

114TH CONGRESS
2D SESSION

H. R. 6496

To amend title 17, United States Code, to establish a small claims system within the Copyright Office, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2016

Ms. JUDY CHU of California (for herself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 17, United States Code, to establish a small claims system within the Copyright Office, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for American
5 Small Creators Act”.

6 **SEC. 2. ESTABLISHMENT OF COPYRIGHT CLAIMS BOARD.**

7 (a) AMENDMENT.—Title 17, United States Code, is
8 amended by adding at the end the following new chapter:

1 experience in the evaluation, litigation, or adju-
2 dication of copyright infringement claims and,
3 between them, shall have represented or pre-
4 sided over a diversity of copyright interests, in-
5 cluding those of both owners and users of copy-
6 righted works. The third copyright claims offi-
7 cer shall have substantial experience in the field
8 of alternative dispute resolution.

9 “(C) TERM.—A copyright claims officer
10 shall serve for a term of 6 years, which may be
11 renewed by the Librarian of Congress upon the
12 recommendation of Register of Copyrights. The
13 term for the first three copyright claims officers
14 appointed pursuant to subparagraph (A) shall
15 be 4, 5, and 6 years, respectively.

16 “(D) VACANCIES.—If a vacancy occurs in
17 the position of a copyright claims officer, the
18 Librarian of Congress shall act expeditiously to
19 appoint a copyright claims officer for that posi-
20 tion who is recommended as qualified by the
21 Register of Copyrights. A copyright claims offi-
22 cer appointed to fill a vacancy that occurs be-
23 fore the expiration of the term for which the of-
24 ficer’s predecessor was appointed shall be ap-
25 pointed to serve a full term of 6 years.

1 “(E) INCAPACITY.—If a copyright claims
2 officer is temporarily unable to perform the du-
3 ties of the officer, the Librarian of Congress
4 shall act expeditiously to appoint an interim
5 copyright claims officer, who is recommended as
6 qualified by the Register of Copyrights, to per-
7 form the duties during the period of incapacity.

8 “(F) COMPENSATION.—The Librarian of
9 Congress shall set the annual rate of pay for
10 any copyright claims officer appointed under
11 this paragraph. Any annual rate of pay estab-
12 lished under this subparagraph shall be not less
13 than the minimum rate of pay, and not greater
14 than the maximum rate of pay, applicable to a
15 Senior-Level (SL) position established under
16 section 5108 of title 5, United States Code.

17 “(2) COPYRIGHT CLAIMS ATTORNEYS.—

18 “(A) APPOINTMENT.—The Register of
19 Copyrights shall appoint not fewer than 2 full-
20 time copyright claims attorneys to assist in the
21 administration of the Board.

22 “(B) QUALIFICATIONS.—Each copyright
23 claims attorney shall be an attorney with not
24 less than 3 years of substantial experience in
25 the field of copyright law.

1 “(C) COMPENSATION.—The Register of
2 Copyrights shall set the annual rate of pay for
3 any copyright claims attorney appointed under
4 this paragraph. Any annual rate of pay estab-
5 lished under this subparagraph shall be not
6 greater than the annual rate of pay for a posi-
7 tion classified at step 10 of GS–15 of the Gen-
8 eral Schedule.

9 “(3) SUPERVISION AND REMOVAL.—Subject to
10 section 1402(c), each copyright claims officer and
11 each copyright claims attorney shall be supervised
12 and removable by the Librarian of Congress.

13 “(4) ADMINISTRATIVE SUPPORT.—The Register
14 of Copyrights shall provide each copyright claims of-
15 ficer and each copyright claims attorney with nec-
16 essary administrative support, including techno-
17 logical facilities, to carry out the duties of such offi-
18 cer and attorney under this chapter.

19 “(5) LOCATION IN COPYRIGHT OFFICE.—The
20 offices and facilities of the copyright claims officers
21 and copyright claims attorneys shall be located at
22 the Copyright Office.

1 **“§ 1402. Authority and Responsibilities of the Copy-**
2 **right Claims Board**

3 “(a) COPYRIGHT CLAIMS OFFICER.—Subject to this
4 chapter and regulations issued by the Register of Copy-
5 rights, the duties of a copyright claims officer are as fol-
6 lows:

7 “(1) To issue determinations on any civil copy-
8 right claim, counterclaim, and defense as may be
9 brought before the Board under this chapter, and to
10 certify the determinations for confirmation by the
11 United States District Court for the District of Co-
12 lumbia.

13 “(2) To ensure that a claim, defense, and coun-
14 terclaim is properly filed and otherwise appropriate
15 for resolution by the Board.

16 “(3) To manage the proceedings of the Board
17 and render rulings relating to the consideration of a
18 claim, defense, and counterclaim, including sched-
19 uling, discovery, evidentiary, and other matters.

20 “(4) To request the production of information
21 and documents relevant to the resolution of a claim,
22 defense, or counterclaim from a party in a pro-
23 ceeding and from others.

24 “(5) To conduct hearings and conferences.

25 “(6) To facilitate the settlement of any claim or
26 counterclaim of parties.

1 “(7) To include in any determination of the
2 Board a requirement for cessation or mitigation of
3 infringing activity, including takedown or destruc-
4 tion of infringing materials, where the party to un-
5 dertake such measures has so agreed.

6 “(8) To provide information to the public con-
7 cerning the procedures and requirements of the
8 Board, including any form and instructional mate-
9 rial.

10 “(9) To maintain a record of each proceeding
11 of the Board and make public any determination in
12 an individual proceeding.

13 “(10) To carry out any other duties prescribed
14 in this chapter.

15 “(11) When not engaged in performing the du-
16 ties prescribed in this chapter, to perform such other
17 duties as may be assigned by the Register of Copy-
18 rights.

19 “(b) COPYRIGHT CLAIMS ATTORNEY.—Subject to
20 this chapter and regulations issued by the Register of
21 Copyrights, the duties of a copyright claims attorney are
22 as follows:

23 “(1) To provide assistance to the copyright
24 claims officers in the administration of the duties of
25 the officers under this chapter.

1 “(2) To provide assistance to members of the
2 public with respect to the procedures and require-
3 ments of the Board.

