

# ANTONELLI LAW

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House Committee on the Judiciary

2138 Rayburn House Office Bldg

Washington DC 20515

Re: H.R.3945 - Copyright Alternative in Small-Claims Enforcement Act of 2017”  
Aka “CASE Act of 2017”.

Dear Committee:

My law firm defends people across the country who are accused of violating the US Copyright Act through online downloading of copyrighted works, mostly movies. I am writing to ask that you cautiously examine H.R.3945 which has been referred to the Committee. The Bill seeks “to establish an alternative dispute resolution program for copyright small claims, and for other purposes.”

Over the past six years, we have defended nearly 2,000 people from Hawaii to New York and talked with thousands more. My concern is the Bill as written will exacerbate the current “copyright troll” problem occurring in federal courts across the country and which is complained of by district judges, including those I quote below.

**I am greatly concerned with the following:**

- A) The high statutory damages of \$15,000 for a single downloaded movie;
- B) A hastened process in this new Small Claims mechanism that will allow well-funded Hollywood organizations to steamroll ordinary Americans who cannot afford defense counsel; and
- C) The Bill’s allowance in Sec. 1403 (a) for Defendants to “opt out” and remove the action to an Article III federal court will force defendants to pay for federal court filing fees, currently \$400, plus other service of process costs. In current federal copyright litigation, the claimant (plaintiff) must pay these costs. In its current form, H.R.3945 forces defendants instead of plaintiffs to pay these costs instead of the plaintiff in order to have the claims heard in an Article II court. This cost-shifting unfairly burdens innocent people who may elect to pay the copyright claimant’s settlement demand as a ransom

since it may be not much more than the federal court's filing fees.

The combination of the three factors above may create an enormous plague of settlement demand letters and litigation in this new forum. Federal judges from coast to coast are already concerned that movie companies have been filing thousands of copyright lawsuits in their district courts as a revenue model, not as a deterrent to piracy (copyright infringement). Easing the process for copyright holders to obtain high statutory damage awards poses a danger the Committee just may not realize.

**My recommendations in order to avoid a new Small Claims forum exacerbating the abusive copyright troll tactics described by federal judges cited below and others are:**

- A) Limit the statutory damage to \$500 per copyrighted work. This will limit the incentive for copyright claims to be prosecuted as a revenue model. It will also limit the damage done for innocent people who are accused of digital piracy due to faulty IP address matching (false-positives), but are found guilty due to their inability to afford a legal defense.
- B) Force the copyright claimant ***to pay the federal court filing fees and service of process costs immediately upon the election of the Defendant*** to "opt out" as allowed by Sec. 1403 (a) and instead proceed in an Article III federal court. Current federal court filing fees are \$400.

The creation of a so-called small-claims copyright court with such high statutory damage awards in conjunction with a new process would amount to an "express lane" for litigation, likely fueling a nationwide campaign of tens of thousands of cases and settlement demand letters designed to scare people into settling for thousands of dollars. From our experience, too many of those people will either be entirely innocent, or the actual downloader may be a minor child or family guest.

Put succinctly, this may put the current federal court problem of copyright trolling on steroids.

For example, Judge Otis Wright of the Central District of California described certain pornographic movie company plaintiffs' copyright-enforcement as a business model and extortion scheme. In one case, Judge Wright described it thus:

These lawsuits run a common theme: plaintiff owns a copyright to a pornographic movie; plaintiff sues numerous John Does in a single action for using BitTorrent to pirate the movie; plaintiff subpoenas the ISPs to obtain the identities of these Does; if successful, plaintiff will send out demand letters to the Does; because of embarrassment, many Does will send back a nuisance-value check to the plaintiff. The cost to the plaintiff: a single filing fee, a bit of discovery, and stamps. The rewards: potentially hundreds of thousands of dollars. Rarely do these

cases reach the merits. **The federal courts are not cogs in a plaintiff's copyright-enforcement business model. The Court will not idly watch what is essentially an extortion scheme,** for a case that plaintiff has no intention of bringing to trial“  
Emphasis added.

*Malibu Media LLC v Does 1-10*, 2:12-cv-03623-ODW-PJW (CDCA), June 27, 2012.

In New York, Federal Judge Alvin K. Hellerstein cited Loyola University of Chicago Law Professor Matthew Sag's published article "Copyright Trolling, An Empirical Study" as follows:

Recent empirical studies show that the field of copyright litigation is increasingly being overtaken by "copyright trolls," roughly defined as plaintiffs who are "more focused on the business of litigation than on selling a product or service or licensing their [copyrights] to third parties to sell a product or service."

*Malibu Media LLC v JOHN DOE subscriber assigned IP address 66.108.67 10* 1:15-cv-04369-AKH (SDNY), July 6, 2015.

