

The CASE Act: Myth vs. Fact



MYTH: The CASE Act does not change U.S. copyright law.

FACT: The CASE Act would create different U.S. copyright law for its small claims proceedings than in the courts. It allows for statutory damages for infringements that occur before registering a work, and it allows for actions to be brought against a defendant without a good faith analysis of fair use.

MYTH: The “small claims proceeding” will have much lower damages than the courts.

FACT: For many defendants, they will be facing a \$7,500 penalty in the small claims proceeding when they would be potentially liable for less than \$10 in a federal court. This difference is because the CASE Act allows for statutory damages of \$7,500 for infringements that occur before registration, while the courts only allow actual economic damages in those cases.

MYTH: Individual defendants will not be sued because the damages will be so small.

FACT: The CASE Act’s statutory damages are intended to be punitive and allow plaintiffs to seek up to \$15,000 per violation. There is no protection against the award of the maximum damages under CASE Act and no requirement that the circumstances of the alleged infringement must be considered when the Copyright Claims Board awards damages.

MYTH: The CASE Act will allow small creators to go after large tech companies and mass infringers.

FACT: Large companies and mass infringers will opt out because they understand copyright law, employ copyright attorneys and can act quickly and decisively. Instead, American consumers, small businesses, nonprofits and religious institutions will be targeted for their lack of copyright law knowledge.

MYTH: This proceeding will be cheap for potential defendants.

FACT: Most defendants will need to hire an attorney to begin to understand the complexities of fair use and copyright law in order to defend themselves. In many cases, the cost of defending will be more than the potential damages. Defendants are left with the tough choice of settling when they otherwise would not be liable or hiring an attorney and spending \$10,000 or more.

MYTH: The CASE Act prevents copyright trolls from targeting individuals, small businesses, nonprofits and religious institutions.

FACT: Despite good intentions, the CASE Act will open up a path for copyright trolls to send threatening letters to extort settlements from individuals, small businesses, nonprofits, religious institutions and more who do not understand the Copyright Claims Board or the complexities of copyright law. Ordinary Americans will be intimidated by copyright trolls into settling without ever even going to the Copyright Claims Board.

MYTH: The 60-day opt-out provision makes the CASE Act voluntary.

FACT: The CASE Act is voluntary for large businesses and savvy copyright lawyers. For the overwhelming majority of Americans, it will take much longer than 60 days to understand the letter, figure out the merits and law around the alleged infringement and make a fair assessment of potential damages. In addition to being at risk for up to \$30,000 in statutory damages, most defendants will need to hire an attorney at significant cost to determine their options, spending even more money.