Controversial copyright bill inches closer to becoming law as House approves



Enlarge / The United States Capitol Building, the seat of Congress, on the National Mall in Washington, D.C.

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In a change of pace for the modern era, the House of Representatives yesterday agreed on a bill and passed it by an overwhelming majority. Unfortunately, the bill in question, known as the CASE Act, is a controversial measure that critics argue could penalize ordinary Americans as much as $30,000 for something as simple as photo sharing, while also emboldening

copyright trolls.

The House voted 410-6 on Monday to adopt the measure, fully named the Copyright Alternative in Small-Claims Enforcement Act of 2019. The bill aims in part to create a new “small claims” Copyright Claims Board within the US Copyright Office. That, proponents argue, would give content creators and rights holders a better, more efficient way to pursue infringement claims, instead of having to spend the time and money on filing a federal court case.

As *Schoolhouse Rock* taught us, a bill needs approval from both the House and Senate before it can become law. (Though the reality is somewhat more complex). CASE went through committee in both the House and Senate earlier this year, and so the version of the bill the House voted to accept on Monday is ready to go to the Senate floor for a vote.

Copyright claims

CASE, if it were to become law, would create a Copyright Claims Board under which rights owners could create claims against individuals instead of pursuing a jury trial. If someone feels their copyright has been infringed, they file a case with the Claims Board and send a notice to the person being sued saying they have done so.

If you’re on the receiving end of a claim, the bill gives you 60 days to respond; failure to do so rewards a default judgement to the claimant. From the notice, the process works in a similar fashion to any other lawsuit, with both sides able to submit evidence, go through discovery, and sit for a hearing before “at least two” members of the Claims Board.

After going through the process, the board may choose to award the claimant financial damages up to $15,000 per each work infringed, or a maximum of $30,000 per proceeding, not counting attorneys fees or other costs.

Rep. Hakeem Jeffries (D-N.Y.), who introduced the bill in May, said at the time that establishing such a board "is critical for the creative middle class who deserve to benefit from the fruits of their labor," adding, "The CASE Act will enable creators to enforce copyright protected content in a fair, timely, and affordable manner."

Sides taken

The battle lines around CASE are pretty clearly drawn.

Groups representing individual content creators, including several writers' and photographers' associations, back the bill. The measure also enjoys support from well-known industry groups such as the Recording Industry Association of America (RIAA). Consumer and digital-rights advocates—including the American Civil Liberties Union, the Electronic Frontier Foundation, and others—oppose it.

Proponents argue that the claims board would make copyright enforcement cheaper and easier for everyone. American Bar Association President Judy Perry Martinez said in an op-ed supporting the bill that participation would be both voluntary and easy. "Currently, defendants can be burdened with significant legal costs and drawn out suits, even where their use is a fair use or otherwise lawful," Martinez wrote.

She added:

> *Participation in the program would be entirely voluntary, and parties could proceed with or without attorneys. Proceedings could be held through phone or videoconferences. Lawyers well-versed in copyright and alternative dispute resolution would decide the claims. The CASE Act would bring positive change to the copyright system by providing copyright holders with a realistic means to protect their works.*

Opponents, however, say that the system would be ripe for

abuse and would likely to bankrupt individuals who get caught up in it.

“We do not oppose the idea of creating a small claims court process” for copyright holders, the ACLU wrote in a letter opposing the bill, adding, “any system to enable easier enforcement of copyrights runs the risk of creating a chilling effect with respect to speech online.”

Essentially, the ACLU argued, CASE would create a copyright system that could be easily abused in the same way DMCA takedown notices can be, or it could be exploited by the same kind of bad-faith actors that exploit the patents system to file spurious lawsuits in search of settlements and payouts:

> *The CASE Act’s new enforcement system will create similar risks of chilling speech by increasing the number of copyright infringement claims that will be brought. Many of these cases will be legitimate. However, some will not, and others, even if brought in good faith, may be defensible as fair use or for some other permissible reason. If legally unsophisticated people are drawn into the CCB process, with the possibility of being liable for $30,000 in damages, they may be forced to settle rather than risk far greater liability, even if they had not infringed.*

In addition to creating an easily exploitable system, the EFF writes, the CASE Act diverges from existing law by assigning a financial value to *unregistered* works and allowing suits to claim financial damages for those as well.

Or, as EFF senior legislative counsel Ernesto Falcon explained in a blog post this week:

> *Under current law, when I take a photo of my kids and someone shares it without my permission, the most I can sue them for is nearly always $0. The CASE Act is a radical departure from this sensible rule. If it passes, sharing most of what you*

> *see online—photos, videos, writings, and other works—means risking crippling liability.*

The EFF also points out that, while members of Congress may think $30,000 is a small claims matter, it's anything but pocket change to the majority of US households. The median household income in the country was about $61,900 in 2018, according to census data. But about 38 million people in the United States live beneath the poverty threshold ($25,750 for a family of four), and data from the US Treasury (PDF) find only six in 10 households have $400 in cash or savings on hand to cover an emergency expense.

In other words, having to fight a copyright infringement claim that costs as much as a year of college would be a significant burden to most households. In short, the EFF said, "It fails to help the artists it's supposed to serve and will put a lot of people at risk."

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