims can have their day in court.

The procedure of the court is also good for the defendants. When they are served with a case, the response packet contained within the service makes it clear to even the inexperienced defendant what is expected of them. Because of how clear it is, they can attempt to avoid an entry of default judgment against them.

Another notable part of the IPEC is that if the case is filed in the incorrect place or becomes more complicated than initially thought, the case can be transferred easily to the correct court.²²⁴ The claimant is not penalized for making such a mistake. On the same note, the defendant gets a choice on whether they think the case should be in that court or not. If they wish it to be transferred, they just need to ask the court to do so, and the court will send the parties a

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Sheehan, *supra* note 26; *see also* U.S. CONST. amend. XIV, § 1 (“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . .”).

²²² Sheehan, *supra* note 26.

²²³ *Id.*

²²⁴ Kate O'Rourke, *The Intellectual Property Enterprise Court - ongoing success for brand owners*, MEWBURN ELLIS, (July 29, 2020), <https://www.mewburn.com/news-insights/the-intellectual-property-enterprise-court-ongoing-success-for-brand-owners>.

questionnaire.²²⁵ The court will decide the issue once they receive said questionnaire.²²⁶

Because the cases are heard by a specialized judge, the claimants can expect consistent decisions from them.²²⁷ This way, the party can plan for how they should present their case in the most efficient and convincing way. Additionally, the judge has a variety of remedies to look at depending on what is best for each party.²²⁸

2. *Reduced time and financial risk.*

Typically, cases that are brought in this court system are heard within a year of filing.²²⁹ Because the length of each case is only about a day or two, this means that the court can hear a lot more cases compared to the High Court, which takes about two to three years to have a case heard.²³⁰

One of the major advantages of this system is the fact that it will not cost a lot of money for the parties to litigate a claim. “Costs can range from £5,000 in the small claims track to £150,000 for more complex IP disputes. It is not uncommon for cases in the High Court to exceed £500,000.”²³¹ This is a significant win for the small creator who cannot afford the High Court. Additionally, small claims court lessens the risk for each party because the system puts a cap on the amount of damages that a party can be asked to pay.²³²

D. CONS OF THE INTELLECTUAL PROPERTY COURT

1. *More decisions equal more confusion.*

While the multiple options in this court are great for the parties, it also makes it more confusing. As mentioned before, there are a lot of factors to consider when determining where a case should be brought. Those factors may not be something that the average person realizes are necessary to think through. The system is meant to be simple enough that representation is not needed, but only

²²⁵ *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 5.

²²⁶ *Id.*

²²⁷ Robert Cumming & Chris Hoole, *The IPEC: Quick and Cost Effective UK IP Litigation*, APPLEYARD LEES (Mar. 5, 2020), <https://www.appleyardlees.com/the-intellectual-property-enterprise-court-quick-and-cost-effective-ip-litigation-in-the-uk/>.

²²⁸ See O’Flinn, *supra* note 161 (explaining that a judge in the IPEC has multiple options for remedies including: “preliminary and final injunctions, damages, accounts of profits, delivery-up and disclosure” as well as money).

²²⁹ *Id.*; see also O’Rourke, *supra* note 224 (explaining that cases heard in the Intellectual Property Enterprise Court are heard at a much faster rate than they would be if brought in the High Court).

²³⁰ Cumming & Hoole, *supra* note 226.

²³¹ *Id.*

²³² *Id.*; see also O’Rourke, *supra* note 224 (stating that one of the advantages of this system is that the cost and damage caps reduce the risk to both parties).

an experienced attorney may be able to think through all these issues. Also, the typical person may not realize that their case is more intricate than they initially thought, meaning, they need an attorney to help them analyze it. Thankfully, there are pro bono options that a claimant may be able to pursue.²³³ Unfortunately, this option may also be difficult for the average claimant to procure depending on the strength and complexity of the case.

