

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2426
OFFERED BY MR. NADLER OF NEW YORK**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Copyright Alternative
3 in Small-Claims Enforcement Act of 2019” or the “CASE
4 Act of 2019”.

5 SEC. 2. COPYRIGHT SMALL CLAIMS.

6 (a) IN GENERAL.—Title 17, United States Code, is
7 amended by adding at the end the following:

**8 “CHAPTER 15—COPYRIGHT SMALL
9 CLAIMS**

- “1501. Definitions.
- “1502. Copyright Claims Board.
- “1503. Authority and duties of the Copyright Claims Board.
- “1504. Nature of proceedings.
- “1505. Registration requirement.
- “1506. Conduct of proceedings.
- “1507. Effect of proceeding.
- “1508. Review and confirmation by district court.
- “1509. Relationship to other district court actions.
- “1510. Implementation by Copyright Office.
- “1511. Funding.

10 “§ 1501. Definitions

11 “In this chapter—

12 “(1) the term ‘party’—

1 “(A) means a party; and

2 “(B) includes the attorney of a party, as
3 applicable;

4 “(2) the term ‘claimant’ means the real party
5 in interest that commences a proceeding before the
6 Copyright Claims Board under section 1506(e), pur-
7 suant to a permissible claim of infringement brought
8 under section 1504(c)(1), noninfringement brought
9 under section 1504(c)(2), or misrepresentation
10 brought under section 1504(c)(3);

11 “(3) the term ‘counterclaimant’ means a re-
12 spondent in a proceeding before the Copyright
13 Claims Board that—

14 “(A) asserts a permissible counterclaim
15 under section 1504(c)(4) against the claimant
16 in the proceeding; and

17 “(B) is the real party in interest with re-
18 spect to the counterclaim described in subpara-
19 graph (A); and

20 “(4) the term ‘respondent’ means any person
21 against whom a proceeding is brought before the
22 Copyright Claims Board under section 1506(e), pur-
23 suant to a permissible claim of infringement brought
24 under section 1504(c)(1), noninfringement brought

1 under section 1504(c)(2), or misrepresentation
2 brought under section 1504(c)(3).

3 **“§ 1502. Copyright Claims Board**

4 “(a) IN GENERAL.—There is established in the Copy-
5 right Office the Copyright Claims Board, which shall serve
6 as an alternative forum in which parties may voluntarily
7 seek to resolve certain copyright claims regarding any cat-
8 egory of copyrighted work, as provided in this chapter.

9 “(b) OFFICERS AND STAFF.—

10 “(1) COPYRIGHT CLAIMS OFFICERS.—The Reg-
11 ister of Copyrights shall recommend 3 full-time
12 Copyright Claims Officers to serve on the Copyright
13 Claims Board in accordance with paragraph (3)(A).
14 The Officers shall be appointed by the Librarian of
15 Congress to such positions after consultation with
16 the Register of Copyrights.

17 “(2) COPYRIGHT CLAIMS ATTORNEYS.—The
18 Register of Copyrights shall hire not fewer than 2
19 full-time Copyright Claims Attorneys to assist in the
20 administration of the Copyright Claims Board.

21 “(3) QUALIFICATIONS.—

22 “(A) COPYRIGHT CLAIMS OFFICERS.—

23 “(i) IN GENERAL.—Each Copyright
24 Claims Officer shall be an attorney who

1 has not fewer than 7 years of legal experi-
2 ence.

3 “(ii) EXPERIENCE.—Two of the Copy-
4 right Claims Officers shall have—

5 “(I) substantial experience in the
6 evaluation, litigation, or adjudication
7 of copyright infringement claims; and

8 “(II) between those 2 Officers,
9 have represented or presided over a
10 diversity of copyright interests, includ-
11 ing those of both owners and users of
12 copyrighted works.

13 “(iii) ALTERNATIVE DISPUTE RESOLU-
14 TION.—The Copyright Claims Officer not
15 described in clause (ii) shall have substan-
16 tial familiarity with copyright law and ex-
17 perience in the field of alternative dispute
18 resolution, including the resolution of liti-
19 gation matters through that method of res-
20 olution.

21 “(B) COPYRIGHT CLAIMS ATTORNEYS.—
22 Each Copyright Claims Attorney shall be an at-
23 torney who has not fewer than 3 years of sub-
24 stantial experience in copyright law.

25 “(4) COMPENSATION.—

1 “(A) COPYRIGHT CLAIMS OFFICERS.—

2 “(i) DEFINITION.—In this subpara-
3 graph, the term ‘senior level employee of
4 the Federal Government’ means an em-
5 ployee, other than an employee in the Sen-
6 ior Executive Service, the position of whom
7 is classified above GS–15 of the General
8 Schedule.

9 “(ii) PAY RANGE.—Each Copyright
10 Claims Officer shall be compensated at a
11 rate of pay that is not less than the min-
12 imum, and not more than the maximum,
13 rate of pay payable for senior level employ-
14 ees of the Federal Government, including
15 locality pay, as applicable.

16 “(B) COPYRIGHT CLAIMS ATTORNEYS.—
17 Each Copyright Claims Attorney shall be com-
18 pensated at a rate of pay that is not more than
19 the maximum rate of pay payable for level 10
20 of GS–15 of the General Schedule, including lo-
21 cality pay, as applicable.

22 “(5) TERMS.—

23 “(A) IN GENERAL.—Subject to subpara-
24 graph (B), a Copyright Claims Officer shall
25 serve for a renewable term of 6 years.

1 “(B) INITIAL TERMS.—The terms for the
2 first Copyright Claims Officers appointed under
3 this chapter shall be as follows:

4 “(i) The first such Copyright Claims
5 Officer appointed shall be appointed for a
6 term of 4 years.

7 “(ii) The second Copyright Claims Of-
8 ficer appointed shall be appointed for a
9 term of 5 years.

10 “(iii) The third Copyright Claims Of-
11 ficer appointed shall be appointed for a
12 term of 6 years.

13 “(6) VACANCIES AND INCAPACITY.—

14 “(A) VACANCY.—

15 “(i) IN GENERAL.—If a vacancy oc-
16 curs in the position of a Copyright Claims
17 Officer, the Librarian of Congress shall,
18 upon the recommendation of and in con-
19 sultation with the Register of Copyrights,
20 act expeditiously to appoint a Copyright
21 Claims Officer for that position.

22 “(ii) VACANCY BEFORE EXPIRA-
23 TION.—An individual appointed to fill a
24 vacancy occurring before the expiration of
25 the term for which the predecessor of the

1 individual was appointed shall be appointed
2 to serve a 6-year term.

3 “(B) INCAPACITY.—If a Copyright Claims
4 Officer is temporarily unable to perform the du-
5 ties of the Officer, the Librarian of Congress
6 shall, upon recommendation of and in consulta-
7 tion with the Register of Copyrights, act expedi-
8 tiously to appoint an interim Copyright Claims
9 Officer to perform such duties during the pe-
10 riod of such incapacity.

11 “(7) SANCTION OR REMOVAL.—Subject to sec-
12 tion 1503(b), the Librarian of Congress may sanc-
13 tion or remove a Copyright Claims Officer.

14 “(8) ADMINISTRATIVE SUPPORT.—The Register
15 of Copyrights shall provide the Copyright Claims Of-
16 ficers and Copyright Claims Attorneys with nec-
17 essary administrative support, including techno-
18 logical facilities, to carry out the duties of the Offi-
19 cers and Attorneys under this chapter.

20 “(9) LOCATION OF COPYRIGHT CLAIMS
21 BOARD.—The offices and facilities of the Copyright
22 Claims Officers and Copyright Claims Attorneys
23 shall be located at the Copyright Office.

1 **“§ 1503. Authority and duties of the Copyright Claims**

2 **Board**

3 “(a) FUNCTIONS.—

4 “(1) COPYRIGHT CLAIMS OFFICERS.—Subject
5 to the provisions of this chapter and applicable regu-
6 lations, the functions of the Copyright Claims Offi-
7 cers shall be as follows:

8 “(A) To render determinations on the civil
9 copyright claims, counterclaims, and defenses
10 that may be brought before the Officers under
11 this chapter.

12 “(B) To ensure that claims, counterclaims,
13 and defenses are properly asserted and other-
14 wise appropriate for resolution by the Copyright
15 Claims Board.

16 “(C) To manage the proceedings before the
17 Officers and render rulings pertaining to the
18 consideration of claims, counterclaims, and de-
19 fenses, including with respect to scheduling, dis-
20 covery, evidentiary, and other matters.

