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H. R. 2426

IN THE SENATE OF THE UNITED STATES

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AN ACT

To amend title 17, United States Code, to establish an alternative dispute resolution program for copyright small claims, 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 “Copyright Alternative
5 in Small-Claims Enforcement Act of 2019” or the “CASE
6 Act of 2019”.

7 **SEC. 2. COPYRIGHT SMALL CLAIMS.**

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

1 **“CHAPTER 15—COPYRIGHT SMALL**
 2 **CLAIMS**

“Sec.

“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.

3 **“§ 1501. Definitions**

4 “In this chapter—

5 “(1) the term ‘party’—

6 “(A) means a party; and

7 “(B) includes the attorney of a party, as
 8 applicable;

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

16 “(3) the term ‘counterclaimant’ means a re-
 17 spondent in a proceeding before the Copyright
 18 Claims Board that—

1 “(A) asserts a permissible counterclaim
2 under section 1504(c)(4) against the claimant
3 in the proceeding; and

4 “(B) is the real party in interest with re-
5 spect to the counterclaim described in subpara-
6 graph (A); and

7 “(4) the term ‘respondent’ means any person
8 against whom a proceeding is brought before the
9 Copyright Claims Board under section 1506(e), pur-
10 suant to a permissible claim of infringement brought
11 under section 1504(c)(1), noninfringement brought
12 under section 1504(c)(2), or misrepresentation
13 brought under section 1504(c)(3).

14 **“§ 1502. Copyright Claims Board**

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

20 “(b) OFFICERS AND STAFF.—

21 “(1) COPYRIGHT CLAIMS OFFICERS.—The Reg-
22 ister of Copyrights shall recommend three full-time
23 Copyright Claims Officers to serve on the Copyright
24 Claims Board in accordance with paragraph (3)(A).

25 The Officers shall be appointed by the Librarian of

1 Congress to such positions after consultation with
2 the Register of Copyrights.

3 “(2) COPYRIGHT CLAIMS ATTORNEYS.—The
4 Register of Copyrights shall hire not fewer than two
5 full-time Copyright Claims Attorneys to assist in the
6 administration of the Copyright Claims Board.

7 “(3) QUALIFICATIONS.—

8 “(A) COPYRIGHT CLAIMS OFFICERS.—

9 “(i) IN GENERAL.—Each Copyright
10 Claims Officer shall be an attorney who
11 has not fewer than 7 years of legal experi-
12 ence.

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

15 “(I) substantial experience in the
16 evaluation, litigation, or adjudication
17 of copyright infringement claims; and

18 “(II) between those two Officers,
19 have represented or presided over a
20 diversity of copyright interests, includ-
21 ing those of both owners and users of
22 copyrighted works.

23 “(iii) ALTERNATIVE DISPUTE RESOLU-
24 TION.—The Copyright Claims Officer not
25 described in clause (ii) shall have substan-

1 tial familiarity with copyright law and ex-
2 perience in the field of alternative dispute
3 resolution, including the resolution of liti-
4 gation matters through that method of res-
5 olution.

6 “(B) COPYRIGHT CLAIMS ATTORNEYS.—

7 Each Copyright Claims Attorney shall be an at-
8 torney who has not fewer than 3 years of sub-
9 stantial experience in copyright law.

10 “(4) COMPENSATION.—

11 “(A) COPYRIGHT CLAIMS OFFICERS.—

12 “(i) DEFINITION.—In this subpara-
13 graph, the term ‘senior level employee of
14 the Federal Government’ means an em-
15 ployee, other than an employee in the Sen-
16 ior Executive Service, the position of whom
17 is classified above GS–15 of the General
18 Schedule.

19 “(ii) PAY RANGE.—Each Copyright
20 Claims Officer shall be compensated at a
21 rate of pay that is not less than the min-
22 imum, and not more than the maximum,
23 rate of pay payable for senior level employ-
24 ees of the Federal Government, including
25 locality pay, as applicable.

1 “(B) COPYRIGHT CLAIMS ATTORNEYS.—
2 Each Copyright Claims Attorney shall be com-
3 pensated at a rate of pay that is not more than
4 the maximum rate of pay payable for level 10
5 of GS–15 of the General Schedule, including lo-
6 cality pay, as applicable.

7 “(5) TERMS.—

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

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

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

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

20 “(iii) The third Copyright Claims Of-
21 ficer appointed shall be appointed for a
22 term of 6 years.

23 “(6) VACANCIES AND INCAPACITY.—

24 “(A) VACANCY.—

1 “(i) IN GENERAL.—If a vacancy oc-
2 curs in the position of a Copyright Claims
3 Officer, the Librarian of Congress shall,
4 upon the recommendation of and in con-
5 sultation with the Register of Copyrights,
6 act expeditiously to appoint a Copyright
7 Claims Officer for that position.

