

116TH CONGRESS  
2D SESSION

# S. 4632

To amend title 17, United States Code, to establish an alternative dispute resolution program for copyright small claims, to amend the Communications Act of 1934 to modify the scope of protection from civil liability for “good Samaritan” blocking and screening of offensive material, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2020

Mr. McCONNELL (for Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 17, United States Code, to establish an alternative dispute resolution program for copyright small claims, to amend the Communications Act of 1934 to modify the scope of protection from civil liability for “good Samaritan” blocking and screening of offensive material, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Online Content Policy Modernization Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COPYRIGHT SMALL CLAIMS

Sec. 101. Copyright small claims.

Sec. 102. Implementation.

Sec. 103. Study.

Sec. 104. Severability.

TITLE II—GOOD SAMARITAN BLOCKING

Sec. 201. Protection from civil liability for “good Samaritan” blocking and screening of offensive material.

3 **TITLE I—COPYRIGHT SMALL**  
 4 **CLAIMS**

5 **SEC. 101. 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’—

13 “(A) means a party; and

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

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

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

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

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

19           “(4) the term ‘respondent’ means any person  
20           against whom a proceeding is brought before the  
21           Copyright Claims Board under section 1506(e), pur-  
22           suant to a permissible claim of infringement brought  
23           under section 1504(c)(1), noninfringement brought  
24           under section 1504(c)(2), or misrepresentation  
25           brought under section 1504(c)(3).

1 **“§ 1502. Copyright Claims Board**

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

7       “(b) OFFICERS AND STAFF.—

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

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

19               “(3) QUALIFICATIONS.—

20                       “(A) COPYRIGHT CLAIMS OFFICERS.—

21                               “(i) IN GENERAL.—Each Copyright  
22 Claims Officer shall be an attorney who  
23 has not fewer than 7 years of legal experi-  
24 ence.

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

1                   “(I) substantial experience in the  
2                   evaluation, litigation, or adjudication  
3                   of copyright infringement claims; and

4                   “(II) between those 2 Officers,  
5                   have represented or presided over a  
6                   diversity of copyright interests, includ-  
7                   ing those of both owners and users of  
8                   copyrighted works.

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

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

21                  “(4) COMPENSATION.—

22                  “(A) COPYRIGHT CLAIMS OFFICERS.—

23                  “(i) DEFINITION.—In this subpara-  
24                  graph, the term ‘senior level employee of  
25                  the Federal Government’ means an em-

1           employee, other than an employee in the Sen-  
2           ior Executive Service, the position of whom  
3           is classified above GS-15 of the General  
4           Schedule.

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

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

18          “(5) TERMS.—

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

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

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

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

7           “(iii) The third Copyright Claims Of-  
8           ficer appointed shall be appointed for a  
9           term of 6 years.

10           “(6) VACANCIES AND INCAPACITY.—

11           “(A) VACANCY.—

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

19           “(ii) VACANCY BEFORE EXPIRA-  
20           TION.—An individual appointed to fill a  
21           vacancy occurring before the expiration of  
22           the term for which the predecessor of the  
23           individual was appointed shall be appointed  
24           to serve a 6-year term.

1           “(B) 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, upon recommendation of, and in consulta-  
5           tion with, the Register of Copyrights, act expe-  
6           ditiously to appoint an interim Copyright  
7           Claims Officer to perform such duties during  
8           the period of such incapacity.

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

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

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

22   **“§ 1503. Authority and duties of the Copyright Claims**  
23                           **Board**

24          “(a) FUNCTIONS.—



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

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

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

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

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

22           “(E) To conduct hearings and conferences.

23           “(F) To facilitate the settlement by the  
24 parties of claims and counterclaims.

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

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

6           “(H) To provide information to the public  
7 concerning the procedures and requirements of  
8 the Copyright Claims Board.

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

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

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

20           “(2) COPYRIGHT CLAIMS ATTORNEYS.—Subject  
21 to the provisions of this chapter and applicable regu-  
22 lations, the functions of the Copyright Claims Attor-  
23 neys shall be as follows:

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

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

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

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

17           “(b) INDEPENDENCE IN DETERMINATIONS.—

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

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

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

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

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

11           “(ii) the application of law to the  
12 facts described in clause (i).

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

23           “(c) DIRECTION BY REGISTER.—Subject to sub-  
24 section (b), the Copyright Claims Officers and Copyright  
25 Claims Attorneys shall, in the administration of their du-

1 ties, be under the general direction of the Register of  
2 Copyrights.

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

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

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

21 “(g) JUDICIAL REVIEW.—Actions of the Copyright  
22 Claims Officers and Register of Copyrights under this  
23 chapter in connection with the rendering of any deter-  
24 mination are subject to judicial review as provided under  
25 section 1508(c) and not under chapter 7 of title 5.

1 **“§ 1504. Nature of proceedings**

2       “(a) VOLUNTARY PARTICIPATION.—Participation in  
3 a Copyright Claims Board proceeding shall be on a vol-  
4 untary basis in accordance with this chapter and the right  
5 of any party to instead pursue a claim, counterclaim, or  
6 defense in a district court of the United States or any  
7 other court, and to seek a jury trial, shall be preserved.

8       “(b) STATUTE OF LIMITATIONS.—

9           “(1) IN GENERAL.—A proceeding may not be  
10 maintained before the Copyright Claims Board un-  
11 less the proceeding is commenced, in accordance  
12 with section 1506(e), before the Copyright Claims  
13 Board within 3 years after the claim accrued.

14           “(2) TOLLING.—Subject to section 1507(a), a  
15 proceeding commenced before the Copyright Claims  
16 Board shall toll the time permitted under section  
17 507(b) for the commencement of an action on the  
18 same claim in a district court of the United States  
19 during the period in which the proceeding is pend-  
20 ing.

21       “(c) PERMISSIBLE CLAIMS, COUNTERCLAIMS, AND  
22 DEFENSES.—The Copyright Claims Board may render de-  
23 terminations with respect to the following claims, counter-  
24 claims, and defenses, subject to such further limitations  
25 and requirements, including with respect to particular

1 classes of works, as may be set forth in regulations estab-  
2 lished by the Register of Copyrights:

3           “(1) A claim for infringement of an exclusive  
4 right in a copyrighted work provided under section  
5 106 by the legal or beneficial owner of the exclusive  
6 right at the time of the infringement for which the  
7 claimant seeks damages, if any, within the limita-  
8 tions set forth in subsection (e)(1).