4 “(3) When not engaged in performing the du-
5 ties prescribed in this chapter, to perform such other
6 duties as may be assigned by the Register of Copy-
7 rights.

8 “(c) INDEPENDENCE IN DETERMINATION.—

9 “(1) IN GENERAL.—The copyright claims offi-
10 cers shall render determinations in individual pro-
11 ceedings independently on the basis of the records in
12 the proceedings of the Board and in accordance with
13 the provisions of this title, judicial precedent, and
14 applicable regulations of the Register of Copyrights.

15 “(2) CONSULTATION WITH THE REGISTER OF
16 COPYRIGHTS.—The copyright claims officers and
17 copyright claims attorneys may consult with the
18 Register of Copyrights on general issues of law, but,
19 subject to section 1405(y), not with respect to the
20 facts of any particular matter pending before them
21 or the application of law thereto.

22 “(3) PERFORMANCE REVIEW.—Notwithstanding
23 any other provision of law or any regulation or pol-
24 icy of the Library of Congress or Register of Copy-
25 rights, no performance appraisal of a copyright

1 claims officer or copyright claims attorney shall con-
2 sider the substantive result of any individual deter-
3 mination reached by the Board as a basis for ap-
4 praisal except insofar as it may relate to an actual
5 or alleged violation of an ethical standard of con-
6 duct.

7 “(d) DIRECTION BY REGISTER.—Subject to sub-
8 section (b), the Register of Copyrights shall direct each
9 copyright claims officer and each copyright claims attor-
10 ney in the administration of their respective duties under
11 this chapter.

12 “(e) INCONSISTENT DUTIES BARRED.—A copyright
13 claims officer or copyright claims attorney may not under-
14 take any duty or responsibility that conflicts with any duty
15 under this chapter.

16 “(f) RECUSAL.—A copyright claims officer or copy-
17 right claims attorney shall recuse themselves from participa-
18 tion in any proceeding with respect to which the copyright
19 claims officer has reason to believe there is a conflict of
20 interest.

21 “(g) EX PARTE COMMUNICATIONS.—Except as oth-
22 erwise provided by law, any party proceeding before the
23 Board shall refrain from ex parte communications with
24 a copyright claims officer concerning the substance of any
25 proceeding before the Board, except that a copyright

1 claims attorney may provide information and assistance
2 to parties concerning the procedures and requirements of
3 the Board.

4 “(h) JUDICIAL REVIEW.—Actions of the copyright
5 claims officers and the Register of Copyrights under this
6 chapter in connection with the rendering of individual de-
7 terminations are subject to judicial review as provided
8 under section 1407(b) and not under chapter 7 of title
9 5.

10 **“§ 1403. Nature of Proceedings**

11 “(a) VOLUNTARY PARTICIPATION.—Participation in
12 a Board proceeding is on a voluntary basis in accordance
13 with this chapter, and the right of any party to instead
14 pursue a claim, counterclaim, or defense in a United
15 States district court or any other court, including a jury
16 trial, is preserved.

17 “(b) STATUTE OF LIMITATIONS.—

18 “(1) IN GENERAL.—No proceeding shall be
19 maintained before the Board unless it is commenced
20 before the Board within 3 years after the claim that
21 is the basis for the proceeding accrued.

22 “(2) TOLLING.—Subject to section 1406(a), a
23 proceeding commenced before the Board shall toll
24 the time permitted under section 507(b) for com-
25 mencement of an action on the same claim in a Fed-

1 eral district court during the time it remains pend-
2 ing.

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

10 “(1) INFRINGEMENT.—A claim for infringe-
11 ment or a declaration of infringement of an exclusive
12 right of copyright provided under section 106 as-
13 serted by the legal or beneficial owner of such exclu-
14 sive right at the time of infringement in which the
15 claimant seeks damages, if any, subject to the limi-
16 tations described in subsection (e)(1).

17 “(2) DECLARATION OF NONINFRINGEMENT.—A
18 claim for a declaration of noninfringement of an ex-
19 clusive right of copyright provided under section 106
20 in which the claimant seeks damages, if any, subject
21 to the limitations described in subsection (e)(1) and
22 in which an actual controversy exists as evidenced by
23 a documented threat of legal action against the
24 claimant.

1 “(3) MISREPRESENTATION; REMOVAL OF COPY-
2 RIGHT MANAGEMENT INFORMATION.—Notwith-
3 standing any other provision of law, a claim under
4 section 512(f), except that any remedy in a pro-
5 ceeding before the Board is limited to those available
6 under this chapter.

7 “(4) COUNTERCLAIM.—A counterclaim asserted
8 solely against any claimant in a proceeding in which
9 any counterclaimant seeks damages, if any, within
10 the limitations set forth in subsection (e)(1), and
11 that—

12 “(A) arises under section 106 or 512(f),
13 and out of the same transaction or occurrence
14 that is the subject of a claim of infringement
15 brought under paragraph (1), a claim of non-
16 infringement under paragraph (2), or a claim of
17 misrepresentation or a claim of removal of
18 copyright management information, under para-
19 graph (3); or

20 “(B) arises under an agreement relating to
21 the same transaction or occurrence that is the
22 subject of a claim of infringement brought
23 under paragraph (1) and could affect the relief
24 awarded to the claimant.

1 “(5) DEFENSE.—A legal or equitable defense
2 under this title or otherwise available under law in
3 response to a claim or counterclaim asserted under
4 this subsection.

5 “(6) MULTIPLE CLAIMS.—A single claim or
6 multiple claims permitted under paragraph (1), (2),
7 or (3) by one or more claimants against one or more
8 respondents, but only if all claims asserted in any
9 one proceeding arise out of the same allegedly in-
10 fringing activity or a continuous course of alleged in-
11 fringement and do not in the aggregate result in a
12 claim for damages in excess of the limitation pro-
13 vided in subsection (e)(1)(D).

14 “(d) EXCLUDED CLAIMS.—The following claims and
15 counterclaims are not subject to determination by the
16 Board:

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

19 “(2) A claim or counterclaim already pending
20 before, or finally adjudicated by, a court of com-
21 petent jurisdiction, unless in the case of a pending
22 claim or counterclaim, the court issues a stay to per-
23 mit such claim or counterclaim to proceed before the
24 Board.

