

October 21, 2019

Re: CASE Act of 2019 (H.R. 2426)

Dear Members:

We strongly urge you to vote against the CASE Act of 2019 (HR 2426). The bill would create an unaccountable “court” within the legislative branch and empowers it to issue unreviewable, unappealable default judgments of up to \$30,000 against private parties in copyright infringement claims—potentially without the knowledge or consent of the “defendants” on whom those judgments are levied.

Rather than subjecting the bill to scrutiny and public debate, **proponents have rammed H.R. 2426 through to the floor without a single hearing or opportunity for amendment.** A prior iteration of the bill was given only one hearing at the end of last Congress, with zero witnesses representing consumers or members of the general public who are most likely to be harmed by the legislation. There have been no hearings—either in the House or Senate—since. The only explanation for such an opaque and rushed process is that the CASE Act cannot survive even minor scrutiny.¹

A close examination of the substance of the bill reveals why it has been rammed through without meaningful opportunity for public input and debate: the system it creates is ineffective at best, and predatory at worst. *The “court” created by CASE relies on a constitutionally suspect opt-out provision, in which a failure to respond waives the respondent’s Constitutional right to a jury trial.* Respondents with any modicum of sophistication—including tech platforms, which the bill has been widely reported as targeting—will simply opt out of the “court”’s jurisdiction.

To repeat: **this bill will not effectively hold online platforms accountable.** It will target only those unsophisticated small businesses and individuals—such as the young, the elderly, sole proprietorships, faith based and nonprofit organizations, and those unfamiliar with the legal system—who engage in everyday activities online, such as sharing photos. Put simply, **this bill does not—and cannot--do what its proponents claim it will do.** Instead, the CASE Act provides a venue that is ineffective for achieving the core goals of the bill (at best) and one that is attractive to abusers (at worst).

¹ In addition to the bill’s internal shortcomings, it is likely unconstitutional. The Supreme Court in *Oil States Energy Services, LLC v. Greene’s Energy Group, LLC*, 584 U.S. ____ (2018) held that any case adjudicating “private rights” between two parties must be heard in an Article III court, while also recognizing a narrow exception for situations in which a prior government grant was recognized to have been made in error. Setting aside the differences between correcting a government error and adjudicating a private dispute over copyright infringement, under *Oil States*, any dispute in which one private party may have to pay \$30,000 to another falls squarely within the ambit of “private rights” that deserve the traditional Article III protections of judge and jury.



The cost of bringing a copyright infringement suit, and the burden this represents for small rightsholders, is a *real* problem that Congress should strive to resolve with *real* solutions—solutions that *don't* create Constitutionally-suspect “courts” with the power to bankrupt American families; that *aren't* rammed through without meaningful opportunity for public input and debate; and that *do* protect against abuse. ***We urge you to vote against H.R. 2426 and support efforts to craft a bill that meaningfully and responsibly addresses this very-real issue.***

Sincerely,

Meredith Rose
Policy Counsel
Public Knowledge