9           “(2) A claim for a declaration of noninfringe-  
10 ment of an exclusive right in a copyrighted work  
11 provided under section 106, consistent with section  
12 2201 of title 28.

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

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

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

25                   “(B) that—

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

9           “(ii) arises under an agreement per-  
10          taining to the same transaction or occur-  
11          rence that is the subject of a claim of in-  
12          fringement brought under paragraph (1),  
13          if the agreement could affect the relief  
14          awarded to the claimant.

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

18          “(6) A single claim or multiple claims permitted  
19          under paragraph (1), (2), or (3) by one or more  
20          claimants against one or more respondents, but only  
21          if all claims asserted in any one proceeding arise out  
22          of the same allegedly infringing activity or contin-  
23          uous course of infringing activities and do not, in  
24          the aggregate, result in the recovery of such claim



1 or claims for damages that exceed the limitations  
2 under subsection (e)(1).

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

6 “(1) A claim or counterclaim that is not a per-  
7 missible claim or counterclaim under subsection (c).

8 “(2) A claim or counterclaim that has been fi-  
9 nally adjudicated by a court of competent jurisdic-  
10 tion or that is pending before a court of competent  
11 jurisdiction, unless that court has granted a stay to  
12 permit that claim or counterclaim to proceed before  
13 the Copyright Claims Board.

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

16 “(4) A claim or counterclaim asserted against a  
17 person or entity residing outside of the United  
18 States, except in a case in which the person or entity  
19 initiated the proceeding before the Copyright Claims  
20 Board and is subject to counterclaims under this  
21 chapter.

22 “(e) PERMISSIBLE REMEDIES.—

23 “(1) MONETARY RECOVERY.—

24 “(A) ACTUAL DAMAGES, PROFITS, AND  
25 STATUTORY DAMAGES FOR INFRINGEMENT.—

1 With respect to a claim or counterclaim for in-  
2 fringement of copyright, and subject to the limi-  
3 tation on total monetary recovery under sub-  
4 paragraph (D), the Copyright Claims Board  
5 may award either of the following:

6 “(i) Actual damages and profits deter-  
7 mined in accordance with section 504(b),  
8 with that award taking into consideration,  
9 in appropriate cases, whether the infring-  
10 ing party has agreed to cease or mitigate  
11 the infringing activity under paragraph  
12 (2).

13 “(ii) Statutory damages, which shall  
14 be determined in accordance with section  
15 504(e), subject to the following conditions:

16 “(I) With respect to works timely  
17 registered under section 412, so that  
18 the works are eligible for an award of  
19 statutory damages in accordance with  
20 that section, the statutory damages  
21 may not exceed \$15,000 for each  
22 work infringed.

23 “(II) With respect to works not  
24 timely registered under section 412,  
25 but eligible for an award of statutory

1 damages under this section, statutory  
2 damages may not exceed \$7,500 per  
3 work infringed, or a total of \$15,000  
4 in any 1 proceeding.

5 “(III) The Copyright Claims  
6 Board may not make any finding  
7 that, or consider whether, the in-  
8 fringement was committed willfully in  
9 making an award of statutory dam-  
10 ages.

11 “(IV) The Copyright Claims  
12 Board may consider, as an additional  
13 factor in awarding statutory damages,  
14 whether the infringer has agreed to  
15 cease or mitigate the infringing activ-  
16 ity under paragraph (2).

17 “(B) ELECTION OF DAMAGES.—With re-  
18 spect to a claim or counterclaim of infringe-  
19 ment, at any time before final determination is  
20 rendered, the claimant or counterclaimant shall,  
21 in accordance with the schedule established by  
22 the Copyright Claims Board under section  
23 1506(k), elect—

1           “(i) to pursue actual damages and  
2           profits or statutory damages under sub-  
3           paragraph (A); or

4           “(ii) not to pursue damages.

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

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

20          “(2) AGREEMENT TO CEASE CERTAIN ACTIV-  
21          ITY.—In a determination of the Copyright Claims  
22          Board, the Board shall include a requirement to  
23          cease conduct if, in the proceeding relating to the  
24          determination—

25                 “(A) a party agrees—

1           “(i) to cease activity that is found to  
2           be infringing, including removing or dis-  
3           abling access to, or destroying, infringing  
4           materials; or

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

12          “(B) the agreement described in subpara-  
13          graph (A) is reflected in the record for the pro-  
14          ceeding.

15          “(3) ATTORNEYS’ FEES AND COSTS.—Notwith-  
16          standing any other provision of law, except in the  
17          case of bad faith conduct as provided in section  
18          1506(y)(2), the parties to proceedings before the  
19          Copyright Claims Board shall bear their own attor-  
20          neys’ fees and costs.

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

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

7       **“§ 1505. Registration requirement**

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

12               “(1) the legal or beneficial owner of the copy-  
 13 right has first delivered a completed application, a  
 14 deposit, and the required fee for registration of the  
 15 copyright to the Copyright Office; and

16               “(2) a registration certificate has either been  
 17 issued or has not been refused.

18       “(b) CERTIFICATE OF REGISTRATION.—Notwith-  
 19 standing any other provision of law, a claimant or counter-  
 20 claimant in a proceeding before the Copyright Claims  
 21 Board shall be eligible to recover actual damages and prof-  
 22 its or statutory damages under this chapter for infringe-  
 23 ment of a work if the requirements of subsection (a) have  
 24 been met, except that—

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

3           “(A) a registration certificate with respect  
4 to the work has been issued by the Copyright  
5 Office, submitted to the Copyright Claims  
6 Board, and made available to the other parties  
7 to the proceeding; and

8           “(B) the other parties to the proceeding  
9 have been provided an opportunity to address  
10 the registration certificate;

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

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

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

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

15 **“§ 1506. Conduct of proceedings**

16       “(a) IN GENERAL.—

17           “(1) APPLICABLE LAW.—Proceedings of the  
 18 Copyright Claims Board shall be conducted in ac-  
 19 cordance with this chapter and regulations estab-  
 20 lished by the Register of Copyrights under this chap-  
 21 ter, in addition to relevant principles of law under  
 22 this title.

23           “(2) CONFLICTING PRECEDENT.—If it appears  
 24 that there may be conflicting judicial precedent on  
 25 an issue of substantive copyright law that cannot be



1 reconciled, the Copyright Claims Board shall follow  
2 the law of the Federal jurisdiction in which the ac-  
3 tion could have been brought if filed in a district  
4 court of the United States, or, if the action could  
5 have been brought in more than 1 such jurisdiction,  
6 the jurisdiction that the Copyright Claims Board de-  
7 termines has the most significant ties to the parties  
8 and conduct at issue.