21 “(D) To request, from participants and
22 nonparticipants in a proceeding, the production
23 of information and documents relevant to the
24 resolution of a claim, counterclaim, or defense.

25 “(E) To conduct hearings and conferences.

1 “(F) To facilitate the settlement by the
2 parties of claims and counterclaims.

3 “(G)(i) To award monetary relief; and

4 “(ii) to include in the determinations of
5 the Officers a requirement that certain activi-
6 ties under section 1504(e)(2) cease or be miti-
7 gated, if the party to undertake the applicable
8 measure has so agreed.

9 “(H) To provide information to the public
10 concerning the procedures and requirements of
11 the Copyright Claims Board.

12 “(I) To maintain records of the pro-
13 ceedings before the Officers, certify official
14 records of such proceedings as needed, and, as
15 provided in section 1506(t), make the records
16 in such proceedings available to the public.

17 “(J) To carry out such other duties as are
18 set forth in this chapter.

19 “(K) When not engaged in performing the
20 duties of the Officers set forth in this chapter,
21 to perform such other duties as may be as-
22 signed by the Register of Copyrights.

23 “(2) COPYRIGHT CLAIMS ATTORNEYS.—Subject
24 to the provisions of this chapter and applicable regu-

1 lations, the functions of the Copyright Claims Attor-
2 neys shall be as follows:

3 “(A) To provide assistance to the Copy-
4 right Claims Officers in the administration of
5 the duties of those Officers under this chapter.

6 “(B) To provide assistance to members of
7 the public with respect to the procedures and
8 requirements of the Copyright Claims Board.

9 “(C) To provide information to potential
10 claimants contemplating bringing a permissible
11 action before the Copyright Claims Board about
12 obtaining a subpoena under section 512(h) for
13 the sole purpose of identifying a potential re-
14 spondent in such an action.

15 “(D) When not engaged in performing the
16 duties of the Attorneys set forth in this chapter,
17 to perform such other duties as may be as-
18 signed by the Register of Copyrights.

19 “(b) INDEPENDENCE IN DETERMINATIONS.—

20 “(1) IN GENERAL.—The Copyright Claims
21 Board shall render the determinations of the Board
22 in individual proceedings independently on the basis
23 of the records in the proceedings before it and in ac-
24 cordance with the provisions of this title, judicial

1 precedent, and applicable regulations of the Register
2 of Copyrights.

3 “(2) CONSULTATION.—The Copyright Claims
4 Officers and Copyright Claims Attorneys—

5 “(A) may consult with the Register of
6 Copyrights on general issues of law; and

7 “(B) subject to section 1506(x), may not
8 consult with the Register of Copyrights with re-
9 spect to—

10 “(i) the facts of any particular matter
11 pending before the Officers and the Attor-
12 neys; or

13 “(ii) the application of law to the
14 facts described in clause (i).

15 “(3) PERFORMANCE APPRAISALS.—Notwith-
16 standing any other provision of law or any regula-
17 tion or policy of the Library of Congress or Register
18 of Copyrights, any performance appraisal of a Copy-
19 right Claims Officer or Copyright Claims Attorney
20 may not consider the substantive result of any indi-
21 vidual determination reached by the Copyright
22 Claims Board as a basis for appraisal except to the
23 extent that result may relate to any actual or alleged
24 violation of an ethical standard of conduct.

1 “(c) DIRECTION BY REGISTER.—Subject to sub-
2 section (b), the Copyright Claims Officers and Copyright
3 Claims Attorneys shall, in the administration of their du-
4 ties, be under the general direction of the Register of
5 Copyrights.

6 “(d) INCONSISTENT DUTIES BARRED.—A Copyright
7 Claims Officer or Copyright Claims Attorney may not un-
8 dertake any duty that conflicts with the duties of the Offi-
9 cer or Attorney in connection with the Copyright Claims
10 Board.

11 “(e) RECUSAL.—A Copyright Claims Officer or Copy-
12 right Claims Attorney shall recuse himself or herself from
13 participation in any proceeding with respect to which the
14 Copyright Claims Officer or Copyright Claims Attorney,
15 as the case may be, has reason to believe that he or she
16 has a conflict of interest.

17 “(f) EX PARTE COMMUNICATIONS.—Except as may
18 otherwise be permitted by applicable law, any party to a
19 proceeding before the Copyright Claims Board shall re-
20 frain from ex parte communications with the Copyright
21 Claims Officers and the Register of Copyrights concerning
22 the substance of any active or pending proceeding before
23 the Copyright Claims Board.

24 “(g) JUDICIAL REVIEW.—Actions of the Copyright
25 Claims Officers and Register of Copyrights under this

1 chapter in connection with the rendering of any deter-
2 mination are subject to judicial review as provided under
3 section 1508(c) and not under chapter 7 of title 5.

4 **“§ 1504. Nature of proceedings**

5 “(a) VOLUNTARY PARTICIPATION.—Participation in
6 a Copyright Claims Board proceeding shall be on a vol-
7 untary basis in accordance with this chapter and the right
8 of any party to instead pursue a claim, counterclaim, or
9 defense in a district court of the United States or any
10 other court, and to seek a jury trial, shall be preserved.
11 The rights, remedies, and limitations under this section
12 may not be waived except in accordance with this chapter.

13 “(b) STATUTE OF LIMITATIONS.—

14 “(1) IN GENERAL.—A proceeding may not be
15 maintained before the Copyright Claims Board un-
16 less the proceeding is commenced, in accordance
17 with section 1506(e), before the Copyright Claims
18 Board within 3 years after the claim accrued.

19 “(2) TOLLING.—Subject to section 1507(a), a
20 proceeding commenced before the Copyright Claims
21 Board shall toll the time permitted under section
22 507(b) for the commencement of an action on the
23 same claim in a district court of the United States
24 during the period in which the proceeding is pend-
25 ing.

1 “(c) PERMISSIBLE CLAIMS, COUNTERCLAIMS, AND
2 DEFENSES.—The Copyright Claims Board may render de-
3 terminations with respect to the following claims, counter-
4 claims, and defenses, subject to such further limitations
5 and requirements, including with respect to particular
6 classes of works, as may be set forth in regulations estab-
7 lished by the Register of Copyrights:

8 “(1) A claim for infringement of an exclusive
9 right in a copyrighted work provided under section
10 106 by the legal or beneficial owner of the exclusive
11 right at the time of the infringement for which the
12 claimant seeks damages, if any, within the limita-
13 tions set forth in subsection (e)(1).

14 “(2) A claim for a declaration of noninfringe-
15 ment of an exclusive right in a copyrighted work
16 provided under section 106, consistent with section
17 2201 of title 28.

18 “(3) A claim under section 512(f) for misrepre-
19 sentation in connection with a notification of claimed
20 infringement or a counter notification seeking to re-
21 place removed or disabled material, except that any
22 remedies relating to such a claim in a proceeding be-
23 fore the Copyright Claims Board shall be limited to
24 those available under this chapter.

1 “(4) A counterclaim that is asserted solely
2 against the claimant in a proceeding—

3 “(A) pursuant to which the counterclaim-
4 ant seeks damages, if any, within the limita-
5 tions set forth in subsection (e)(1); and

6 “(B) that—

7 “(i) arises under section 106 or sec-
8 tion 512(f) and out of the same trans-
9 action or occurrence that is the subject of
10 a claim of infringement brought under
11 paragraph (1), a claim of noninfringement
12 brought under paragraph (2), or a claim of
13 misrepresentation brought under para-
14 graph (3); or

15 “(ii) arises under an agreement per-
16 taining to the same transaction or occur-
17 rence that is the subject of a claim of in-
18 fringement brought under paragraph (1),
19 if the agreement could affect the relief
20 awarded to the claimant.

21 “(5) A legal or equitable defense under this title
22 or otherwise available under law, in response to a
23 claim or counterclaim asserted under this subsection.

24 “(6) A single claim or multiple claims permitted
25 under paragraph (1), (2), or (3) by one or more

1 claimants against one or more respondents, but only
2 if all claims asserted in any one proceeding arise out
3 of the same allegedly infringing activity or contin-
4 uous course of infringing activities and do not, in
5 the aggregate, result in the recovery of such claim
6 or claims for damages that exceed the limitations
7 under subsection (e)(1).

8 “(d) EXCLUDED CLAIMS.—The following claims and
9 counterclaims are not subject to determination by the
10 Copyright Claims Board:

11 “(1) A claim or counterclaim that is not a per-
12 missible claim or counterclaim under subsection (e).