1 “(3) A claim or counterclaim by or against a
2 Federal or State government entity.

3 “(4) A claim or counterclaim asserted against a
4 person or entity residing outside of the United
5 States.

6 “(5) A claim or counterclaim dismissed by the
7 Board pursuant to section 1405(f)(3).

8 “(e) PERMISSIBLE REMEDIES.—

9 “(1) DAMAGES FOR INFRINGEMENT.—

10 “(A) ACTUAL AND STATUTORY DAM-
11 AGES.—Subject to the limitation on total dam-
12 ages set forth in subparagraph (D), with re-
13 spect to a claim or counterclaim for infringe-
14 ment of copyright, the Board may award—

15 “(i) actual damages and profits of the
16 infringing party determined in accordance
17 with section 504(b), which determination
18 shall include in appropriate cases consider-
19 ation of whether the infringing party has
20 agreed to cease or mitigate the infringing
21 activity as provided under paragraph (2);
22 or

23 “(ii) limited statutory damages, which
24 shall be determined in accordance with sec-

1 tion 504(c), subject to the following condi-
2 tions:

3 “(I) With respect to a work time-
4 ly registered as described under sec-
5 tion 412 and eligible for an award of
6 statutory damages under that section,
7 statutory damages may not exceed
8 \$15,000 per work infringed.

9 “(II) With respect to a work not
10 timely registered as described under
11 section 412 but eligible for an award
12 of statutory damages under section
13 1404(b), statutory damages may not
14 exceed \$7,500 per work infringed, or
15 a total of \$15,000 in any one pro-
16 ceeding.

17 “(III) In making an award of
18 statutory damages, the Board may
19 not make any finding or consider
20 whether the infringement was com-
21 mitted willfully.

22 “(IV) The Board may consider,
23 as an additional factor in awarding
24 statutory damages, whether the in-
25 fringer has agreed to cease or miti-

1 gate the infringing activity under
2 paragraph (2).

3 “(B) ELECTION OF DAMAGES.—With re-
4 spect to a claim or counterclaim of infringe-
5 ment, the claimant or counterclaimant shall,
6 after the close of discovery and in accordance
7 with the schedule adopted by the Board pursu-
8 ant to section 1405(k), elect to pursue either
9 actual damages and profits or statutory dam-
10 ages under subparagraph (A).

11 “(C) OTHER DAMAGES.—Damages for any
12 claim and counterclaim, other than an infringe-
13 ment claim, shall be awarded in accordance
14 with applicable law and shall be subject to the
15 limitation set forth in subparagraph (D).

16 “(D) LIMITATION ON TOTAL DAMAGES.—
17 Notwithstanding any other provision of law, a
18 party who pursues one or more claims or coun-
19 terclaims in any single proceeding before the
20 Board may not seek or recover in such pro-
21 ceeding damages totaling more than \$30,000,
22 not including any attorneys’ fees and costs that
23 may be awarded under section 1405(z)(2).

24 “(2) AGREEMENT BY PARTY TO CEASE IN-
25 FRINGING ACTIVITY.—In any proceeding in which a

1 party agrees to cease activity (including by removal
2 or disabling of access to, or destruction of, material
3 that is found to infringe) and the agreement is in-
4 cluded in the record, the Board shall include in the
5 final determination a requirement that such party, if
6 found to have infringed, cease the infringing conduct
7 to the extent agreed.

8 “(3) COSTS AND ATTORNEYS’ FEES.—Notwith-
9 standing any other provision of law and except as
10 provided under section 1405(z)(2), each party to a
11 proceeding before the Board shall bear the costs and
12 attorneys’ fees of that party.

13 **“§ 1404. Registration requirement**

14 “(a) REQUIREMENTS TO FILE CLAIM OR COUNTER-
15 CLAIM.—No claim or counterclaim alleging infringement
16 of an exclusive right of copyright may be asserted before
17 the Board unless the owner of the copyright has first deliv-
18 ered a completed application, deposit, and the required fee
19 for registration to the Copyright Office and either a reg-
20 istration certificate has been issued or has not been re-
21 fused.

22 “(b) DAMAGES.—Notwithstanding any other provi-
23 sion of law, a claimant or counterclaimant in a proceeding
24 before the Board may not recover actual damages and
25 profits or limited statutory damages for infringement of

1 a work under this chapter unless the requirements of sub-
2 section (a) have been met and—

3 “(1) until the Copyright Offices issues a reg-
4 istration certificate;

5 “(2) until the registration certificate is sub-
6 mitted to the Board and made available to the other
7 parties to the proceeding and the other parties have
8 been provided an opportunity to address the
9 issuance of the registration certificate;

10 “(3) the proceeding is not being held in abey-
11 ance as described in subsection (c); and

12 “(4) the proceeding has not be dismissed with-
13 out prejudice, in the case of a proceeding in which
14 the Board receives notice that registration has been
15 refused by the Copyright Office.

16 “(c) ABEYANCE.—In the case of a proceeding that
17 cannot proceed due to an outstanding registration certifi-
18 cate, the proceeding shall be held in abeyance pending sub-
19 mission of the certificate for the work to the Board, and
20 if held in abeyance for more than one year, the Board
21 may, upon providing written notice to the parties and 30
22 days to respond, dismiss the proceeding without prejudice.

23 “(d) PRESUMPTION.—In the case of a certificate of
24 registration for a work that was registered before or with-
25 in five years after the first publication of the work, the

1 presumption described in section 410(c) shall apply in a
2 proceeding before the Board.

3 **“§ 1405. Proceedings**

4 “(a) IN GENERAL.—Proceedings of the Board shall
5 be conducted in accordance with this chapter and regula-
6 tions issued by the Register of Copyrights.

7 “(b) RECORD.—The Board shall maintain records
8 documenting the proceedings of the Board.

9 “(c) CENTRALIZED PROCESS.—The Board may con-
10 duct proceedings by means of Internet-based applications
11 and other telecommunications facilities, except that in any
12 case involving physical or other nontestimonial evidence,
13 the Board may make alternative arrangements for the
14 submission of evidence if the arrangements do not preju-
15 dice another party to the proceeding.