8 “(ii) VACANCY BEFORE EXPIRA-
9 TION.—An individual appointed to fill a
10 vacancy occurring before the expiration of
11 the term for which the predecessor of the
12 individual was appointed shall be appointed
13 to serve a 6-year term.

14 “(B) INCAPACITY.—If a Copyright Claims
15 Officer is temporarily unable to perform the du-
16 ties of the Officer, the Librarian of Congress
17 shall, upon recommendation of and in consulta-
18 tion with the Register of Copyrights, act expedi-
19 tiously to appoint an interim Copyright Claims
20 Officer to perform such duties during the pe-
21 riod of such incapacity.

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

1 “(8) ADMINISTRATIVE SUPPORT.—The Register
2 of Copyrights shall provide the Copyright Claims Of-
3 ficers and Copyright Claims Attorneys with nec-
4 essary administrative support, including techno-
5 logical facilities, to carry out the duties of the Offi-
6 cers and Attorneys under this chapter.

7 “(9) LOCATION OF COPYRIGHT CLAIMS
8 BOARD.—The offices and facilities of the Copyright
9 Claims Officers and Copyright Claims Attorneys
10 shall be located at the Copyright Office.

11 **“§ 1503. Authority and duties of the Copyright Claims**

12 **Board**

13 “(a) FUNCTIONS.—

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

18 “(A) To render determinations on the civil
19 copyright claims, counterclaims, and defenses
20 that may be brought before the Officers under
21 this chapter.

22 “(B) To ensure that claims, counterclaims,
23 and defenses are properly asserted and other-
24 wise appropriate for resolution by the Copyright
25 Claims Board.

1 “(C) To manage the proceedings before the
2 Officers and render rulings pertaining to the
3 consideration of claims, counterclaims, and de-
4 fenses, including with respect to scheduling, dis-
5 covery, evidentiary, and other matters.

6 “(D) To request, from participants and
7 nonparticipants in a proceeding, the production
8 of information and documents relevant to the
9 resolution of a claim, counterclaim, or defense.

10 “(E) To conduct hearings and conferences.

11 “(F) To facilitate the settlement by the
12 parties of claims and counterclaims.

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

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

19 “(H) To provide information to the public
20 concerning the procedures and requirements of
21 the Copyright Claims Board.

22 “(I) To maintain records of the pro-
23 ceedings before the Officers, certify official
24 records of such proceedings as needed, and, as

1 provided in section 1506(t), make the records
2 in such proceedings available to the public.

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

5 “(K) When not engaged in performing the
6 duties of the Officers set forth in this chapter,
7 to perform such other duties as may be as-
8 signed by the Register of Copyrights.

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

13 “(A) To provide assistance to the Copy-
14 right Claims Officers in the administration of
15 the duties of those Officers under this chapter.

16 “(B) To provide assistance to members of
17 the public with respect to the procedures and
18 requirements of the Copyright Claims Board.

19 “(C) To provide information to potential
20 claimants contemplating bringing a permissible
21 action before the Copyright Claims Board about
22 obtaining a subpoena under section 512(h) for
23 the sole purpose of identifying a potential re-
24 spondent in such an action.

1 “(D) When not engaged in performing the
2 duties of the Attorneys set forth in this chapter,
3 to perform such other duties as may be as-
4 signed by the Register of Copyrights.

5 “(b) INDEPENDENCE IN DETERMINATIONS.—

6 “(1) IN GENERAL.—The Copyright Claims
7 Board shall render the determinations of the Board
8 in individual proceedings independently on the basis
9 of the records in the proceedings before it and in ac-
10 cordance with the provisions of this title, judicial
11 precedent, and applicable regulations of the Register
12 of Copyrights.

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

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

17 “(B) subject to section 1506(x), may not
18 consult with the Register of Copyrights with re-
19 spect to—

20 “(i) the facts of any particular matter
21 pending before the Officers and the Attor-
22 neys; or

23 “(ii) the application of law to the
24 facts described in clause (i).

1 “(3) PERFORMANCE APPRAISALS.—Notwith-
2 standing any other provision of law or any regula-
3 tion or policy of the Library of Congress or Register
4 of Copyrights, any performance appraisal of a Copy-
5 right Claims Officer or Copyright Claims Attorney
6 may not consider the substantive result of any indi-
7 vidual determination reached by the Copyright
8 Claims Board as a basis for appraisal except to the
9 extent that result may relate to any actual or alleged
10 violation of an ethical standard of conduct.

11 “(c) DIRECTION BY REGISTER.—Subject to sub-
12 section (b), the Copyright Claims Officers and Copyright
13 Claims Attorneys shall, in the administration of their du-
14 ties, be under the general direction of the Register of
15 Copyrights.

16 “(d) INCONSISTENT DUTIES BARRED.—A Copyright
17 Claims Officer or Copyright Claims Attorney may not un-
18 dertake any duty that conflicts with the duties of the Offi-
19 cer or Attorney in connection with the Copyright Claims
20 Board.