13 “(2) A claim or counterclaim that has been fi-
14 nally adjudicated by a court of competent jurisdic-
15 tion or that is pending before a court of competent
16 jurisdiction, unless that court has granted a stay to
17 permit that claim or counterclaim to proceed before
18 the Copyright Claims Board.

19 “(3) A claim or counterclaim by or against a
20 Federal or State governmental entity.

21 “(4) A claim or counterclaim asserted against a
22 person or entity residing outside of the United
23 States, except in a case in which the person or entity
24 initiated the proceeding before the Copyright Claims

1 Board and is subject to counterclaims under this
2 chapter.

3 “(e) PERMISSIBLE REMEDIES.—

4 “(1) MONETARY RECOVERY.—

5 “(A) ACTUAL DAMAGES, PROFITS, AND
6 STATUTORY DAMAGES FOR INFRINGEMENT.—

7 With respect to a claim or counterclaim for in-
8 fringement of copyright, and subject to the limi-
9 tation on total monetary recovery under sub-
10 paragraph (D), the Copyright Claims Board
11 may award either of the following:

12 “(i) Actual damages and profits deter-
13 mined in accordance with section 504(b),
14 with that award taking into consideration,
15 in appropriate cases, whether the infring-
16 ing party has agreed to cease or mitigate
17 the infringing activity under paragraph
18 (2).

19 “(ii) Statutory damages, which shall
20 be determined in accordance with section
21 504(e), subject to the following conditions:

22 “(I) With respect to works timely
23 registered under section 412, so that
24 the works are eligible for an award of
25 statutory damages in accordance with

1 that section, the statutory damages
2 may not exceed \$15,000 for each
3 work infringed.

4 “(II) With respect to works not
5 timely registered under section 412,
6 but eligible for an award of statutory
7 damages under this section, statutory
8 damages may not exceed \$7,500 per
9 work infringed, or a total of \$15,000
10 in any 1 proceeding.

11 “(III) The Copyright Claims
12 Board may not make any finding
13 that, or consider whether, the in-
14 fringement was committed willfully in
15 making an award of statutory dam-
16 ages.

17 “(IV) The Copyright Claims
18 Board may consider, as an additional
19 factor in awarding statutory damages,
20 whether the infringer has agreed to
21 cease or mitigate the infringing activ-
22 ity under paragraph (2).

23 “(B) ELECTION OF DAMAGES.—With re-
24 spect to a claim or counterclaim of infringe-
25 ment, at any time before final determination is

1 rendered, and notwithstanding the schedule es-
2 tablished by the Copyright Claims Board under
3 section 1506(k), the claimant or counterclaim-
4 ant shall elect—

5 “(i) to recover actual damages and
6 profits or statutory damages under sub-
7 paragraph (A); or

8 “(ii) not to recover damages.

9 “(C) DAMAGES FOR OTHER CLAIMS.—
10 Damages for claims and counterclaims other
11 than infringement claims, such as those
12 brought under section 512(f), shall be subject
13 to the limitation under subparagraph (D).

14 “(D) LIMITATION ON TOTAL MONETARY
15 RECOVERY.—Notwithstanding any other provi-
16 sion of law, a party that pursues any one or
17 more claims or counterclaims in any single pro-
18 ceeding before the Copyright Claims Board may
19 not seek or recover in that proceeding a total
20 monetary recovery that exceeds the sum of
21 \$30,000, exclusive of any attorneys’ fees and
22 costs that may be awarded under section
23 1506(y)(2).

24 “(2) AGREEMENT TO CEASE CERTAIN ACTIV-
25 ITY.—In a determination of the Copyright Claims

1 Board, the Board shall include a requirement to
2 cease conduct if, in the proceeding relating to the
3 determination—

4 “(A) a party agrees—

5 “(i) to cease activity that is found to
6 be infringing, including removing or dis-
7 abling access to, or destroying, infringing
8 materials; or

9 “(ii) to cease sending a takedown no-
10 tice or counter notice under section 512 to
11 the other party regarding the conduct at
12 issue before the Board if that notice or
13 counter notice was found to be a knowing
14 material misrepresentation under section
15 512(f); and

16 “(B) the agreement described in subpara-
17 graph (A) is reflected in the record for the pro-
18 ceeding.

19 “(3) ATTORNEYS’ FEES AND COSTS.—Notwith-
20 standing any other provision of law, except in the
21 case of bad faith conduct as provided in section
22 1506(y)(2), the parties to proceedings before the
23 Copyright Claims Board shall bear their own attor-
24 neys’ fees and costs.

1 “(f) JOINT AND SEVERAL LIABILITY.—Parties to a
2 proceeding before the Copyright Claims Board may be
3 found jointly and severally liable if all such parties and
4 relevant claims or counterclaims arise from the same ac-
5 tivity or activities.

6 “(g) PERMISSIBLE NUMBER OF CASES.—The Reg-
7 ister of Copyrights may establish regulations relating to
8 the permitted number of proceedings each year by the
9 same claimant under this chapter, in the interests of jus-
10 tice and the administration of the Copyright Claims
11 Board.

12 **“§ 1505. Registration requirement**

13 “(a) APPLICATION OR CERTIFICATE.—A claim or
14 counterclaim alleging infringement of an exclusive right
15 in a copyrighted work may not be asserted before the
16 Copyright Claims Board unless—

17 “(1) the legal or beneficial owner of the copy-
18 right has first delivered a completed application, a
19 deposit, and the required fee for registration of the
20 copyright to the Copyright Office; and

21 “(2) a registration certificate has either been
22 issued or has not been refused.

23 “(b) CERTIFICATE OF REGISTRATION.—Notwith-
24 standing any other provision of law, a claimant or counter-
25 claimant in a proceeding before the Copyright Claims

1 Board shall be eligible to recover actual damages and prof-
2 its or statutory damages under this chapter for infringe-
3 ment of a work if the requirements of subsection (a) have
4 been met, except that—

5 “(1) the Copyright Claims Board may not
6 render a determination in the proceeding until—

7 “(A) a registration certificate with respect
8 to the work has been issued by the Copyright
9 Office, submitted to the Copyright Claims
10 Board, and made available to the other parties
11 to the proceeding; and

12 “(B) the other parties to the proceeding
13 have been provided an opportunity to address
14 the registration certificate;

15 “(2) if the proceeding may not proceed further
16 because a registration certificate for the work is
17 pending, the proceeding shall be held in abeyance
18 pending submission of the certificate to the Copy-
19 right Claims Board, except that, if the proceeding is
20 held in abeyance for more than 1 year, the Copy-
21 right Claims Board may, upon providing written no-
22 tice to the parties to the proceeding, and 30 days to
23 the parties to respond to the notice, dismiss the pro-
24 ceeding without prejudice; and

1 “(3) if the Copyright Claims Board receives no-
2 tice that registration with respect to the work has
3 been refused, the proceeding shall be dismissed with-
4 out prejudice.

5 “(c) PRESUMPTION.—In a case in which a registra-
6 tion certificate shows that registration with respect to a
7 work was issued not later than 5 years after the date of
8 the first publication of the work, the presumption under
9 section 410(c) shall apply in a proceeding before the Copy-
10 right Claims Board, in addition to relevant principles of
11 law under this title.

12 “(d) REGULATIONS.—In order to ensure that actions
13 before the Copyright Claims Board proceed in a timely
14 manner, the Register of Copyrights shall establish regula-
15 tions allowing the Copyright Office to make a decision,
16 on an expedited basis, to issue or deny copyright registra-
17 tion for an unregistered work that is at issue before the
18 Board.

19 **“§ 1506. Conduct of proceedings**

20 “(a) IN GENERAL.—

21 “(1) APPLICABLE LAW.—Proceedings of the
22 Copyright Claims Board shall be conducted in ac-
23 cordance with this chapter and regulations estab-
24 lished by the Register of Copyrights under this chap-

1 ter, in addition to relevant principles of law under
2 this title.

3 “(2) CONFLICTING PRECEDENT.—If it appears
4 that there may be conflicting judicial precedent on
5 an issue of substantive copyright law that cannot be
6 reconciled, the Copyright Claims Board shall follow
7 the law of the Federal jurisdiction in which the ac-
8 tion could have been brought if filed in a district
9 court of the United States, or, if the action could
10 have been brought in more than 1 such jurisdiction,
11 the jurisdiction that the Copyright Claims Board de-
12 termines has the most significant ties to the parties
13 and conduct at issue.

