An Overview of the CASE Act
CASE Act Overview

THE CASE ACT: How It Will Work

The CASE Act Small Claims Court Will Work in Practice

STEP 1: A claim is discovered and a notice is given to the parties to resolve the issue.

STEP 2: The Claimant files a claim on the Copyright Claims Board (CCB).

STEP 3: The CCB attorneys examine the claim to determine if it meets the CASE Act's requirements. If it does not, the claim is dismissed.

STEP 4: If the claim meets the CASE Act requirements, the Claimant notifies the Respondent about the claim in accordance with the Federal Rules of Civil Procedure and the CASE Act.

STEP 5: The Respondent has 60 days to respond to the claim. If the Respondent does not respond, the claim is considered admitted.

STEP 6: If the Respondent does not respond, the CCB issues a default judgment against the Respondent.

STEP 7: Any time before a decision is reached, the CCB may order discovery or set a mediation hearing.

STEP 8: If the case is not dismissed and the parties have not settled, the CCB may issue a decision based on relevant federal court precedents.

STEP 9: The parties have 30 days to appeal the decision by the CCB and another 30 days to appeal a decision by the Board of Copyrights.

STEP 10: After all appeals are concluded, the decision is final and binding.

The CASE Act is supported by creators and creators' advocacy groups, including:

www.christiancastle.com
CASE Act Overview

Myths and Facts
CASE Act Overview

Myth: The Great Meme FUD Campaign
CASE Act Overview
CASE Act Overview
CASE Act Overview

THE INTERNET DID NOT VOTE AGAINST

YOUR SO CALLED SEX TRAFFICKING
By definition, a true meme is a viral event
Why would CCB be preferred forum over federal court due to multiplicity of claims higher damages awards with attorneys fees injunctive relief
Google Routinely Uses Its Platforms to Mount "Break the Internet"-style Campaigns and memes are a favorite tactic
Google (and Facebook) uses a large network of proxies to conduct public messaging campaigns
CASE Act Overview

See Public Citizen’s “Mission Creep-y” Study and Google Transparency Project (www.googletransparencyproject.org)
CASE Act Overview

Memes were used to frame part of Google’s campaign against the European Copyright Directive
Google funds activist site that pushes its views

Matthew Moore Media Correspondent

Google is helping to fund a website that encourages people to spam politicians and newspapers with automated messages backing its policy goals.

The campaigning site is intended to amplify the extent of public support for policies that benefit Silicon Valley, an investigation by The Times suggests. The tools were recently used to bombard MEPs with phone calls opposing EU proposals to introduce tighter online copyright rules. The proposed legislation was rejected by the European parliament last month after a lobbying campaign led by Google and Facebook.

The grassroots opposition to the bill appears to have been orchestrated, in part, by OpenMedia, which describes itself as an organization working to keep the internet open, affordable, and surveillance-free. Although OpenMedia insists that donors do not influence its campaigns, Google is listed as one of its “platinum donors,” and Jacob Glick, a board member, previously worked as Google’s head of policy.

Visitors to the OpenMedia website were connected directly to their local MEP using “one-click calling” technology and provided with a script “suggesting talking points” about the EU proposals. These closely mirrored Google’s arguments against the copyright directive, including the claim that the law would create a tax on web links.

OpenMedia was also used to marshal opposition to plans by Amber Rudd, as home secretary, to control messaging apps such as WhatsApp to ditch end-to-end encryption. She argued that it was limiting intelligence agencies’ ability to stop terrorists. Google and Facebook, which owns WhatsApp, have resisted attempts to restrict encryption.

OpenMedia used software to enable activists to bombard British newspapers with pre-encryption “letters to the editor” backing Silicon Valley’s line. The website suggested facts for opponents to include. If they sent identical copies of the letters to the five papers closest to the user’s postcode. The technology used by OpenMedia was developed by New/Mode, an “engagement platform” it helped to found in 2016. New/Mode boasts that its one-click tools allow campaigns to “fool targets with public messages” on social media and “blanket local media with stories from your supporters.”

Greenpeace and Amnesty International are among its clients. Corporations have been accused of using these tools to create an impression of grassroots support for their agendas, a tactic known as “astro turfing.”

