



House Judiciary Committee  
Copyright Alternative in Small-Claims Enforcement Act of 2017  
September 25, 2018

Chairman Goodlatte, Ranking Member Nadler, and Members of Committee,

Engine is a non-profit advocacy and research organization that works with a community of entrepreneurial startups, pioneers, innovators, investors, and technologists across the country. The startups we represent are among the most innovative and fastest growing companies in the country, fundamentally altering and challenging entrenched business models, ideas, and institutions across all industries. They are businesses that drive our economic prosperity, create jobs, and improve our lives.

Engine writes today to express our concerns with the Copyright Alternative in Small-Claims Enforcement Act of 2017 (“CASE Act”). While this proposal is intended to provide a lower cost mechanism for small copyright holders to address online copyright infringements, it is unlikely to function in this manner. Instead, it creates an opaque and unaccountable quasi-judicial tribunal empowered to grant substantial financial damages awards wholly unrelated to any actual injury incurred. Without any of the standard procedural safeguards of federal courts, this new copyright court is prone to abuse from vexatious litigants targeting unwary users.

The latest discussion draft of the bill improves upon prior versions, particularly in that it eliminates the Copyright Claims Board’s virtually limitless subpoena power. However, the bill still contains several troubling provisions that will make it a forum for weak claims that would face dismissal in federal court. Ultimately, the Copyright Claims Board envisioned under the CASE Act will exacerbate the two biggest problem with our current copyright system: outsized damages awards bearing no relation to the cost of the alleged infringements and minimal safeguards to protect against meritless claims.

For startups, massive statutory damages penalties in copyright law are already a problem as they impose unreasonable burdens divorced from any real finding of harm. The CASE Act allows statutory damages awards of up to \$15,000 per infringed work -- hardly a “small claim.” The average startup launches with around \$75,000 of outside funding meaning that a single statutory damages award from the Copyright Claims Board could be ruinous for a small startup. We should be working to restore sanity to copyright damages awards rather than further normalizing the practice of allowing irrational and burdensome financial penalties on startups and users.

For these reasons, Engine remains opposed to the CASE Act in its present form as the bill creates potential traps for small startups and incentivizes bad faith claims against users and companies alike. Thank you for the opportunity to weigh in on behalf of startups.