2. *Strictness of the court.*

Cost caps can be both a positive and a negative for the system. “[W]hilst the caps reduce exposure, it usually means that, not all costs incurred will be recoverable. This is particularly so for complex disputes perhaps involving expert witnesses and lengthy disclosure.”²³⁴ While some may end up in a better position overall, that may not be the case for all litigants.

The IPE has a lot of rules and limits in place for each party.²³⁵ “[T]he tighter timescales, evidence limitations and restricted costs caps can reduce the parties’ freedom to litigate, however, this is less of a problem for more straightforward disputes.”²³⁶ Though the restricted time limits are typically a good thing for the litigants, that may be a thing of the past. Because of its appeal to those who cannot afford to bring a case elsewhere, the system has seen a dramatic rise in case numbers.²³⁷ This can leave litigants waiting longer than they used to because the court is having to adjust to more and more cases each year.

E. WHICH PARTS OF THE UK’S SYSTEM WILL CORRECT THE DOWNFALLS OF THE CASE ACT?

After the examination of the IPEC and the CASE Act, the next step is to apply this information. As mentioned earlier, many groups that were meant to benefit from the CASE Act’s new form of a court were less than impressed, but can the downfalls of the CASE act can be remedied by the adopting IPEC practices? Arguably, yes. While there are many cons of the CASE Act, adopting a similar court system to the IPEC will be a viable answer to all those problems. The following section will discuss how the United States should implement these changes.

²³³ See *The Intellectual Property Enterprise Court Guide*, *supra* note 71, at 5 (explaining that if a person cannot afford any attorney, they can seek pro bono options).

²³⁴ Cumming & Hoole, *supra* note 226.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

1. *Opting out gets an upgrade.*

For many, the opt-out system was a huge reason that they did not like the system that the CASE Act provides for.²³⁸ While the IPEC still has its own form of opting out, the is an upgrade. As stated, if the defendant in the IPEC does not want the case heard in the particular court that it was brought in, all they need to do is ask the court to have it moved.²³⁹ After the request has been made, the court will send both parties a questionnaire which will aid the court in deciding whether the case should stay in that court or not.²⁴⁰ This still gives the defendant a say in where the case is heard, but not enough power that they can force a claimant into a more costly court without the claimant's thoughts on the matter being heard. While this does not eradicate the opt-out system, it gives it a revamping that would appeal to more groups that would be heavily impacted by the system.

2. *Broader jurisdiction and options for remedies.*

Another major issue was that the CASE Act system lacked a variety of remedies available. The CASE Act was limited to monetary awards.²⁴¹ The problem with that is that sometimes money will not remedy all the damage done to a claimant. When ideas are stolen and profited from, the small creator has already lost more than money. Their idea is out there, and they will have a hard time getting it back.

If the United States were to follow the IPEC, parties would be able to choose from a larger pool of remedies, including: “preliminary and final injunctions, damages, accounts of profits, delivery-up and disclosure” as well as money.²⁴² Sometimes the actual monetary damage done to the claimant is minuscule and something else is needed. Allowing for a wider variety of remedies gives the damaged party more control over their case and puts more pressure on the wrongdoer because they cannot just pay away their acts. Big repeat players who more than likely have the money to throw at a lawsuit would be held to a higher standard because they may have to do more than just pay the claimant.

While the CASE Act was only meant to cover copyright cases, it neglects to realize that there are claimants for other types of intellectual property cases that have no means to recover because of the high costs in the federal system. The IPEC system can hear a variety of different IP-related cases, including copyright

²³⁸ See Rose, *supra* note 196 (explaining that the opt-out system will create more problems than solutions).

²³⁹ See *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 5 (explaining the way in which litigants may seek to change the location of the case if they want).

²⁴⁰ *Id.* at 5.

²⁴¹ See Copyright Alternative in Small-Claims Enforcement Act of 2019, 17 U.S.C. § 1504(e) (explaining the remedies available for the litigants).