21 “(e) RECUSAL.—A Copyright Claims Officer or Copy-
22 right Claims Attorney shall recuse himself or herself from
23 participation in any proceeding with respect to which the
24 Copyright Claims Officer or Copyright Claims Attorney,

1 as the case may be, has reason to believe that he or she
2 has a conflict of interest.

3 “(f) EX PARTE COMMUNICATIONS.—Except as may
4 otherwise be permitted by applicable law, any party to a
5 proceeding before the Copyright Claims Board shall re-
6 frain from ex parte communications with the Copyright
7 Claims Officers and the Register of Copyrights concerning
8 the substance of any active or pending proceeding before
9 the Copyright Claims Board.

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

15 **“§ 1504. Nature of proceedings**

16 “(a) VOLUNTARY PARTICIPATION.—Participation in
17 a Copyright Claims Board proceeding shall be on a vol-
18 untary basis in accordance with this chapter and the right
19 of any party to instead pursue a claim, counterclaim, or
20 defense in a district court of the United States, any other
21 court, or any other forum, and to seek a jury trial, shall
22 be preserved. The rights, remedies, and limitations under
23 this section may not be waived except in accordance with
24 this chapter.

25 “(b) STATUTE OF LIMITATIONS.—

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

6 “(2) TOLLING.—Subject to section 1507(a), a
7 proceeding commenced before the Copyright Claims
8 Board shall toll the time permitted under section
9 507(b) for the commencement of an action on the
10 same claim in a district court of the United States
11 during the period in which the proceeding is pend-
12 ing.

13 “(c) PERMISSIBLE CLAIMS, COUNTERCLAIMS, AND
14 DEFENSES.—The Copyright Claims Board may render de-
15 terminations with respect to the following claims, counter-
16 claims, and defenses, subject to such further limitations
17 and requirements, including with respect to particular
18 classes of works, as may be set forth in regulations estab-
19 lished by the Register of Copyrights:

20 “(1) A claim for infringement of an exclusive
21 right in a copyrighted work provided under section
22 106 by the legal or beneficial owner of the exclusive
23 right at the time of the infringement for which the
24 claimant seeks damages, if any, within the limita-
25 tions set forth in subsection (e)(1).

1 “(2) A claim for a declaration of noninfringe-
2 ment of an exclusive right in a copyrighted work
3 provided under section 106, consistent with section
4 2201 of title 28.

5 “(3) A claim under section 512(f) for misrepre-
6 sentation in connection with a notification of claimed
7 infringement or a counter notification seeking to re-
8 place removed or disabled material, except that any
9 remedies relating to such a claim in a proceeding be-
10 fore the Copyright Claims Board shall be limited to
11 those available under this chapter.

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

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

17 “(B) that—

18 “(i) arises under section 106 or sec-
19 tion 512(f) and out of the same trans-
20 action or occurrence that is the subject of
21 a claim of infringement brought under
22 paragraph (1), a claim of noninfringement
23 brought under paragraph (2), or a claim of
24 misrepresentation brought under para-
25 graph (3); or

1 “(ii) arises under an agreement per-
2 taining to the same transaction or occur-
3 rence that is the subject of a claim of in-
4 fringement brought under paragraph (1),
5 if the agreement could affect the relief
6 awarded to the claimant.

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

10 “(6) A single claim or multiple claims permitted
11 under paragraph (1), (2), or (3) by one or more
12 claimants against one or more respondents, but only
13 if all claims asserted in any one proceeding arise out
14 of the same allegedly infringing activity or contin-
15 uous course of infringing activities and do not, in
16 the aggregate, result in the recovery of such claim
17 or claims for damages that exceed the limitations
18 under subsection (e)(1).

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

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

24 “(2) A claim or counterclaim that has been fi-
25 nally adjudicated by a court of competent jurisdic-

1 tion or that is pending before a court of competent
2 jurisdiction, unless that court has granted a stay to
3 permit that claim or counterclaim to proceed before
4 the Copyright Claims Board.

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

7 “(4) A claim or counterclaim asserted against a
8 person or entity residing outside of the United
9 States, except in a case in which the person or entity
10 initiated the proceeding before the Copyright Claims
11 Board and is subject to counterclaims under this
12 chapter.

13 “(e) PERMISSIBLE REMEDIES.—

14 “(1) MONETARY RECOVERY.—

15 “(A) ACTUAL DAMAGES, PROFITS, AND
16 STATUTORY DAMAGES FOR INFRINGEMENT.—

17 With respect to a claim or counterclaim for in-
18 fringement of copyright, and subject to the limi-
19 tation on total monetary recovery under sub-
20 paragraph (D), the Copyright Claims Board
21 may award either of the following:

22 “(i) Actual damages and profits deter-
23 mined in accordance with section 504(b),
24 with that award taking into consideration,
25 in appropriate cases, whether the infring-

1 ing party has agreed to cease or mitigate
2 the infringing activity under paragraph
3 (2).