The EU’s copyright proposals were backed by the music industry, media groups, and publishers that hoped the new law would ensure that content creators were fairly rewarded. During the debate in June, MEPs received tens of thousands of automated emails and phone messages supporting the view of the tech giants. Yet real-world demonstrations were sparsely attended.

TheTrichordist, a blog that first highlighted the connection between Google and OpenMedia, accused the search company of hacking the democratic process. OpenMedia, based in Vancouver, insisted that Google and other donors had no influence over its campaigns and said that most of its funding came from grassroots supporters.

“OpenMedia does not accept funding that compromises its organisational independence, including funding relationships that may influence our focus,” Laura Tribe, the group’s executive director, said. “We receive contributions from a diverse range of businesses and organisations whose goals align with ours. Google is one of these.”

Google said: “As one of many donors, we are transparent about supporting OpenMedia’s work to campaign for the open web, and we respect their organisational and editorial independence.”

Google and OpenMedia declined to reveal how much money the search giant had contributed. OpenMedia said that 143,000 people took part in its copyright directive campaign and 2,400 in the pre-encryption campaign in the UK. Groups that backed the copyright proposals claim Google spent £27 million on lobbying against it.

Janet’s just realised...
Copyright lawyers of @Facebook and @Google told me last September in #Siliconvalley that they will interfere in the European law making. And they did.
Misinformed YouTubers Are Undermining the Fight for Children’s Privacy Online

They think that protecting kids online will destroy the video platform. They’re wrong.

By HARSIMAR DHANOA and JONATHAN GREENGARDEN

NOV 27, 2019 • 7:25 AM
CASE Act Overview

Fact: “Memes” generally a derivative work
May be subject to fair use defense
Fact: CCB is expressly permitted to declare noninfringements, e.g., fair use
CASE Act Overview

Fact: Meme user can opt out of CCB so no issue
CASE Act Overview

Myths and Facts
Myth: Opt out process will deceive “respondents” into default judgments
CASE Act Overview

Fact: Respondents have 60 days to opt out after receiving notice.

Proceeding does not become active until 60 day opt-out period expires.

AND
CASE Act Overview

CCB may extend the initial opt-out period for another 60 days in the interests of justice
CASE Act Overview

Myth: Respondent will not know they can opt out or what happens if they fail to respond to notice
CASE Act Overview

Fact: Notice must be consistent with FRCP and that notice must explain consequences of not responding, e.g., no Article III court, waiving right to jury trial.

AND
Copyright Claims Board ALSO sends notices

1) Notification of proceeding by CCB
2) If respondent defaults, CCB sends default notice giving respondent another 30 days before default is final
3) If default, a FOURTH notice giving another 90 days to challenge default in federal court
Two Google-funded groups campaigned against CASE Act:
Public Knowledge and
Electronic Frontier Foundation
D. Public Knowledge

Public Knowledge is a non-profit organization whose mission is to “preserv[e] the
openness of the Internet and the public’s access to knowledge; promot[e] creativity through
balanced copyright; and uphol[d] and protect[t] the rights of consumers to use innovative
technology lawfully.” See http://www.publcknowledge.org/about. Google has contributed to
Public Knowledge for years before the complaint in the case at bar was filed. Public Knowledge
has commented on the case. See Ex. II (available at
http://www.publcknowledge.org/blog/copyright-compatibility); Ex. JJ (available at
Tell Congress: Say No To The CASE Act Tomorrow!

The House of Representatives has passed the Copyright Alternative in Small-Claims Enforcement Act, and now it’s before the Senate. The CASE Act is hugely problematic -- it would establish an unaccountable “small claims” tribunal within the U.S. Copyright Office, meaning it would be exempt from the regulations and procedures of the judicial branch.

The tribunal would be allowed to assign damages of up to $30,000 -- nearly half the income of the average American household -- nearly 5x more than the national average for small claims courts. To go through a traditional federal court instead, accused parties will have to opt out -- which most individuals will not even know they can do.

The bill creates an appealing business model for copyright trolls, who can file claims against small-time artists and internet users with the possibility of high profit. This bill can literally bankrupt individuals -- while letting corporations and sophisticated mass infringers off the hook entirely -- and do so without any meaningful right of appeal.

