

Legal Connections



LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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Come hear Alex Smith, Andromeda Morrison, Sarah Slane, and Peter Lovins discuss Sport's Betting with the CBJ on February 23rd. Event info can be found at cbalaw.com/events.

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NEW COPYRIGHT CLAIMS BOARD CREATES "SMALL CLAIMS" ALTERNATIVE TO LITIGATION

Copyright litigants now have a lower-cost, streamlined option thanks to the Copyright Claims Board ("CCB") at the United States copyright office. Established by the 2021 CASE Act, the CCB already has over 250 cases since its launch in July 2022. The CCB can hear claims for copyright infringement, declarations of non-infringement, misrepresentation claims in DMCA take down notices (section 512(f) claims), and legal and equitable actions, including fair use.

The CCB is an opt-in process for both parties. The parties may choose to appear with an attorney, pro-se, or with the help of a law student. The CCB limits actual damages to \$30,000 (there are no limits in federal court) or \$15,000 in statutory damages (versus \$150,000 in federal court). The CCB cannot make a finding of willfulness and has limited power to issue injunctions and attorneys' fees.

The CCB's streamlined litigation process includes standardized discovery

requests, no depositions, no expert witness (except in rare circumstances), simplified motions, and a virtual format for conferences and hearings. The CCB has a standard track for claims up to \$30,000 and a smaller, more streamlined track for claims up to \$5000 that focuses on mediation-like conferences with the claims officer.

The CCB's website home is at <https://ccb.gov/>

Advantages to Plaintiffs:

- Potentially significantly lower litigation costs.
- Lower filing fees.
- Attorney not required; law students can be used.
- Ability to get limited statutory damages even if failure to timely register.
- Potential free mediation.
- If defendant opts-out Plaintiff can use that against them as factor in federal court when arguing for higher award.

Disadvantages to Plaintiffs:

- Defendant can opt-out, causing plaintiff to lose filing fee and waste time filing a CCB claim first.
- Limited statutory damages.
- Attorney's fee award unlikely.
- Still would need to file in district court to enforce after default judgment if defendant's doesn't pay.
- The case can still be reviewed by district court, and thus may be appealable, which ultimately would add additional steps in the litigation process.
- If cases end up in district court for review or judgment, only the federal court in the District of Columbia can be used, which would likely be an inconvenient forum for most plaintiffs and their attorneys.

Advantages to Defendants (reasons not to opt-out):

HIGHLIGHTING DIVERSITY

The Columbus Bar Minority Clerkship Program is underway for 2023. Since the inception of the program in 1987, employers have generously contributed more than \$6 million in salaries, employing 800+ summer clerks. Qualified firms and students interested in the program can find more information on our website or by emailing Stacey Mckenna at stacey@cbalaw.org.

- Likely savings on litigation costs and attorney's fees.
- Statutory damages are drastically limited, and attorney's fees award unlikely.

Disadvantages to Defendants:

- May be plaintiff's only practical remedy; thus, failure to opt-out may allow a case to proceed that would be impractical in federal court.
- A threat of statutory damages that may not have been available in federal court.
- The case moves quickly and is less complicated than federal court, making it more difficult to defend cases and establish leverage for settlement. ■

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CHECK OUT THE LATEST ISSUE OF THE COLUMBUS BAR LAWYERS QUARTERLY TO READ ABOUT CONSTITUTIONAL LAW AND NEWS YOU CAN USE.

ADOPTING THE RIGHT KIND OF BYOD POLICY

According to a recent survey by Zippia.com, 83% of companies have "some kind" of BYOD (Bring Your Own Device) policy. The survey did not report, however, how many companies have the "right kind" of BYOD policy. The same survey reports that 75% of employees use their personal cell phones for work, but 17% of employees admit using their personal device without telling their employer, even if required.

In a misappropriation of trade secrets claim, the "right kind" of BYOD policy can be evidence the employer took reasonable efforts under the



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circumstances to protect the secrecy of the trade secret information. The "right kind" of BYOD balances the security needs of the employer with the cost-savings and efficiencies of allowing employees to use their own devices for work and considers the following:

- Will personal devices be supplied by the employer or the employee?

- Will the employer pay for all or part of the device or the monthly data plan? If a device is required for the job, an employer may be legally required to pay.
- The definition of "personal device" (e.g., smartphones, laptops, tablets,

computers, external hard drives, removable drives, and wearables).

- Requiring personal devices used for work be registered with the employer.
- Employee training on, and adherence to, IT policies and security protocols.
- Prohibiting the download and use of certain software and apps. (TikTok is now banned by some governments and universities.)
- Designating approved work communication methods, and prohibit communicating by personal email accounts, social media, instant messaging, direct messaging, texting, or VoIP.
- Allowing periodic IT audits to ensure compliance.

- Mandating prompt reporting of lost or stolen devices.
- Protecting trade secrets and confidential information on all devices (e.g., password protection, access on a need-to-know basis, no downloading or copying).
- Requiring devices be physically secured and used only by the assigned employee.
- Adopting procedures for termination of employment to secure devices, require devices be returned, and verify all company information has been removed from the employee's personal devices.

When the biggest security threat for most employers comes from their own employees, having the "right kind" of BYOD policy is imperative. ■

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