9 “(b) RECORD.—The Copyright Claims Board shall  
10 maintain records documenting the proceedings before the  
11 Board.

12 “(c) CENTRALIZED PROCESS.—Proceedings before  
13 the Copyright Claims Board shall—

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

17 “(2) take place by means of written submis-  
18 sions, hearings, and conferences carried out through  
19 internet-based applications and other telecommuni-  
20 cations facilities, except that, in cases in which phys-  
21 ical or other nontestimonial evidence material to a  
22 proceeding cannot be furnished to the Copyright  
23 Claims Board through available telecommunications  
24 facilities, the Copyright Claims Board may make al-  
25 ternative arrangements for the submission of such

1 evidence that do not prejudice any other party to the  
2 proceeding.

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

6 “(1) an attorney; or

7 “(2) a law student who is qualified under appli-  
8 cable law governing representation by law students  
9 of parties in legal proceedings and who provides  
10 such representation on a pro bono basis.

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

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

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

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

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

24 “(1) CLAIMS.—Upon the filing of a claim under  
25 subsection (e), the claim shall be reviewed by a

1 Copyright Claims Attorney to ensure that the claim  
2 complies with this chapter and applicable regula-  
3 tions, subject to the following:

4 “(A) If the claim is found to comply, the  
5 claimant shall be notified regarding that com-  
6 pliance and instructed to proceed with service of  
7 the claim under subsection (g).

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

1 so notified and shall be instructed to proceed  
2 with service of the claim, but if the claim still  
3 fails to comply, upon confirmation of such non-  
4 compliance by a Copyright Claims Officer, the  
5 proceeding shall be dismissed without prejudice.  
6 The Copyright Claims Board shall also dismiss  
7 without prejudice any proceeding in which a  
8 compliant claim is not filed within the applica-  
9 ble 30-day period.

10 “(C)(i) Subject to clause (ii), for purposes  
11 of this paragraph, a claim against an online  
12 service provider for infringement by reason of  
13 the storage of or referral or linking to infring-  
14 ing material that may be subject to the limita-  
15 tions on liability set forth in subsection (b), (c),  
16 or (d) of section 512 shall be considered non-  
17 compliant unless the claimant affirms in the  
18 statement required under subsection (e)(1) of  
19 this section that the claimant has previously no-  
20 tified the service provider of the claimed in-  
21 fringement in accordance with subsection  
22 (b)(2)(E), (c)(3), or (d)(3) of section 512, as  
23 applicable, and the service provider failed to re-  
24 move or disable access to the material expedi-  
25 tiously upon the provision of such notice.

1           “(ii) If a claim is found to be noncompliant  
2           under clause (i), the Copyright Claims Board  
3           shall provide the claimant with information con-  
4           cerning the service of such a notice under the  
5           applicable provision of section 512.

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

1 counterclaim is refiled and served again within that  
2 second 30-day period and is compliant, the counter-  
3 claimant and such other parties shall be so notified,  
4 but if the counterclaim still fails to comply, upon  
5 confirmation of such noncompliance by a Copyright  
6 Claims Officer, the counterclaim, but not the pro-  
7 ceeding, shall be dismissed without prejudice.

8 “(3) DISMISSAL OF UNSUITABILITY.—The  
9 Copyright Claims Board shall dismiss a claim or  
10 counterclaim without prejudice if, upon reviewing  
11 the claim or counterclaim, or at any other time in  
12 the proceeding, the Copyright Claims Board con-  
13 cludes that the claim or counterclaim is unsuitable  
14 for determination by the Copyright Claims Board,  
15 including on account of any of the following:

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

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

19 “(C) The determination of a relevant issue  
20 of law or fact that could exceed either the num-  
21 ber of proceedings the Copyright Claims Board  
22 could reasonably administer or the subject mat-  
23 ter competence of the Copyright Claims Board.

24 “(g) SERVICE OF NOTICE AND CLAIMS.—In order to  
25 proceed with a claim against a respondent, a claimant

1 shall, within 90 days after receiving notification under  
2 subsection (f) to proceed with service, file with the Copy-  
3 right Claims Board proof of service on the respondent. In  
4 order to effectuate service on a respondent, the claimant  
5 shall cause notice of the proceeding and a copy of the  
6 claim to be served on the respondent, either by personal  
7 service or pursuant to a waiver of personal service, as pre-  
8 scribed in regulations established by the Register of Copy-  
9 rights. Such regulations shall include the following re-  
10 quirements:

11           “(1) The notice of the proceeding shall adhere  
12           to a prescribed form and shall set forth the nature  
13           of the Copyright Claims Board and proceeding, the  
14           right of the respondent to opt out, and the con-  
15           sequences of opting out and not opting out, includ-  
16           ing a prominent statement that, by not opting out  
17           within 60 days after receiving the notice, the re-  
18           spondent—

19                       “(A) loses the opportunity to have the dis-  
20                       pute decided by a court created under article  
21                       III of the Constitution of the United States;  
22                       and

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

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

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

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

9                   “(A) complying with State law for serving  
10                  a summons in an action brought in courts of  
11                  general jurisdiction in the State where service is  
12                  made;

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

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

19                  “(D) delivering a copy of the notice and  
20                  claim to an agent designated by the respondent  
21                  to receive service of process or, if not so des-  
22                  ignated, an agent authorized by appointment or  
23                  by law to receive service of process.

24           “(5)(A) A corporation, partnership, or unincor-  
25           porated association that is subject to suit in courts



1 of general jurisdiction under a common name shall  
2 be served by delivering a copy of the notice and  
3 claim to its service agent. If such service agent has  
4 not been designated, service shall be accomplished—

5 “(i) by complying with State law for serv-  
6 ing a summons in an action brought in courts  
7 of general jurisdiction in the State where serv-  
8 ice is made; or

9 “(ii) by delivering a copy of the notice and  
10 claim to an officer, a managing or general  
11 agent, or any other agent authorized by ap-  
12 pointment or by law to receive service of proc-  
13 ess in an action brought in courts of general ju-  
14 risdiction in the State where service is made  
15 and, if the agent is one authorized by statute  
16 and the statute so requires, by also mailing a  
17 copy of the notice and claim to the respondent.