And in addition, federal Judge Harold Baer has written that the pressure on pornographic copyright infringement defendants to settle their case quickly and thereby avoid embarrassment and litigation costs — when they may not even have committed any infringement — is all too real. Unfair pressure tactics "if left unchecked, **could turn copyright protection on its head.** Congress intended to incentivize the creation of useful arts by providing a statutory right and a means of enforcement that would reward authors for their labors, hardly the Plaintiffs' strategy here."

*Media Products Inc., dba Devils Film v Does 1-12* 1:12-cv-03719-HB (SDNY), September 4, 2012.

But it is not just pornographic media companies that are filing thousands of copyright infringement cases in the federal court. Far from it. In fact, currently, the following mainstream movie companies are suing thousands of people in federal court right now:

- **A Family Man** starring Gerard Butler and Alison Brie (Headhunter LLC)
- **Boyka: Undisputed** starring Scott Adkins and Teodora Duhovnikova (UN4 Productions)
- **Criminal** starring Ryan Reynolds, Kevin Costner, and Gary Oldman (Criminal Productions)
- **Eliminators** starring Scott Adkins, Stu Bennett, and Daniel Caltagirone (WWE Studios Finance Corporation)
- **The Hitman's Bodyguard** Ryan Reynolds, Samuel L. Jackson, Gary Oldman, Bodyguard Productions, Inc.

- **I.T** starring Pierce Brosnan, James Frecheville and Anna Friel (I.T. Productions)
- **Larceny** starring Dolph Lundgren, Louis Mandylor, & Corbin Bernsen (Badhouse Studios, LLC)
- **London Has Fallen** starring Gerard Butler, Morgan Freeman and Aaron Eckhart (LHF Productions)
- **Mechanic: Resurrection** starring Jason Statham and Jessica Alba (ME2 Productions)
- **Mr. Church** starring Eddie Murphy and Britt Robertson (Cook Productions)
- **Once Upon a Time in Venice** starring Bruce Willis (Venice PI LLC)
- **Tushy, Vixen, and Blacked** film brands – Strike 3 Holdings LLC
- **X-Art.com** movies of the adult variety (Malibu Media LLC)
- **Vengeance: A Love Story** starring Nicolas Cage and Anna Hutchinson (Justice Everywhere Productions)

These cases too often pose problems in innocent people being sued for copyright infringement. For example, in one case involving the film “Pay the Ghost” starring Nicholas Cage, Northern District of Illinois Judge Sara Ellis impugned the validity of how the plaintiff selected its accused defendants:

“This Court agrees with those courts that have found that the plaintiff needs to allege more than just the registration of an IP address to an individual in order to proceed against that individual for copyright infringement.”

*PTG NEVADA, LLC, v. WAI CHAN, STEPHANI FEDOROVICH, and MICHAEL AFFRUNTI 16-cv-1621, (NDIL).*

We agree with Judge Ellis. From our experience defending nearly 2,000 individuals and businesses accused of digital piracy, we have found the rate of “false positives” defined as copyright claims filed against an innocent person due to just an IP address which may have been faked on the Internet – is unacceptably high.

If left unchecked, H.R.3945 - Copyright Alternative in Small-Claims Enforcement Act of 2017” has the potential to hurt tens of thousands of people’s lives with erroneous claims due to flawed IP address matching, along with an “express lane” of so-called small claims litigation. Can you imagine how the average family will suffer from just the anxiety of facing exorbitant statutory damages of up to \$15,000 for a single downloaded movie?

Again, if a copyright small claims procedure must be created, in order to avoid the abusive copyright troll tactics described by the federal judges cited above and others, my recommendations are:

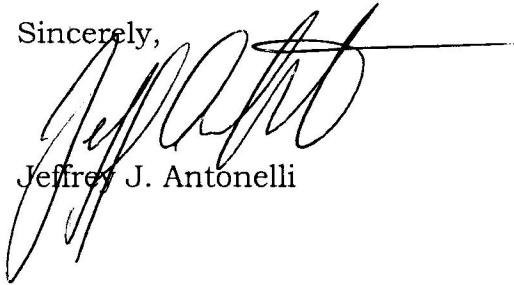
- C) Limit the statutory damage to \$500 per copyrighted work. This will limit the incentive for copyright claims to be prosecuted as a revenue model. It will also limit the damage done for innocent people who are accused of digital piracy due to faulty IP address matching (false-positives), but are found

guilty due to their inability to afford a legal defense.

- D) Force the copyright claimant **to pay the federal court filing fees and service of process costs immediately upon the election of the Defendant** to “opt out” as allowed by Sec. 1403 (a) and instead proceed in an Article III federal court. Current federal court filing fees are \$400.

Thank you for your consideration of my concerns about H.R.3945, the Copyright Alternative in Small-Claims Enforcement Act of 2017.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey J. Antonelli', with a horizontal line extending to the right from the end of the signature.

Jeffrey J. Antonelli