



## Why the CASE Act is Constitutional

### **The CASE Act is a Rational, Valid Exercise of Congress’s Authority Under the Copyright Clause**

The Supreme Court has made clear that copyright laws passed under the Copyright Clause of the Constitution need only be rationally related to a legitimate government interest. *Eldred v. Ashcroft*, 537 US. 186 (2003). By enabling individuals and small businesses to enforce their rights, the CASE Act, (H.R. 2426 and S. 1273) easily passes the rational basis test.

### **The CASE Act is Consistent with the Seventh Amendment’s Right to a Jury Trial**

The Seventh Amendment to the Constitution guarantees a person’s right to a trial by jury. But that right is waivable. Because the process created by the CASE Act is optional and parties can opt to proceed before a jury in federal court instead of the small claims court, it is fully consistent with the Constitutional right to a jury trial.

### **The CASE Act is Consistent with Article III of the Constitution**

The Constitution guarantees a person’s right to have a case heard by an Article III court. But that right can be waived. By giving respondents a fair opportunity to waive their right to appear before an Article III court, the CASE Act is fully consistent with Supreme Court precedent. Also, in assessing whether a non-Article III tribunal is constitutional, the Supreme Court considers whether that tribunal usurps the constitutional prerogatives of Article III courts. Here, there is no such usurpation because any impact on Article III courts is at most “*de minimis* given that today typically individual creators cannot afford to bring suit in federal court.” Further, in cases where Congress assigns an adjudicatory role to a governmental agency, the Supreme Court places significant weight on whether the legislation is tied to a well-defined federal statutory scheme. H.R. 3945 sets out a detailed copyright regime with specific rights and remedies to further the public interest in accessing creative works. *See also Oil States Energy Services, LLC v. Greene’s Energy Group, LLC*, 138 S.Ct. 1365 (2018) (Inter partes review -- which authorizes the United States Patent and Trademark Office to reconsider and cancel an already-issued patent claim -- does not violate Article III (or the Seventh Amendment)).

### **The CASE Act Satisfies Due Process Requirements**

The Constitution guarantees a person’s right to be notified of the proceedings and to be heard by the tribunal. The CASE Act satisfies these due process requirements by (i) ensuring that respondents are informed of the claim against them and giving them ample time to opt out; (ii) allowing respondents to request a hearing before the Board, to present evidence, and be

represented by counsel; and (iii) requiring that its service of process procedures parallel the Federal Rules of Civil Procedure, and also describe the small claims process, specifying respondent's right to opt out and set forth the consequences of opting out.

**The Judicial Review Provisions of the CASE Act are Constitutional and Necessary**

"[W]hile a statutory review is important, and *must be exercised without discrimination, such a review is not a requirement of due process.*" *Nat'l Union v. Arnold*, 348 U.S. 37 (1954). De novo review of Board decisions would frustrate the overriding purpose of the CASE Act. As the Copyright Office recognized, "the benefits of a streamlined system would quickly evaporate if decisions could be extensively reconsidered, especially by an Article III court. Losing parties with substantial resources could essentially seek to re-litigate the matter in federal court. [A] litigant who could not afford the burden or expense of federal court and was forced to litigate an appeal would be back at square one."