4 “(ii) Statutory damages, which shall
5 be determined in accordance with section
6 504(c), subject to the following conditions:

7 “(I) With respect to works timely
8 registered under section 412, so that
9 the works are eligible for an award of
10 statutory damages in accordance with
11 that section, the statutory damages
12 may not exceed \$15,000 for each
13 work infringed.

14 “(II) With respect to works not
15 timely registered under section 412,
16 but eligible for an award of statutory
17 damages under this section, statutory
18 damages may not exceed \$7,500 per
19 work infringed, or a total of \$15,000
20 in any one proceeding.

21 “(III) The Copyright Claims
22 Board may not make any finding
23 that, or consider whether, the in-
24 fringement was committed willfully in

1 making an award of statutory dam-
2 ages.

3 “(IV) The Copyright Claims
4 Board may consider, as an additional
5 factor in awarding statutory damages,
6 whether the infringer has agreed to
7 cease or mitigate the infringing activ-
8 ity under paragraph (2).

9 “(B) ELECTION OF DAMAGES.—With re-
10 spect to a claim or counterclaim of infringe-
11 ment, at any time before final determination is
12 rendered, and notwithstanding the schedule es-
13 tablished by the Copyright Claims Board under
14 section 1506(k), the claimant or counterclaim-
15 ant shall elect—

16 “(i) to recover actual damages and
17 profits or statutory damages under sub-
18 paragraph (A); or

19 “(ii) not to recover damages.

20 “(C) DAMAGES FOR OTHER CLAIMS.—
21 Damages for claims and counterclaims other
22 than infringement claims, such as those
23 brought under section 512(f), shall be subject
24 to the limitation under subparagraph (D).

1 “(D) LIMITATION ON TOTAL MONETARY
2 RECOVERY.—Notwithstanding any other provi-
3 sion of law, a party that pursues any one or
4 more claims or counterclaims in any single pro-
5 ceeding before the Copyright Claims Board may
6 not seek or recover in that proceeding a total
7 monetary recovery that exceeds the sum of
8 \$30,000, exclusive of any attorneys’ fees and
9 costs that may be awarded under section
10 1506(y)(2).

11 “(2) AGREEMENT TO CEASE CERTAIN ACTIV-
12 ITY.—In a determination of the Copyright Claims
13 Board, the Board shall include a requirement to
14 cease conduct if, in the proceeding relating to the
15 determination—

16 “(A) a party agrees—

17 “(i) to cease activity that is found to
18 be infringing, including removing or dis-
19 abling access to, or destroying, infringing
20 materials; or

21 “(ii) to cease sending a takedown no-
22 tice or counter notice under section 512 to
23 the other party regarding the conduct at
24 issue before the Board if that notice or
25 counter notice was found to be a knowing

1 material misrepresentation under section
2 512(f); and

3 “(B) the agreement described in subpara-
4 graph (A) is reflected in the record for the pro-
5 ceeding.

6 “(3) ATTORNEYS’ FEES AND COSTS.—Notwith-
7 standing any other provision of law, except in the
8 case of bad faith conduct as provided in section
9 1506(y)(2), the parties to proceedings before the
10 Copyright Claims Board shall bear their own attor-
11 neys’ fees and costs.

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

17 “(g) PERMISSIBLE NUMBER OF CASES.—The Reg-
18 ister of Copyrights may establish regulations relating to
19 the permitted number of proceedings each year by the
20 same claimant under this chapter, in the interests of jus-
21 tice and the administration of the Copyright Claims
22 Board.

23 **“§ 1505. Registration requirement**

24 “(a) APPLICATION OR CERTIFICATE.—A claim or
25 counterclaim alleging infringement of an exclusive right

1 in a copyrighted work may not be asserted before the
2 Copyright Claims Board unless—

3 “(1) the legal or beneficial owner of the copy-
4 right has first delivered a completed application, a
5 deposit, and the required fee for registration of the
6 copyright to the Copyright Office; and

7 “(2) a registration certificate has either been
8 issued or has not been refused.

9 “(b) CERTIFICATE OF REGISTRATION.—Notwith-
10 standing any other provision of law, a claimant or counter-
11 claimant in a proceeding before the Copyright Claims
12 Board shall be eligible to recover actual damages and prof-
13 its or statutory damages under this chapter for infringe-
14 ment of a work if the requirements of subsection (a) have
15 been met, except that—

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

18 “(A) a registration certificate with respect
19 to the work has been issued by the Copyright
20 Office, submitted to the Copyright Claims
21 Board, and made available to the other parties
22 to the proceeding; and

23 “(B) the other parties to the proceeding
24 have been provided an opportunity to address
25 the registration certificate;

1 “(2) if the proceeding may not proceed further
2 because a registration certificate for the work is
3 pending, the proceeding shall be held in abeyance
4 pending submission of the certificate to the Copy-
5 right Claims Board, except that, if the proceeding is
6 held in abeyance for more than 1 year, the Copy-
7 right Claims Board may, upon providing written no-
8 tice to the parties to the proceeding, and 30 days to
9 the parties to respond to the notice, dismiss the pro-
10 ceeding without prejudice; and

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

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

22 “(d) REGULATIONS.—In order to ensure that actions
23 before the Copyright Claims Board proceed in a timely
24 manner, the Register of Copyrights shall establish regula-
25 tions allowing the Copyright Office to make a decision,

1 on an expedited basis, to issue or deny copyright registra-
2 tion for an unregistered work that is at issue before the
3 Board.