14 “(b) RECORD.—The Copyright Claims Board shall
15 maintain records documenting the proceedings before the
16 Board.

17 “(c) CENTRALIZED PROCESS.—Proceedings before
18 the Copyright Claims Board shall—

19 “(1) be conducted at the offices of the Copy-
20 right Claims Board without the requirement of in-
21 person appearances by parties or others; and

22 “(2) take place by means of written submis-
23 sions, hearings, and conferences carried out through
24 internet-based applications and other telecommuni-
25 cations facilities, except that, in cases in which phys-

1 ical or other nontestimonial evidence material to a
2 proceeding cannot be furnished to the Copyright
3 Claims Board through available telecommunications
4 facilities, the Copyright Claims Board may make al-
5 ternative arrangements for the submission of such
6 evidence that do not prejudice any other party to the
7 proceeding.

8 “(d) REPRESENTATION.—A party to a proceeding be-
9 fore the Copyright Claims Board may be, but is not re-
10 quired to be, represented by—

11 “(1) an attorney; or

12 “(2) a law student who is qualified under appli-
13 cable law governing representation by law students
14 of parties in legal proceedings and who provides
15 such representation on a pro bono basis.

16 “(e) COMMENCEMENT OF PROCEEDING.—In order to
17 commence a proceeding under this chapter, a claimant
18 shall, subject to such additional requirements as may be
19 prescribed in regulations established by the Register of
20 Copyrights, file a claim with the Copyright Claims Board,
21 that—

22 “(1) includes a statement of material facts in
23 support of the claim;

24 “(2) is certified under subsection (y)(1); and

1 “(3) is accompanied by a filing fee in such
2 amount as may be prescribed in regulations estab-
3 lished by the Register of Copyrights.

4 “(f) REVIEW OF CLAIMS AND COUNTERCLAIMS.—

5 “(1) CLAIMS.—Upon the filing of a claim under
6 subsection (e), the claim shall be reviewed by a
7 Copyright Claims Attorney to ensure that the claim
8 complies with this chapter and applicable regula-
9 tions, subject to the following:

10 “(A) If the claim is found to comply, the
11 claimant shall be notified regarding that com-
12 pliance and instructed to proceed with service of
13 the claim under subsection (g).

14 “(B) If the claim is found not to comply,
15 the claimant shall be notified that the claim is
16 deficient and be permitted to file an amended
17 claim not later than 30 days after the date on
18 which the claimant receives the notice, without
19 the requirement of an additional filing fee. If
20 the claimant files a compliant claim within that
21 30-day period, the claimant shall be so notified
22 and be instructed to proceed with service of the
23 claim. If the claim is refiled within that 30-day
24 period and still fails to comply, the claimant
25 shall again be notified that the claim is defi-

1 cient and shall be provided a second oppor-
2 tunity to amend the claim within 30 days after
3 the date of that second notice, without the re-
4 quirement of an additional filing fee. If the
5 claim is refiled again within that second 30-day
6 period and is compliant, the claimant shall be
7 so notified and shall be instructed to proceed
8 with service of the claim, but if the claim still
9 fails to comply, upon confirmation of such non-
10 compliance by a Copyright Claims Officer, the
11 proceeding shall be dismissed without prejudice.
12 The Copyright Claims Board shall also dismiss
13 without prejudice any proceeding in which a
14 compliant claim is not filed within the applica-
15 ble 30-day period.

16 “(C)(i) Subject to clause (ii), for purposes
17 of this paragraph, a claim against an online
18 service provider for infringement by reason of
19 the storage of or referral or linking to infring-
20 ing material that may be subject to the limita-
21 tions on liability set forth in subsection (b), (c),
22 or (d) of section 512 shall be considered non-
23 compliant unless the claimant affirms in the
24 statement required under subsection (e)(1) of
25 this section that the claimant has previously no-

1 tified the service provider of the claimed in-
2 fringement in accordance with subsection
3 (b)(2)(E), (c)(3), or (d)(3) of section 512, as
4 applicable, and the service provider failed to re-
5 move or disable access to the material expedi-
6 tiously upon the provision of such notice.

7 “(ii) If a claim is found to be noncompliant
8 under clause (i), the Copyright Claims Board
9 shall provide the claimant with information con-
10 cerning the service of such a notice under the
11 applicable provision of section 512.

12 “(2) COUNTERCLAIMS.—Upon the filing and
13 service of a counterclaim, the counterclaim shall be
14 reviewed by a Copyright Claims Attorney to ensure
15 that the counterclaim complies with the provisions of
16 this chapter and applicable regulations. If the coun-
17 terclaim is found not to comply, the counterclaimant
18 and the other parties to the proceeding shall be noti-
19 fied that the counterclaim is deficient, and the
20 counterclaimant shall be permitted to file and serve
21 an amended counterclaim within 30 days after the
22 date of such notice. If the counterclaimant files and
23 serves a compliant counterclaim within that 30-day
24 period, the counterclaimant and such other parties
25 shall be so notified. If the counterclaim is refiled and

1 served within that 30-day period but still fails to
2 comply, the counterclaimant and such other parties
3 shall again be notified that the counterclaim is defi-
4 cient, and the counterclaimant shall be provided a
5 second opportunity to amend the counterclaim with-
6 in 30 days after the date of the second notice. If the
7 counterclaim is refiled and served again within that
8 second 30-day period and is compliant, the counter-
9 claimant and such other parties shall be so notified,
10 but if the counterclaim still fails to comply, upon
11 confirmation of such noncompliance by a Copyright
12 Claims Officer, the counterclaim, but not the pro-
13 ceeding, shall be dismissed without prejudice.

14 “(3) DISMISSAL FOR UNSUITABILITY.—The
15 Copyright Claims Board shall dismiss a claim or
16 counterclaim without prejudice if, upon reviewing
17 the claim or counterclaim, or at any other time in
18 the proceeding, the Copyright Claims Board con-
19 cludes that the claim or counterclaim is unsuitable
20 for determination by the Copyright Claims Board,
21 including on account of any of the following:

22 “(A) The failure to join a necessary party.

23 “(B) The lack of an essential witness, evi-
24 dence, or expert testimony.

1 “(C) The determination of a relevant issue
2 of law or fact that could exceed either the num-
3 ber of proceedings the Copyright Claims Board
4 could reasonably administer or the subject mat-
5 ter competence of the Copyright Claims Board.

6 “(g) SERVICE OF NOTICE AND CLAIMS.—In order to
7 proceed with a claim against a respondent, a claimant
8 shall, within 90 days after receiving notification under
9 subsection (f) to proceed with service, file with the Copy-
10 right Claims Board proof of service on the respondent. In
11 order to effectuate service on a respondent, the claimant
12 shall cause notice of the proceeding and a copy of the
13 claim to be served on the respondent, either by personal
14 service or pursuant to a waiver of personal service, as pre-
15 scribed in regulations established by the Register of Copy-
16 rights. Such regulations shall include the following re-
17 quirements:

18 “(1) The notice of the proceeding shall adhere
19 to a prescribed form and shall set forth the nature
20 of the Copyright Claims Board and proceeding, the
21 right of the respondent to opt out, and the con-
22 sequences of opting out and not opting out, includ-
23 ing a prominent statement that, by not opting out
24 within 60 days after receiving the notice, the re-
25 spondent—

1 “(A) loses the opportunity to have the dis-
2 pute decided by a court created under article
3 III of the Constitution of the United States;
4 and

5 “(B) waives the right to a jury trial re-
6 garding the dispute.

7 “(2) The copy of the claim served on the re-
8 spondent shall be the same as the claim that was
9 filed with the Copyright Claims Board.

10 “(3) Personal service of a notice and claim may
11 be effected by an individual who is not a party to
12 the proceeding and is older than 18 years of age.

13 “(4) An individual, other than a minor or in-
14 competent individual, may be served by—

15 “(A) complying with State law for serving
16 a summons in an action brought in courts of
17 general jurisdiction in the State where service is
18 made;

19 “(B) delivering a copy of the notice and
20 claim to the individual personally;

21 “(C) leaving a copy of the notice and claim
22 at the individual’s dwelling or usual place of
23 abode with someone of suitable age and discre-
24 tion who resides there; or

1 “(D) delivering a copy of the notice and
2 claim to an agent designated by the respondent
3 to receive service of process or, if not so des-
4 ignated, an agent authorized by appointment or
5 by law to receive service of process.

