

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
U.S. Senate
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
U.S. Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham, Ranking Member Feinstein and Members of the Senate Judiciary Committee:

As you prepare for a markup of the Online Content Policy Modernization Act, S. 4632, the undersigned group of creators, library organizations, online services and startups and other organizations write in opposition to this bill which includes controversial copyright small claims provisions that would expose ordinary Americans to tens of thousands of dollars in damages and has serious constitutionality issues that have still not been vetted.

The copyright small claims dispute provisions in S. 4632 are based upon S. 1273, the Copyright Alternative in Small-Claims Enforcement Act of 2019 (“CASE Act”), which could potentially bankrupt millions of Americans, and be used to target schools, libraries and religious institutions at a time when more of our lives are taking place online than ever before due to the COVID-19 pandemic. Laws that would subject any American organization or individual — from small businesses to religious institutions to nonprofits to our grandparents and children — to up to \$30,000 in damages for something as simple as posting a photo on social media, reposting a meme, or using a photo to promote their nonprofit online are not based on sound policy.

If the economic threat to unsuspecting Americans is not reason enough to oppose the CASE Act, the many constitutional questions surrounding the bill are of equal concern. The provisions in S. 4632 modeled after the CASE Act establish an unprecedented judicial function within the legislative branch, eroding over two centuries of separation of powers *and* the role of Article III courts under our Constitution. It ignores the 7th Amendment right to jury trial in civil common law based disputes, which copyright falls under. It also denies Americans’ rights to due process. By making the tribunal’s ruling final in most circumstances, defendants would be left without any appeal or legal recourse, even for clear errors of law. And because the bill grants the Copyright

Office the open-ended ability to increase available statutory damages, we are concerned the problem will get worse over time.

That is why our broad and diverse group of organizations have all come out with such strong opposition to earlier versions of this flawed legislation. We recognize that individual artists deserve to be able to enforce their copyright and be compensated for their work. The copyright small claims provisions in S. 4632 may have been drafted with laudable intentions, but they would instead result in exposing hard-working Americans to economic ruin and challenge our Constitution. That is why other attempts to pass and sign this bill into law have not advanced. Moving forward with this policy is not serving the best interests of our nation.

Sincerely,

Center for Democracy and Technology
Computer and Communications Industry Association
Consumer Technology Association
Copia
Electronic Frontier Foundation
Engine
Global Expert Network on Copyright User Rights
Innovation Defense Foundation
Internet Archive
Library Copyright Alliance
Medical Library Association
Organization for Transformative Works
Re:Create
R Street Institute
Software Preservation Network