



October 21, 2019

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader, U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Re: Opposition to the CASE Act, H.R. 2426

Dear Speaker Pelosi and Leader McCarthy:

The Library Copyright Alliance, consisting of the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries, urges you to vote against the Copyright Alternatives in Small Claims Enforcement (“CASE”) Act of 2019, which is on the suspension calendar this week.

The understandable intention of the CASE Act is to enhance the ability of authors to enforce their copyrights. But by making it easier for copyright owners to initiate lawsuits over minor disputes, the CASE Act likely will lead to a significant increase in the amount of litigation brought against libraries.

Libraries make extensive use of copyrighted works under exceptions such as fair use. Application of the fair use doctrine is complex, resulting in disagreements between libraries and copyright owners who make ill-informed assertions concerning the limitations of fair use. By encouraging low-cost litigation in a new Copyright Claims Tribunal in the Copyright Office, the CASE Act will induce more of these ill-founded claims to be brought against libraries.

Proceedings before the Copyright Claims Tribunal deny defendants many of the protections of normal litigation in a federal court, including Rule 11 sanctions, complete discovery, a trial by jury, and most importantly, the right of judicial appeal. The CASE Act supposedly balances the denial of these protections by allowing the defendant to opt out of the small-claims proceeding.

Unfortunately, the opt-out mechanism will impose a heavy burden on libraries. Libraries typically are units within larger organizations, such as a city government or a university. A library ordinarily does not have the authority to handle litigation on its own; once a lawsuit is filed, it must be referred to the city attorney or the university general counsel. Thus, the library will not be able to opt out of even the most baseless copyright claim. It will frequently have to refer the case to

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counsel, which will be forced to make its own assessment for which it will bill the library. At a large public or research library, this could occur dozens of times each year.

Significantly, the opt-out mechanism is worse in this bill than in the previous version in the last Congress. In the previous version, a person could prospectively opt out of all proceedings before the Copyright Claims Tribunal. Thus, a city government or university could opt out once, and never again have to worry about litigating nuisance claims in the Copyright Claims Tribunal. This blanket prospective opt-out was removed in the current version of the bill, meaning that a library will have to incur the significant cost of opting out each time it is sued in a “small claims” case.

This problem could easily be remedied, either by restoring the prospective opt-out in the previous version of the bill, or by converting the opt-out into an opt-in requirement. Unfortunately, the bill’s sponsors have been unwilling to modify the bill as it has moved through the House. Accordingly, we request that you vote no.

We are happy to answer any questions you may have.

Respectfully,

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