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[Docket No. 2011–10]

Remedies for Small Copyright Claims:

Additional Comments

Background of James Cannings

JAMES CANNINGS, international recording musician/businessman, founded a Performing Rights Organization - Our Own Performance Society, Inc. (OOPS) is a not-for-profit corporation, which champions performing rights' needs and lobbies the US Congress, the Copyright Office et al. on behalf of songwriters and music publishers with a special focus on small claims, among others. OOPS also collects and distributes performance royalties on behalf of songwriters, bands and music publishers

Additional Comments by James Cannings

This is a response to a request for additional public comment pertaining to a study undertaken by the U.S. Copyright Office at the request of Congress in reference to the topic of adjudicating small copyright claims. The study is postulated to assess whether and, if so, how the current legal system hinders or prevents copyright owners from pursuing claims that have a relatively small economic value and will discuss, with appropriate recommendations, potential changes in administrative, regulatory, and statutory authority. At this time, the Office seeks additional comments on some of the possible alternatives.

A small claims regime is already established in Title 17 United States Code “U.S.C. § 803 (4). The process is administered by the Copyright Royalty Judges, “CRB” but as suggested below, some aspects of this regime can be modified so as to maximize small claims jurisprudence.

Arbitrations before the CRB might be especially useful as a model for arbitrating small copyright claims

In a CRB preceding the Copyright Law encourages voluntary settlement. Settlement offers and responses are encouraged in good faith. From my experience settlements are confidential. The said Law states that the failure to settle trumps arbitration before the CRB. See Amendment in the Nature of A Substitute to H.R. 1417 offered by Mr. Smith of Texas, Mr. Berman and Mr. Conyers, § 803(3)(A).

Based on the Copyright Law it is not necessary that a prospective plaintiff, with a claim that meets the small claims criteria, retain the option of choosing the existing Federal District Court process because under the current CRB regime the United States Court of Appeals for the District of Columbia Circuit possesses jurisdiction to review final determinations of the CRB. § 803 (d).

The location of tribunal(s) must be within the Federal judicial district that includes the address at the time that the small claim is filed. Doing so reduces travelling costs.

The qualifications and selection of adjudicators is already established in Title 17 of U.S.C. § 802.

In order to afford the copyright owner a fair return for his or her creative work in particular. 17 USC Chapter 8 § 801 (b)(I) (A) and § 801 in general.

Therefore, small claims process must be available for all types of copyrighted works, including infringement, infringement claim that is tied to a contractual issue, issues of copyright ownership, Lanham Act, takedown notice containing material misrepresentation in violation of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. 512(f) etc.

Small claims must be- limited to the maximum of \$10, 000 or less. See Amendment in the Nature of A Substitute to H.R. 1417 offered by Mr. Smith of Texas, Mr. Berman and Mr. Conyers, § 803(4)(A).

It may be permissible for a copyright owner to pursue multiple claims in the same proceeding provided that, either individually or, alternatively in the aggregate, they do not exceed the cap of \$10, 000.

In the Amendment in the Nature of A Substitute to H.R. 1417 offered by Mr. Smith of Texas, Mr. Berman and Mr. Conyers, the cap of \$10, 000 or less was proposed to amend Title 17 USC cited as the Copyright Royalty and Distribution Act of 2003. The Amendment also allowed small claimants the exemption from paying a \$150 filing fee. See § 803(4)(A)

Clarification was made to the CRB asking whether the cap is \$10, 000 or \$1,000. To the best of my recollection and belief, the Code of Federal Regulations, "CFR" at that time declared it to be \$1,000. To date a response has not been tendered by the agency.

Should the amount be \$1,000 that amount cannot be justified as it is a deterrent to litigation since procedural fees, litigation fees, Xerox copies of exhibits, brief, replies and/or answers, empirically exceed \$1, 000.

In 1997/98, I arbitrated a musical works fund claim before the then Copyrights Arbitration Panel "CARP." The cost for this proceeding was beyond \$1, 000. I was awarded \$63 74. Federal Register/Vol. 63, No. 79/Friday, April 24, 1998 and FR Doc. 98-10923 Filed 4-23-98. [Docket No.94-3 CARP CD 90-92

An appeal was made to the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court of the United States with no gain. Nos. 91-1119 and 98-1814, respectively.

