

The CASE Act: Good Intention. Bad Result.

The Copyright Alternative in Small-Claims Enforcement Act of 2019 (CASE Act) is intended to create a small claims court for copyright proceedings at the Copyright Office in the Library of Congress where those who think their copyright is being infringed can bring actions against infringers.

However, the CASE Act will actually create a likely unconstitutional process leading to litigation abuse that could bankrupt many Americans, small businesses, and nonprofits for something as simple as posting a photo on Instagram or Twitter. Furthermore, it will do nothing to deal with most of the infringement that is occurring.



Unprecedented and Unconstitutional

- Would create a “small claims” judicial proceeding in the Copyright Office, waiving the Supreme Court upheld Seventh Amendment right to jury trials in copyright cases, without the affirmative consent of all parties
- Unprecedented judicial function within the legislative branch would erode over two centuries of separation of powers
- Denies due process by leaving defendants without most appeal or legal recourse rights

Excessive Penalties

- Could subject any American organization or individual—from small businesses to religious institutions to nonprofits—to up to \$30,000 in statutory damages per case
- Excessive penalty would be the largest for any small claims proceeding in the U.S. and is 5 times the national average of other small claims courts and the equivalent to more than half the annual take-home pay for many Americans
- Americans could face bankruptcy for merely sharing a meme or posting a photo

Incentivizes Abuse

- Would make copyright trolling an even bigger problem than it already is, taking up more than half of the current copyright judicial docket
- Creates new opportunities for attorneys and copyright trolls to exploit the system, similar to patent trolls
- 60-day opt-out period will only cause confusion and cause many defendants to incur default judgments with no meaningful right to appeal
- The 60-day opt-out period forces defendants to get up to speed on all the complicated elements of copyright law (including fair use) to understand their rights in 60 days even though small claims proceedings are supposed to be without legal counsel
- The opt-out system will benefit large corporations and mass infringers which will only further entrench a culture of secrecy within major entertainment industries

Lack of Legal Clarity

- Even if someone is acting in good faith and attempting to obtain permission before using a work, they may not be able to do so leaving them exposed to claims
- Allows the tribunal to apply the law incorrectly with no recourse on the part of the defendant
- It allows a claim to be made prior to the copyright registration even being accepted or rejected, meaning that defendants could settle based on the threat of \$30,000 in damages, regardless of whether the use is ultimately infringement
- The Supreme Court recently ruled that the registration process must be completed before filing infringement claims, but registration is not required to bring an action under the CASE Act

Very Different than the English Small Claims System

- Unlike the small claims court in the United Kingdom—where actual damages are applied—this proposed tribunal has a statutory damages minimum fine of \$750 and up to \$15,000 per work. Most of the fines in the UK court are for less than the statutory minimum in the U.S.
- U.S. courts already see more than 4 times as many IP cases per capita as the English system. A small claims tribunal here will open the litigation floodgates even wider

Would Not Stop Most Infringement

- The bill does nothing to stop infringement by overseas actors, which is where most mass infringement occurs
- Sophisticated large-scale infringers and big corporations will simply opt out of the procedure
- What is left is small businesses, nonprofits, religious institutions, libraries, schools and individuals, who would be subject to most of the actions under this bill