6 “(5)(A) A corporation, partnership, or unincor-
7 porated association that is subject to suit in courts
8 of general jurisdiction under a common name shall
9 be served by delivering a copy of the notice and
10 claim to its service agent. If such service agent has
11 not been designated, service shall be accomplished—

12 “(i) by complying with State law for serv-
13 ing a summons in an action brought in courts
14 of general jurisdiction in the State where serv-
15 ice is made; or

16 “(ii) by delivering a copy of the notice and
17 claim to an officer, a managing or general
18 agent, or any other agent authorized by ap-
19 pointment or by law to receive service of proc-
20 ess in an action brought in courts of general ju-
21 risdiction in the State where service is made
22 and, if the agent is one authorized by statute
23 and the statute so requires, by also mailing a
24 copy of the notice and claim to the respondent.

1 “(B) A corporation, partnership or unincor-
2 porated association that is subject to suit in courts
3 of general jurisdiction under a common name may
4 elect to designate a service agent to receive notice of
5 a claim against it before the Copyright Claims
6 Board by complying with requirements that the Reg-
7 ister of Copyrights shall establish by regulation. The
8 Register of Copyrights shall maintain a current di-
9 rectory of service agents that is available to the pub-
10 lic for inspection, including through the internet,
11 and may require such corporations, partnerships,
12 and unincorporated associations designating such
13 service agents to pay a fee to cover the costs of
14 maintaining the directory.

15 “(6) In order to request a waiver of personal
16 service, the claimant may notify a respondent, by
17 first class mail or by other reasonable means, that
18 a proceeding has been commenced, such notice to be
19 made in accordance with regulations established by
20 the Register of Copyrights, subject to the following:

21 “(A) Any such request shall be in writing,
22 shall be addressed to the respondent, and shall
23 be accompanied by a prescribed notice of the
24 proceeding, a copy of the claim as filed with the
25 Copyright Claims Board, a prescribed form for

1 waiver of personal service, and a prepaid or
2 other means of returning the form without cost.

3 “(B) The request shall state the date on
4 which the request is sent, and shall provide the
5 respondent a period of 30 days, beginning on
6 the date on which the request is sent, to return
7 the waiver form signed by the respondent. The
8 signed waiver form shall, for purposes of this
9 subsection, constitute acceptance and proof of
10 service as of the date on which the waiver is
11 signed.

12 “(7)(A) A respondent’s waiver of personal serv-
13 ice shall not constitute a waiver of the respondent’s
14 right to opt out of the proceeding.

15 “(B) A respondent who timely waives personal
16 service under paragraph (6) and does not opt out of
17 the proceeding shall be permitted a period of 30
18 days, in addition to the period otherwise permitted
19 under the applicable procedures of the Copyright
20 Claims Board, to submit a substantive response to
21 the claim, including any defenses and counterclaims.

22 “(8) A minor or an incompetent individual may
23 only be served by complying with State law for serv-
24 ing a summons or like process on such an individual

1 in an action brought in the courts of general juris-
2 diction of the State where service is made.

3 “(9) Service of a claim and waiver of personal
4 service may only be effected within the United
5 States.

6 “(h) NOTIFICATION BY COPYRIGHT CLAIMS
7 BOARD.—The Register of Copyrights shall establish regu-
8 lations providing for a written notification to be sent by,
9 or on behalf of, the Copyright Claims Board to notify the
10 respondent of a pending proceeding against the respon-
11 dent, as set forth in those regulations, which shall—

12 “(1) include information concerning the re-
13 spondent’s right to opt out of the proceeding, the
14 consequences of opting out and not opting out, and
15 a prominent statement that, by not opting out with-
16 in 60 days after the date of service under subsection
17 (g), the respondent loses the opportunity to have the
18 dispute decided by a court created under article III
19 of the Constitution of the United States and waives
20 the right to a jury trial regarding the dispute; and

21 “(2) be in addition to, and separate and apart
22 from, the notice requirements under subsection (g).

23 “(i) OPT-OUT PROCEDURE.—Upon being properly
24 served with a notice and claim, a respondent who chooses
25 to opt out of the proceeding shall have a period of 60 days,

1 beginning on the date of service, in which to provide writ-
2 ten notice of such choice to the Copyright Claims Board,
3 in accordance with regulations established by the Register
4 of Copyrights. If proof of service has been filed by the
5 claimant and the respondent does not submit an opt-out
6 notice to the Copyright Claims Board within that 60-day
7 period, the proceeding shall be deemed an active pro-
8 ceeding and the respondent shall be bound by the deter-
9 mination in the proceeding to the extent provided under
10 section 1507(a). If the respondent opts out of the pro-
11 ceeding during that 60-day period, the proceeding shall
12 be dismissed without prejudice, except that, in exceptional
13 circumstances and upon written notice to the claimant, the
14 Copyright Claims Board may extend that 60-day period
15 in the interests of justice.

16 “(j) SERVICE OF OTHER DOCUMENTS.—Documents
17 submitted or relied upon in a proceeding, other than the
18 notice and claim, shall be served in accordance with regu-
19 lations established by the Register of Copyrights.

20 “(k) SCHEDULING.—Upon confirmation that a pro-
21 ceeding has become an active proceeding, the Copyright
22 Claims Board shall issue a schedule for the future conduct
23 of the proceeding. The schedule shall not specify a time
24 that a claimant or counterclaimant is required make an
25 election of damages that is inconsistent with section

1 1504(e). A schedule issued by the Copyright Claims Board
2 may be amended by the Copyright Claims Board in the
3 interests of justice.

4 “(l) CONFERENCES.—One or more Copyright Claims
5 Officers may hold a conference to address case manage-
6 ment or discovery issues in a proceeding, which shall be
7 noted upon the record of the proceeding and may be re-
8 corded or transcribed.

9 “(m) PARTY SUBMISSIONS.—A proceeding of the
10 Copyright Claims Board may not include any formal mo-
11 tion practice, except that, subject to applicable regulations
12 and procedures of the Copyright Claims Board—

13 “(1) the parties to the proceeding may make re-
14 quests to the Copyright Claims Board to address
15 case management and discovery matters, and submit
16 responses thereto; and

17 “(2) the Copyright Claims Board may request
18 or permit parties to make submissions addressing
19 relevant questions of fact or law, or other matters,
20 including matters raised sua sponte by the Copy-
21 right Claims Officers, and offer responses thereto.

22 “(n) DISCOVERY.—Discovery in a proceeding shall be
23 limited to the production of relevant information and doc-
24 uments, written interrogatories, and written requests for

1 admission, as provided in regulations established by the
2 Register of Copyrights, except that—

3 “(1) upon the request of a party, and for good
4 cause shown, the Copyright Claims Board may ap-
5 prove additional relevant discovery, on a limited
6 basis, in particular matters, and may request spe-
7 cific information and documents from participants in
8 the proceeding and voluntary submissions from non-
9 participants, consistent with the interests of justice;

10 “(2) upon the request of a party, and for good
11 cause shown, the Copyright Claims Board may issue
12 a protective order to limit the disclosure of docu-
13 ments or testimony that contain confidential infor-
14 mation; and

15 “(3) after providing notice and an opportunity
16 to respond, and upon good cause shown, the Copy-
17 right Claims Board may apply an adverse inference
18 with respect to disputed facts against a party who
19 has failed to timely provide discovery materials in
20 response to a proper request for materials that could
21 be relevant to such facts.

22 “(o) EVIDENCE.—The Copyright Claims Board may
23 consider the following types of evidence in a proceeding,
24 and such evidence may be admitted without application
25 of formal rules of evidence:

1 “(1) Documentary and other nontestimonial
2 evidence that is relevant to the claims, counter-
3 claims, or defenses in the proceeding.

4 “(2) Testimonial evidence, submitted under
5 penalty of perjury in written form or in accordance
6 with subsection (p), limited to statements of the par-
7 ties and nonexpert witnesses, that is relevant to the
8 claims, counterclaims, and defenses in a proceeding,
9 except that, in exceptional cases, expert witness tes-
10 timony or other types of testimony may be permitted
11 by the Copyright Claims Board for good cause
12 shown.

13 “(p) HEARINGS.—The Copyright Claims Board may
14 conduct a hearing to receive oral presentations on issues
15 of fact or law from parties and witnesses to a proceeding,
16 including oral testimony, subject to the following:

17 “(1) Any such hearing shall be attended by not
18 fewer than two of the Copyright Claims Officers.

19 “(2) The hearing shall be noted upon the record
20 of the proceeding and, subject to paragraph (3), may
21 be recorded or transcribed as deemed necessary by
22 the Copyright Claims Board.