18 “(B) A corporation, partnership, or unincor-  
19 porated association that is subject to suit in courts  
20 of general jurisdiction under a common name may  
21 elect to designate a service agent to receive notice of  
22 a claim against it before the Copyright Claims  
23 Board by complying with requirements that the Reg-  
24 ister of Copyrights shall establish by regulation. The  
25 Register of Copyrights shall maintain a current di-

1       rectory of service agents that is available to the pub-  
2       lic for inspection, including through the internet,  
3       and may require such corporations, partnerships,  
4       and unincorporated associations designating such  
5       service agents to pay a fee to cover the costs of  
6       maintaining the directory.

7               “(6) In order to request a waiver of personal  
8       service, the claimant may notify a respondent, by  
9       first class mail or by other reasonable means, that  
10      a proceeding has been commenced, such notice to be  
11      made in accordance with regulations established by  
12      the Register of Copyrights, subject to the following:

13               “(A) Any such request shall be in writing,  
14               shall be addressed to the respondent, and shall  
15               be accompanied by a prescribed notice of the  
16               proceeding, a copy of the claim as filed with the  
17               Copyright Claims Board, a prescribed form for  
18               waiver of personal service, and a prepaid or  
19               other means of returning the form without cost.

20               “(B) The request shall state the date on  
21               which the request is sent, and shall provide the  
22               respondent a period of 30 days, beginning on  
23               the date on which the request is sent, to return  
24               the waiver form signed by the respondent. The  
25               signed waiver form shall, for purposes of this

1 subsection, constitute acceptance and proof of  
2 service as of the date on which the waiver is  
3 signed.

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

7 “(B) A respondent who timely waives personal  
8 service under paragraph (6) and does not opt out of  
9 the proceeding shall be permitted a period of 30  
10 days, in addition to the period otherwise permitted  
11 under the applicable procedures of the Copyright  
12 Claims Board, to submit a substantive response to  
13 the claim, including any defenses and counterclaims.

14 “(8) A minor or an incompetent individual may  
15 only be served by complying with State law for serv-  
16 ing a summons or like process on such an individual  
17 in an action brought in the courts of general juris-  
18 diction of the State where service is made.

19 “(9) Service of a claim and waiver of personal  
20 service may only be effected within the United  
21 States.

22 “(h) NOTIFICATION BY COPYRIGHT CLAIMS  
23 BOARD.—The Register of Copyrights shall establish regu-  
24 lations providing for a written notification to be sent by,  
25 or on behalf of, the Copyright Claims Board to notify the

1 respondent of a pending proceeding against the respond-  
2 ent, as set forth in those regulations, which shall—

3           “(1) include information concerning the re-  
4 spondent’s right to opt out of the proceeding, the  
5 consequences of opting out and not opting out, and  
6 a prominent statement that, by not opting out with-  
7 in 60 days after the date of service under subsection  
8 (g), the respondent loses the opportunity to have the  
9 dispute decided by a court created under article III  
10 of the Constitution of the United States and waives  
11 the right to a jury trial regarding the dispute; and

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

14           “(i) OPT-OUT PROCEDURE.—Upon being properly  
15 served with a notice and claim, a respondent who chooses  
16 to opt out of the proceeding shall have a period of 60 days,  
17 beginning on the date of service, in which to provide writ-  
18 ten notice of such choice to the Copyright Claims Board,  
19 in accordance with regulations established by the Register  
20 of Copyrights. If proof of service has been filed by the  
21 claimant and the respondent does not submit an opt-out  
22 notice to the Copyright Claims Board within that 60-day  
23 period, the proceeding shall be deemed an active pro-  
24 ceeding and the respondent shall be bound by the deter-  
25 mination in the proceeding to the extent provided under

1 section 1507(a). If the respondent opts out of the pro-  
2 ceeding during that 60-day period, the proceeding shall  
3 be dismissed without prejudice, except that, in exceptional  
4 circumstances and upon written notice to the claimant, the  
5 Copyright Claims Board may extend that 60-day period  
6 in the interests of justice.

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

11 “(k) SCHEDULING.—Upon confirmation that a pro-  
12 ceeding has become an active proceeding, the Copyright  
13 Claims Board shall issue a schedule for the future conduct  
14 of the proceeding. A schedule issued by the Copyright  
15 Claims Board may be amended by the Copyright Claims  
16 Board in the interests of justice.

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

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

1           “(1) the parties to the proceeding may make re-  
2 requests to the Copyright Claims Board to address  
3 case management and discovery matters, and submit  
4 responses thereto; and

5           “(2) the Copyright Claims Board may request  
6 or permit parties to make submissions addressing  
7 relevant questions of fact or law, or other matters,  
8 including matters raised sua sponte by the Copy-  
9 right Claims Officers, and offer responses thereto.

10          “(n) DISCOVERY.—Discovery in a proceeding shall be  
11 limited to the production of relevant information and doc-  
12 uments, written interrogatories, and written requests for  
13 admission, as provided in regulations established by the  
14 Register of Copyrights, except that—

15           “(1) upon the request of a party, and for good  
16 cause shown, the Copyright Claims Board may ap-  
17 prove additional relevant discovery, on a limited  
18 basis, in particular matters, and may request spe-  
19 cific information and documents from participants in  
20 the proceeding and voluntary submissions from non-  
21 participants, consistent with the interests of justice;

22           “(2) upon the request of a party, and for good  
23 cause shown, the Copyright Claims Board may issue  
24 a protective order to limit the disclosure of docu-

1       ments or testimony that contain confidential infor-  
2       mation; and

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

10       “(o) EVIDENCE.—The Copyright Claims Board may  
11       consider the following types of evidence in a proceeding,  
12       and such evidence may be admitted without application  
13       of formal rules of evidence:

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

17           “(2) Testimonial evidence, submitted under  
18       penalty of perjury in written form or in accordance  
19       with subsection (p), limited to statements of the par-  
20       ties and nonexpert witnesses, that is relevant to the  
21       claims, counterclaims, and defenses in a proceeding,  
22       except that, in exceptional cases, expert witness tes-  
23       timony or other types of testimony may be permitted  
24       by the Copyright Claims Board for good cause  
25       shown.

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

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

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

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

14       “(q) VOLUNTARY DISMISSAL.—

15           “(1) BY CLAIMANT.—Upon the written request  
16 of a claimant that is received before a respondent  
17 files a response to the claim in a proceeding, the  
18 Copyright Claims Board shall dismiss the pro-  
19 ceeding, or a claim or respondent, as requested,  
20 without prejudice.

