



A2P2 ISSUE BRIEF: DECEMBER 2020 COPYRIGHT ROUNDUP

JANUARY 2021

THE DIGITAL COPYRIGHT ACT OF 2021

In late December 2020, Senator Thom Tillis released a draft bill which aimed to make several reforms to the Digital Millennium Copyright Act (“DMCA”). The draft bill would replace the current “notice-and-takedown” system with a “notice-and-staydown” system whereby, once a copyright holder notifies a service provider that they believe a particular use is infringing, the service provider must remove all subsequent infringing uses unless the user makes a statement that the use is licensed or otherwise authorized by law (such as being a fair use). The draft bill would also lower the specificity required in takedown notices, establish the Copyright Office as a division of the Department of Commerce, limit liability for users who use orphan works after a diligent but unsuccessful search for the copyright holder, and make changes to the Copyright Office’s triennial rule-making process and exemptions on the DMCA’s prohibition on bypassing technical protection measures with the aim of streamlining the process. Senator Tillis has invited stakeholders to submit reply comments to the draft bill by March 5th.

Senator Tillis released the draft bill after posing a series of questions for stakeholders regarding how the DMCA could be reformed to reflect the needs of copyright holders and the state of the world 22 years after the DMCA was passed. Several organizations and individuals (including Authors Alliance) submitted responses to those questions or reactions to the draft bill that cautioned against a notice-and-staydown system, and instead advised Senator Tillis that copyright law should seek to align the interests of individual creators with the interests of the public for whom they create. Authors Alliance joined a chorus of other organizations that also argued that any reforming legislation should require a nexus between the relevant use and copyright infringement for there to be a violation of section 1201. Other organizations have voiced support for the proposed move to a notice-and-staydown system and for other changes that they argue would make it easier to remove infringing content online.

Read More: [Press Release, Sen. Thom Tillis, Tillis Releases Landmark Discussion Draft to Reform the Digital Millennium Copyright Act, Dec. 22, 2020](#)
[Rebecca Tapscott, Senator Tillis Releases Draft Bill to Modernize the Digital Millennium Copyright Act, IPWatchdog, Dec. 22, 2020](#)
[Authors All., Authors Alliance Weighs in on DMCA Reform, Dec. 5, 2020](#)
[Library Copyright All., Library Copyright Alliance Expresses Concerns with Digital Copyright Act Discussion Draft, Dec. 22, 2020](#)

COPYRIGHT ALTERNATIVE IN SMALL CLAIMS ENFORCEMENT ACT OF 2019 (CASE ACT)

The year-end stimulus package included a provision known as The CASE Act, co-sponsored by several members of Congress, and introduced in 2019. In short, the CASE Act creates a small claims tribunal—known as the Copyright Claims Board (“CCB”)—within the Copyright Office for copyright disputes as an alternative to pursuing copyright claims in federal court. The CCB is set to begin operations by the end of December 2021, unless the Copyright Office makes the determination to delay implementation.

Proponents of the CASE Act argue that it will help individual creators, who often cannot afford the expense of bringing litigation in federal court, but are more likely to be able to afford the lesser costs associated with pursuing the dispute in the CCB. But those who have spoken out against the CASE Act (including Authors Alliance), have argued that while a more accessible forum for resolving copyright disputes is an admirable goal, but that the CASE Act seeks to achieve it in a way that is extremely flawed. These include the fact that CASE Act allows for excessive damages, does not provide for review by a court in most cases, and the overall scheme is one we fear will invite litigation by copyright trolls. Some critics of the CASE Act have also noted it had little to do with the critical year-end spending bill, which was largely intended as a COVID-19 relief measure.

Read More: [*U.S. Copyright Off., Congress Passes CASE Act of 2020 and Law Regarding Unauthorized Streaming Services, Dec. 22, 2020*](#)
[*Terrica Carrington & Keith Kupferschmid, CASE Act Signed into Law: What This Means, Copyright All., Jan. 7, 2021*](#)
[*Authors All., Authors Alliance Voices Concerns About the CASE ACT, Sept. 19, 2019*](#)
[*Mike Masnick, Congress Looks to Rush Through Unconstitutional Pro-Copyright Trolls Bill, Despite Promising to Explore Alternatives, TechDirt, Oct. 21, 2019*](#)

PROTECTING LAWFUL STREAMING ACT OF 2020

Also included in the year-end stimulus package was a provision known as the Protecting Lawful Streaming Act. The Act—sponsored and led by Senator Thom Tillis and Senator Patrick Leahy—targets and punishes commercial, for-profit services that stream large amounts of copyrighted content without proper authorization. Senator Tillis has said that these services cost the U.S. economy billions of dollars annually. The provision drew attention in part because of its harsh penalties—violators can be sentenced to up to 10 years in prison.

The Protect Lawful Streaming Act is not intended to apply to individual Internet users who access such unauthorized streams, and co-sponsor Senator Leahy has characterized the law as a “narrow” one which only “target[s] only commercial, for-profit criminal privacy.” Critics have noted that there is no glaring need for harsher criminal penalties for copyright infringement, which can already be incredibly

costly for alleged infringers, but also acknowledged that the Act is narrow enough that it is unlikely to create liability for individual users or institutional actors acting in good faith. This law is also unlikely to directly negatively affect authors.

Read More: [Press Release, Sen. Thom Tillis, *Bipartisan Legislation Led by Tillis and Leahy to Fight Illegal Streaming by Criminal Organizations to be Signed into Law*, Dec. 21, 2020](#)
[Jordan Valinsky, *10 Years for Illegal Streaming? It's in the Covid-19 Relief Bill*, CNN, Dec. 22, 2020](#)
[Makena Kelly, *New 'Felony Streaming' Measure is Aimed at Piracy Services, Not Twitch Streamers*, Verge, Dec. 22, 2020](#)