23 “(3) A recording or transcript of the hearing
24 shall be made available to any Copyright Claims Of-
25 ficer who is not in attendance.

1 “(q) VOLUNTARY DISMISSAL.—

2 “(1) BY CLAIMANT.—Upon the written request
3 of a claimant that is received before a respondent
4 files a response to the claim in a proceeding, the
5 Copyright Claims Board shall dismiss the pro-
6 ceeding, or a claim or respondent, as requested,
7 without prejudice.

8 “(2) BY COUNTERCLAIMANT.—Upon written re-
9 quest of a counterclaimant that is received before a
10 claimant files a response to the counterclaim, the
11 Copyright Claims Board shall dismiss the counter-
12 claim, such dismissal to be without prejudice.

13 “(3) CLASS ACTIONS.—Any party in an active
14 proceeding before the Copyright Claims Board who
15 receives notice of a pending or putative class action,
16 arising out of the same transaction or occurrence, in
17 which that party is a class member may request in
18 writing dismissal of the proceeding before the Board.
19 Upon notice to all claimants and counterclaimants,
20 the Copyright Claims Board shall dismiss the pro-
21 ceeding without prejudice.

22 “(r) SETTLEMENT.—

23 “(1) IN GENERAL.—At any time in an active
24 proceeding, some or all of the parties may—

1 “(A) jointly request a conference with a
2 Copyright Claims Officer for the purpose of fa-
3 cilitating settlement discussions; or

4 “(B) submit to the Copyright Claims
5 Board an agreement providing for settlement
6 and dismissal of some or all of the claims and
7 counterclaims in the proceeding.

8 “(2) ADDITIONAL REQUEST.—A submission
9 under paragraph (1)(B) may include a request that
10 the Copyright Claims Board adopt some or all of the
11 terms of the parties’ settlement in a final determina-
12 tion in the proceeding.

13 “(s) FACTUAL FINDINGS.—Subject to subsection
14 (n)(3), the Copyright Claims Board shall make factual
15 findings based upon a preponderance of the evidence.

16 “(t) DETERMINATIONS.—

17 “(1) NATURE AND CONTENTS.—A determina-
18 tion rendered by the Copyright Claims Board in a
19 proceeding shall—

20 “(A) be reached by a majority of the Copy-
21 right Claims Board;

22 “(B) be in writing, and include an expla-
23 nation of the factual and legal basis of the de-
24 termination;

1 “(C) set forth any terms by which a re-
2 spondent or counterclaim respondent has
3 agreed to cease infringing activity under section
4 1504(e)(2);

5 “(D) to the extent requested under sub-
6 section (r)(2), set forth the terms of any settle-
7 ment agreed to under subsection (r)(1); and

8 “(E) include a clear statement of all dam-
9 ages and other relief awarded, including under
10 subparagraphs (C) and (D).

11 “(2) DISSENT.—A Copyright Claims Officer
12 who dissents from a decision contained in a deter-
13 mination under paragraph (1) may append a state-
14 ment setting forth the grounds for that dissent.

15 “(3) PUBLICATION.—Each final determination
16 of the Copyright Claims Board shall be made avail-
17 able on a publicly accessible website. The Register
18 shall establish regulations with respect to the publi-
19 cation of other records and information relating to
20 such determinations, including the redaction of
21 records to protect confidential information that is
22 the subject of a protective order under subsection
23 (n)(2).

24 “(4) FREEDOM OF INFORMATION ACT.—All in-
25 formation relating to proceedings of the Copyright

1 Claims Board under this title is exempt from disclo-
2 sure to the public under section 552(b)(3) of title 5,
3 except for determinations, records, and information
4 published under paragraph (3).

5 “(u) RESPONDENT’S DEFAULT.—If a proceeding has
6 been deemed an active proceeding but the respondent has
7 failed to appear or has ceased participating in the pro-
8 ceeding, as demonstrated by the respondent’s failure,
9 without justifiable cause, to meet one or more deadlines
10 or requirements set forth in the schedule adopted by the
11 Copyright Claims Board under subsection (k), the Copy-
12 right Claims Board may enter a default determination, in-
13 cluding the dismissal of any counterclaim asserted by the
14 respondent, as follows and in accordance with such other
15 requirements as the Register of Copyrights may establish
16 by regulation:

17 “(1) The Copyright Claims Board shall require
18 the claimant to submit relevant evidence and other
19 information in support of the claimant’s claim and
20 any asserted damages and, upon review of such evi-
21 dence and any other requested submissions from the
22 claimant, shall determine whether the materials so
23 submitted are sufficient to support a finding in favor
24 of the claimant under applicable law and, if so, the

1 appropriate relief and damages, if any, to be award-
2 ed.

3 “(2) If the Copyright Claims Board makes an
4 affirmative determination under paragraph (1), the
5 Copyright Claims Board shall prepare a proposed
6 default determination, and shall provide written no-
7 tice to the respondent at all addresses, including
8 email addresses, reflected in the records of the pro-
9 ceeding before the Copyright Claims Board, of the
10 pendency of a default determination by the Copy-
11 right Claims Board and of the legal significance of
12 such determination. Such notice shall be accom-
13 panied by the proposed default determination and
14 shall provide that the respondent has a period of 30
15 days, beginning on the date of the notice, to submit
16 any evidence or other information in opposition to
17 the proposed default determination.

18 “(3) If the respondent responds to the notice
19 provided under paragraph (2) within the 30-day pe-
20 riod provided in such paragraph, the Copyright
21 Claims Board shall consider respondent’s submis-
22 sions and, after allowing the other parties to address
23 such submissions, maintain, or amend its proposed
24 determination as appropriate, and the resulting de-
25 termination shall not be a default determination.

1 “(4) If the respondent fails to respond to the
2 notice provided under paragraph (2), the Copyright
3 Claims Board shall proceed to issue the default de-
4 termination as a final determination. Thereafter, the
5 respondent may only challenge such determination to
6 the extent permitted under section 1508(c), except
7 that, before any additional proceedings are initiated
8 under section 1508, the Copyright Claims Board
9 may, in the interests of justice, vacate the default
10 determination.

11 “(v) CLAIMANT’S FAILURE TO PROCEED.—

12 “(1) FAILURE TO COMPLETE SERVICE.—If a
13 claimant fails to complete service on a respondent
14 within the 90-day period required under subsection
15 (g), the Copyright Claims Board shall dismiss that
16 respondent from the proceeding without prejudice. If
17 a claimant fails to complete service on all respond-
18 ents within that 90-day period, the Copyright Claims
19 Board shall dismiss the proceeding without preju-
20 dice.

21 “(2) FAILURE TO PROSECUTE.—If a claimant
22 fails to proceed in an active proceeding, as dem-
23 onstrated by the claimant’s failure, without justifi-
24 able cause, to meet one or more deadlines or require-
25 ments set forth in the schedule adopted by the Copy-

1 right Claims Board under subsection (k), the Copy-
2 right Claims Board may, upon providing written no-
3 tice to the claimant and a period of 30 days, begin-
4 ning on the date of the notice, to respond to the no-
5 tice, and after considering any such response, issue
6 a determination dismissing the claimants' claims,
7 which shall include an award of attorneys' fees and
8 costs, if appropriate, under subsection (y)(2). There-
9 after, the claimant may only challenge such deter-
10 mination to the extent permitted under section
11 1508(e), except that, before any additional pro-
12 ceedings are initiated under section 1508, the Copy-
13 right Claims Board may, in the interests of justice,
14 vacate the determination of dismissal.

15 “(w) REQUEST FOR RECONSIDERATION.—A party
16 may, within 30 days after the date on which the Copyright
17 Claims Board issues a final determination in a proceeding
18 under this chapter, submit a written request for reconsid-
19 eration of, or an amendment to, such determination if the
20 party identifies a clear error of law or fact material to
21 the outcome, or a technical mistake. After providing the
22 other parties an opportunity to address such request, the
23 Copyright Claims Board shall either deny the request or
24 issue an amended final determination.

1 “(x) REVIEW BY REGISTER.—If the Copyright
2 Claims Board denies a party a request for reconsideration
3 of a final determination under subsection (w), that party
4 may, within 30 days after the date of such denial, request
5 review of the final determination by the Register of Copy-
6 rights in accordance with regulations established by the
7 Register. Such request shall be accompanied by a reason-
8 able filing fee, as provided in such regulations. The review
9 by the Register shall be limited to consideration of whether
10 the Copyright Claims Board abused its discretion in deny-
11 ing reconsideration of the determination. After providing
12 the other parties an opportunity to address the request,
13 the Register shall either deny the request for review, or
14 remand the proceeding to the Copyright Claims Board for
15 reconsideration of issues specified in the remand and for
16 issuance of an amended final determination. Such amend-
17 ed final determination shall not be subject to further con-
18 sideration or review, other than under section 1508(e).