21           “(2) BY COUNTERCLAIMANT.—Upon written re-  
22 quest of a counterclaimant that is received before a  
23 claimant files a response to the counterclaim, the  
24 Copyright Claims Board shall dismiss the counter-  
25 claim, such dismissal to be without prejudice.



1           “(3) CLASS ACTIONS.—Any party in an active  
2 proceeding before the Copyright Claims Board who  
3 receives notice of a pending or putative class action,  
4 arising out of the same transaction or occurrence, in  
5 which that party is a class member may request in  
6 writing dismissal of the proceeding before the Board.  
7 Upon notice to all claimants and counterclaimants,  
8 the Copyright Claims Board shall dismiss the pro-  
9 ceeding without prejudice.

10          “(r) SETTLEMENT.—

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

13                   “(A) jointly request a conference with a  
14 Copyright Claims Officer for the purpose of fa-  
15 cilitating settlement discussions; or

16                   “(B) submit to the Copyright Claims  
17 Board an agreement providing for settlement  
18 and dismissal of some or all of the claims and  
19 counterclaims in the proceeding.

20           “(2) ADDITIONAL REQUEST.—A submission  
21 under paragraph (1)(B) may include a request that  
22 the Copyright Claims Board adopt some or all of the  
23 terms of the parties’ settlement in a final determina-  
24 tion in the proceeding.

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

4       “(t) DETERMINATIONS.—

5           “(1) NATURE AND CONTENTS.—A determina-  
6 tion rendered by the Copyright Claims Board in a  
7 proceeding shall—

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

10           “(B) be in writing, and include an expla-  
11 nation of the factual and legal basis of the de-  
12 termination;

13           “(C) set forth any terms by which a re-  
14 spondent or counterclaim respondent has  
15 agreed to cease infringing activity under section  
16 1504(e)(2);

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

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

23           “(2) DISSENT.—A Copyright Claims Officer  
24 who dissents from a decision contained in a deter-

1       mination under paragraph (1) may append a state-  
2       ment setting forth the grounds for that dissent.

3           “(3) PUBLICATION.—Each final determination  
4       of the Copyright Claims Board shall be made avail-  
5       able on a publicly accessible website. The Register  
6       shall establish regulations with respect to the publi-  
7       cation of other records and information relating to  
8       such determinations, including the redaction of  
9       records to protect confidential information that is  
10      the subject of a protective order under subsection  
11      (n)(2).

12          “(4) FREEDOM OF INFORMATION ACT.—All in-  
13      formation relating to proceedings of the Copyright  
14      Claims Board under this title is exempt from disclo-  
15      sure to the public under section 552(b)(3) of title 5,  
16      except for determinations, records, and information  
17      published under paragraph (3).

18          “(u) RESPONDENT’S DEFAULT.—If a proceeding has  
19      been deemed an active proceeding but the respondent has  
20      failed to appear or has ceased participating in the pro-  
21      ceeding, as demonstrated by the respondent’s failure,  
22      without justifiable cause, to meet one or more deadlines  
23      or requirements set forth in the schedule adopted by the  
24      Copyright Claims Board under subsection (k), the Copy-  
25      right Claims Board may enter a default determination, in-

1 cluding the dismissal of any counterclaim asserted by the  
2 respondent, as follows and in accordance with such other  
3 requirements as the Register of Copyrights may establish  
4 by regulation:

5           “(1) The Copyright Claims Board shall require  
6           the claimant to submit relevant evidence and other  
7           information in support of the claimant’s claim and  
8           any asserted damages and, upon review of such evi-  
9           dence and any other requested submissions from the  
10          claimant, shall determine whether the materials so  
11          submitted are sufficient to support a finding in favor  
12          of the claimant under applicable law and, if so, the  
13          appropriate relief and damages, if any, to be award-  
14          ed.

15          “(2) If the Copyright Claims Board makes an  
16          affirmative determination under paragraph (1), the  
17          Copyright Claims Board shall prepare a proposed  
18          default determination, and shall provide written no-  
19          tice to the respondent at all addresses, including  
20          email addresses, reflected in the records of the pro-  
21          ceeding before the Copyright Claims Board, of the  
22          pendency of a default determination by the Copy-  
23          right Claims Board and of the legal significance of  
24          such determination. Such notice shall be accom-  
25          panied by the proposed default determination and

1 shall provide that the respondent has a period of 30  
2 days, beginning on the date of the notice, to submit  
3 any evidence or other information in opposition to  
4 the proposed default determination.

5 “(3) If the respondent responds to the notice  
6 provided under paragraph (2) within the 30-day pe-  
7 riod provided in such paragraph, the Copyright  
8 Claims Board shall consider respondent’s submis-  
9 sions and, after allowing the other parties to address  
10 such submissions, maintain, or amend its proposed  
11 determination as appropriate, and the resulting de-  
12 termination shall not be a default determination.

13 “(4) If the respondent fails to respond to the  
14 notice provided under paragraph (2), the Copyright  
15 Claims Board shall proceed to issue the default de-  
16 termination as a final determination. Thereafter, the  
17 respondent may only challenge such determination to  
18 the extent permitted under section 1508(c), except  
19 that, before any additional proceedings are initiated  
20 under section 1508, the Copyright Claims Board  
21 may, in the interests of justice, vacate the default  
22 determination.

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

24 “(1) FAILURE TO COMPLETE SERVICE.—If a  
25 claimant fails to complete service on a respondent

1 within the 90-day period required under subsection  
2 (g), the Copyright Claims Board shall dismiss that  
3 respondent from the proceeding without prejudice. If  
4 a claimant fails to complete service on all respon-  
5 dents within that 90-day period, the Copyright Claims  
6 Board shall dismiss the proceeding without preju-  
7 dice.

8 “(2) FAILURE TO PROSECUTE.—If a claimant  
9 fails to proceed in an active proceeding, as dem-  
10 onstrated by the claimant’s failure, without justifi-  
11 able cause, to meet one or more deadlines or require-  
12 ments set forth in the schedule adopted by the Copy-  
13 right Claims Board under subsection (k), the Copy-  
14 right Claims Board may, upon providing written no-  
15 tice to the claimant and a period of 30 days, begin-  
16 ning on the date of the notice, to respond to the no-  
17 tice, and after considering any such response, issue  
18 a determination dismissing the claimants’ claims,  
19 which shall include an award of attorneys’ fees and  
20 costs, if appropriate, under subsection (y)(2). There-  
21 after, the claimant may only challenge such deter-  
22 mination to the extent permitted under section  
23 1508(e), except that, before any additional pro-  
24 ceedings are initiated under section 1508, the Copy-

1 right Claims Board may, in the interests of justice,  
2 vacate the determination of dismissal.