²⁴² O'Flinn, *supra* note 161.

ones.²⁴³ If the United States were to expand the list of possible case types to be heard by the small claims court, more people would be able to have their day in court. On the other hand, this could force dockets to get overly crowded. Even so, the benefits for the small creators who are unable to have their case heard by a low-cost court because it would not be considered a copyright case outweigh the potential cons.

3. *More consistent decisions.*

Lastly, if America were to adopt a small claims court system like the one found in the UK, the parties involved would be able to have more consistent decisions rendered. The CASE Act does not have a specialized judge sitting in the court making the decisions. In fact, they do not have an actual judge to hear the case at all. The parties can expect to have a claims board hear their case, which is made up of three attorneys.²⁴⁴ Thankfully, these attorneys still must be copyright attorneys and have seven years of experience litigating similar matters, but that seems to be a problem for many.²⁴⁵ Not to mention that seven years is not a long time as a practicing attorney. No experienced judge equals inconsistent decision making. Inconsistent decisions leads to the inability to adequately prepare for a case even with an experienced lawyer. Lawyers are also unable to predict what will happen in each case.

With the UK's form of small claims court, the parties get a specialized judge who will be able to keep the outcomes more consistent.²⁴⁶ This allows parties to be better prepared for their cases because they will know how the judge is likely to rule.

F. WHAT IT IS UNABLE TO FIX?

1. *Little limitation on the scope of possible cases to those that most need it can lead to abuse.*

If different groups were worried about the lack of limiting in the CASE Act, then they are going to find an even bigger issue with the broad nature of the Intellectual Property Enterprise Court. With two levels and a wide range of case types that it can hear, a system like the UK's in America would not help limit the scope of what can be heard. It would only exacerbate that concern.

No matter what system is adopted, people will still try to abuse it. Trolls will still attempt to use the courts to gain money from a vulnerable claimant or defendant who does not understand the system. However, this is true no matter

²⁴³ See *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 4 (explaining the types of cases that can be heard in this court system).

²⁴⁴ See Olson, *supra* note 9 (explaining how the claims board would work under the CASE Act).

²⁴⁵ *Id.*; see also Copyright Alternative in Small-Claims Enforcement Act of 2019, 17 U.S.C. § 1502 (discussing the criteria for the board members under the CASE Act system).

²⁴⁶ Cumming & Hoole, *supra* note 226.

what system is adopted. People and companies will always try to take advantage of others given the chance to do so.

2. *Steep penalties are still a possible issue.*

Opponents of the CASE Act were worried that the penalties possible in that system would be too high. If a two-tiered system like the UK's was adopted, this issue would just get worse. With higher limits for cases in those two small claims tracks, the amount that a losing party could be asked to pay could, and probably would, be well over the minimum allowed in the United States federal system. Leaving those who already pointed out this issue with no fix.

3. *Would this be constitutional in America?*

For the same reasons that the CASE Act may be unconstitutional, the adoption of a UK-style system could also be unconstitutional. As stated in the CASE Act discussion, the Supreme Court held that there is a difference between the adjudication of public rights and private rights.²⁴⁷ The Court took issue with the adjudication of private rights and found that doing that is not allowed under our Constitution, more specifically Article III.²⁴⁸ The IPEC would arguably be taking the adjudication of private rights away from typical Article III courts and thus, be unconstitutional in America.

G. COULD AN IPEC-STYLED SYSTEM WORK IN AMERICA?

After looking at everything that the IPEC does, it is clear that this form of small claims system could work in the United States. It would allow more people to bring claims in court without spending all the money they have to litigate the claim. The main issue that Congress, and probably the Supreme Court, would have to work through if they wish to update the CASE Act is whether it would even be constitutional.

Because the United States is vastly larger in size than the United Kingdom, the system would likely have to be duplicated in different areas of America to cover the entire country. If the United States were to have only one central small claims track, possibly in D.C., the cost of traveling, taking off from work, and getting a case prepared, if the case could not be heard virtually, would be high. This system would leave the claimant in a position that makes it impossible to bring a claim.