Tell your Senators to say no to the CASE Act and instead create a small claims court that truly allows creators to exercise their rights through an accountable, appealable, and reasonable system.
CASE Act Overview

Announced on eve of House vote but
Phone2Action bot
called Senate offices
CASE Act Overview

C. Electronic Frontier Foundation

The Electronic Frontier Foundation ("EFF") is a non-profit organization whose mission is to "defend[] free speech, privacy, innovation, and consumer rights," see https://www.eff.org/about, with long-standing public views on the importance of interoperability. See, e.g., https://www.eff.org/cases/blizzard-v-bnetd. Google has contributed to the EFF for years before the complaint in the case at bar was filed.

Michael Barclay, now a volunteer fellow for the Electronic Frontier Foundation, commented on the case on his blog, IP Duck.5 See Ex. Y (available at http://ipduck.blogspot.com/2012/05/judge-alsup-rules-that-java-apis-are.html); Ex. Z (available at http://ipduck.blogspot.com/2012/05/phase-one-verdict-in-oracle-v-google.html). Mr. Barclay’s interest in the copyrightability of software interfaces, however, long predated his association with EFF, and in fact predated Google’s existence—Mr. Barclay represented Borland in Lotus v. Borland. Ex. AA (Borland’s Supreme Court merits brief).

Julie Samuels is a Staff Attorney at the EFF focusing on intellectual property issues. See https://www.eff.org/about/staff/julie-samuels. In that capacity, Ms. Samuels frequently comments on intellectual property cases of note, including this case. See Ex. BB ("No Copyrights on APIs: Judge Defends Interoperability and Innovation," May 31, 2012, available at https://www.eff.org/deeplinks/2012/05/no-copyrights-apis-judge-defends-interoperability-and-innovation); Ex. CC ("Oracle v. Google and the Dangerous Implications of Treating APIs as..."
CASE Act Overview

Cy Pres Awards

<table>
<thead>
<tr>
<th>Organization</th>
<th>Google Referrer</th>
<th>Facebook Sponsored Stories</th>
<th>Google Buzz</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Civil Liberties Union</td>
<td></td>
<td></td>
<td>$700,000</td>
</tr>
<tr>
<td>Berkley Center for Law and Technology</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>Samuelson Law, Technology and Public Policy Clinic</td>
<td></td>
<td></td>
<td>$200,000</td>
</tr>
<tr>
<td>Berkman Center</td>
<td>$750,000</td>
<td>$300,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Brookings Institution</td>
<td></td>
<td></td>
<td>$165,000</td>
</tr>
<tr>
<td>Carnegie Mellon Privacy &amp; Security Lab</td>
<td>$1,050,000</td>
<td></td>
<td>$350,000</td>
</tr>
<tr>
<td>Center for Democracy &amp; Technology</td>
<td></td>
<td></td>
<td>$500,000</td>
</tr>
<tr>
<td>Electronic Frontier Foundation</td>
<td></td>
<td></td>
<td>$500,000</td>
</tr>
<tr>
<td>MacArthur Foundation</td>
<td></td>
<td></td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Indiana University</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>Stanford Center for Internet and Society</td>
<td>$800,000</td>
<td>$300,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>YMCA of Greater Long Beach</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>Electronic Privacy Information Center</td>
<td></td>
<td></td>
<td>$500,000</td>
</tr>
<tr>
<td>Santa Clara University</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>Youth Radio</td>
<td></td>
<td></td>
<td>$50,000</td>
</tr>
<tr>
<td>Joan Ganz Cooney Center</td>
<td></td>
<td></td>
<td>$500,000</td>
</tr>
<tr>
<td>NYU Information Law Institute</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>Campaign for Commercial Free Childhood</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>Consumers Federation of America</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>Rose Foundation</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>ConnectSafety.org (Larry Magid/Facebook)</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>WiredSafety.org</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
<tr>
<td>World Privacy Forum</td>
<td>$850,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chicago Kent</td>
<td>$800,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AARP Foundation</td>
<td>$750,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Organization</td>
<td>Google Referrer</td>
<td>Facebook Sponsored Stories</td>
<td>Google Buzz</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>-----------------</td>
<td>----------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>American Civil Liberties Union</td>
<td></td>
<td></td>
<td>$700,000</td>
</tr>
<tr>
<td>Berkley Center for Law and Technology</td>
<td></td>
<td>$300,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Samuelson Law, Technology and Public Policy Clinic</td>
<td></td>
<td></td>
<td>$200,000</td>
</tr>
<tr>
<td>Berkman Center</td>
<td></td>
<td>$750,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Brookings Institution</td>
<td></td>
<td></td>
<td>$165,000</td>
</tr>
<tr>
<td>Carnegie Mellon Privacy &amp; Security Lab</td>
<td></td>
<td>$1,050,000</td>
<td>$350,000</td>
</tr>
<tr>
<td>Center for Democracy &amp; Technology</td>
<td></td>
<td>$500,000</td>
<td>$500,000</td>
</tr>
<tr>
<td>Electronic Frontier Foundation</td>
<td></td>
<td>$500,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>MacArthur Foundation</td>
<td></td>
<td>$500,000</td>
<td></td>
</tr>
<tr>
<td>Indiana University</td>
<td></td>
<td></td>
<td>$300,000</td>
</tr>
</tbody>
</table>
No. 17-961

