

October 18, 2017

The Honorable Hakeem Jeffries
1607 Longworth House Office Building
Washington, DC 20515

The Honorable Tom Marino
2242 Rayburn House Office Building
Washington, DC 20515

Re: CASE Act of 2017

Dear Congressmen Jeffries and Marino:

The undersigned organizations and associations appreciate the challenges low-value infringement cases pose to individual artists. Unfortunately, the small claims system established by the CASE Act would not successfully address the problem. Defendants rarely would consent to the jurisdiction of the small-claims tribunal because it would not be in their interest to do so; they likely would not waive the traditional benefits and protections of federal court litigation.

The absence of independent judicial review of the Copyright Claims Board's decisions makes it even less likely that a defendant would consent to the Board's jurisdiction. Accordingly, Congress and the Copyright Office would expend significant time and resources creating the Board, with its three copyright claims officers and two copyright claims attorneys, but it would hardly get used.

To the extent that defendants would consent to the Board's jurisdiction, they likely would be unsophisticated consumers who would not know to opt out or who would fail to respond altogether, leading to a default judgment. This would turn the Board into a default judgment mill, attractive to abusive litigants because of the lower costs of initiating an action compared to federal court.

Moreover, a recent article published in the *Journal of the Copyright Society of the USA*¹ demonstrates that a voluntary small claims procedure can already be established Rule 53(a)(1)(A) of the Federal Rules of Civil Procedure. This provision allows voluntary referral of cases to a special master. It would be far more practical to use the existing Federal Rules of Civil Procedure to experiment with a small claims system than to establish an entirely new framework in the Copyright Office.

Again, we are sympathetic to the difficulties individual artists experience in enforcing their copyrights. Our associations represent authors who themselves have experienced these

¹ Morgan E. Pietz, *Copyright Court: A New Approach to Recapturing Revenue Lost to Infringement: How Existing Court Rules, Tactics From the "Trolls," and Innovative Lawyering Can Immediately Create a Copyright Small Claims Procedure that Solves BitTorrent and Photo Piracy*, 64 J. COPYRIGHT SOC'Y 1 (2016).

difficulties. Nonetheless, for the reasons stated above, we do not believe that the Copyright Claim Board created by the CASE Act would be a fiscally prudent means of addressing this issue.

Respectfully,

American Library Association
Association of Research Libraries
Association of College and Research Libraries
Authors Alliance
Center for Democracy & Technology
Engine
Public Knowledge
R Street Institute
Re:Create

cc: Members of the House Committee on the Judiciary