Expanding a similar system across the country does not seem like a major issue though. We already have circuits and divisions in place to accommodate that same issue in the federal court system. Copying that form and just simply creating a new location, docket, and limited court staff does not strike me as so difficult for those with the power to do that. It would still be an added cost for

²⁴⁷ Article III of the US Constitution. Judicial Department, *supra* note 215.

²⁴⁸ *Id.*

the government and take time to set up, but the actual system for where these should be is basically already created.

There is no need for Congress to make up a whole new system just for the small claims court if there is already a working one in place for them to copy. No new buildings should be needed since the cases should be able to be heard in the same courthouses as the circuit/district court. If Congress were to follow the district court model, there would need to be about 94 small claims tracks to accommodate each district.²⁴⁹

If Congress follows the circuit court model, they will need to set up about 12 with possibly an extra one in the Ninth Circuit to cover the large landmass that it encompasses.²⁵⁰ Given the cost of creating these new court systems, it is more likely that a small claims court modeling the circuit court system would be more efficient. Since the IPEC allows for paper trials²⁵¹, it is likely that the cases would not take up court room space in many circumstances. The judge can simply review the case in their office at their own pace. This model would leave the rest of the court rooms and offices open for their normal hearings and trials.

In addition, Congress should keep in mind that they were already willing to allow for virtual, over the phone, and letter hearings under the CASE Act²⁵² and should try to continue that with any new bill they create. This will just be another way to ensure that the parties can afford to litigate claims. The COVID-19 pandemic has made it easier than ever to make this a reality. Almost everyone has a smart phone or a computer that is compatible with Zoom or some other form of virtual meetings²⁵³, and it is almost impossible that parties have not used at least one of them at this point. And with courtrooms around the country already being equipped with all the technology necessary for these hearings to happen over the internet²⁵⁴, there is no reason why this could not be used for an

²⁴⁹ *Court Role and Structure*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/court-role-and-structure#:~:text=The%2094%20federal%20judicial%20districts,correctly%20in%20the%20trial%20court> (last visited Nov. 12, 2020) (“The 94 federal judicial districts are organized into 12 regional circuits, each of which has a court of appeals. The appellate court’s task is to determine whether or not the law was applied correctly in the trial court.”).

²⁵⁰ *Id.*

²⁵¹ See *Guide to the Intellectual Property Enterprise Court Small Claims Track*, *supra* note 85, at 6 (explaining that cases do not have to be heard in person).

²⁵² See Copyright Alternative in Small-Claims Enforcement Act of 2019, 17 U.S.C. § 1506(c) (explaining that claims in this system can be heard in person, as a paper argument, or through internet-based applications).

²⁵³ *How Many Smart Phones Are in The World*, BANKMYCELL (Sept. 2021), <https://www.bankmycell.com/blog/how-many-phones-are-in-the-world> (explaining that over 61.85% of the world has a smart phone).

²⁵⁴ See Eric Scigliano, *Zoom Court is Changing How Justice is Served – For Better, For Worse, and Possibly Forever*, THE ATLANTIC (May 2021), <https://www.theatlantic.com/magazine/archive/2021/05/can-justice-be-served-on-zoom/618392/> (explaining how courts have adapted because of the pandemic).

intellectual property small claims court. If for some reason they do not have the ability to use one of those applications, they will still be able to call in or have a letter hearing done.

IV. CONCLUSION

If America looked to our cousins across the pond for guidance, Congress could implement a multi-tiered system that could give these small creators the ability to defend themselves. While the CASE Act has provoked a conversation about a small claims court being utilized in the United States, the downfalls of its creation highly outweigh its pros. Congress should look outside of this country for answers. The United Kingdom nearly perfected its small claims system over time. Why re-invent the wheel when there is a working one next door? If we multiplied it to a grander scale to cover the landmass of our country and to use the advanced technology to our advantage, it would be a great win for all.