



## Why the CASE Act Will Not Result in Copyright Trolling

Some copyright detractors believe there is a copyright “troll” problem that will be exacerbated by the CASE Act. We completely disagree that a copyright troll problem exists. But even if, for the sake of argument, we accept the premise that there is a copyright troll problem, the CASE Act would clearly not exacerbate that problem and would in fact alleviate it.

The CASE Act includes numerous safeguards to prevent “trolling.” The most important of these safeguards is that *participation in the small claims process is completely optional*. If a person thinks the claimant (*i.e.*, the copyright owner who is suing them) is a copyright troll, they (the respondent) can opt out of the case, and the case disappears. The discretionary nature of the CASE Act makes it impossible for a troll to “coerce” someone into court or to bring “frivolous claims” against them.

There are numerous other safeguards in the CASE Act (H.R. 2426 and S. 1273) to prevent trolling. In fact, *there are more safeguards to prevent trolling abuse in the CASE Act than exist under federal law*. These safeguards include:

**The Simplicity of Opting Out Makes the Small Claims Process Inhospitable to Trolling:** Under the CASE Act, respondents can easily and quickly opt out of any case.

**The Penalties in the CASE Act for Bad Faith and Filing Frivolous Claims are Severe:** Under the CASE Act, if a copyright owner is found to have brought claim(s) in bad faith, the Copyright Claims Board has the authority to not only dismiss the claim but also to: (i) award attorneys’ fees to the respondent of up to \$5,000, or more in extraordinary circumstances; (ii) ban the claimant from filing a case for one year; and (iii) dismiss ALL pending cases filed by the claimant. These are substantial penalties, only the first of which is available when a case is filed in federal court.

**The CASE Act Caps Damages:** The small claims process is unfriendly to copyright trolls because the CASE Act caps damages for infringement at a maximum of \$15,000 in statutory damages per claim. This figure pales in comparison to the \$150,000 in statutory damages per claim available in federal court for copyright infringement. The CASE Act also caps *total* damages per case at \$30,000. In contrast, there is NO cap under existing federal law. The CASE Act damage caps would prevent trolls from making threats of massive, unpredictable copyright damages in an effort to extort cash settlements.

**The CASE Act Will Limit the Number of Cases that Can be Brought:** The CASE Act allows the Copyright Office to issue regulations preventing any one person or entity from bringing a certain number of cases in a year. Therefore, even if a troll could somehow abuse the system, the Copyright Office has the ability to limit or prevent that abuse. There is no such restriction on the number of cases that can be filed in federal court. Nor does the Copyright Office have this ability to limit the number of cases filed in federal court

**Trolls Who Try to Abuse the CASE Act Would Lose Money:** When the respondent opts out, the claimant loses the non-refundable filing fee. This gives the respondent leverage, not the claimant, because if the claimant is a troll they stand to lose money every time a respondent opts out.

*In sum, the small claims tribunal established by the CASE Act would be a very inhospitable environment for so-called copyright trolls, especially when compared to the limitless claims that can be brought in federal court.*