
September 6, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Doug Collins
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Subject: *H.R. 2426, the Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2019*

Dear Chairman Nadler and Ranking Member Collins:

I am writing on behalf of the American Bar Association (ABA) to express our support for the Copyright Alternative in Small-Claims Enforcement Act of 2019 (the “CASE Act”), which the House Judiciary Committee is scheduled to consider soon.

The CASE Act was drafted to provide an alternative forum to federal court for low-value copyright disputes. The copyright community has noted the need for such a tribunal, as the high cost of legal counsel, time-consuming nature of discovery, and significant likelihood of loss when proceeding *pro se* have all made federal copyright infringement litigation effectively unavailable for parties with limited resources. As a result, copyright holders who cannot afford to bring claims essentially must acquiesce to infringement and are thus deprived of the protections copyright is meant to afford. Moreover, copyright defendants are often burdened with significant legal costs and long-lasting suits, even where their use is a fair use or otherwise lawful. Overall, these risks hinder copyright law from fulfilling its primary function of incentivizing the creation of new, expressive works. If enacted, the CASE Act would establish a Copyright Claims Board (the “Board”) within the United States Copyright Office (the “Office”) to resolve copyright claims up to \$15,000 for a single work and up to \$30,000 in one proceeding in which two or more claims are asserted.

The ABA’s Section of Intellectual Property Law has long supported the creation of a low-cost small claims procedure for civil copyright disputes. Last month, our association considered the issue at our annual meeting and adopted policy¹ supporting

¹ American Bar Association Resolution 110A, adopted Aug. 12-13, 2019, *available at* <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2019/110a-annual-2019.pdf>

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creation of a program similar to that now proposed by the CASE Act. An alternative small claims forum within the Copyright Office limited to claims seeking up to \$30,000 in damages, staffed by lawyers well-versed in copyright and alternative dispute resolution, and open to consenting parties proceeding *pro se* or with legal representation is well worth pursuing.

The CASE Act has the potential to resolve many of the current problems and would greatly benefit the copyright community at large. It would also bring positive change to the copyright system by providing copyright holders with a realistic means to protect their works, and we urge you to support it when it comes before the Judiciary Committee next week.

Thank you for considering these comments. If you have any questions regarding these comments, please feel free to contact Kira Alvarez at 202-662-1779 or kira.alvarez@americanbar.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Judy', with a stylized flourish extending to the right.

Judy Perry Martinez