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July 11, 2019

The Honorable Thom Tillis
185 Dirksen Office Building
Washington, DC 20510

The Honorable Richard Durbin
711 Hart Office Building
Washington, DC 20510

The Honorable Jeanne Shaheen
506 Hart Office Building
Washington, DC 20510

The Honorable Marsha Blackburn
357 Dirksen Office Building
Washington, DC 20510

The Honorable Mazie Hirono
730 Hart Office Building
Washington, DC 20510

The Honorable John Kennedy
383 Russell Office Building
Washington, DC 20510

The Honorable Tom Udall
531 Hart Office Building
Washington, DC 20510

Dear Senators Tillis, Durbin, Kennedy, Hirono, Shaheen, Udall, and Blackburn:

We thank you for introducing and supporting S. 1273, the Copyright Alternative in Small-Claims Enforcement Act of 2019 (the “CASE Act”), in the U.S. Senate. The CASE Act is absolutely vital in helping authors, artists, musicians, photographers, and countless small businesses protect their intellectual property from theft. It addresses a crucial access to justice problem for creators in every sector across the country.

Currently, authors and other creators have no practical means of enforcing their primary asset as creators—their copyrights. The CASE Act will go a long way to correcting that by providing an affordable forum in which to bring at least their small claims. With the many threats authors face today—particularly the proliferation of large-scale digital piracy—a small claims tribunal is more necessary than ever.

As you know, copyright infringement cases today must be brought in federal court, at a minimum cost of several hundred thousand dollars. Only a handful of authors can even consider such costs. The Authors Guild’s 2018 author income survey, with over 5,000 respondents, found that full-time authors earned a median of just \$20,300 from their writing in 2017. It means that federal litigation is out of the question, and infringers know that. As a result, even though copyright was provided to creators in the Constitution itself, most creators have been left without enforceable rights; and a right without a remedy is no right at all. The CASE Act would change that and make copyright meaningful again for creators.

The CASE Act was the result of a recommendation by the Copyright Office after several years of study and input from interested parties; it has been in the works for almost ten years. It is supported by a large number of organizations, from the Chamber of Commerce to the Association of American Publishers (see below).

In just the past few days, opposition has appeared to this bill from the usual suspects. Fortunately, their concerns have all been addressed by S. 1273. They articulate four main objections, which we address in turn.

Claim #1: “Copyright Trolls” will misuse the tribunal for harassment purposes.

Fact: The tribunal will be troll proof. Composed of copyright experts with experience representing both copyright owners and users, the tribunal has the power to dismiss any spurious claim and award attorneys’ fees in cases of bad faith claims. “Bad actors” will be fined for abuse and repeat offenders barred from continuing to use the tribunal. As even more assurance against trolls, the Register of Copyright can limit the number of cases that can be brought by the same claimant.

Claim #2: Decisions by the tribunal will cause confusion with federal court precedents.

Fact: Decisions by the tribunal have no precedential effect in federal court. As such, they cannot cause confusion with federal court precedents. The bill clearly states that “determination of the Copyright Claims Board may not be cited or relied upon as legal precedent in any other action or proceeding before any court or tribunal, including the Copyright Claims Board.” Rather, the Copyright Claims Board will be required to follow the law of the applicable jurisdiction.

Claim #3: The creation of the tribunal is unconstitutional.

Fact: The constitutionality of the law has been vetted and re-vetted for almost a decade now by constitutional law experts. There is an opt-out regime that allows either party to take a case into the regular court system, so that constitutional access to the regular courts is preserved. The constitutionality issues are addressed in the Copyright Office’s Copyright Small Claims Report of September 2013.

Claim #4: The opt-in will cause default judgements.

Fact: Many safeguards have been added to prevent unintentional default judgements for failure to opt out—more than one would get in federal court. First, the claimant must formally serve the respondent and both the claimant, then the Copyright Office will send a formal notice describing the opt-out procedures to ensure against any unwitting default judgements, and another before a default judgment is entered. S. 1273 extends the “opt-out” period from 30 to 60 days and allows anyone to file a preemptive “blanket opt-out” that would exempt them from the small claims system created by the CASE Act. Last, a provision was added to allow companies to designate a service agent to receive notice.

The CASE Act is crucial to providing creators with the ability to enforce their copyrights—the very basis of their livelihoods—and to recognize the benefits and incentives that are at the core of copyright law. Too many authors have been left without real remedies for too long.

We thank you greatly for your leadership on this issue of great importance to so many creators. We are available to answer your questions anytime.

Sincerely,



Doug Preston
President, The Authors Guild



Mary E. Rasenberger
Executive Director, The Authors Guild