4 **“§ 1506. Conduct of proceedings**

5 “(a) IN GENERAL.—

6 “(1) APPLICABLE LAW.—Proceedings of the
7 Copyright Claims Board shall be conducted in ac-
8 cordance with this chapter and regulations estab-
9 lished by the Register of Copyrights under this chap-
10 ter, in addition to relevant principles of law under
11 this title.

12 “(2) CONFLICTING PRECEDENT.—If it appears
13 that there may be conflicting judicial precedent on
14 an issue of substantive copyright law that cannot be
15 reconciled, the Copyright Claims Board shall follow
16 the law of the Federal jurisdiction in which the ac-
17 tion could have been brought if filed in a district
18 court of the United States, or, if the action could
19 have been brought in more than one such jurisdic-
20 tion, the jurisdiction that the Copyright Claims
21 Board determines has the most significant ties to
22 the parties and conduct at issue.

23 “(b) RECORD.—The Copyright Claims Board shall
24 maintain records documenting the proceedings before the
25 Board.

1 “(c) CENTRALIZED PROCESS.—Proceedings before
2 the Copyright Claims Board shall—

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

6 “(2) take place by means of written submis-
7 sions, hearings, and conferences carried out through
8 internet-based applications and other telecommuni-
9 cations facilities, except that, in cases in which phys-
10 ical or other nontestimonial evidence material to a
11 proceeding cannot be furnished to the Copyright
12 Claims Board through available telecommunications
13 facilities, the Copyright Claims Board may make al-
14 ternative arrangements for the submission of such
15 evidence that do not prejudice any other party to the
16 proceeding.

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

20 “(1) an attorney; or

21 “(2) a law student who is qualified under appli-
22 cable law governing representation by law students
23 of parties in legal proceedings and who provides
24 such representation on a pro bono basis.

1 “(e) COMMENCEMENT OF PROCEEDING.—In order to
2 commence a proceeding under this chapter, a claimant
3 shall, subject to such additional requirements as may be
4 prescribed in regulations established by the Register of
5 Copyrights, file a claim with the Copyright Claims Board,
6 that—

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

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

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

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

14 “(1) CLAIMS.—Upon the filing of a claim under
15 subsection (e), the claim shall be reviewed by a
16 Copyright Claims Attorney to ensure that the claim
17 complies with this chapter and applicable regula-
18 tions, subject to the following:

19 “(A) If the claim is found to comply, the
20 claimant shall be notified regarding that com-
21 pliance and instructed to proceed with service of
22 the claim under subsection (g).

23 “(B) If the claim is found not to comply,
24 the claimant shall be notified that the claim is
25 deficient and be permitted to file an amended

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

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

17 “(ii) If a claim is found to be noncompliant
18 under clause (i), the Copyright Claims Board
19 shall provide the claimant with information con-
20 cerning the service of such a notice under the
21 applicable provision of section 512.

22 “(2) COUNTERCLAIMS.—Upon the filing and
23 service of a counterclaim, the counterclaim shall be
24 reviewed by a Copyright Claims Attorney to ensure
25 that the counterclaim complies with the provisions of

1 this chapter and applicable regulations. If the coun-
2 terclaim is found not to comply, the counterclaimant
3 and the other parties to the proceeding shall be noti-
4 fied that the counterclaim is deficient, and the
5 counterclaimant shall be permitted to file and serve
6 an amended counterclaim within 30 days after the
7 date of such notice. If the counterclaimant files and
8 serves a compliant counterclaim within that 30-day
9 period, the counterclaimant and such other parties
10 shall be so notified. If the counterclaim is refiled and
11 served within that 30-day period but still fails to
12 comply, the counterclaimant and such other parties
13 shall again be notified that the counterclaim is defi-
14 cient, and the counterclaimant shall be provided a
15 second opportunity to amend the counterclaim with-
16 in 30 days after the date of the second notice. If the
17 counterclaim is refiled and served again within that
18 second 30-day period and is compliant, the counter-
19 claimant and such other parties shall be so notified,
20 but if the counterclaim still fails to comply, upon
21 confirmation of such noncompliance by a Copyright
22 Claims Officer, the counterclaim, but not the pro-
23 ceeding, shall be dismissed without prejudice.