3 “(w) REQUEST FOR RECONSIDERATION.—A party  
4 may, within 30 days after the date on which the Copyright  
5 Claims Board issues a final determination in a proceeding  
6 under this chapter, submit a written request for reconsid-  
7 eration of, or an amendment to, such determination if the  
8 party identifies a clear error of law or fact material to  
9 the outcome, or a technical mistake. After providing the  
10 other parties an opportunity to address such request, the  
11 Copyright Claims Board shall either deny the request or  
12 issue an amended final determination.

13 “(x) REVIEW BY REGISTER.—If the Copyright  
14 Claims Board denies a party a request for reconsideration  
15 of a final determination under subsection (w), that party  
16 may, within 30 days after the date of such denial, request  
17 review of the final determination by the Register of Copy-  
18 rights in accordance with regulations established by the  
19 Register. Such request shall be accompanied by a reason-  
20 able filing fee, as provided in such regulations. The review  
21 by the Register shall be limited to consideration of whether  
22 the Copyright Claims Board abused its discretion in deny-  
23 ing reconsideration of the determination. After providing  
24 the other parties an opportunity to address the request,  
25 the Register shall either deny the request for review, or

1 remand the proceeding to the Copyright Claims Board for  
2 reconsideration of issues specified in the remand and for  
3 issuance of an amended final determination. Such amend-  
4 ed final determination shall not be subject to further con-  
5 sideration or review, other than under section 1508(c).

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

7 “(1) CERTIFICATION.—The Register of Copy-  
8 rights shall establish regulations requiring certifi-  
9 cation of the accuracy and truthfulness of state-  
10 ments made by participants in proceedings before  
11 the Copyright Claims Board.

12 “(2) BAD FAITH CONDUCT.—Notwithstanding  
13 any other provision of law, in any proceeding in  
14 which a determination is rendered and it is estab-  
15 lished that a party pursued a claim, counterclaim, or  
16 defense for a harassing or other improper purpose,  
17 or without a reasonable basis in law or fact, then,  
18 unless inconsistent with the interests of justice, the  
19 Copyright Claims Board shall in such determination  
20 award reasonable attorneys’ fees and costs to any  
21 adversely affected party of in an amount of not more  
22 than \$5,000, except that—

23 “(A) if an adversely affected party ap-  
24 peared pro se in the proceeding, the award to



1           that party shall be for costs only, in an amount  
2           of not more than \$2,500; and

3           “(B) in extraordinary circumstances, such  
4           as where a party has demonstrated a pattern or  
5           practice of bad faith conduct as described in  
6           this paragraph, the Copyright Claims Board  
7           may, in the interests of justice, award costs in  
8           excess of the limitations under this paragraph.

9           “(3) ADDITIONAL PENALTY.—If the Board  
10          finds that on more than one occasion within a 12-  
11          month period a party pursued a claim, counterclaim,  
12          or defense before the Copyright Claims Board for a  
13          harassing or other improper purpose, or without a  
14          reasonable basis in law or fact, that party shall be  
15          barred from initiating a claim before the Copyright  
16          Claims Board under this chapter for a period of 12  
17          months beginning on the date on which the Board  
18          makes such a finding. Any proceeding commenced  
19          by that party that is still pending before the Board  
20          when such a finding is made shall be dismissed with-  
21          out prejudice, except that if a proceeding has been  
22          deemed active under subsection (i), the proceeding  
23          shall be dismissed under this paragraph only if the  
24          respondent provides written consent thereto.

1       “(z) REGULATIONS FOR SMALLER CLAIMS.—The  
2 Register of Copyrights shall establish regulations to pro-  
3 vide for the consideration and determination, by at least  
4 one Copyright Claims Officer, of any claim under this  
5 chapter in which total damages sought do not exceed  
6 \$5,000 (exclusive of attorneys’ fees and costs). A deter-  
7 mination issued under this subsection shall have the same  
8 effect as a determination issued by the entire Copyright  
9 Claims Board.

10 **“§ 1507. Effect of proceeding**

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

24               “(1) A determination of the Copyright Claims  
25 Board shall not preclude litigation or relitigation as

1 between the same or different parties before any  
2 court or tribunal, or the Copyright Claims Board, of  
3 the same or similar issues of fact or law in connec-  
4 tion with claims or counterclaims not asserted or not  
5 finally determined by the Copyright Claims Board.

6 “(2) A determination of ownership of a copy-  
7 righted work for purposes of resolving a matter be-  
8 fore the Copyright Claims Board may not be relied  
9 upon, and shall not have any preclusive effect, in  
10 any other action or proceeding before any court or  
11 tribunal, including the Copyright Claims Board.

12 “(3) Except to the extent permitted under this  
13 subsection and section 1508, any determination of  
14 the Copyright Claims Board may not be cited or re-  
15 lied upon as legal precedent in any other action or  
16 proceeding before any court or tribunal, including  
17 the Copyright Claims Board.

18 “(b) CLASS ACTIONS NOT AFFECTED.—

19 “(1) IN GENERAL.—A proceeding before the  
20 Copyright Claims Board shall not have any effect on  
21 a class action proceeding in a district court of the  
22 United States, and section 1509(a) shall not apply  
23 to a class action proceeding in a district court of the  
24 United States.

1           “(2) NOTICE OF CLASS ACTION.—Any party to  
2           an active proceeding before the Copyright Claims  
3           Board who receives notice of a pending class action,  
4           arising out of the same transaction or occurrence as  
5           the proceeding before the Copyright Claims Board,  
6           in which the party is a class member shall either—

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

10                   “(B) seek dismissal under section  
11                   1506(q)(3) of the proceeding before the Copy-  
12                   right Claims Board.

13           “(c) OTHER MATERIALS IN PROCEEDING.—Except  
14 as permitted under this section and section 1508, a sub-  
15 mission or statement of a party or witness made in connec-  
16 tion with a proceeding before the Copyright Claims Board,  
17 including a proceeding that is dismissed, may not be cited  
18 or relied upon in, or serve as the basis of, any action or  
19 proceeding concerning rights or limitations on rights  
20 under this title before any court or tribunal, including the  
21 Copyright Claims Board.