In the Supreme Court of the United States

THEODORE H. FRANK, et al.,

Petitioners,

v.

PALOMA GAOS, Individually and on Behalf of All Others Similarly Situated, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICI CURIAE DAVID LOWREY,
RAYMOND J. PEPPERELL, BLAKE MORGAN, AND GUY FORSYTH IN SUPPORT OF PETITIONERS
CASE Act Overview

Causal or Conditional Fallacy

Please tell your Senators and Representative to vote no on the CASE Act (S. 1273, H.R. 2426). It could leave regular Internet users on the hook for tens of thousands of dollars for doing things we do online every day: sharing memes, downloading photos, and sharing videos.

Enter your phone number below and we'll connect you (US numbers only).

www.christiancastle.com
CASE Act Overview

Authorize **Phone2Action** to access your account?

- See Tweets from your timeline (including protected Tweets) as well as your Lists and collections.
- See your Twitter profile information and account settings.
- See accounts you follow, mute, and block.
- **Follow and unfollow accounts for you.**
- Update your profile and account settings.
- Post and delete Tweets for you, and engage with Tweets posted by others (Like, un-Like, or reply to a Tweet, Retweet, etc.) for you.
- Create, manage, and delete Lists and collections for you.
- **Mute, block, and report accounts for you.**

This application will be able to:

Learn more about third-party app permissions in the Help Center.

We recommend reviewing the app’s terms and privacy policy to understand how it will use data from your Twitter account. You can revoke access to any app at any time from the Apps and sessions section of your Twitter account settings.

**WHY DO THEY NEED THIS?**

www.christiancastle.com
CASE Act Overview

Take the spambots bowling
CASE Act Overview

Myth: Copyright “trolling”
CASE Act Overview

Copyright “trolling” not defined in US Code
“Coerce” users into expensive federal litigation that defendant can’t afford
CASE Act Overview

Sounds familiar—where we came in
Fact: CASE has many disincentives for trolling
Optional participation so preserves respondent’s ability to forum shop and loophole seeking behavior (reverse trolling)
CASE Act Overview

Damages Cap of $15,000 per work and total damages per case at $30,000
Copyright Office regulations can limit total number of cases that any one person can file in a year.
Myth: CCB is unconstitutional
CASE Act Overview

Fact: SCOTUS interpreted 7th Amendment as Requiring that copyright claims be heard before a jury

_Feltner v. Columbia Pictures Television, Inc._
SCOTUS also held:

“[A]s a personal right, Article III’s guarantee of an impartial and independent federal adjudication is subject to waiver, just as are other personal constitutional rights that dictate the procedures by which civil and criminal matters must be tried.”

CCB satisfies constitutional requirements by voluntary consent and waiver of Article III right to federal court and 7th Amendment right to civil jury
CASE Act Overview

Will no doubt be litigated by Big Tech companies that profit from DMCA loopholes
An Overview of the CASE Act