16 “(d) REPRESENTATION.—A party to a proceeding be-
17 fore the Board may be represented by an attorney or a
18 law student who is qualified under applicable law to rep-
19 resent a party on a pro bono basis.

20 “(e) COMMENCEMENT OF PROCEEDING.—A claimant
21 may, subject to such additional requirements as may be
22 prescribed in regulations issued by the Register of Copy-
23 rights, commence a proceeding under this section by filing
24 a claim with the Board, that—

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

3 “(2) is certified in accordance with subsection
4 (z)(1); and

5 “(3) is accompanied by the appropriate filing
6 fee prescribed in such regulations which—

7 “(A) may not exceed the cost of filing an
8 action in a United States district court; and

9 “(B) shall be established to further goals
10 of the Board.

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

12 “(1) CLAIMS.—A copyright claims attorney
13 shall review each claim filed with the Board for com-
14 pliance with the provisions of this chapter and appli-
15 cable regulations and take action as follows:

16 “(A) COMPLIANT CLAIM.—If the copyright
17 claims attorney finds that a claim complies
18 under this section the attorney shall notify the
19 claimant that the claimant may serve notice
20 under subsection (h).

21 “(B) NONCOMPLIANT CLAIM.—If the copy-
22 right claims attorney finds that a claim does
23 not comply under this section, the attorney
24 shall notify the claimant that the claim is defi-
25 cient and that the claimant may file an amend-

1 ed claim not later than 30 days after the date
2 of such notice without paying an additional fil-
3 ing fee.

4 “(C) COMPLIANT AMENDED CLAIM.—If the
5 claimant files a compliant amended claim within
6 the period of time described under subpara-
7 graph (B), the copyright claims attorney shall
8 notify the claimant that the claimant may pro-
9 ceed under subparagraph (A).

10 “(D) NONCOMPLIANT AMENDED CLAIM.—
11 If the claimant files a noncompliant amended
12 claim within the period of time described under
13 subparagraph (B), the copyright claims attor-
14 ney shall notify the claimant under subpara-
15 graph (B).

16 “(E) COMPLIANT SECOND AMENDED
17 CLAIM.—If the claimant files a compliant sec-
18 ond amended claim within the period of time
19 described under subparagraph (B), the copy-
20 right claims attorney shall notify the claimant
21 that the claimant may proceed under subpara-
22 graph (A).

23 “(F) NONCOMPLIANT SECOND AMENDED
24 CLAIM.—If the claimant files a noncompliant
25 second amended claim within the period of time

1 described under subparagraph (B), the Board
2 shall dismiss the proceeding without prejudice.

3 “(G) CLAIM NOT TIMELY FILED.—The
4 Board shall dismiss without prejudice any pro-
5 ceeding in which a compliant claim is not timely
6 filed.

7 “(H) CLAIM AGAINST AN ONLINE SERVICE
8 PROVIDER.—For purposes of this paragraph,
9 the Board shall—

10 “(i) consider a claim against an online
11 service provider for infringement by reason
12 of the storage, at the direction of a user,
13 of material residing on a system or net-
14 work controlled or operated by the service
15 provider that may be subject to section
16 512(c), or by reason of the service provider
17 referring or linking users to an online loca-
18 tion containing infringing material that
19 may be subject to the provisions of section
20 512(d), noncompliant unless the claimant
21 affirms in the statement required under
22 subsection (e)(1) that the claimant has
23 previously notified the service provider of
24 the claimed infringement in accordance
25 with section 512(c)(3) and the service pro-

1 vider failed to remove or disable access to
2 the material within 5 business days after
3 the date of such notice; and

4 “(ii) if a claim is found to be non-
5 compliant under clause (i), provide the
6 claimant with information concerning the
7 service of a notice pursuant to section
8 512(c)(3).

9 “(2) COUNTERCLAIM.—A counterclaim shall be
10 treated in the same manner as a claim under para-
11 graph (1) except that each notice shall be served on
12 the all other parties.

13 “(3) DISMISSAL FOR GOOD CAUSE.—If, upon
14 reviewing a claim or counterclaim in a particular
15 proceeding, the Board determines that the claim or
16 counterclaim is unsuitable for determination by the
17 Board due to a failure to join a necessary party, the
18 lack of an essential witness, evidence, expert testi-
19 mony, or for other good cause, the Board shall dis-
20 miss the proceeding without prejudice.

21 “(g) PROOF OF SERVICE.—To proceed with a claim
22 against a respondent, a claimant must file with the Board
23 proof of service of the notice described in subsection (h)
24 on the respondent not later than 90 days after the date

1 on which the claimant receives notice to proceed under
2 subsection (f)(1)(A).

3 “(h) SERVICE OF NOTICE AND CLAIMS.—Service on
4 a respondent by a claimant is valid only if the claimant
5 causes notice of the proceeding and a copy of the claim
6 to be served on the respondent, either by personal service
7 or pursuant to a waiver of personal service, as prescribed
8 in regulations issued by the Register of Copyrights. Each
9 such notice shall be in accordance with the following:

10 “(1) The notice shall adhere to a prescribed
11 form that describes the Board under section 1401
12 and a proceeding under section 1403, the respond-
13 ent’s right to opt out under subsection (i), and the
14 consequences of opting out and not opting out.

15 “(2) The copy of the claim served on the re-
16 spondent shall be as the claim was filed with the
17 Board.

18 “(3) Personal service of a notice and claim may
19 only be made by an individual who is not a party to
20 the proceeding and is at least 18 years of age.

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

23 “(A) a procedure under State law for serv-
24 ing a summons in an action brought in a court

1 of general jurisdiction in the State where serv-
2 ice is made; or

3 “(B) any of the following:

4 “(i) Delivering the notice and a copy
5 of the claim to the individual personally.

6 “(ii) Leaving the notice and a copy of
7 the claim at the individual’s dwelling or
8 usual place of abode with someone of suit-
9 able age and discretion who resides there.

10 “(iii) Delivering the notice and a copy
11 of the claim to an agent authorized by ap-
12 pointment or by law to receive service of
13 process.