24 “(3) DISMISSAL FOR UNSUITABILITY.—The
25 Copyright Claims Board shall dismiss a claim or

1 counterclaim without prejudice if, upon reviewing
2 the claim or counterclaim, or at any other time in
3 the proceeding, the Copyright Claims Board con-
4 cludes that the claim or counterclaim is unsuitable
5 for determination by the Copyright Claims Board,
6 including on account of any of the following:

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

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

10 “(C) The determination of a relevant issue
11 of law or fact that could exceed either the num-
12 ber of proceedings the Copyright Claims Board
13 could reasonably administer or the subject mat-
14 ter competence of the Copyright Claims Board.

15 “(g) SERVICE OF NOTICE AND CLAIMS.—In order to
16 proceed with a claim against a respondent, a claimant
17 shall, within 90 days after receiving notification under
18 subsection (f) to proceed with service, file with the Copy-
19 right Claims Board proof of service on the respondent. In
20 order to effectuate service on a respondent, the claimant
21 shall cause notice of the proceeding and a copy of the
22 claim to be served on the respondent, either by personal
23 service or pursuant to a waiver of personal service, as pre-
24 scribed in regulations established by the Register of Copy-

1 rights. Such regulations shall include the following re-
2 quirements:

3 “(1) The notice of the proceeding shall adhere
4 to a prescribed form and shall set forth the nature
5 of the Copyright Claims Board and proceeding, the
6 right of the respondent to opt out, and the con-
7 sequences of opting out and not opting out, includ-
8 ing a prominent statement that, by not opting out
9 within 60 days after receiving the notice, the re-
10 spondent—

11 “(A) loses the opportunity to have the dis-
12 pute decided by a court created under article
13 III of the Constitution of the United States;
14 and

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

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

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

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

1 “(A) complying with State law for serving
2 a summons in an action brought in courts of
3 general jurisdiction in the State where service is
4 made;

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

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

11 “(D) delivering a copy of the notice and
12 claim to an agent designated by the respondent
13 to receive service of process or, if not so des-
14 ignated, an agent authorized by appointment or
15 by law to receive service of process.

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

22 “(i) by complying with State law for serv-
23 ing a summons in an action brought in courts
24 of general jurisdiction in the State where serv-
25 ice is made; or

1 “(ii) by delivering a copy of the notice and
2 claim to an officer, a managing or general
3 agent, or any other agent authorized by ap-
4 pointment or by law to receive service of proc-
5 ess in an action brought in courts of general ju-
6 risdiction in the State where service is made
7 and, if the agent is one authorized by statute
8 and the statute so requires, by also mailing a
9 copy of the notice and claim to the respondent.

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

24 “(6) In order to request a waiver of personal
25 service, the claimant may notify a respondent, by

1 first class mail or by other reasonable means, that
2 a proceeding has been commenced, such notice to be
3 made in accordance with regulations established by
4 the Register of Copyrights, subject to the following:

5 “(A) Any such request shall be in writing,
6 shall be addressed to the respondent, and shall
7 be accompanied by a prescribed notice of the
8 proceeding, a copy of the claim as filed with the
9 Copyright Claims Board, a prescribed form for
10 waiver of personal service, and a prepaid or
11 other means of returning the form without cost.

12 “(B) The request shall state the date on
13 which the request is sent, and shall provide the
14 respondent a period of 30 days, beginning on
15 the date on which the request is sent, to return
16 the waiver form signed by the respondent. The
17 signed waiver form shall, for purposes of this
18 subsection, constitute acceptance and proof of
19 service as of the date on which the waiver is
20 signed.

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

24 “(B) A respondent who timely waives personal
25 service under paragraph (6) and does not opt out of

1 the proceeding shall be permitted a period of 30
2 days, in addition to the period otherwise permitted
3 under the applicable procedures of the Copyright
4 Claims Board, to submit a substantive response to
5 the claim, including any defenses and counterclaims.

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

11 “(9) Service of a claim and waiver of personal
12 service may only be effected within the United
13 States.

14 “(h) NOTIFICATION BY COPYRIGHT CLAIMS
15 BOARD.—The Register of Copyrights shall establish regu-
16 lations providing for a written notification to be sent by,
17 or on behalf of, the Copyright Claims Board to notify the
18 respondent of a pending proceeding against the respond-
19 ent, as set forth in those regulations, which shall—

20 “(1) include information concerning the re-
21 spondent’s right to opt out of the proceeding, the
22 consequences of opting out and not opting out, and
23 a prominent statement that, by not opting out with-
24 in 60 days after the date of service under subsection
25 (g), the respondent loses the opportunity to have the

1 dispute decided by a court created under article III
2 of the Constitution of the United States and waives
3 the right to a jury trial regarding the dispute; and

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

6 “(i) OPT-OUT PROCEDURE.—Upon being properly
7 served with a notice and claim, a respondent who chooses
8 to opt out of the proceeding shall have a period of 60 days,
9 beginning on the date of service, in which to provide writ-
10 ten notice of such choice to the Copyright Claims Board,
11 in accordance with regulations established by the Register
12 of Copyrights. If proof of service has been filed by the
13 claimant and the respondent does not submit an opt-out
14 notice to the Copyright Claims Board within that 60-day
15 period, the proceeding shall be deemed an active pro-
16 ceeding and the respondent shall be bound by the deter-
17 mination in the proceeding to the extent provided under
18 section 1507(a). If the respondent opts out of the pro-
19 ceeding during that 60-day period, the proceeding shall
20 be dismissed without prejudice, except that, in exceptional
21 circumstances and upon written notice to the claimant, the
22 Copyright Claims Board may extend that 60-day period
23 in the interests of justice.