22           “(d) APPLICABILITY OF SECTION 512(g).—A claim  
23 or counterclaim before the Copyright Claims Board that  
24 is brought under subsection (c)(1) or (c)(4) of section  
25 1504, or brought under subsection (c)(6) of section 1504

1 and that relates to a claim under subsection (c)(1) or  
2 (c)(4) of such section, qualifies as an action seeking an  
3 order to restrain a subscriber from engaging in infringing  
4 activity under section 512(g)(2)(C) if—

5           “(1) notice of the commencement of the Copy-  
6 right Claims Board proceeding is provided by the  
7 claimant to the service provider’s designated agent  
8 before the service provider replaces the material fol-  
9 lowing receipt of a counter notification under section  
10 512(g); and

11           “(2) the claim brought alleges infringement of  
12 the material identified in the notification of claimed  
13 infringement under section 512(c)(1)(C).

14           “(e) FAILURE TO ASSERT COUNTERCLAIM.—The  
15 failure or inability to assert a counterclaim in a proceeding  
16 before the Copyright Claims Board shall not preclude the  
17 assertion of that counterclaim in a subsequent court action  
18 or proceeding before the Copyright Claims Board.

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

1 **“§ 1508. Review and confirmation by district court**

2       “(a) IN GENERAL.—In any proceeding in which a  
3 party has failed to pay damages, or has failed otherwise  
4 to comply with the relief, awarded in a final determination  
5 of the Copyright Claims Board, including a default deter-  
6 mination or a determination based on a failure to pros-  
7 ecute, the aggrieved party may, not later than 1 year after  
8 the date on which the final determination is issued, any  
9 reconsideration by the Copyright Claims Board or review  
10 by the Register of Copyrights is resolved, or an amended  
11 final determination is issued, whichever occurs last, apply  
12 to the United States District Court for the District of Co-  
13 lumbia or any other appropriate district court of the  
14 United States for an order confirming the relief awarded  
15 in the final determination and reducing such award to  
16 judgment. The court shall grant such order and direct  
17 entry of judgment unless the determination is or has been  
18 vacated, modified, or corrected under subsection (c). If the  
19 United States District Court for the District of Columbia  
20 or other district court of the United States, as the case  
21 may be, issues an order confirming the relief awarded by  
22 the Copyright Claims Board, the court shall impose on the  
23 party who failed to pay damages or otherwise comply with  
24 the relief, the reasonable expenses required to secure such  
25 order, including attorneys’ fees, that were incurred by the  
26 aggrieved party.

1 “(b) FILING PROCEDURES.—

2 “(1) APPLICATION TO CONFIRM DETERMINA-  
3 TION.—Notice of the application under subsection  
4 (a) for confirmation of a determination of the Copy-  
5 right Claims Board and entry of judgment shall be  
6 provided to all parties to the proceeding before the  
7 Copyright Claims Board that resulted in the deter-  
8 mination, in accordance with the procedures applica-  
9 ble to service of a motion in the district court of the  
10 United States where the application is made.

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

13 “(A) A certified copy of the final or  
14 amended final determination of the Copyright  
15 Claims Board, as reflected in the records of the  
16 Copyright Claims Board, following any process  
17 of reconsideration or review by the Register of  
18 Copyrights, to be confirmed and rendered to  
19 judgment.

20 “(B) A declaration by the applicant, under  
21 penalty of perjury—

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

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

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

3           “(iv) stating whether the applicant is  
4           aware of any other proceedings before the  
5           court concerning the same determination  
6           of the Copyright Claims Board.

7           “(c) CHALLENGES TO THE DETERMINATION.—

8           “(1) BASES FOR CHALLENGE.—Not later than  
9           90 days after the date on which the Copyright  
10          Claims Board issues a final or amended final deter-  
11          mination in a proceeding, or not later than 90 days  
12          after the date on which the Register of Copyrights  
13          completes any process of reconsideration or review of  
14          the determination, whichever occurs later, a party  
15          may seek a court order vacating, modifying, or cor-  
16          recting the determination of the Copyright Claims  
17          Board in the following cases:

18               “(A) If the determination was issued as a  
19               result of fraud, corruption, misrepresentation,  
20               or other misconduct.

21               “(B) If the Copyright Claims Board ex-  
22               ceeded its authority or failed to render a final  
23               determination concerning the subject matter at  
24               issue.



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

5           “(2) PROCEDURE TO CHALLENGE.—

6           “(A) NOTICE OF APPLICATION.—Notice of  
7 the application to challenge a determination of  
8 the Copyright Claims Board shall be provided  
9 to all parties to the proceeding before the Copy-  
10 right Claims Board, in accordance with the pro-  
11 cedures applicable to service of a motion in the  
12 court where the application is made.

13           “(B) STAYING OF PROCEEDINGS.—For  
14 purposes of an application under this sub-  
15 section, any judge who is authorized to issue an  
16 order to stay the proceedings in an any other  
17 action brought in the same court may issue an  
18 order, to be served with the notice of applica-  
19 tion, staying proceedings to enforce the award  
20 while the challenge is pending.

21 **“§ 1509. Relationship to other district court actions**

22           “(a) STAY OF DISTRICT COURT PROCEEDINGS.—  
23 Subject to section 1507(b), a district court of the United  
24 States shall issue a stay of proceedings or such other relief  
25 as the court determines appropriate with respect to any

1 claim brought before the court that is already the subject  
2 of a pending or active proceeding before the Copyright  
3 Claims Board.

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

10 **“§ 1510. Implementation by Copyright Office**

11 “(a) REGULATIONS.—

12 “(1) IMPLEMENTATION GENERALLY.—The Reg-  
13 ister of Copyrights shall establish regulations to  
14 carry out this chapter. Such regulations shall include  
15 the fees prescribed under subsections (e) and (x) of  
16 section 1506. The authority to issue such fees shall  
17 not limit the authority of the Register of Copyrights  
18 to establish fees for services under section 708. All  
19 fees received by the Copyright Office in connection  
20 with the activities under this chapter shall be depos-  
21 ited by the Register of Copyrights and credited to  
22 the appropriations for necessary expenses of the Of-  
23 fice in accordance with section 708(d). In estab-  
24 lishing regulations under this subsection, the Reg-  
25 ister of Copyrights shall provide for the efficient ad-

1       ministration of the Copyright Claims Board, and for  
2       the ability of the Copyright Claims Board to timely  
3       complete proceedings instituted under this chapter,  
4       including by implementing mechanisms to prevent  
5       harassing or improper use of the Copyright Claims  
6       Board by any party.