14 “(5) A corporation, partnership, or unincor-
15 porated association that is subject to suit in courts
16 of general jurisdiction under a common name may
17 be served by—

18 “(A) a procedure under State law for serv-
19 ing a summons in an action brought in courts
20 of general jurisdiction in the State where serv-
21 ice is made; or

22 “(B) delivering the notice and a copy of
23 the claim to an officer, a managing or general
24 agent, or any other agency authorized by ap-
25 pointment or by law to receive service of proc-

1 ess in an action brought in courts of general ju-
2 risdiction and, if the agent is authorized by
3 State statute and the statute so requires, by
4 also mailing a copy of the notice and a copy of
5 the claim to the respondent.

6 “(6) In order to request a waiver of personal
7 service, a claimant may notify a respondent by first-
8 class mail or other reliable means that a proceeding
9 has been commenced, as follows:

10 “(A) Any such request shall—

11 “(i) be in writing and addressed to
12 the individual respondent;

13 “(ii) include the notice and a copy of
14 the claim as filed;

15 “(iii) include 2 copies of a prescribed
16 form for waiver of personal service; and

17 “(iv) include a prepaid or costless
18 means of returning the form.

19 “(B) The request shall state the date on
20 which the request was sent and provide the re-
21 spondent 30 days after such date to return 1
22 copy of the signed waiver, which shall constitute
23 proof of service for purposes of filing under
24 subsection (g) and this subsection.

1 “(7) A respondent’s waiver of personal service
2 shall not constitute a waiver of the respondent’s
3 right to opt out of the proceeding under subsection
4 (i).

5 “(8) A respondent who waives personal service
6 and does not opt out under subsection (i) shall be
7 permitted an additional 30 days beyond the amount
8 of time normally permitted under the applicable pro-
9 cedures of the Board to submit a substantive re-
10 sponse to the claim, including any defense or coun-
11 terclaim.

12 “(9) A minor or an incompetent individual may
13 only be served by a procedure under applicable State
14 law for serving a summons or other process on such
15 an individual in an action brought in the courts of
16 general jurisdiction of the State in which service is
17 made.

18 “(10) Service or waiver of personal service
19 under this subsection may only be made within the
20 United States.

21 “(i) OPT-OUT PROCEDURE.—A respondent may opt
22 out of a proceeding under this section not later than 60
23 days after the date of service under subsection (h) by
24 transmitting written notice thereof to the Board, in ac-

1 cordance with regulations issued by the Register of Copy-
2 rights. If the respondent—

3 “(1) does not opt out, the proceeding shall con-
4 tinue and the respondent shall be bound by the de-
5 termination under section 1406(a) or subsection (u);
6 or

7 “(2) opts out, the proceeding shall be dismissed
8 without prejudice.

9 “(j) SERVICE OF OTHER DOCUMENTS.—Documents
10 submitted or relied upon in the proceeding shall be served
11 in accordance with regulations issued by the Register of
12 Copyrights.

13 “(k) SCHEDULING.—The Board shall issue a sched-
14 ule, which may be amended by the Board for good cause,
15 for each proceeding under this chapter.

16 “(l) NO FORMAL MOTION PRACTICE.—There shall be
17 no formal motion practice in a Board proceeding.

18 “(m) CONFERENCES.—At the request of a party or
19 at the discretion of a copyright claims officer, one or more
20 copyright claims officers may hold a conference with the
21 parties on the record to address matters in a proceeding
22 including case management and discovery issues, but not
23 issues of fact or law.

1 “(n) PARTY SUBMISSIONS.—The Board may request
2 or permit the parties to make submissions regarding rel-
3 evant questions of fact or law.

4 “(o) DISCOVERY.—

5 “(1) IN GENERAL.—Discovery shall be limited,
6 pursuant to regulations issued by the Register of
7 Copyrights, to the following:

8 “(A) Production of relevant information
9 and documents.

10 “(B) Written interrogatories.

11 “(C) Written requests for admissions.

12 “(2) SPECIAL REQUESTS.—The Board may—

13 “(A) request specific information and doc-
14 uments from parties to the proceeding or oth-
15 ers; or

16 “(B) upon request of a party and for good
17 cause shown, approve additional limited dis-
18 covery.

19 “(3) ADVERSE INFERENCE.—After providing
20 notice and an opportunity to respond, and upon
21 good cause shown, the Board may apply an adverse
22 inference regarding disputed facts against a party
23 who has failed to timely provide discovery materials
24 in response to a proper request for relevant mate-
25 rials.

1 “(p) EVIDENCE.—The Board may consider the fol-
2 lowing types of evidence in a proceeding, which may be
3 admitted without application of formal rules of evidence:

4 “(1) NONTESTIMONIAL EVIDENCE.—Documen-
5 tary and other nontestimonial evidence that is rel-
6 evant to any claim, counterclaim, or defense in a
7 proceeding.

8 “(2) TESTIMONIAL EVIDENCE.—Testimonial
9 evidence that is—

10 “(A) submitted under penalty of perjury
11 and in accordance with subsection (q);

12 “(B) limited to written statements of the
13 parties and witnesses; and

14 “(C) relevant to any claim, counterclaim,
15 and defense in a proceeding.

16 “(3) SPECIAL EVIDENCE.—In exceptional cases
17 and for good cause shown, expert witness or other
18 forms of testimony.

19 “(q) HEARINGS.—The Board may conduct a hearing
20 to receive oral presentations on issues of fact or law from
21 parties and witnesses to a proceeding in accordance with
22 the following procedures:

23 “(1) Any hearing shall be noted on the record
24 of the proceeding and may be recorded or tran-
25 scribed.

1 “(2) A recording or transcript of a hearing
2 shall be provided to any copyright claims officer who
3 does not attend a hearing.

4 “(r) VOLUNTARY DISMISSAL.—

5 “(1) BY CLAIMANT.—Upon written request of a
6 claimant that is received prior to a respondent’s fil-
7 ing of a response to a claim, the Board shall dis-
8 miss, without prejudice, a claim, a respondent, or
9 the entire proceeding.

10 “(2) BY COUNTERCLAIMANT.—Upon written re-
11 quest of a counterclaimant received prior to a claim-
12 ant’s filing of a response to a counterclaim, the
13 Board shall dismiss the counterclaim without preju-
14 dice.