24 “(j) SERVICE OF OTHER DOCUMENTS.—Documents
25 submitted or relied upon in a proceeding, other than the

1 notice and claim, shall be served in accordance with regu-
2 lations established by the Register of Copyrights.

3 “(k) SCHEDULING.—Upon confirmation that a pro-
4 ceeding has become an active proceeding, the Copyright
5 Claims Board shall issue a schedule for the future conduct
6 of the proceeding. The schedule shall not specify a time
7 that a claimant or counterclaimant is required make an
8 election of damages that is inconsistent with section
9 1504(e). A schedule issued by the Copyright Claims Board
10 may be amended by the Copyright Claims Board in the
11 interests of justice.

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

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

21 “(1) the parties to the proceeding may make re-
22 quests to the Copyright Claims Board to address
23 case management and discovery matters, and submit
24 responses thereto; and

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

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

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

18 “(2) upon the request of a party, and for good
19 cause shown, the Copyright Claims Board may issue
20 a protective order to limit the disclosure of docu-
21 ments or testimony that contain confidential infor-
22 mation; and

23 “(3) after providing notice and an opportunity
24 to respond, and upon good cause shown, the Copy-
25 right Claims Board may apply an adverse inference

1 with respect to disputed facts against a party who
2 has failed to timely provide discovery materials in
3 response to a proper request for materials that could
4 be relevant to such facts.

5 “(o) EVIDENCE.—The Copyright Claims Board may
6 consider the following types of evidence in a proceeding,
7 and such evidence may be admitted without application
8 of formal rules of evidence:

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

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

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

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

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

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

10 “(q) VOLUNTARY DISMISSAL.—

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

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

22 “(3) CLASS ACTIONS.—Any party in an active
23 proceeding before the Copyright Claims Board who
24 receives notice of a pending or putative class action,
25 arising out of the same transaction or occurrence, in

1 which that party is a class member may request in
2 writing dismissal of the proceeding before the Board.
3 Upon notice to all claimants and counterclaimants,
4 the Copyright Claims Board shall dismiss the pro-
5 ceeding without prejudice.

6 “(r) SETTLEMENT.—

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

9 “(A) jointly request a conference with a
10 Copyright Claims Officer for the purpose of fa-
11 cilitating settlement discussions; or

12 “(B) submit to the Copyright Claims
13 Board an agreement providing for settlement
14 and dismissal of some or all of the claims and
15 counterclaims in the proceeding.

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

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

24 “(t) DETERMINATIONS.—

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

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

6 “(B) be in writing, and include an expla-
7 nation of the factual and legal basis of the de-
8 termination;

9 “(C) set forth any terms by which a re-
10 spondent or counterclaim respondent has
11 agreed to cease infringing activity under section
12 1504(e)(2);

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

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

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

23 “(3) PUBLICATION.—Each final determination
24 of the Copyright Claims Board shall be made avail-
25 able on a publicly accessible website. The Register

1 shall establish regulations with respect to the publi-
2 cation of other records and information relating to
3 such determinations, including the redaction of
4 records to protect confidential information that is
5 the subject of a protective order under subsection
6 (n)(2).

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

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

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

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

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

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

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

20 “(1) FAILURE TO COMPLETE SERVICE.—If a
21 claimant fails to complete service on a respondent
22 within the 90-day period required under subsection
23 (g), the Copyright Claims Board shall dismiss that
24 respondent from the proceeding without prejudice. If
25 a claimant fails to complete service on all respond-

1 ents within that 90-day period, the Copyright Claims
2 Board shall dismiss the proceeding without preju-
3 dice.

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

23 “(w) REQUEST FOR RECONSIDERATION.—A party
24 may, within 30 days after the date on which the Copyright
25 Claims Board issues a final determination in a proceeding

1 under this chapter, submit a written request for reconsid-
2 eration of, or an amendment to, such determination if the
3 party identifies a clear error of law or fact material to
4 the outcome, or a technical mistake. After providing the
5 other parties an opportunity to address such request, the
6 Copyright Claims Board shall either deny the request or
7 issue an amended final determination.

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

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

2 “(1) CERTIFICATION.—The Register of Copy-
3 rights shall establish regulations requiring certifi-
4 cation of the accuracy and truthfulness of state-
5 ments made by participants in proceedings before
6 the Copyright Claims Board.