7               “(2) LIMITS ON MONETARY RELIEF.—

8               “(A) IN GENERAL.—Subject to subpara-  
9       graph (B), the Register of Copyrights may, in  
10       order to further the goals of the Copyright  
11       Claims Board, conduct a rulemaking to adjust  
12       the limits on monetary recovery or attorneys’  
13       fees and costs that may be awarded under this  
14       chapter.

15              “(B) EFFECTIVE DATE OF ADJUST-  
16       MENT.—Any rule under subparagraph (A) that  
17       makes an adjustment shall take effect at the  
18       end of the 120-day period beginning on the  
19       date on which the Register of Copyrights sub-  
20       mits the rule to Congress and only if Congress  
21       does not, during that 120-day period, enact a  
22       law that provides in substance that Congress  
23       does not approve the rule.

24              “(b) NECESSARY FACILITIES.—Subject to applicable  
25       law, the Register of Copyrights may retain outside vendors

1 to establish internet-based, teleconferencing, and other fa-  
 2 cilities required to operate the Copyright Claims Board.

3 “(c) FEES.—Any filing fees, including the fee to com-  
 4 mence a proceeding under section 1506(e), shall be pre-  
 5 scribed in regulations established by the Register of Copy-  
 6 rights. The sum total of such filing fees shall be in an  
 7 amount of at least \$100, may not exceed the cost of filing  
 8 an action in a district court of the United States, and shall  
 9 be fixed in amounts that further the goals of the Copyright  
 10 Claims Board.

11 **“§ 1511. Funding**

12 “There are authorized to be appropriated such sums  
 13 as may be necessary to pay the costs incurred by the Copy-  
 14 right Office under this chapter that are not covered by  
 15 fees collected for services rendered under this chapter, in-  
 16 cluding the costs of establishing and maintaining the  
 17 Copyright Claims Board and its facilities.”.

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

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

21 **SEC. 102. IMPLEMENTATION.**

22 Not later 1 year after the date of enactment of this  
 23 Act, the Copyright Claims Board established under section  
 24 1502 of title 17, United States Code, as added by section  
 25 101 of this Act, shall begin operations.

1 **SEC. 103. STUDY.**

2 Not later than 3 years after the date on which the  
3 Copyright Claims Board issues the first determination of  
4 the Copyright Claims Board under chapter 15 of title 17,  
5 United States Code, as added by section 101 of this Act,  
6 the Register of Copyrights shall conduct, and report to  
7 Congress on, a study that addresses the following:

8 (1) The use and efficacy of the Copyright  
9 Claims Board in resolving copyright claims, includ-  
10 ing the number of proceedings the Copyright Claims  
11 Board could reasonably administer.

12 (2) Whether adjustments to the authority of the  
13 Copyright Claims Board are necessary or advisable,  
14 including with respect to—

15 (A) eligible claims, such as claims under  
16 section 1202 of title 17, United States Code;  
17 and

18 (B) works and applicable damages limita-  
19 tions.

20 (3) Whether greater allowance should be made  
21 to permit awards of attorneys' fees and costs to pre-  
22 vailing parties, including potential limitations on  
23 such awards.

24 (4) Potential mechanisms to assist copyright  
25 owners with small claims in ascertaining the identity  
26 and location of unknown online infringers.

1           (5) Whether the Copyright Claims Board  
2           should be expanded to offer mediation or other non-  
3           binding alternative dispute resolution services to in-  
4           terested parties.

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

8 **SEC. 104. SEVERABILITY.**

9           If any provision of this title, an amendment made by  
10          this title, or the application of such provision or amend-  
11          ment to any person or circumstance is held to be unconsti-  
12          tutional, the remainder of this title and the amendments  
13          made by this title, and the application of the provision or  
14          the amendment to any other person or circumstance, shall  
15          not be affected.

16           **TITLE II—GOOD SAMARITAN**  
17           **BLOCKING**

18 **SEC. 201. PROTECTION FROM CIVIL LIABILITY FOR “GOOD**  
19           **SAMARITAN” BLOCKING AND SCREENING OF**  
20           **OFFENSIVE MATERIAL.**

21          Section 230 of the Communications Act of 1934 (47  
22          U.S.C. 230) is amended—

23           (1) in subsection (c)—

24           (A) in paragraph (1)—

1 (i) by striking “No provider” and in-  
2 serting the following:

3 “(A) IN GENERAL.—No provider”; and

4 (ii) by adding at the end the fol-  
5 lowing:

6 “(B) APPLICABILITY.—

7 “(i) IN GENERAL.—Subparagraph (A)  
8 shall not apply to any decision or agree-  
9 ment made or action taken by a provider  
10 or user of an interactive computer service  
11 to restrict access to or availability of mate-  
12 rial provided by another information con-  
13 tent provider.

14 “(ii) CIVIL LIABILITY.—Any applica-  
15 ble immunity for a decision or agreement  
16 made or action taken by a provider or user  
17 of an interactive computer service de-  
18 scribed in clause (i) shall be provided solely  
19 by paragraph (2).”; and

20 (B) in paragraph (2)—

21 (i) in subparagraph (A)—

22 (I) by striking “considers to be”  
23 and inserting “has an objectively rea-  
24 sonable belief is”; and

1 (II) by striking “or otherwise ob-  
2 jectionable” and inserting “promoting  
3 self-harm, promoting terrorism, or un-  
4 lawful”; and

5 (ii) in subparagraph (B), by striking  
6 “paragraph (1)” and inserting “subpara-  
7 graph (A)”; and

8 (2) in subsection (f)(3)—

9 (A) by striking “The term” and inserting  
10 the following:

11 “(A) IN GENERAL.—The term”; and

12 (B) by adding at the end the following:

13 “(B) RESPONSIBILITY.—For purposes of  
14 subparagraph (A), being responsible in whole or  
15 in part for the creation or development of infor-  
16 mation—

17 “(i) includes any instance in which a  
18 person or entity editorializes or affirma-  
19 tively and substantively modifies the con-  
20 tent of another person or entity; and

21 “(ii) does not include a change to the  
22 format, layout, or basic appearance of the  
23 content of another person or entity.”.

○