15 “(s) SETTLEMENT.—During the pendency of any
16 proceeding under this chapter, some or all of the parties
17 may—

18 “(1) jointly request a conference with a copy-
19 right claims officer for the purpose of facilitating
20 settlement discussions; or

21 “(2) submit to the Board—

22 “(A) an agreement providing for settle-
23 ment and dismissal of one or more of the claims
24 and counterclaims in the proceeding; or

1 “(B) a request that the Board adopt some
2 or all of the terms of the parties’ settlement
3 under subparagraph (A) in a final determina-
4 tion.

5 “(t) FINDINGS; STANDARD OF PROOF.—Subject to
6 subsection (o)(3), the Board shall make findings based
7 upon a preponderance of the evidence.

8 “(u) FINAL DETERMINATIONS.—

9 “(1) NATURE AND CONTENTS.—A final deter-
10 mination issued by the Board in a proceeding
11 shall—

12 “(A) require the consensus of a majority of
13 the copyright claims officers presiding over the
14 proceeding;

15 “(B) be in writing and include an expla-
16 nation of the underlying factual and legal bases
17 for the determination;

18 “(C) pursuant to section 1403(e)(2), set
19 forth any terms by which a respondent or coun-
20 terclaim respondent has agreed to cease infring-
21 ing activity;

22 “(D) set forth the terms of any settlement
23 to the extent requested by the parties under
24 subsection (s); and

1 “(E) include a clear statement of all dam-
2 ages and other relief awarded.

3 “(2) DISSENT.—A copyright claims officer who
4 dissents from a decision contained in a determina-
5 tion may append a statement setting forth the
6 grounds for such dissent.

7 “(3) ONLINE PUBLICATION.—The Board shall
8 publish all final determinations on a publicly acces-
9 sible Web site maintained by the Board.

10 “(v) DEFAULT BY RESPONDENT.—If a respondent
11 fails to appear or ceases to participate in a proceeding
12 under this chapter, such as by failing to meet one or more
13 deadlines or requirements set forth in the schedule adopt-
14 ed by the Board under subsection (k), without justifiable
15 cause, the Board may issue a default determination, in
16 accordance with regulations issued by the Register of
17 Copyrights and the following:

18 “(1) REVIEW OF CLAIMANT’S EVIDENCE.—The
19 Board shall review the relevant evidence and other
20 information in support of the claim and any asserted
21 damages and, upon review of such evidence and any
22 other requested submissions from the claimant, issue
23 a default determination under subsection (u).

24 “(2) DEFAULT DETERMINATION.—

1 “(A) PREPARATION AND NOTICE.—If the
2 Board finds for the claimant under paragraph
3 (1), the Board shall prepare a default deter-
4 mination and provide a copy and written notice
5 thereof to the respondent at each address, in-
6 cluding each email address, included in the
7 records of the Board.

8 “(B) TIME TO CURE DEFAULT.—The no-
9 tice under subparagraph (A) shall state that the
10 respondent may submit evidence and other in-
11 formation in opposition to the proposed deter-
12 mination not later than the 30 days after the
13 date on which the notice is sent.

14 “(3) CLAIMANT RESPONDS TO NOTICE OF DE-
15 FAULT.—If the respondent responds to the notice
16 under paragraph (2)(A) within the period of time
17 described under paragraph (2)(B), the Board shall
18 consider respondent’s submissions and, after allow-
19 ing the other parties to address such submissions—

20 “(A) amend the default determination; or

21 “(B) enter a final determination subject to
22 section 1407(b).

23 “(4) CLAIMANT FAILS TO RESPOND TO NOTICE
24 OF DEFAULT.—If the respondent fails to respond to
25 the notice provided under paragraph (2), the Board

1 shall issue the default determination as a final deter-
2 mination, subject to section 1407(b).

3 “(w) FAILURE TO PROCEED BY CLAIMANT OR
4 COUNTERCLAIMANT.—

5 “(1) FAILURE TO COMPLETE SERVICE.—If a
6 claimant or counterclaimant fails to complete service
7 on a respondent within the time provided under sub-
8 section (h), the respondent shall be dismissed from
9 the proceeding without prejudice. If a claimant fails
10 to complete service on all respondents within such
11 time, the proceeding shall be dismissed by the Board
12 without prejudice.

13 “(2) FAILURE TO PROSECUTE.—If a claimant
14 fails to proceed in a proceeding under this chapter,
15 such as by any failure to meet one or more deadlines
16 or requirements set forth in the schedule adopted by
17 the Board pursuant to subsection (k), without jus-
18 tifiable cause, the Board shall issue a final deter-
19 mination under subsection (u) dismissing any rel-
20 evant claim or counterclaim (and awarding of attor-
21 neys’ fees and costs if appropriate under subsection
22 (z)) and provide a copy and written notice thereof to
23 the claimant or counterclaimant at each address, in-
24 cluding each email address, included in the records
25 of the Board.

1 “(x) RECONSIDERATION.—

2 “(1) REQUEST FOR RECONSIDERATION.—A
3 party may, not later than 14 days after the date on
4 which the Board issues a final determination, submit
5 a written request for reconsideration of, or amend-
6 ment to, the determination on the basis of an alleged
7 error. The request shall identify the alleged error of
8 procedure, law, or fact material to the outcome.

9 “(2) DETERMINATION.—After providing the
10 other parties an opportunity to address a request
11 under paragraph (1), the Board shall respond by ei-
12 ther denying the request or issuing an amended final
13 determination.

14 “(y) REVIEW BY REGISTER OF COPYRIGHTS.—

15 “(1) REQUEST FOR REVIEW.—A party who has
16 been denied reconsideration of a final determination
17 by the Board may request review of the denial by
18 the Register of Copyrights not later than 14 days
19 after the date of the denial in accordance with regu-
20 lations issued by the Register of Copyrights, which
21 shall provide for a reasonable filing fee.

22 “(2) STANDARD OF REVIEW.—A review under
23 paragraph (1) shall be limited to consideration of
24 whether the Board abused its discretion in denying
25 reconsideration.

1 “(3) DECISION.—After providing the other par-
2 ties with an opportunity to address the request
3 under paragraph (1), the Register shall respond by
4 denying the request or remanding the proceeding to
5 the Board for reconsideration of issues identified in
6 the remand and the issuance of an amended final
7 determination. The amended final determination
8 shall not be subject to further consideration or re-
9 view other than pursuant to section 1407.