19 “(y) CONDUCT OF PARTIES AND ATTORNEYS.—

20 “(1) CERTIFICATION.—The Register of Copy-
21 rights shall establish regulations requiring certifi-
22 cation of the accuracy and truthfulness of state-
23 ments made by participants in proceedings before
24 the Copyright Claims Board.

1 “(2) BAD FAITH CONDUCT.—Notwithstanding
2 any other provision of law, in any proceeding in
3 which a determination is rendered and it is estab-
4 lished that a party pursued a claim, counterclaim, or
5 defense for a harassing or other improper purpose,
6 or without a reasonable basis in law or fact, then,
7 unless inconsistent with the interests of justice, the
8 Copyright Claims Board shall in such determination
9 award reasonable costs and attorneys’ fees to any
10 adversely affected party of in an amount of not more
11 than \$5,000, except that—

12 “(A) if an adversely affected party ap-
13 peared pro se in the proceeding, the award to
14 that party shall be for costs only, in an amount
15 of not more than \$2,500; and

16 “(B) in extraordinary circumstances, such
17 as where a party has demonstrated a pattern or
18 practice of bad faith conduct as described in
19 this paragraph, the Copyright Claims Board
20 may, in the interests of justice, award costs and
21 attorneys’ fees in excess of the limitations
22 under this paragraph.

23 “(3) ADDITIONAL PENALTY.—If the Board
24 finds that on more than one occasion within a 12-
25 month period a party pursued a claim, counterclaim,

1 or defense before the Copyright Claims Board for a
2 harassing or other improper purpose, or without a
3 reasonable basis in law or fact, that party shall be
4 barred from initiating a claim before the Copyright
5 Claims Board under this chapter for a period of 12
6 months beginning on the date on which the Board
7 makes such a finding. Any proceeding commenced
8 by that party that is still pending before the Board
9 when such a finding is made shall be dismissed with-
10 out prejudice, except that if a proceeding has been
11 deemed active under subsection (i), the proceeding
12 shall be dismissed under this paragraph only if the
13 respondent provides written consent thereto.

14 “(z) REGULATIONS FOR SMALLER CLAIMS.—The
15 Register of Copyrights shall establish regulations to pro-
16 vide for the consideration and determination, by at least
17 one Copyright Claims Officer, of any claim under this
18 chapter in which total damages sought do not exceed
19 \$5,000 (exclusive of attorneys’ fees and costs) that are
20 otherwise consistent with this chapter. A determination
21 issued under this subsection shall have the same effect as
22 a determination issued by the entire Copyright Claims
23 Board.

1 **“§ 1507. Effect of proceeding**

2 “(a) DETERMINATION.—Subject to the reconsider-
3 ation and review processes provided under subsections (w)
4 and (x) of section 1506 and section 1508(c), the issuance
5 of a final determination by the Copyright Claims Board
6 in a proceeding, including a default determination or de-
7 termination based on a failure to prosecute, shall, solely
8 with respect to the parties to such determination, preclude
9 relitigation before any court or tribunal, or before the
10 Copyright Claims Board, of the claims and counterclaims
11 asserted and finally determined by the Board, and may
12 be relied upon for such purpose in a future action or pro-
13 ceeding arising from the same specific activity or activi-
14 ties, subject to the following:

15 “(1) A determination of the Copyright Claims
16 Board shall not preclude litigation or relitigation as
17 between the same or different parties before any
18 court or tribunal, or the Copyright Claims Board, of
19 the same or similar issues of fact or law in connec-
20 tion with claims or counterclaims not asserted or not
21 finally determined by the Copyright Claims Board.

22 “(2) A determination of ownership of a copy-
23 righted work for purposes of resolving a matter be-
24 fore the Copyright Claims Board may not be relied
25 upon, and shall not have any preclusive effect, in

1 any other action or proceeding before any court or
2 tribunal, including the Copyright Claims Board.

3 “(3) Except to the extent permitted under this
4 subsection and section 1508, any determination of
5 the Copyright Claims Board may not be cited or re-
6 lied upon as legal precedent in any other action or
7 proceeding before any court or tribunal, including
8 the Copyright Claims Board.

9 “(b) CLASS ACTIONS NOT AFFECTED.—

10 “(1) IN GENERAL.—A proceeding before the
11 Copyright Claims Board shall not have any effect on
12 a class action proceeding in a district court of the
13 United States, and section 1509(a) shall not apply
14 to a class action proceeding in a district court of the
15 United States.

16 “(2) NOTICE OF CLASS ACTION.—Any party to
17 an active proceeding before the Copyright Claims
18 Board who receives notice of a pending class action,
19 arising out of the same transaction or occurrence as
20 the proceeding before the Copyright Claims Board,
21 in which the party is a class member shall either—

22 “(A) opt out of the class action, in accord-
23 ance with regulations established by the Reg-
24 ister of Copyrights; or

1 “(B) seek dismissal under section
2 1506(q)(3) of the proceeding before the Copy-
3 right Claims Board.

4 “(c) OTHER MATERIALS IN PROCEEDING.—Except
5 as permitted under this section and section 1508, a sub-
6 mission or statement of a party or witness made in connec-
7 tion with a proceeding before the Copyright Claims Board,
8 including a proceeding that is dismissed, may not be cited
9 or relied upon in, or serve as the basis of, any action or
10 proceeding concerning rights or limitations on rights
11 under this title before any court or tribunal, including the
12 Copyright Claims Board.

13 “(d) APPLICABILITY OF SECTION 512(g).—A claim
14 or counterclaim before the Copyright Claims Board that
15 is brought under subsection (c)(1) or (c)(4) of section
16 1504, or brought under subsection (c)(6) of section 1504
17 and that relates to a claim under subsection (c)(1) or
18 (c)(4) of such section, qualifies as an action seeking an
19 order to restrain a subscriber from engaging in infringing
20 activity under section 512(g)(2)(C) if—

21 “(1) notice of the commencement of the Copy-
22 right Claims Board proceeding is provided by the
23 claimant to the service provider’s designated agent
24 before the service provider replaces the material fol-

1 lowing receipt of a counter notification under section
2 512(g); and

3 “(2) the claim brought alleges infringement of
4 the material identified in the notification of claimed
5 infringement under section 512(c)(1)(C).

6 “(e) FAILURE TO ASSERT COUNTERCLAIM.—The
7 failure or inability to assert a counterclaim in a proceeding
8 before the Copyright Claims Board shall not preclude the
9 assertion of that counterclaim in a subsequent court action
10 or proceeding before the Copyright Claims Board.

11 “(f) OPT-OUT OR DISMISSAL OF PARTY.—If a party
12 has timely opted out of a proceeding under section 1506(i)
13 or is dismissed from a proceeding before the Copyright
14 Claims Board issues a final determination in the pro-
15 ceeding, the determination shall not be binding upon and
16 shall have no preclusive effect with respect to that party.

17 **“§ 1508. Review and confirmation by district court**

18 “(a) IN GENERAL.—In any proceeding in which a
19 party has failed to pay damages, or has failed otherwise
20 to comply with the relief, awarded in a final determination
21 of the Copyright Claims Board, including a default deter-
22 mination or a determination based on a failure to pros-
23 ecute, the aggrieved party may, not later than 1 year after
24 the date on which the final determination is issued, any
25 reconsideration by the Copyright Claims Board or review

1 by the Register of Copyrights is resolved, or an amended
2 final determination is issued, whichever occurs last, apply
3 to the United States District Court for the District of Co-
4 lumbia or any other appropriate district court of the
5 United States for an order confirming the relief awarded
6 in the final determination and reducing such award to
7 judgment. The court shall grant such order and direct
8 entry of judgment unless the determination is or has been
9 vacated, modified, or corrected under subsection (c). If the
10 United States District Court for the District of Columbia
11 or other district court of the United States, as the case
12 may be, issues an order confirming the relief awarded by
13 the Copyright Claims Board, the court shall impose on the
14 party who failed to pay damages or otherwise comply with
15 the relief, the reasonable expenses required to secure such
16 order, including attorneys' fees, that were incurred by the
17 aggrieved party.

