This message is being sent from Heather E. Kimmel, General Counsel of the United Church of Christ to all Conference Ministers, Conference Attorneys, the Senior Leadership Team, and other covenanted partners of the UCC. Please feel free to forward it to anyone else who may find it useful.

Dear Colleagues:

This is my second email relating to the Consolidated Appropriations Act, which was passed in December. The first email discussed the Paycheck Protection Act and the Families First Coronavirus Response Act updates. This email relates to the Copyright Alternative in Small-Claims Enforcement Act of 2020 (CASE Act), which was passed as part of the CAA.

As you may be aware, our churches, Conferences, and other settings occasionally receive communications that claim they are infringing the copyright of particular works, usually photographs or other materials posted on the setting's website. In today's circumstances, however, we could also begin to see claims related to the streaming of music and other works as many churches are holding worship virtually. In many cases the setting has posted the material without knowledge or intent of infringing a copyright, but that is not a defense to a claim of infringement. In some cases the setting takes the risk that the copyright owner will never bring suit due to the large expense and simply ignores the communication. In some cases the church assumes the communication is fraudulent or a scam, and ignores it. In other cases the setting may negotiate a much lower settlement. Rarely does a claim like this make it to the level of a federal lawsuit against one of our churches or other settings, and that is ordinarily in the best interest of both parties due to the expensive nature of litigation.

The CASE Act will make is easier and less expensive for copyright owners to enforce their copyrights. Instead of filing a lawsuit in federal court, a copyright owner will have the option of bringing their claim for copyright infringement, up to $30,000 in actual damages, to the Copyright Claims Board. A claim can be made without being represented by an attorney. Once a defendant is served with a claim has been filed with the Copyright Claims Board, the defendant will have 60 days to opt out of proceeding in front of the Board, and proceed in federal court if the plaintiff wants to pursue it there.

With the passing of the CASE Act, it will be easier and much cheaper for a copyright owner to bring an action. And, if a church ignores or misses the 60-day opt-out window, the church will be obligated to go through the Copyright Claims Board and give up the right to have the dispute heard in court with a jury trial, along with full appeal rights.

This new legislation makes it even more important for our churches and other church settings to ensure that they have appropriate licenses for any copyrighted material that they are using, and not to ignore any notices claiming they are infringing the copyrighted works of others. While it may be in the best interest of the church to agree to proceed before the Copyright Claims Board, that's a decision that should be made with the advice of counsel, and not by default for not responding to a notice.

The U.S. Copyright Office is developing regulations around the implementation of the CASE Act, and I will keep you up to date.