10 “(z) CONDUCT OF PARTIES AND ATTORNEYS.—

11 “(1) CERTIFICATION.—Each participant in a
12 proceeding under this chapter shall certify the accu-
13 racy and truthfulness of any statement made before
14 the Board under regulations issued by the Register
15 of Copyrights.

16 “(2) BAD FAITH.—In any final determination
17 issued under subsection (u), the Board may award,
18 to each adversely affected party, reasonable costs
19 and attorneys’ fees not to exceed a total of \$5,000
20 (\$2,500 in the case of a party that proceeds pro se)
21 if—

22 “(A) the Board finds that a party to the
23 proceeding pursued a claim, counterclaim, or
24 defense for an improper purpose or without rea-
25 sonable basis in law or fact; or

1 “(B) a claim or counterclaim in the pro-
2 ceeding is dismissed for failure to prosecute
3 under subsection (w)(2).

4 “(aa) SPECIAL RULE FOR CLAIMS OF \$5,000 OR
5 LESS.—Notwithstanding anything to the contrary in this
6 chapter, the Register of Copyrights may issue regulations
7 to provide for the disposition of any claim in which the
8 total damages is \$5,000 or less (exclusive of attorneys’
9 fees and costs)—

10 “(1) that provide for one copyright claims offi-
11 cer to consider and issue a determination with re-
12 gard to the claim; and

13 “(2) for which a copyright claims attorney shall
14 review the claim and determine whether the case
15 shall be heard by one officer or the Board.

16 **“§ 1406. Effect of proceeding**

17 “(a) ESTOPPEL.—Subject to subsections (x) and (y)
18 of section 1405 and section 1407(b), a party to a pro-
19 ceeding under this chapter in which the Board has issued
20 a final determination may not assert, in any proceeding,
21 before any court or tribunal, any claim or counterclaim
22 asserted and resolved by the final determination. The final
23 determination may be cited or relied upon in a future pro-
24 ceeding except that—

1 “(1) a final determination of the Board may
2 not preclude litigation or relitigation between the
3 same or different parties before any court or tri-
4 bunal of the same or similar issues of fact or law in
5 connection with a different claim or counterclaim not
6 asserted and finally determined by the determination
7 of the Board;

8 “(2) a determination of ownership of a copy-
9 righted work for purposes of resolving a proceeding
10 before the Board may not be relied upon, and shall
11 have no preclusive effect, in any action or proceeding
12 before a court or tribunal, including the Board; and

13 “(3) a final determination may not be cited or
14 relied upon as legal precedent in any other action or
15 proceeding before any court or tribunal, including
16 the Board, other than as permitted under this sub-
17 section and section 1407.

18 “(b) OTHER MATERIALS IN PROCEEDING.—Except
19 as permitted under this section and section 1407, a sub-
20 mission or statement of a party or witness made in connec-
21 tion with a proceeding before the Board, including a pro-
22 ceeding that is dismissed, shall not be cited or relied upon
23 in, or serve as the basis of, any action or proceeding under
24 this title before any court or tribunal, including the Board.

1 “(c) SECTION 512(g).—Notwithstanding any other
2 provision of law, the commencement of a proceeding by
3 a claimant that is brought before the Board against a sub-
4 scriber of a service provider in which the claimant seeks
5 a declaration of infringement concerning material that has
6 been removed or to which access has been disabled by the
7 service provider in response to a notification of claimed
8 infringement by the claimant pursuant to section
9 512(e)(1)(C) shall be a basis to preclude the replacement
10 of such material by the service provider pursuant to sec-
11 tion 512(g) if notice of the commencement of the Board
12 proceeding is provided by the claimant to the service pro-
13 vider’s designated agent not less than 10 and not more
14 than 14 business days following receipt of a counter-
15 notification by the service provider pursuant to section
16 512(g).

17 “(d) STAY OF DISTRICT COURT PROCEEDINGS.—A
18 district court shall order a stay of proceedings or such
19 other relief as the court determines to be appropriate with
20 respect to any claim brought before the court that is the
21 subject of a pending proceeding before the Board.

22 “(e) FAILURE TO ASSERT COUNTERCLAIM.—The
23 failure or inability to assert a counterclaim in a proceeding
24 before the Board shall not preclude the assertion of the

1 counterclaim in a subsequent court action or proceeding
2 before the Board.

3 “(f) OPT-OUT OR DISMISSAL OF PARTY.—If a party
4 has timely opted out of a proceeding under section 1405(i)
5 or is dismissed from a proceeding before the Board issues
6 a final determination in the proceeding, the final deter-
7 mination shall not be binding upon and shall have no pre-
8 clusive effect with respect to that party.

9 **“§ 1407. Confirmation or review by district court**

10 “(a) CONFIRMATION BY DISTRICT COURT.—

11 “(1) IN GENERAL.—In any proceeding in which
12 a party fails to pay damages or otherwise comply
13 with the relief awarded in a final determination of
14 the Board, the aggrieved party may petition the
15 United States District Court for the District of Co-
16 lumbia, or any other Federal district court of com-
17 petent jurisdiction, for an order confirming the relief
18 awarded not later than 1 year after the latest of—

19 “(A) the date on which the Board issued
20 the final determination under section 1405(u);

21 “(B) the date on which the Board denies
22 reconsideration under section 1405(x);

23 “(C) the date on which the Register of
24 Copyrights denies review under section 1405(y);

25 or

1 “(D) the date on which the Board issues
2 an amended final determination under sub-
3 section (x) or subsection (y) of section 1405.

4 “(2) RELIEF.—The Court shall grant an order
5 under subsection (a) and direct entry of judgment
6 unless the determination is vacated, modified, or cor-
7 rected as permitted under subsection (b). The judg-
8 ment shall be docketed as if issued in an action in
9 the United States District Court for the District of
10 Columbia, or any other Federal court of competent
11 jurisdiction, and shall be subject to all the provisions
12 of law relating to, and of the same force and effect
13 as if the judgment had been rendered in, an action
14 in the jurisdiction.

