



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

April 22, 2021

SENT VIA REGULATIONS.GOV FROM GAVIN YOUNG ON BEHALF OF THE OFFICE OF THE CHAIRMAN OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Ms. Regan A. Smith
General Counsel and Associate Register of Copyrights
U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559

Re: Docket No. COLC-2021-0001, Copyright Alternative in Small-Claims Enforcement (“CASE”) Act Regulations

Dear Ms. Smith:

On behalf of the Office of the Chairman of the Administrative Conference of the United States (ACUS), I offer the following comments in response to the above-referenced notice.

ACUS is an independent agency in the executive branch charged by statute with, among other things, making recommendations to the President, federal agencies, Congress, and the Judicial Conference of the United States to improve rulemaking, adjudication, and other administrative procedures. Its official recommendations are issued by its Assembly, more than half of whose members are government officials appointed by federal agencies. *See* 5 U.S.C. § 591 *et seq.* Recommendations and their accompanying reports appear at www.acus.gov.

Before turning to specific topics of inquiry, I note three ACUS resources that you may find helpful for developing rules governing the Copyright Claims Board (CCB):

1. The [Model Adjudication Rules](#) (2018) contain specific language that the Copyright Office may find useful to develop procedural rules on a broad range of subjects.
2. [Recommendation 2016-4](#), *Evidentiary Hearings Not Required by the Administrative Procedure Act*, sets forth best practices, many of which may be appropriate for CCB proceedings. 81 Fed. Reg. 94314 (Dec. 23, 2016).
3. The reference guide [Federal Administrative Adjudication Outside the Administrative Procedure Act](#) (2019) expands on practices described in Recommendation 2016-4.

A full list of all ACUS adjudication-related resources appears at www.acus.gov/adjudication.

Rules of Practice, Procedure, and Evidence

The Copyright Office requests models for rules of practice, procedure, and evidence in addition to the Federal Rules of Civil Procedure. You may wish to consult [Recommendation 2016-4](#) and [Model Adjudication Rules](#) §§ 112, 120, 239, 320–324, which lay out best practices on subjects including ex parte communications, impartiality, confidentiality, sanctions, and evidentiary rules. Two other recommendations provide additional recommendations on rules governing evidence and impartiality: [Recommendation 86-2](#), *Use of Federal Rules of Evidence in Federal Agency Adjudications*, 51 Fed. Reg. 25642 (July 16, 1986), and [Recommendation 2018-4](#), *Recusal Rules for Administrative Adjudicators*, 84 Fed. Reg. 2139 (Feb. 6, 2019).

Because the CASE Act is intended to make copyright proceedings “accessible especially for pro se parties and those with little prior formal exposure to copyright laws,” the Copyright Office may also wish to consider ACUS resources which specify best practices for assisting self-represented parties, such as simplifying procedures and providing guidance on agency practices. See [Recommendation 2016-6](#), *Self-Represented Parties in Administrative Proceedings*, 81 Fed. Reg. 94319 (Dec. 23, 2016); [Model Adjudication Rules](#), *supra*, § 140.

Public Access to Records and Proceedings

The Copyright Office requests information regarding the means for making final determinations and other records and information publicly available online. You may wish to consult three recommendations which provide best practices for making adjudication rules, decisions and record materials, and policies governing agency adjudicators available online. [Recommendation 2017-1](#), *Adjudication Materials on Agency Websites*, 82 Fed. Reg. 31039 (July 5, 2017); [Recommendation 2018-5](#), *Public Availability of Adjudication Rules*, 84 Fed. Reg. 2142 (Feb. 6, 2019); [Recommendation 2020-5](#), *Publication of Policies Governing Agency Adjudicators*, 86 Fed. Reg. 6622 (Jan. 22, 2021).

Case Management Systems

The Copyright Office requests information regarding the selection of an electronic filing and case management system. You may wish to consult [Recommendation 2018-3](#), *Electronic Case Management in Federal Administrative Adjudication*, which provides a detailed roadmap to help agencies select, develop, and expand electronic case management systems. 83 Fed. Reg. 30686 (June 29, 2018).

Register's Review of CCB's Denial of Reconsideration

The Copyright Office seeks input on any issues related to review of CCB determinations by the Register of Copyrights. You may wish to consult [Recommendation 2020-3](#), *Agency Appellate Systems*, which sets forth best practices regarding the availability of and standards for

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appellate review, decision-making processes, case management, and transparency. 86 Fed. Reg. 6618 (Jan. 22, 2021). You may also find helpful the rules governing appellate review in [Model Adjudication Rules](#) §§ 400–450.

Virtual Hearings

The Copyright Office also asks for input on any other subjects. Because the CASE Act permits the CCB to conduct hearings virtually, you may wish to consult two recommendations that set forth best practices on when and how to conduct video hearings. See [Recommendation 2011-4, Agency Use Of Video Hearings: Best Practices And Possibilities For Expansion](#), 76 Fed. Reg. 48795 (Aug. 9, 2011); [Recommendation 2014-7, Best Practices for Using Video Teleconferencing for Hearings](#), 79 Fed. Reg. 75114 (Dec. 17, 2014). ACUS is currently undertaking a new project, [Virtual Hearings in Agency Adjudication](#), to identify best practices for hearings involving the use of internet-based videoconferencing software.

ACUS's Office of the Chairman thanks the Copyright Office for this opportunity to comment on its inquiry. Please contact me at gyoung@acus.gov or 202-480-2080 if you have questions or would like further information.

Sincerely,

Gavin Young
Attorney Advisor