The Copyright Act is Federal. Therefore, all actions must be subject to Federal not State jurisdiction.

All defenses available to large claims must be allowed to small claims. Due Process must be the rule. In essence the Constitutional right of small claims must in no way be compromised.

Since voluntary good faith negotiations are encouraged by the Copyrights Law, bad faith on the part of a user may necessitate legal proceedings. Therefore,

statutory damages, recovery of attorneys' fees and cost must be paid to small claim litigants, whether the creative work(s) in dispute is/are statutorily protected and/or is/are protected by Common Law.

Proof of filing of an application for registration manifests sufficient good faith intent to register a creative work and/or works for statutory protection. Therefore, the registration status of a work must not affect statutory damages, recovery of attorneys' fees and cost.

All small claims should be treated as in-forma pauperis. Attorneys are encouraged to do pro bono work. A data base of attorneys desiring to do so should be maintained in the event that a small claim copyright owner needs representation. Pro Se representation must also be statutorily recognized.

Paper submission should be encouraged but such type proceeding should not limit the exercise of jurisprudence. Therefore, hearings with personal appearances, expert witnesses, non-party witnesses, teleconferences or videoconferences in lieu of personal appearances must be allowed.

The tribunal must have subpoena power.

A time frame for adjudication as is the custom and usage within federal jurisdiction is suggested to be established. Title 17 U.S.C. establishes a time frame for proceedings before the CRB

Discovery, motion practice, written, oral, documentary evidence, depositions (either oral or by written question), requests for production of documents, interrogatories and/or requests for admission must be subject to standards of admissibility as is established by current Federal Civil Judicial Procedure and Rules. In essence there must be no disparate treatment between large and small claims. Some leniency should be granted to pro se litigants.

The record of proceedings recorded and transcribed by a licensed court reporter must be kept by the tribunal and be publicly available.

The reasoned decisions of the tribunal must be rendered in writing and must include factual findings, legal explanation and/or other analysis.

Decisions should be final subject to review by a Court of competent jurisdiction.

The decision should be published, and carry precedential weight.

In the event the matter is not appealed, enforcement of judgment must be made subject to all means of collection, available through federal procedures.

As aforementioned, appeals of small claims must be allowed to proceed under the rules of a poor person application. Therefore, a waiver of filing fee and posting of bond must be allowed in all proceedings until the exhaustion of all legal remedies.

Except for being found to act in bad faith, after agency review or appeal only small claims should be allowed to recover damages, attorneys' fees and costs. To require small claims to pay these fees and costs will cause hardship and prevent small claims from being prosecuted to the fullest extent of the law.

Group claims in a single proceeding should be encouraged. They must be subject current Federal Civil Judicial Procedure and Rules.

Frivolous claims can be summarily dismissed.

Copyright is a Constitutional right. Therefore, all constitutional rights available to small claims must be adhered to and implemented to the fullest extent.

Copyright is a federal right. Therefore, the alternative of State courts in regard to Copyright subject matter must never be contemplated and/or considered.

Conclusion

As aforementioned, as a result of economic limitations small claims must be granted poor person status in all proceedings.

A good example of economic limitations, which barred a Copyright owner from prosecuting a copyright infringement, is a case which involved the copyright infringement by the famous English group the Rolling Stones.

A New York radio station WBLS played the copyrighted work that was infringed upon and invited the general public to weigh in on the matter.

The general public by consensus determined that the creative work of a New York copyright owner was infringed upon by the recording of the Rolling Stones. The court determined otherwise.

The copyright owner could not prosecute beyond that decision because he was up against millionaires. Because of limited funds the copyright owner was forced to accept the decision of the lower court, even though he had appeals available to him.

Because of limited funds he also had the limitation of the lack of good representation.

It is therefore, expedient of this inquiry to recommend that the economic limitations that prevent effective prosecution and proper representation of small claims be fully addressed so as to allow for equal opportunity before the law.

Respectfully Submitted,

James Cannings

Small Claims/Copyright Owner