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

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

22 “(B) in extraordinary circumstances, such
23 as where a party has demonstrated a pattern or
24 practice of bad faith conduct as described in
25 this paragraph, the Copyright Claims Board

1 may, in the interests of justice, award costs and
2 attorneys' fees in excess of the limitations
3 under this paragraph.

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

20 “(z) REGULATIONS FOR SMALLER CLAIMS.—The
21 Register of Copyrights shall establish regulations to pro-
22 vide for the consideration and determination, by at least
23 one Copyright Claims Officer, of any claim under this
24 chapter in which total damages sought do not exceed
25 \$5,000 (exclusive of attorneys' fees and costs) that are

1 otherwise consistent with this chapter. A determination
2 issued under this subsection shall have the same effect as
3 a determination issued by the entire Copyright Claims
4 Board.

5 **“§ 1507. Effect of proceeding**

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

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

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

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

13 “(b) CLASS ACTIONS NOT AFFECTED.—

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

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

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

4 “(B) seek dismissal under section
5 1506(q)(3) of the proceeding before the Copy-
6 right Claims Board.

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

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

24 “(1) notice of the commencement of the Copy-
25 right Claims Board proceeding is provided by the

1 claimant to the service provider’s designated agent
2 before the service provider replaces the material fol-
3 lowing receipt of a counter notification under section
4 512(g); and

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

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

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

19 **“§ 1508. Review and confirmation by district court**

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

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

20 “(b) FILING PROCEDURES.—

21 “(1) APPLICATION TO CONFIRM DETERMINA-
22 TION.—Notice of the application under subsection
23 (a) for confirmation of a determination of the Copy-
24 right Claims Board and entry of judgment shall be
25 provided to all parties to the proceeding before the

1 Copyright Claims Board that resulted in the deter-
2 mination, in accordance with the procedures applica-
3 ble to service of a motion in the district court of the
4 United States where the application is made.

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

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

14 “(B) A declaration by the applicant, under
15 penalty of perjury—

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

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

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

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

25 “(c) CHALLENGES TO THE DETERMINATION.—

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

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

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

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

22 “(2) PROCEDURE TO CHALLENGE.—

23 “(A) NOTICE OF APPLICATION.—Notice of
24 the application to challenge a determination of
25 the Copyright Claims Board shall be provided

1 to all parties to the proceeding before the Copy-
2 right Claims Board, in accordance with the pro-
3 cedures applicable to service of a motion in the
4 court where the application is made.

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

13 **“§ 1509. Relationship to other district court actions**

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

21 “(b) ALTERNATIVE DISPUTE RESOLUTION PROC-
22 ESS.—A proceeding before the Copyright Claims Board
23 under this chapter shall qualify as an alternative dispute
24 resolution process under section 651 of title 28 for pur-

1 poses of referral of eligible cases by district courts of the
2 United States upon the consent of the parties.

3 **“§ 1510. Implementation by Copyright Office**

4 “(a) REGULATIONS.—

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

25 “(2) LIMITS ON MONETARY RELIEF.—

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), not earlier than 3 years after the
3 date on which Copyright Claims Board issues
4 the first determination of the Copyright Claims
5 Board, the Register of Copyrights may, in order
6 to further the goals of the Copyright Claims
7 Board, conduct a rulemaking to adjust the lim-
8 its on monetary recovery or attorneys’ fees and
9 costs that may be awarded under this chapter.

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

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

23 “(c) FEES.—Any filing fees, including the fee to com-
24 mence a proceeding under section 1506(e), shall be pre-
25 scribed in regulations established by the Register of Copy-

1 rights. The sum total of such filing fees shall be in an
 2 amount of at least \$100, may not exceed the cost of filing
 3 an action in a district court of the United States, and shall
 4 be fixed in amounts that further the goals of the Copyright
 5 Claims Board.

6 **“§ 1511. Funding**

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

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

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

16 **SEC. 3. IMPLEMENTATION.**

17 Not later 1 year after the date of enactment of this
 18 Act, the Copyright Claims Board established under section
 19 1502 of title 17, United States Code, as added by section
 20 2 of this Act, shall begin operations.

21 **SEC. 4. STUDY.**

22 Not later than 3 years after the date on which Copy-
 23 right Claims Board issues the first determination of the
 24 Copyright Claims Board under chapter 15 of title 17,
 25 United States Code, as added by section 2 of this Act,

1 the Register of Copyrights shall conduct, and report to
2 Congress on, a study that addresses the following:

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

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

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

13 (B) works and applicable damages limita-
14 tions.

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

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

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

Calendar No. 266

116TH CONGRESS
1ST Session

H. R. 2426

AN ACT

To amend title 17, United States Code, to establish an alternative dispute resolution program for copyright small claims, and for other purposes.

OCTOBER 23, 2019

Received; read twice and placed on the calendar