15 “(3) FILING PROCEDURES.—

16 “(A) NOTICE OF FILING.—Notice of the
17 petition for confirmation of a determination of
18 the Board and entry of judgment shall be pro-
19 vided to each party to the proceeding before the
20 Board, in accordance with the procedures appli-
21 cable to service of a motion in the United
22 States District Court. If a party to be served is
23 a nonresident, then notice of the petition shall
24 be served by the marshal of any district within

1 which such party may be found in the same
2 manner as other process of the court.

3 “(B) CONTENT OF FILING.—The petition
4 shall include a certified and dated copy of the
5 determination of the Board and a declaration
6 by the petitioner, under penalty of perjury, that
7 it is a true and correct copy of such determina-
8 tion and the date it was issued.

9 “(b) CHALLENGES TO A DETERMINATION.—

10 “(1) BASES FOR CHALLENGE.—Not later than
11 90 days after the date of issuance of a final deter-
12 mination by the Board, a party to the relevant pro-
13 ceeding may petition the United States Court for the
14 District of Columbia for an order vacating, modi-
15 fying, or correcting the final determination on the
16 grounds that—

17 “(A) the final determination was issued as
18 a result of fraud, corruption, or as a result of
19 misconduct or undue means;

20 “(B) the Board exceeded the authority of
21 the Board;

22 “(C) the Board so imperfectly executed the
23 duties of the Board that the final determination
24 was neither final nor definite regarding the
25 matter of controversy; or

1 “(D) the Board issued a default deter-
2 mination or determination based on failure to
3 prosecute and the default or failure was due to
4 excusable neglect.

5 “(2) PROCEDURE TO CHALLENGE.—

6 “(A) NOTICE OF FILING.—Notice of the
7 petition to challenge a determination of the
8 Board shall be provided to each party to the
9 proceeding before the Board, in accordance with
10 the procedures applicable to service of a motion
11 in the United States District Court for the Dis-
12 trict of Columbia. If a party to be served is a
13 nonresident, then notice of the application shall
14 be served by the marshal of any district within
15 which such party may be found in the same
16 manner as other process of the court.

17 “(B) CONTENT OF FILING.—The petition
18 shall include a certified and dated copy of the
19 determination of the Board and a declaration
20 by the petitioner, under penalty of perjury, that
21 it is a true and correct copy of such determina-
22 tion and the date it was issued, and the basis
23 for challenge under paragraph (1). For the pur-
24 poses of the application, any judge who has the
25 authority to order a stay of the proceedings in

1 an action brought in the same court may make
2 an order, to be served with the notice of appli-
3 cation, staying proceedings to enforce the
4 award.

5 **“§ 1408. Referral of Cases by District Courts**

6 “(a) COSTS AND ATTORNEYS’ FEES.—In any case
7 before a United States district court in which the court
8 is considering whether to award costs or attorneys’ fees
9 to a prevailing party under section 505, the district court
10 may consider, among other relevant factors, whether the
11 nonprevailing party had the option and could have chosen
12 to proceed before the Board instead of the district court.

13 “(b) ALTERNATIVE DISPUTE RESOLUTION PROC-
14 ESS.—The Board shall qualify as an alternative dispute
15 resolution process under section 651 of title 28 for pur-
16 poses of referral of eligible cases upon consent of the par-
17 ties by United States district courts.

18 **“§ 1409. Definitions**

19 “In this chapter:

20 “(1) PARTY.—The term ‘party’ refers to both a
21 party and the party’s attorney, as applicable.

22 “(2) PERSON.—The term ‘person’ (including
23 ‘his’ and ‘her’) refers to both an individual and an
24 entity that is amenable to legal process under appli-
25 cable law.

1 “(3) SERVICE PROVIDER.—The term ‘service
2 provider’ has the meaning given that term in section
3 512(k).

4 **“§ 1410. Funding**

5 “(a) DEPOSIT OF FEES.—Any fee received by the
6 Copyright Office under this title shall be deposited by the
7 Register and credited to the appropriations for necessary
8 expenses of the Office in accordance with subsection (d)
9 of section 708.

10 “(b) FUNDING.—There are authorized to be appro-
11 priated such sums as may be necessary to pay the costs
12 incurred by the Copyright Office that are not covered by
13 fees collected for services rendered under this chapter, in-
14 cluding the costs of establishing and maintaining the
15 Board and the facilities of the Board.”.

16 (b) CLERICAL AMENDMENT.—The table of chapters
17 for title 17, United States Code, is amended by adding
18 after the item relating to chapter 13 the following new
19 item:

“14. Copyright Claims Board 1401”.

20 (c) IMPLEMENTATION BY COPYRIGHT OFFICE.—

21 (1) REGULATIONS.—Not later than 90 days
22 after the date of the enactment of this Act, the Reg-
23 ister of Copyrights shall issue regulations necessary
24 to carry out chapter 14 of title 17, United States
25 Code, as added by subsection (a).

1 (2) NECESSARY FACILITIES.—The Register of
2 Copyrights may enter into a contract with an appro-
3 priate entity to establish Internet-based teleconfer-
4 encing or other facilities necessary to carry out the
5 amendment made by subsection (a).

6 (3) REPORT.—Not later than 3 years after the
7 date on which the Copyright Claims Board, issues
8 the first determination under section 1405(u) of title
9 17 United States Code, as added by subsection (a),
10 the Register of Copyrights shall submit to Congress
11 a report on the following:

12 (A) The use and efficacy of the Copyright
13 Claims Board in resolving copyright claims.

14 (B) Whether adjustments to the authority
15 of the Copyright Claims Board, including eligi-
16 ble claims, works, and applicable damages limi-
17 tations, are necessary or advisable.

18 (C) Whether greater allowance should be
19 made to permit awards of attorneys' fees and
20 costs to prevailing parties, including potential
21 limitations on such awards, in proceedings
22 under this chapter.

23 (D) Potential mechanisms to assist copy-
24 right owners with small claims in ascertaining

1 the identity and location of unknown online in-
2 fringers.

3 (E) Whether the Copyright Claims Board
4 should be expanded to offer mediation or other
5 nonbinding alternative dispute resolution serv-
6 ices to interested parties.

7 (F) Such other matters as the Register of
8 Copyrights determines are pertinent to the
9 Copyright Claims Board.

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