18 “(b) FILING PROCEDURES.—

19 “(1) APPLICATION TO CONFIRM DETERMINA-
20 TION.—Notice of the application under subsection
21 (a) for confirmation of a determination of the Copy-
22 right Claims Board and entry of judgment shall be
23 provided to all parties to the proceeding before the
24 Copyright Claims Board that resulted in the deter-
25 mination, in accordance with the procedures applica-

1 ble to service of a motion in the district court of the
2 United States where the application is made.

3 “(2) CONTENTS OF APPLICATION.—The appli-
4 cation shall include the following:

5 “(A) A certified copy of the final or
6 amended final determination of the Copyright
7 Claims Board, as reflected in the records of the
8 Copyright Claims Board, following any process
9 of reconsideration or review by the Register of
10 Copyrights, to be confirmed and rendered to
11 judgment.

12 “(B) A declaration by the applicant, under
13 penalty of perjury—

14 “(i) that the copy is a true and cor-
15 rect copy of such determination;

16 “(ii) stating the date it was issued;

17 “(iii) stating the basis for the chal-
18 lenge under subsection (c)(1); and

19 “(iv) stating whether the applicant is
20 aware of any other proceedings before the
21 court concerning the same determination
22 of the Copyright Claims Board.

23 “(c) CHALLENGES TO THE DETERMINATION.—

24 “(1) BASES FOR CHALLENGE.—Not later than
25 90 days after the date on which Copyright Claims

1 Board issues a final or amended final determination
2 in a proceeding, or not later than 90 days after the
3 date on which the Register of Copyrights completes
4 any process of reconsideration or review of the deter-
5 mination, whichever occurs later, a party may seek
6 a court order vacating, modifying, or correcting the
7 determination of the Copyright Claims Board in the
8 following cases:

9 “(A) If the determination was issued as a
10 result of fraud, corruption, misrepresentation,
11 or other misconduct.

12 “(B) If the Copyright Claims Board ex-
13 ceeded its authority or failed to render a final
14 determination concerning the subject matter at
15 issue.

16 “(C) In the case of a default determination
17 or determination based on a failure to pros-
18 ecute, if it is established that the default or fail-
19 ure was due to excusable neglect.

20 “(2) PROCEDURE TO CHALLENGE.—

21 “(A) NOTICE OF APPLICATION.—Notice of
22 the application to challenge a determination of
23 the Copyright Claims Board shall be provided
24 to all parties to the proceeding before the Copy-
25 right Claims Board, in accordance with the pro-

1 cedures applicable to service of a motion in the
2 court where the application is made.

3 “(B) STAYING OF PROCEEDINGS.—For
4 purposes of an application under this sub-
5 section, any judge who is authorized to issue an
6 order to stay the proceedings in an any other
7 action brought in the same court may issue an
8 order, to be served with the notice of applica-
9 tion, staying proceedings to enforce the award
10 while the challenge is pending.

11 **“§ 1509. Relationship to other district court actions**

12 “(a) STAY OF DISTRICT COURT PROCEEDINGS.—
13 Subject to section 1507(b), a district court of the United
14 States shall issue a stay of proceedings or such other relief
15 as the court determines appropriate with respect to any
16 claim brought before the court that is already the subject
17 of a pending or active proceeding before the Copyright
18 Claims Board.

19 “(b) ALTERNATIVE DISPUTE RESOLUTION PROC-
20 ESS.—A proceeding before the Copyright Claims Board
21 under this chapter shall qualify as an alternative dispute
22 resolution process under section 651 of title 28 for pur-
23 poses of referral of eligible cases by district courts of the
24 United States upon the consent of the parties.

1 **“§ 1510. Implementation by Copyright Office**

2 “(a) REGULATIONS.—

3 “(1) IMPLEMENTATION GENERALLY.—The Reg-
4 ister of Copyrights shall establish regulations to
5 carry out this chapter. Such regulations shall include
6 the fees prescribed under subsections (e) and (x) of
7 section 1506. The authority to issue such fees shall
8 not limit the authority of the Register of Copyrights
9 to establish fees for services under section 708. All
10 fees received by the Copyright Office in connection
11 with the activities under this chapter shall be depos-
12 ited by the Register of Copyrights and credited to
13 the appropriations for necessary expenses of the Of-
14 fice in accordance with section 708(d). In estab-
15 lishing regulations under this subsection, the Reg-
16 ister of Copyrights shall provide for the efficient ad-
17 ministration of the Copyright Claims Board, and for
18 the ability of the Copyright Claims Board to timely
19 complete proceedings instituted under this chapter,
20 including by implementing mechanisms to prevent
21 harassing or improper use of the Copyright Claims
22 Board by any party.

23 “(2) LIMITS ON MONETARY RELIEF.—

24 “(A) IN GENERAL.—Subject to subpara-
25 graph (B), not earlier than 3 years after the
26 date on which Copyright Claims Board issues

1 the first determination of the Copyright Claims
2 Board, the Register of Copyrights may, in order
3 to further the goals of the Copyright Claims
4 Board, conduct a rulemaking to adjust the lim-
5 its on monetary recovery or attorneys' fees and
6 costs that may be awarded under this chapter.

7 “(B) EFFECTIVE DATE OF ADJUST-
8 MENT.—Any rule under subparagraph (A) that
9 makes an adjustment shall take effect at the
10 end of the 120-day period beginning on the
11 date on which the Register of Copyrights sub-
12 mits the rule to Congress and only if Congress
13 does not, during that 120-day period, enact a
14 law that provides in substance that Congress
15 does not approve the rule.

16 “(b) NECESSARY FACILITIES.—Subject to applicable
17 law, the Register of Copyrights may retain outside vendors
18 to establish internet-based, teleconferencing, and other fa-
19 cilities required to operate the Copyright Claims Board.

20 “(c) FEES.—Any filing fees, including the fee to com-
21 mence a proceeding under section 1506(e), shall be pre-
22 scribed in regulations established by the Register of Copy-
23 rights. The sum total of such filing fees shall be in an
24 amount of at least \$100, may not exceed the cost of filing
25 an action in a district court of the United States, and shall

1 be fixed in amounts that further the goals of the Copyright
2 Claims Board.

3 **“§ 1511. Funding**

4 “There are authorized to be appropriated such sums
5 as may be necessary to pay the costs incurred by the Copy-
6 right Office under this chapter that are not covered by
7 fees collected for services rendered under this chapter, in-
8 cluding the costs of establishing and maintaining the
9 Copyright Claims Board and its facilities.”.

10 (b) CLERICAL AMENDMENT.—The table of chapters
11 for title 17, United States Code, is amended by adding
12 after the item relating to chapter 14 the following:

“15. **Copyright Small Claims** **1501”.**

13 **SEC. 3. IMPLEMENTATION.**

14 Not later 1 year after the date of enactment of this
15 Act, the Copyright Claims Board established under section
16 1502 of title 17, United States Code, as added by section
17 2 of this Act, shall begin operations.

18 **SEC. 4. STUDY.**

19 Not later than 3 years after the date on which Copy-
20 right Claims Board issues the first determination of the
21 Copyright Claims Board under chapter 15 of title 17,
22 United States Code, as added by section 2 of this Act,
23 the Register of Copyrights shall conduct, and report to
24 Congress on, a study that addresses the following:

1 (1) The use and efficacy of the Copyright
2 Claims Board in resolving copyright claims, includ-
3 ing the number of proceedings the Copyright Claims
4 Board could reasonably administer.

5 (2) Whether adjustments to the authority of the
6 Copyright Claims Board are necessary or advisable,
7 including with respect to—

8 (A) eligible claims, such as claims under
9 section 1202 of title 17, United States Code;
10 and

11 (B) works and applicable damages limita-
12 tions.

13 (3) Whether greater allowance should be made
14 to permit awards of attorneys' fees and costs to pre-
15 vailing parties, including potential limitations on
16 such awards.

17 (4) Potential mechanisms to assist copyright
18 owners with small claims in ascertaining the identity
19 and location of unknown online infringers.

20 (5) Whether the Copyright Claims Board
21 should be expanded to offer mediation or other non-
22 binding alternative dispute resolution services to in-
23 terested parties.

1 (6) Such other matters as the Register of Copy-
2 rights believes may be pertinent concerning the
3 Copyright Claims Board.

4 **SEC. 5. SEVERABILITY.**

5 If any provision of this Act, an amendment made by
6 this Act, or the application of such provision or amend-
7 ment to any person or circumstance is held to be unconsti-
8 tutional, the remainder of this Act and the amendments
9 made by this Act, and the application of the provision or
10 the amendment to any other person or circumstance, shall
11 not be affected.

